

Stark County Safety Council Newsletter

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STARK COUNTY

SAFETY COUNCIL

A committee of the Canton Regional Chamber of Commerce

OSHA ISSUES FINAL RULES FOR CRANES & DERRICKS

By Jacqueline Bollas Caldwell, Esq.

OSHA has issued its final rule to strengthen and update safety requirements for Cranes and Derricks used in Construction. Significant new requirements include the following:

- Third-party certification of crane operators that must be paid for by employers. (This provision will not take effect immediately to give time for certification facilities to be established, except for cranes being used in a jurisdiction with its own licensing requirements.)
- Inspection of towers before they are moved and erected at the site.
- New procedures for working around power lines as a result of the high instance of construction workers being injured or killed when equipment comes in contact with lines.
- The rule becomes effective 90 days after August 9, 2010 (November 8, 2010).
- The final rule was published on August 9, 2010, in the Federal Register and a copy of the regulatory text is available at <http://www.osha.gov/doc/cranesreg.pdf>.
- This new standard addresses key hazards related to cranes, including the four main causes of worker death and injury – electrocution, crushed by parts of the equipment, struck by the equipment/load, and falls.
- The final rule clarifies that employers must pay for all training required by the final rule and for certification of equipment operators.

This final rule covers about 267 worksites where Cranes and Derricks are being used and approximately 4.8 million workers. OSHA expects this final rule to prevent about 22 fatalities and 175 non-fatal injuries annually.

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 August 12, 2010

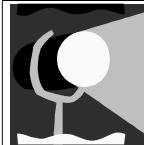
Speaker: Chuck Green
Public Awareness & Service Coordinator Ohio
Utilities Protection Service (O.U.P.S.)
Topic: "Call Before You Dig"

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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.

SCSC Members:

Our safety article this month is submitted by Attorney Hans Nilges, Partner, Morrow & Meyer, LLC, North Canton. I am sure you will find this interesting.

Best Regards,

Susan

Supreme Court Upholds Intentional Tort Legislation

By Hans Nilges, Esq.

In two separate and much anticipated decisions, the Ohio Supreme Court upheld the constitutionality of the Intentional Tort Reform Law passed by the Ohio General Assembly in 2005.

In 1982, through its Blankenship decision, the Supreme Court carved out an exception to workers' compensation immunity for "employer intentional torts." It subsequently defined the scope of that cause of action to include instances where the employer was "substantially certain" that harm would result to an employee.

Different courts developed different interpretations of the type of conduct required by an employer to be actionable, with some courts adopting a very liberal view. In some cases, this resulted in a near evisceration of workers' compensation immunity. For example, the 11th District Court of Appeals determined that an employee who admitted to intentionally jumping off a roof to chase a bucket, in direct violation of an established and enforced work rule, could prove an intentional tort claim.

To curb similar abuses and obtain consistency, in 2005 the legislature created a statutory definition of "substantial certainty," which requires the employer to act "with a deliberate intent to cause injury" before liability can attach. This statute was challenged by a number of plaintiffs on constitutional grounds, who were successful in the lower courts. The leading cases were Kaminski v. Metal & Wire Products Co. and Stetter v. R.J. Corman Derailment Services.

On March 23, 2010, however, the Supreme Court overruled both Kaminski and Stetter and specifically found that the Intentional Tort Reform Law to be constitutional. In doing so it clarified that the appropriate standard for most intentional tort cases is "deliberate intent." Accordingly, although it is unknown for certain how courts will construe the phrase "deliberate intent," it appears that it will now be much easier for employers to prevail in employer intentional tort lawsuits.

It is important to note, however, that even under the Intentional Tort Reform Law, a rebuttable presumption that an intentional tort has occurred is created whenever an employer intentionally removes equipment or machine guarding or makes misrepresentations regarding a toxic or hazardous substance.

Hans A. Nilges, Esq. is a partner with the Morrow & Meyer, LLC law firm where he provides legal counsel and advice to employers regarding all aspects of labor and employment law.

This newsletter is distributed monthly to keep you advised of developments in the area of OSHA law. Note: This should not be substituted for legal advice and should not be relied upon in a specific case.

Upcoming Program

September 9, 2010

September 9, 2010

11:30-1:30 pm

Myers Lake Ballroom

Stark County Safety Council Business Expo

This provides an opportunity to our members to showcase their wares. Put your best face forward!

Only \$75.00 for a display table—includes 2 lunches. Only 50 tables available. See Connie Cerny to reserve your table.

To be a spotlight company contact Mark Rossiter
mark.rossiter@anheuser-buch.com

Upcoming Events

August 27, 2010—CPR Training at Chateau Michele from 8 a.m.-5 p.m.; registration at 7:30 a.m.; fee; includes lunch; space limited; contact Connie Cerny 330-458-2061

Sept. 9, 2010—SCSC ANNUAL SAFETY & BUSINESS EXPO—SCSC will once again hold its' annual Safety & Business Expo on this date. See above for details.

October—5K Race—Date to be announced

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. **July 1, 2010 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.
4. **Please complete a Program Evaluation Form** following each luncheon meeting. Your input is important.