



American Society of Safety Engineers
Protecting people, property, and the environment since 1911
Greater San Jose Chapter

<http://www.assesj.org> email:gsjc@assesj.org



January 2011 Newsletter

Safety.BLR.com®

New Year's Resolution: Keeping Safety a Top Priority

As the new year approaches, it's a good time to reflect on the success of your safety program during the past year. Was safety a top priority for everyone in your organization? Did you manage to meet objectives, or do you perhaps need to undertake some new initiatives in the new year?

Hunt down and eliminate hazards. One initiative that you might consider is to turn the spotlight on workplace hazards. For example:

Take a second look at the layout and condition of work areas.

- Examine tools and equipment to make sure they are safe for employees to use (and review maintenance schedules to make sure they stay that way).
- Observe the way employees work (you might be surprised at how many unsafe behaviors you observe).
- Check to make sure that appropriate personal protective equipment (in good condition) is readily available to all workers.
- Identify potential fire, chemical, electrical, and other hazards throughout your facility and take action to eliminate these risks.

Emphasize training. Employee training is probably the most important aspect of any successful safety program.

- Check OSHA standards for training requirements (many regulations have very specific requirements).
- Make sure training sessions are interactive and provide plenty of opportunities for questions and discussion.
- Take advantage of available technology to enhance and expand training options.
- Provide lots of demonstrations and hands-on experience during training sessions.
- Don't forget to provide training for supervisors and managers, too (especially when new regulations, policies, equipment, processes, etc., are introduced).

Encourage employee participation. If employees at all levels in the organization are actively involved in promoting workplace safety, your safety initiatives are much more likely to achieve objectives and improve overall safety.

Upcoming Chapter Meetings

Tuesday January 11, 2011 - 12:00pm - Biltmore Hotel & Suites, Santa Clara, CA

Topic: Safe Machinery in Laboratories and Industrial Factories

Presentation by Eugene Heil, P.E., CEO and Principal of Abstraction Engineering Inc.

This presentation will introduce the various codes and standards related to machine safety. This will include some product liability law and the roles of various safety personnel (building inspectors, fire department, Cal/OSHA, professional engineers, insurance loss control). The presentation will show examples of common machine hazards and effective controls.

Presenter: Abstraction Engineering provides professional engineering for safe machinery including field label evaluation, arc flash, robot, CE Mark, and SEMI S2. Eugene Heil has a BS in electrical engineering and MS in engineering management, and is licensed as a professional electrical engineer, electrical and general contractor, and real estate broker. Eugene also has 26 years with Hewlett-Packard, Unisys, Shugart, and start-ups, developing computer mass storage systems, with senior management responsibility for quality and reliability. www.abstractionengineering.com

safetyphoto

photos of hazards in the workplace

The photo was taken of a fire exit during an office refurbishment, the building was fully occupied (60+ staff) and there was only one other fire exit in the building.





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LEGAL REMEDIES IN CONSTRUCTION ACCIDENTS - ARTICLE BY POWERS & SANTOLA LLP



Sunday, 09 January 2011

Twenty-six year-old Joseph Delaney was carrying a load of steel rods at the site of a new baseball stadium in Ramapo, New York when his forklift tipped over and ejected him from the vehicle. Apparently a tire sunk several inches into muddy ground, causing the load, and Delaney's vehicle, to become unstable. He suffered a number of injuries, including bruises to his shoulder, hip and legs.

The Occupational Safety and Health Administration (OSHA) launched an investigation into the accident. Delaney's employer, Nikko Construction, has actively participated in the inquiry. The accident brings about a number of questions regarding how workers may be compensated for on-the-job injuries. This article highlights OSHA's role in construction site accidents, how workers' compensation works and how injured workers may bring a private cause of action against offending employers.

OSHA's Role in Construction Site Accidents

As part of the U.S. Department of Labor, OSHA is responsible for ensuring safe working conditions. It establishes and enforces safety standards for a number of industries, including those using flammable or toxic liquids and heavy equipment, especially those in inherently dangerous environments. OSHA is also charged with investigating safety complaints and worksite accidents.

American workers have a right to safe working environments. To that end, employers are required to follow OSHA safety standards and provide a workplace free of serious hazards. OSHA conducts periodic investigations to ensure compliance and also reviews accidents to discover whether safety violations caused an accident. When violations occur, OSHA may hold the employer liable and levy fines for non-compliance. However, it does not compensate employees for injuries or losses arising from an accident.

Workers' Compensation as a Remedy

Injured workers may seek workers' compensation benefits to pay for medical expenses and lost wages when they are hurt in workplace accidents. Workers' comp is established as a no-fault system to ensure that employees are compensated based on the injury itself. Negligence is not considered in calculating benefit amounts. As such, employers are not sanctioned for violations that may have caused an injury, and employees are not punished for their own carelessness (although a work comp claim could be denied if it is found that the worker was intoxicated or if he or she intentionally attempted to injure someone). Further, workers' compensation is normally the exclusive remedy for injured workers, so employers are not held accountable through this mechanism for safety issues that cause accidents.

Private Causes of Action

Despite this, employees may seek damages based on industrial violations. Section 241(6) of New York's Labor Law requires owners of the land upon which the construction work takes place to make sure that construction areas are "constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein". The law also requires employers, owners and all contractors to comply with safety regulations set forth by the New York Labor Department. Further, this law allows injured workers to bring a cause of action against the owner of the land where the accident occurred and/or any contractor, except for the injured worker's own employer.

More at: http://www.melodika.net/index.php?option=com_content&task=view&id=106703&Itemid=54



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FLASH REPORT!

Governor Signs Bill Reforming "Serious Violation" Definition. In a major victory for advocates of reform of the way serious violations are adjudicated by the Cal/OSH Appeals Board, Governor Arnold Schwarzenegger has signed **AB 2774**, perhaps the most significant occupational safety and health bill to come out of Sacramento in several years. AB 2774, authored by Sandre Swanson (D-Oakland) takes several bold steps in redefining what is a serious violation and enhancing communication between employers and the Division of Occupational Safety and Health (DOSH). (See linked story.)

AB 2774 rewrites California Labor Code 6432, replacing current language with a rebuttable presumption that a serious violation exists if DOSH demonstrates that there is a "reasonable possibility" that death or serious physical harm could result from the hazard.

Current language states that a serious violation exists if DOSH shows there is a substantial probability that death or serious physical harm could result from a violation. This requirement has made it difficult for DOSH to win before Cal/OSH Appeals Board, which interprets the requirement to mean that the division has to prove a 51% likelihood of death or serious injury. Administrative law judges routinely dismiss citations for serious violations or reclassify them to "general," even in fatality cases, based on this requirement.

One of the most important aspects for employers and labor groups in AB 2774 is the requirement that inspectors attempt to get specific information from employers before issuing a citation. The intent is to give employers a better idea of what they would be cited for and give them the opportunity to abate the alleged hazard or rebut the alleged violation.

The bill also adds a provision that would require the Appeals Board to accept testimony by DOSH inspectors on serious violations if they demonstrate their Cal/OSHA-mandated training is current. The board has in the past disqualified inspector testimony for failing to have "specific familiarity" about a hazard.

AB 2774 is the culmination of several months of negotiation between employer groups, labor advocates and the Division to craft a piece of legislation that all sides could live with and advance the cause of health and safety. Legislative staffers and stakeholders say the direct involvement of the Department of Industrial Relations and the editorials from Cal-OSHA Reporter also helped drive the consensus.

The California Chamber of Commerce and a coalition of employer groups removed its opposition in August.

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