

Lessons learned from real-life OSHA regulation violations

OSHA - the Occupational Safety and Health Administration - takes every complaint seriously. Take these real-life lessons as a gentle reminder to review your OSHA compliance, so you're well prepared in the event an employee ever files a complaint or worst, an accident or on-the-job injury brings OSHA to the scene.

Lesson: Whether a safety hazard is real, or even perceived, a manager should never punish an employee who lodges a complaint to OSHA

When a Pennsylvania hair salon fired a stylist after the woman's husband complained to OSHA that the shop's toilet was backed up and repeatedly overflowed, sending soiled water into the work area.

According to the complaint, "Employees experienced gagging and nausea as a result of the smell of waste in the salon. After the cleaning crew sprayed chemicals in the bathroom, the staff experienced burning eyes, headaches and nausea." The owner did not allow the employees to close shop that day. A court ordered the salon to pay the fired stylist \$40,000 to settle the retaliation claim.

Lesson: Employers must know the capabilities and limits of the equipment their employees use

A Missouri company working on an East Harlem construction project last year face OSHA fines after a small crane tumbled out of a fourth-floor window, critically injuring three workers. The incident on East 125th Street also led to criminal charges for two construction supervisors.

Western Specialty Contractors must pay fines totaling \$155,000. OSHA inspectors found that the crane—only about six feet tall, but extending far outside the building—was not properly secured. In addition, the operator had not been properly trained to calculate how much the crane could safely lift without becoming unstable.

Workers four stories below were badly injured when the crane fell on them in June 2018.

Lesson: Get the lead out before you open for business

Workers at a gun range in Killeen, Texas were exposed to unsafe lead levels, according to the U.S. Department of Labor's Occupational Safety and Health Administration.

OSHA officials found airborne lead in excess of safe levels and lead contamination on surfaces throughout the Tap Rack Bang Indoor Shooting Range. OSHA cited the facility for failing to monitor employees for lead-related illnesses. Inspectors also said employees swept up lead debris instead of removing it with vacuums equipped with air filters.

The shooting range faces penalties totaling \$214,387.

Lesson: A comprehensive workplace violence prevention program is necessary

OSHA proposes fines after finding no peace at KidsPeace, a private charity serving youth with behavioral and mental health problems, for exposing its employees to workplace violence at two facilities in North Whitehall Township, outside Allentown, Pennsylvania.

An OSHA statement said KidsPeace employees were exposed daily to physical assault, including punching, kicking and biting. It said employees regularly suffered concussions and lacerations. OSHA said the facilities lacked a “comprehensive workplace violence prevention program.”

KidsPeace faces a fine of \$29,010 for the infractions.

Among the items listed in the citations were insufficient staffing levels to prevent or address violent behavior by patients. OSHA also cited poor communication systems for alerting managers and others when emergencies arose.

KidsPeace was also written up for poor workplace health and safety record-keeping.

Lesson: You must prove OSHA compliance is impossible

The federal Occupational Safety and Health Administration has the power to fine employers that don't follow workplace safety rules. However, there are several safe harbors built into the OSHA law. For example, if an employer can show that providing safety measures would be impossible, compliance would not be required.

Recent case: OSHA inspectors discovered that employees of Manson Construction, a heavy marine construction firm, were working above water without fall protection. OSHA rules require guardrails around construction platforms or safety nets underneath. However, the employees were wearing personal flotation devices.

Manson was slapped with 12 safety violations, each carrying fines of up to \$7,000.

Manson appealed, arguing it was not feasible to use fall protection systems on a marine construction site. That's why it provided life jackets to workers. It offered no specifics on why it couldn't install guardrails or safety nets.

The court said that, absent an economic or technological rationale for omitting fall protection, the fines would be allowed to stand. (Manson Construction v. Secretary of Labor, 9th Cir., 2018)

Final note: Manson Construction didn't present any data on why the usual OSHA fall protection solutions were not viable options. It didn't cite cost or explain why adding fall protection to the set-up was technologically impossible. It merely argued that should workers fall, they would survive because of their life jackets.