

Stark County Safety Council Newsletter

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STARK COUNTY

SAFETY COUNCIL

A committee of the Canton Regional Chamber of Commerce

OSHA'S "SEVERE VIOLATOR" PROGRAM HITS THE CONSTRUCTION INDUSTRY HARD

By Jacqueline Bollas Caldwell, Esq.

On June 18, 2010, OSHA's Severe Violator Enforcement Program ("SVEP") became effective. This program was aimed at enhancing inspections and enforcement against "employers who willfully and repeatedly endanger workers by exposing them to serious hazards."

A year later, OSHA has handled in excess of 100 severe violator cases, and 60% of those cases were against construction contractors.

Under OSHA's SVEP directive, employers who meet the following criteria are subject to severe violator enforcement:

- A) One or more willful, repeat, failure to abate citations in connection with an employee death/multiple hospitalization situations;
- B) Two or more willful, repeat, or failure to abate citations based on high gravity, serious violations relating to the following "high-emphasis hazards": fall hazards; national emphasis programs concerning amputation, combustible dust, crystalline silica, lead, excavation, trenching hazards, grain handling;
- C) Three or more willful, repeat, or failure to abate citations concerning OSHA's process safety standard (concerning potential release of highly hazardous chemicals);
- D) All "egregious" (per instance citations) enforcement actions.

The consequences of being labeled a severe violator are grave, including enhanced enforcement, such as mandatory follow-up inspections, nationwide inspections of related workplaces, increased notification, enhanced settlement provisions (for example, companywide compliance, mandatory hiring of safety consultant to implement comprehensive safety and health plan).

OSHA has also issued an administrative penalty information bulletin through which it increased the time period for classification of "repeated violations" from three years to five years, and adopted a penalty structure for serious citations ranging from \$3,000.00 to \$7,000.00.

In sum, OSHA has adopted new enforcement techniques to ratchet up penalties and enforcement consequences. OSHA is using these enforcement techniques aggressively against all employers, including construction contractors.

If you have questions about this article, please contact Jacqueline Bollas Caldwell at: 330-244-2864 or jcaldwell@kwgd.com.

NOTE: This general summary of the law should not be used to solve individual problems since slight changes in the fact situation may require a material variance in the applicable legal advice.

Today's Program

September 8, 2011

Speakers: Jacqueline Bollas Caldwell, Attorney at Law, Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A. &

Dan Morgan, State Farm Insurance Agency

Topic: "Social Media & The Workplace"

September Spotlight Co:



ABOUT THE SEPTEMBER SPOTLIGHT CO.

SARTA (Stark Area Regional Transit Authority) services over 2.1 million people a year across all of Stark County. In operation since 1997, SARTA currently operates 31 fixed routes in Alliance, Canton, Hartville, Jackson Township, Louisville, Massillon, North Canton and Uniontown. 79% of Stark County residents live within a ½ mile of SARTA's fixed routes. Fixed Route services are utilized by students, employees, disabled individuals and seniors. In addition, our Proline service provides disabled individuals with countywide transportation. Proline services average over 140,000 rides per year to those with no other means of transportation. For more information about SARTA, visit www.sartaonline.com and check out our Facebook page at www.facebook.com/SARTAonline.com.

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Safety Council Mission Statement: To provide a forum for safety and health information, education and networking in Stark County, through leadership, innovation, facilitation, program, and support, in partnership with other public and private organizations.

This month's article was written by : Gust Callas, Attorney at Law, Black, McCuskey, Souers & Arbaugh

Employer Liability For Texting While Driving

In a recent study by CareerBuilder it was found that 54% of workers who have smart phones - including 66% of sales workers and 59% of professional and business services workers - admit to checking them while driving.

To minimize liability that can result from employees' texting while driving, employers can take the following steps.

- Update workplace policies to specifically address texting while driving. To protect against liability, the policy should generally bar employees altogether from texting while driving on company time, in connection with work-related purposes, or while using employer provided equipment.
- Warn employees of the dangers of texting while driving and point them to the relevant policy - as well as applicable state laws - at the time company cell phones or vehicles are issued to employees.
- If employers stress the need for employees to constantly check e-mail or otherwise "stay in touch" while away from the office, particular care should be taken to avoid scheduling calls or texting employees at a time they know when the employee will likely be driving. If internal practices encourage cell phone use while driving, even the best policy is essentially without merit.

The federal government is increasingly focused on the dangers of employees' cell phone use while driving and OSHA's "*Distracted Driving Initiative*" is at the forefront of federal action. Under the Initiative, if OSHA receives a credible complaint that an employer requires texting while driving or organizes work so that texting is a practical necessity, OSHA will investigate and, where necessary issue citations and penalties against the employer. The plans for OSHA's Initiative can be found at <http://www.osha.gov/distracted-driving/initiative.html>.

If you have any questions or concerns about workplace safety and the use of cell phones, please contact attorney Gust Callas at Black, McCuskey, Souers, & Arbaugh, at 330-456-8341

Upcoming Program

October 13, 2011

Speaker: **Ron Blasiman**
Owner, Blasiman Fire Equipment
Topic: **Fire Extinguishers, Exit and Emergency Light Regulations**

October Spotlight Company



Robin's Corner

Q: *If I want to do a workplace ergonomic review of possible hazards my employees may be exposed to – what are the ergonomic risk factors I need to be looking for?*

A: *There are 7 risk factors to aware of:*

- Repetition
- Forceful Exertion
- Direct Mechanical Pressure (vibration)
- Static Posture
- Inadequate Recovery Time
- Awkward Posture
- Environmental Stressors

UPCOMING

Sept. 27: CPR Training - at the Chamber - 3 sessions - fee \$15.00. For more information contact Connie Cerny at the Chamber.

Oct. 11: Fire Prevention Breakfast at Skyland Pines Golf Club & Banquet Facility - Fee \$13.00 - Reserved tables of 8 available. For reservations go to: www.StarkCountySafetyCouncil.org

October 29: 14th Annual Pumpkin Race at Whipple-Dale Centre benefiting Stark DD Special Olympics.

Chainsaw Safety Classes at Stark State College
Monday Sept 19th , Sat. Oct. 15 & Mon. Oct. 31s all morning sessions. Fee \$80.00. For additional information call Scott Brenner at 330-933-1345.

Important items to make note of:

1. **Semi-Annual Reports** are required to maintain your membership with the SCSC. Reports are due July 15th and January 15th each year.
2. **Don't forget to sign-in.** If you do not sign the "sign-in sheet" your company will not receive credit for attending. This could hurt your company's chances of receiving the BWC's discount.
3. **NOTE: July 1, 2011 began a new 12 month period** for the BWC's rebate program. If your company is eligible, you must attend a minimum of 10 events, with your company's CEO or a senior level manager attending one of these 10, and submit two semi-annual reports. See BWC website for complete rebate details.