

February 14, 2022

Should Supervisor have to tell contractor when to wear PPE?

He blamed eye injury and fall on facility's equipment

“Hello there, I’m Samir from On The Mark Painting Pros,” said the painting contractor.

“Oh yes! We’ve worked together before, a few years back,” said Steve Schmidt, Supervisor for Main Realty.

“I thought I recognized your face as well,” said Samir. The two shook hands.

“Let me show you what’s going on,” Steve said, walking Samir inside.

First task: Rebuild the ceiling

“What a beautiful old building,” said Samir, looking around.

“She’s almost 150 years old,” Steve

nodded. “And will look brand new once we’re done renovations.

“OK here is where we’d like you to start,” said Steve. “As you can see, we pulled out the old ceiling. Those beams need to be scraped and leveled.”

“Got it,” said Samir. “And it’s OK if I use that scaffold?” Samir pointed to a three-foot-high scaffold with four legs in the corner of the room.

“Were you planning to use a ladder?” Steve asked. “I don’t mean to tell you how to do your job, but you’ll get tired

(Please see Supervisor ... on Page 2)

Sharpen Your Judgment

Staff not exposed to hazard: Is OSHA fine valid?

“Help me to understand this OSHA fine,” Safety Director Chris Taylor said. “Which ramp did OSHA say was unsafe?”

“It wasn’t even one of ours,” said Supervisor Joe Murphy. “Let me explain ... ”

Was it a hazard?

“OSHA showed up for a surprise inspection,” Joe said. “And everything was going well. The inspector didn’t find any violations.”

“Always good to hear,” said Chris.

“Yeah,” continued Joe. “But when she was ready to leave, she saw some rickety plywood ramp hanging off the back of one of the trucks

at the loading dock. One of the delivery drivers had set it up, so I went over and took it down.”

“You’re sure it wasn’t ours?” Chris asked.

“We only use quality, safe equipment for unloading,” Joe said. “My people know the safety rules front to back. OSHA even quizzed them, and they all said breaking the rules wasn’t acceptable – they could lose their jobs over it.

“The good news is none of our people were exposed to the hazard, they were all at lunch at the time. But the bad news is that OSHA fined us,” Joe went on.

Could the company get the fine dismissed?

This regular feature sharpens your thinking and helps keep both you and your firm out of trouble. It describes a real legal conflict and lets you judge the outcome.

Make your decision, then please turn to Page 4 for the court’s ruling.

Supervisor ...

(continued from Page 1)

a lot sooner working on a ladder.”

“Oh I agree with you on that,” Samir laughed.

“You wouldn’t believe the tight spaces I work in sometimes on a ladder. Thank you!”

Doesn’t take Supervisor’s offer

“There’s a bucket with gloves and goggles in the back room,” said Steve.

“Just return what you use when you’re wrapped up for the day.”

“Hmm? Oh yes, thank you,” said Samir.

Samir gathered up buckets of joint compound and plaster, a hammer, a machine with a blade in front to cut rods in the ceiling, netted wire and a corner bead, and then hoisted all of it up onto the scaffold platform.

He didn’t take the Supervisor’s offer of protective eyewear though.

Work goes as planned until –

All this scraping is making me hungry, Samir thought to himself. *I’ll have to try one of the lunch trucks up the block.*

As he struggled to clean a rafter beam, a small chip of concrete flew loose into Samir’s eye.

“Arggghh!” Samir yelled. He lost his balance and fell back on the platform. Adding insult to injury, he banged his head on the corner of a heavy bucket.

“What happened? Are you all right?” said Steve, who came to check when he heard yelling.

“No! I can’t see,” said Samir. “Feel like I’m going to pass out ...”

Did Supervisor drop the ball?

Samir suffered injuries to his eye and head that required medical care and cost him time from work.

The Supervisor couldn’t believe what happened next. “Suing us?!”

“That’s right,” said the lawyer. “He says the scaffold wasn’t safe because it doesn’t have guardrails and he couldn’t tie off to an anchor point.

“He’s blaming his injuries on that and also for not having eyewear,” the lawyer said.

“Hold on! I offered him goggles,” said Steve. “He’s done this kind of work before. It was up

to him to protect his eyes.”

“Maybe so,” said the lawyer. “But I think we’re on the hook for the fall from the scaffold.”

“What fall? He landed on the scaffold,” said Steve. “The scaffold did what it was supposed to and supported him.”

Result: The company tried getting the charges dismissed but a court ruled a jury might reasonably find the company liable, and let the case move forward.

The company can either settle or risk a jury trial.

What you need to know:

Host facilities should set safety rules for workers and contractors. Ask contractors to review and agree to your policy before letting them start work.

To reduce liability, you’re better off insisting they provide their own equipment, tools and PPE.

And in this case, the Supervisor wouldn’t have been out of line telling the contractor to wear eyewear because of the risk of debris falling from above.

Based on Tomal v. 225 Broadway Company

TEST YOUR KNOWLEDGE

Is weed ‘legal’ in the workplace? Know the facts

More and more laws are being passed legalizing marijuana for both medicinal and recreational use.

That’s led to many employers wondering: How can this impact safety? And what can I do about it?

Answer *True* or *False* to find out how much you know about this intersection of drugs and work.

1. In states where recreational marijuana is now legal, workplaces can’t discipline workers for using the drug.
2. Medical marijuana use must be permitted by workplaces. Workers who have been prescribed medicinal marijuana are exempt from existing workplace drug policies.
3. When it comes to use of marijuana, federal laws generally trump state laws.

ANSWERS

1. *False.* If your workplace prohibits drug use, it can still discipline workers who use marijuana – even in states where it’s legal for recreational use.
2. *False.* Even if medical marijuana is prescribed by a doctor, workplaces can still prohibit its use. Workers who are prescribed pot don’t have to be exempt from testing, and they can be disciplined for using it on or off the job.
3. *True.* Marijuana is still illegal at the federal level. This generally trumps state law, which means employers can ban the use of the drug by employees. Workers should be made aware that regardless of state laws, they’re still subject to workplace drug and alcohol policies. Be sure these policies are put in writing to protect your company in court.

Answers to the quiz:

Fines, accidents and damage supervisors could've prevented

News you can use to head off safety mishaps

In this regular section we highlight situations that led to fatalities, injuries, near-misses, damaged equipment or fines that frontline supervisors could've prevented.

2 workers killed by toxic fumes – PPE fell short

What happened: Workers at a chemical plant were performing a line break and nitrogen gas purge that required taking pipes apart. More than one highly hazardous chemical combined to produce toxic – and deadly – fumes. The employees hadn't been trained to isolate the chemicals and use all required protective gear, such as respirators. Two employees – one of them a 20-year veteran who noticed a funny smell he'd never come across in his years working at the plant, according to his wife – died of respiratory failure days later in the hospital due to exposure to toxic fluorocarbons.

Result: Daikin America in Decatur, Alabama, received a willful citation from OSHA for lack of safe work practices such as lockout/tagout or confined space entry, as well as nine serious citations for:

- not providing safety data sheets for all chemicals used in its processes
- lack of written procedures for respiratory protection
- not being able to provide OSHA inspectors with copies of safety data sheets, and
- inadequate respirators and additional PPE.

Lesson: Process safety management (PSM) fines cost the company \$232,103. It faces costly payouts

to the families of the two deceased employees and a third employee who survived exposure that are suing the company. For more info on PSM and hazardous materials/chemicals, go to OSHA's website at: [osha.gov/laws-regs/regulations/standardnumber/1910/1910.119](https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.119)

Lot of problems with trenching practices: \$173K

What happened: OSHA checked on an Idaho utility contractor's trenching practices and didn't like what it saw.

Result: Mountain Power Construction (Post Falls, ID) employees were laying power lines underground. The trenches they were working in left them prone to a cave-in where someone could've been crushed or suffocated. The firm got written up for failure to:

- provide adequate protective systems so workers could be pulled to safety quickly in the event of a cave-in
- train employees on hazard recognition and avoidance
- ensure the crew wore protective helmets in areas where head injuries could occur
- provide adequate means of egress (ladders, ropes) from trench excavations
- keep excavated materials at least 2 feet from the edges of all trenching, and
- ensure excavations were inspected daily by a competent person.

Lesson: As long as the firm fixes its trenching methods, it can avoid future fines. But it's on the hook for \$173,787 this time around.

SAFETY TRAINING TIPS

■ Are workers up to date on chemical hazards?

Workers need to know about chemicals used in the workplace or it can come back to haunt.

For example, OSHA recently cited a Connecticut aircraft parts manufacturer accused of failing to provide adequate protection against solvents hexavalent chromium and cadmium, both of which can cause cancer.

Exposure to the toxic substances occurred during electroplating, mixing and preparing, and painting and paint removal processes on small aircraft parts. OSHA found workers weren't trained on hazards posed by these chemicals.

■ Inspire your staffers with a touch of humility

Leaders don't need to relate to everyone in their audience when they speak. But they want to be relatable.

That helps inspire others – whether it's your team or a larger group you're training or speaking to – says Gia Storms, a leadership coach.

To relate and inspire, Storms suggests you:

- Ready failure stories. When you tell others how you failed – and bounced back – you create intimacy.
- Be real right now. Tell others how you feel when you answer questions, or share a story off the cuff.
- Share what's on your mind. In smaller groups and informal meetings, prepare some thoughts on something that's impacted you recently at work or in life.
- Ask others if they'd like to share a similar story or experience. The more input, the better.

Essential for a strong safety culture: Spend time on the people who want to learn

Who doesn't want to buy in?

Employees valuing their own safety and watching out for each other because they want to, not because they have to.

That in a nutshell is the definition of a good safety culture.

How do you get there?

There are a few avenues to reach it, but many employers go down the wrong path, negatively impacting safety and wasting people's time to boot.

That's according to Dale Lesinski, VP of Sales & Training for DiVal Safety Equipment, who spoke at the National Safety Council's 2021 conference.

Buy-in is usually predictable

For example: Lesinski says when a new idea is announced, you usually have a 20-60-20 split among employees.

Twenty percent show some enthusiasm ... they think, this is good.

Another 20% think the idea is stupid, and the worst of this group might actually try to run interference to make sure it doesn't work.

The other 60% are in the middle.

They think, this might work, or they're looking for some proof before making up their minds.

Which group do some companies spend the most time on?

You guessed it: The bottom 20% – those with the worst attitudes.

Attitude drives results

Don't make the same mistake of focusing on the Negative Nicks and Nancys, Lesinski says.

You'll never get 100% buy-in.

But you can get 70% by concentrating more on the other 80%.

As for the 20 or so who don't buy in?

Lesinski says you'll never reach them.

However: When the other 70% believes, they will change the people at the bottom.

This might result in some in the "bottom 20" deciding to quit and find work elsewhere.

Info: www.nsc.org/events

What you need to know:

Lesinski says a company has to define its "why" for safety. The answer is something that appeals to employees: Everybody gets home to their kitchen table at night.

Safety can't be all about the sign at the front gate that says "X days without an accident" or your DART (Days Away, Restricted or Transferred) rating.

Those things don't resonate with employees, according to Lesinski. Incorporate people into your company's safety "why."

Sharpen Your Judgment – The Decision

(continued from Page 1)

Yes. The fine was dismissed when it was brought before a judge at the Occupational Safety and Health Review Commission (OSHRC).

OSHA claimed there was a possibility the company's workers were exposed to a hazard. It asked the workers about the setup, but they knew the safety rules. Yet a fine was issued.

The company argued it had taken steps to protect its workers from this kind of hazard. Its people knew the rules, and faced punishment for violating them.

OSHRC sided with the company.

It said there was substantial evidence the company didn't have knowledge of the

makeshift ramp until the safety inspector came through and it removed the hazard right away.

That combined with its record of upholding safety rules got the fine dismissed.

Analysis: Demonstrate rules are known

OSHA wants to see companies walk the talk when it comes to safety. Just saying you have rules in place isn't enough.

Your people need to be so well-versed in safety rules they can answer confidently in any situation – and there need to be real and significant consequences for breaking them.

Based on Secretary of Labor v. SSA Pacific.

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