



National Safety  
Management  
Society

**DIGEST**

*Updating Members on Safety Management News*

**April 2008**

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## **Welcoming Our New 2008 NSMS Members**

On behalf NSMS President Roosevelt, the NSMS Executive Committee and the NSMS Board of Directors, we like to thank all members who have proactively renewed their 2008 membership to the National Safety Management Society. We would also like to acknowledge and welcome the following new members to our Society:

- **Erik R. Benson**, Safety Manager – Kiewit Pacific Company (Concord, California)
- **Christina A. Fant**, Owner, - Southeastern Truck and Equipment (Bishopville, South Carolina)
- **Isidoro A. Geverola**, Health, Safety & Environmental Manager – Aircraft Service International Group (Los Angeles, California)
- **Frank M. Gray**, Student Member – Slippery Rock University (Kittanning, Pennsylvania)
- **Syed Masood Ali Rizvi**, Safety Engineer – Nour Comm Company, Subcontractor of Aramco (Dammam, Saudia Arabia)
- **Polly A. Miller**, Occupational Safety & Health Specialist – U.S. Government Accountability Office (Washington, D.C.)

We appreciate your interest in furthering your skills, knowledge and abilities in the management of safety and risks, as well as your interest to networking and professional development. Welcome again to NSMS!

## **Election Ballots Forthcoming for NSMS Board of Directors Openings**

Nominations have been received and we appreciate our members' interest and commitment to help serve on the Board and contribute to the Society's growth and needs of our membership. This leadership role is critical to help chart the strategic direction for our Society and address members' professional development. The electronic ballots will be distributed to all current dues-paying members next month.

## **Planning Underway for the “NSMS 2008 Professional Development Conference”**

With the limited availability of cost-effective conference space around the Greater Houston area during the spring, the NSMS Board has decided to reschedule the event around the mid-October/early November timeframe. The venue will be in the Greater Houston area. We had an outstanding 2007 Annual Conference in Las Vegas last winter and the positive feedback we received is asking for more professional development events. This upcoming conference is open to NSMS members, past members and other interested safety/risk management professionals/supervisors/managers/executives with the US and internationally, as well as students pursuing degrees in the field..

If you are interested in being part of the planning committee, please contact the NSMS Headquarters via email ([nsmsinc@yahoo.com](mailto:nsmsinc@yahoo.com)) and we will connect you with the core logistical team.

If you are interested in speaking, submitting a technical, research or safety management paper, or sharing at our poster session, please contact:

Dr. Charles W. McGlothlin, Jr. PhD PE  
Program Director, OS&H  
Oakland University School of Health Services  
Rochester, MI 48306  
Email: [mcglothl@oakland.edu](mailto:mcglothl@oakland.edu)  
(248) 370-2664

As an employer, Recruiter or vendor, if you are interested in participating in our job fair and exhibition, please send an email to our corporate headquarters ([nsmisinc@yahoo.com](mailto:nsmisinc@yahoo.com)). Thank you.

## **NATIONAL SAFETY MANAGEMENT SOCIETY**

### **2008 Professional Development Conference: Safety Management Best Practices, Regulatory Update and Professional/Leadership Development**

**Timeframe: mid-October/early November, 2008**

**Location: Greater Houston Area**

#### **Draft Conference Agenda and Tentative Speakers**

##### **Day 1**

7:15 am to 8:00 am	Conference Registration/Check-in
8:00 am to 8:30 am	Welcome/Introductions/Announcements (NSMS President Roosevelt Smith and Executive Director Jeffrey Chung)
8:45 am to 9:30 am	Guest Speaker or “Integrating the Environmental, Health, Safety and Security Functions into Business Operations” – James J. Thatcher, PhD
9:45 am to 10:30 am	The ANSI Z10 Occupational Safety & Health Management System Standard: What it is, why it was developed, and how it compares to other management system standards such as OHSAS 18001 and OSHA VPP. – Thomas Slavin, MS, MBA, CIH, CSP, CSHM.
10:30 am to 10:45 am	Morning Break/Networking
11:00 am to 11:45 am	“A New Benchmark for Integrating a Systematic Safety Management Approach” – Charles W. McGlothlin, Jr., PhD P.E

11:45 am to 12:45 pm	Lunch Speaker: “The Five Stars of Safety Leadership” – Steven J. Geigle, M.A., CSHM
1:00 pm to 3:00 pm	The Jones Act – Overview and Regulatory Update
3:00 pm to 3:15 pm	Afternoon Refreshment Break/Exhibits Open
3:30 pm to 4:15 pm	“Safety vs. Risk Management: Can’t All Just Get Along” Scott Sloan, CSP CSHM ARM
4:15 pm to 5:00 pm	Speaker or “Problem Solving Tools Workshop for Safety/Health/Risk Managers and Technical Professionals” – Jeffrey Chung, PhD CSHM
5:15 pm to 6:45 pm	Vendors-Sponsored Reception/Poster Session/Networking

## **Day 2**

7:30 am to 8:00 am	Conference Registration Check-in
8:30 am to 10:30 am	“Student Presentations – Safety Thesis and/or Research Papers.
10:30 am to 10:45 am	Morning Break/Networking
11:00 am to 11:45 noon	“The Aging Workforce: An Emerging Human Factors and Safety Issue Facing Safety/Risk Managers, Supervisors and Operations – Jeffrey Chung, PhD CSHM CHFP
12:00 pm to 1:00 pm	Lunch Speaker: “Safety Management Integration and Operational Excellence” – Anthony Veltri, Ed.D.
1:15 pm to 2:00 pm	Guest Speaker or "E-Learning in Emergency Management" – Dr. Thomas Schneid, Ph.D JD
2:00 pm to 2:45 pm	Guest Speaker or “Search of “Best-in-Class” Safety Organizations: Survey of Attributes Driving Excellence in Workplace “Safety” Performance – Jeffrey Chung, PhD CSHM
2:45 pm to 3:30 pm	Injury and Illness Recordkeeping Documentation and Analysis
3:30 pm to 3:45 pm	Afternoon Refreshment Break/Networking
3:45pm to 4:30 pm	Closing Comments/Feedback Survey/Networking

## **The NSMS “Blog” is Here**

Steve Geigle has created and launched the “NSMS Blog” on the NSMS website. It will allow members and others to post comments, remarks and initiate discussions about a variety of safety management topics and issues. You can participate in the Blog by going to the NSMS website (<http://nsms.us>) and look for the link on the home page along the left-hand column of navigation areas.

## **FREE ACCESS: Online Certified Safety and Health Manager (CSHM) Educational and Exam Preparation Reference Materials**

As a benefit for our current and future dues-paying members, NSMS is **permanently** offering free access to the Certified Safety and Health Manager (CSHM) preparation and educational materials. The online resources, created by NSMS member Steve Geigle, can be found at [www.cshmprep.com](http://www.cshmprep.com) and the only action an NSMS member needs to take is to email Steve requesting access from that website. You will need to include your current NSMS member number (found on your membership card and certificate). Once the number is verified, you will be granted a username and password to access the online reference materials. This is a great opportunity to brush up on your safety management and technical knowledge and prepare for a successful passing of the CSHM certification examination.

## **U.S. Department of Labor Files Whistleblower Suit Against Freehold, N.J., Construction Company (OSHA Regional News Release - March 27, 2008)**

The U.S. Department of Labor has filed suit against Brocon Petroleum Inc. and its president, Richard Kohler, on behalf of an employee who was terminated in violation of the whistleblower provisions of the Occupational Safety and Health (OSH) Act. The Freehold construction company specializes in municipal sanitation projects.

The complaint alleges that the defendants terminated the employee in retaliation for the employee engaging in a protected activity. The department's Occupational Safety and Health Administration (OSHA) conducted an inspection of the employer's worksite in response to an anonymous complaint about safety practices at the worksite. The defendants later that day fired the complainant because they believed the complainant had contacted OSHA.

The former employee filed a complaint with OSHA alleging retaliation by the defendants in violation of Section 11(c) of the OSH Act. OSHA investigated the complaint and determined it had merit. After being notified of OSHA's findings, the defendants refused to reinstate the employee to the same or a substantially equivalent position of employment, and to pay back wages or other employment benefits.

"Employees should be free to exercise their rights under the law without fear of termination or retaliation by their employers," said Louis Ricca Jr., OSHA's acting regional administrator in New York. "This lawsuit underscores the Labor Department's commitment to vigorously take action to protect those rights."

Filed in the U.S. District Court for the District of New Jersey, the complaint seeks to reinstate the employee; secure compensatory damages, lost back pay and punitive damages; and require the company to post a notice in a prominent place for 60 days that explains employee rights under Section 11(c) of the OSH Act.

OSHA enforces the whistleblower provisions of the OSH Act and 15 other statutes protecting employees who report violations of various trucking, airline, nuclear power, pipeline, environmental, rail and securities laws. Detailed information on employee whistleblower rights, including fact sheets, is available online at:

<http://www.osha.gov/dep/oia/whistleblower/index.html>.

### **OSHA Whistleblower Protection Program** (By Katherine Torres, Occupational Hazards – 02/08)

The Occupational Safety and Health Act is designed to regulate employment conditions relating to occupational safety and health and to achieve safer and more healthful workplaces throughout the nation. The Act provides for a wide range of substantive and procedural rights for employees and representatives of employees. The Act also recognizes that effective implementation and achievement of its goals depend in large measure upon the active and orderly participation of employees, individually and through their representatives, at every level of safety and health activity.

To help ensure that employees are, in fact, free to participate in safety and health activities, Section 11(c) of the Act prohibits any person from discharging or in any manner discriminating against any employee because the employee has exercised rights under the Act.

These rights include complaining to OSHA and seeking an OSHA inspection, participating in an OSHA inspection, and participating or testifying in any proceeding related to an OSHA inspection.

OSHA also administers the whistleblowing provisions of fifteen other statutes, protecting employees who report violations of various trucking, airline, nuclear power, pipeline, environmental, rail and securities laws.

A person filing a complaint of discrimination or retaliation will be required to show that he or she engaged in protected activity, the employer knew about that activity, the employer subjected him or her to an adverse employment action, and the protected activity contributed to the adverse action. Adverse employment action is generally defined as a material change in the terms or conditions of employment. Depending upon the circumstances of the case, "discrimination" can include:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denial of benefits
- Failure to hire or rehire
- Intimidation
- Reassignment affecting prospects for promotion
- Reducing pay or hours

The 16 statutes enforced by OSHA and the regulations governing their administration are listed below. Click on any statute for a downloadable PDF document.

- [Section 11\(c\) of the Occupational Safety and Health Act of 1970 \(OSHA\)](#)
- [The Surface Transportation Assistance Act of 1982 \(STAA\), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007](#)
- [The Asbestos Hazard Emergency Response Act of 1986 \(AHERA\)](#)
- [The International Safe Container Act of 1977 \(ISCA\)](#)
- [The Safe Drinking Water Act of 1974 \(SDWA\)](#)
- [The Federal Water Pollution Control Act of 1972 \(FWPCA\)](#)
- [The Toxic Substances Control Act of 1976 \(TSCA\)](#)
- [The Solid Waste Disposal Act of 1976 \(SWDA\)](#)
- [The Clean Air Act of 1977 \(CAA\)](#)
- [The Comprehensive Environmental Response, Compensation and Liability Act of 1980 \(CERCLA\)](#)
- [The Energy Reorganization Act of 1974 \(ERA\)](#)
- [The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century \(AIR21\)](#)
- [Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002 \(CCFA\) \(Sarbanes-Oxley Act\)](#)

- [Section 6 of the Pipeline Safety Improvement Act of 2002 \(PSIA\)](#)
- [The Federal Rail Safety Act \(FRSA\), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007](#)
- [The National Transit Systems Security Act of 2007 \(NTSSA\), Section 1413 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53](#)

## Regulations

- [29 CFR Part 1977 - Discrimination Against Employees Exercising Rights under the Williams-Steiger Occupational Safety and Health Act of 1970](#)
- [29 CFR Part 1978 - Rules for Implementing Section 405 of the Surface Transportation Assistance Act of 1982](#)
- [29 CFR Part 1979 - Procedures for the Handling of Discrimination Complaints under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century](#)
- [29 CFR Part 1980 - Procedures for the Handling of Discrimination Complaints under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002](#)
- [29 CFR Part 1981 - Procedures for the Handling of Discrimination Complaints under Section 6 of the Pipeline Safety Improvement Act of 2002](#)
- [29 CFR Part 24 - Interim Final Rule, Procedures for the Handling of Retaliation Complaints under the Employee Protection Provisions of Six Federal Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as amended \[PDF\]](#)
  - Energy Reorganization Act (ERA) Poster [\[PDF\]](#)

## Filing a Complaint

If you believe your employer has discriminated against you because you exercised your safety and health rights or other protected activity, contact your local [OSHA Office](#) right away. Most discrimination complaints fall under the OSH Act, which gives you only 30 days to report discrimination. Some of the other laws have complaint-filing deadlines that differ from OSHA's, so be sure to check.

In addition, depending on the statute, you may need to file your complaint in writing. You can telephone, fax, or mail your OSHA 11(c) complaint. The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. For more information, call your closest [OSHA Regional Office](#):

- *Boston (617) 565-3860*
- *New York (212) 337-2378*
- *Philadelphia (215) 861-4900*
- *Atlanta (404) 562-2300*
- *Chicago (312) 353-2220*
- *Dallas (972) 850-4145*
- *Kansas City (816) 283-8745*
- *Denver (720) 264-6550*
- *San Francisco (415) 625-2547*
- *Seattle (206) 553-5930*

Complaints may be filed orally or in writing, by mail (we recommend certified mail), fax, or hand delivery during business hours. The date postmarked, faxed, or hand-delivered is considered the date filed.

OSHA conducts an in-depth interview with each complainant to determine the need for an investigation. If evidence supports the worker's claim of discrimination, OSHA will ask the employer to restore the worker's job, earnings and benefits. If the employer objects, OSHA may take the employer to court to seek relief for the worker. The procedures for investigations of discrimination complaints are contained in the OSHA Whistleblower Investigations Manual, which can be found at

[http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=DIRECTIVES&p\\_id=3016](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=3016)

### **Tall Order - State Lacks Resources to Certify Crane Operators** (By C. Benjamin Ford, Staff Writer – Maryland Community Newspaper Online, Gazette.Net)

In the past two weeks, two tower cranes collapsed and killed nine people in New York and Florida.

New York expanded its regulation of tower cranes Thursday, now requiring an inspector to be at each one as it is raised and lowered. The new rules were put in place in the wake of the March 15 collapse of a 19-story crane that demolished a townhouse and killed seven people in New York City.

On Tuesday, the top third of a tower crane collapsed in Miami, falling nearly 40 stories and killing two people.

Florida, like Maryland, does not require inspections of cranes or certification of operators.

The number of accidents involving construction cranes is relatively small compared to the number of construction projects using them throughout the country, said Gerry Fritz, spokesman for the national trade group Associated Builders and Contractors in Arlington, Va.

“These were unfortunate incidents,” Fritz said.

Maryland Occupational Safety and Health inspectors do not go out of their way to inspect cranes, but they will if cranes are part of a work site receiving a random inspection, said Roger Campbell, assistant director of MOSH. In the past three years, MOSH has issued 44 citations involving cranes and related rigging during inspections.

MOSH has 36 inspectors for roughly 160,000 work sites in the state, Campbell said.

“To inspect each and every tower crane when it goes up is going to take more resources than I have,” Campbell said.

The rate of failure of tower cranes is so low that inspectors put more emphasis on other potential workplace hazards, he said.

Construction sites with excavation work are more likely to be inspected than a site with a construction crane because more workplace deaths have occurred from trenches collapsing than cranes collapsing, Campbell said. MOSH carried out 1,377 inspections in 2007.

“I don’t have a lot of medicine so I try to put it where the hurt is,” Campbell said.

Even with the two fatal collapses this month, deaths involving cranes are extremely rare nationally, Campbell said.

Of 5,703 work fatalities in 2006, the most recent year available, 28 involved a construction crane, according to the U.S. Bureau of Labor Statistics.

MOSH inspectors could not recall a work-related death involving a crane in Maryland, Campbell said.

In 1993, a tower crane collapsed at a Baltimore construction project at the University of Maryland Hospital, but no one was injured, Campbell said.

The last recorded workplace injury in the state involving a crane occurred in 2003, he said.

The U.S. Occupational Safety and Health Administration is currently drafting a requirement that all crane operators be certified, Campbell said.

If that effort drags on, Campbell said he would ask that the state legislature look at a certification requirement for crane operators.

Campbell said he did not know why the state does not already require certification of crane operators as it does other occupations such as hair stylists.

“That’s a good question,” he said. “I don’t have an answer for you.”

## **OSHA Targets Chemical Plants - Agency Will Inspect Industry's Operations With Far Greater Scrutiny** (By Jeff Johnson, Chemical & Engineering News – March 17, 2008)

In 2008, chemical companies are beginning to receive a battery of complex "process safety management" (PSM) inspections conducted by the [Occupational Safety & Health Administration](#), says Richard E. Fairfax, director of OSHA enforcement programs.

The inspections will focus on management and operation of chemical manufacturing processes, which are the primary cause of large chemical accidents. Like the processes, the inspections are complex, Fairfax notes, and will be similar to those of an OSHA inspection program for refineries, which began last June.

OSHA has been urged to conduct more frequent PSM inspections by the [Chemical Safety & Hazard Investigation Board](#) (CSB) following a fatal 2005 refinery accident in Texas. CSB noted that over a decade, OSHA conducted only four PSM inspections at chemical plants and none at refineries ([C&EN, March 26, 2007, page 32](#)).

Fairfax tells C&EN that so far OSHA has found 212 violations at refineries after conducting 52 inspections. OSHA found about 89% of the violations to be "serious" and assessed \$700,000 in penalties. An inspection can remain open for six months, and few of the refinery inspections are closed. Citations will grow, he says, noting, "We still have a long way to go."

The new chemical and refinery inspections are OSHA "national emphasis programs," Fairfax says. In all, OSHA has about eight emphasis programs in different industries. Each can last up to five years, he says. The refinery program will end in 2009; the chemical plant program's duration will depend on results once inspections begin.

OSHA has 101 refineries under its jurisdiction, and it will inspect 81 of them. The others are part of a voluntary OSHA oversight program. Also under OSHA jurisdiction are 28,000 chemical plants, Fairfax says, and the agency is just now determining how many plants it can inspect.

OSHA has about 1,000 inspectors, and 330 are being trained for the refinery program. These same inspectors and more will be trained for the chemical plant program, Fairfax says.

United Steelworkers health and safety specialist Kim Nibarger applauds the program but is concerned about a shortage of inspectors and adequacy of the training. The union represents workers in both chemical plants and refineries. Fairfax counters that OSHA is running inspectors through three training courses, and each inspection team is led by a PSM veteran inspector.

## **Lessons Learned: Plumbing Contractor Gets Jail Time for Assaulting Safety Inspector**

A Kitchener (Canadian) plumbing contractor is going to jail for a physical altercation with a health and safety inspector. He shouted and swore at inspector before pushing him inside office trailer of construction site.

Ion Cenuser's plumbing contracting business was working on a construction site in Scarborough, Ont., on Jan. 24, 2006. The inspector from the ministry of labour arrived to follow up on health and safety orders that were issued for the site earlier. He asked two workers why they weren't wearing head protection and Cenuser walked over. The inspector noticed Cenuser wasn't wearing protective footwear and mentioned it to him. Cenuser began swearing at the inspector, who walked away in search of the site manager. However, Cenuser followed him, continuing to shout and swear.

Inside, things escalated and Cenuser grabbed the inspector and pushed him across the trailer. He was charged with hindering, obstructing, molesting or interfering with an inspector performing a duty under the *Occupational Health and Safety Act*.

The court convicted Cenuser of the charges and sentenced him to seven days in jail and fined him \$3,000.

### **Lessons Learned: Trench Work Death Leads to Lawsuit** (San Antonio Express-News – March 27, 2008)

Relatives of a man who died after the collapse of a trench he was digging for John Stuart Sitework have filed a wrongful death lawsuit against the company, claiming its negligence resulted in the death.

Luis Garcia, 36, died March 5 when the trench walls fell, burying him 15 feet deep. He was digging a sewer line for a Fieldstone subdivision.

According to the lawsuit, John Stuart Sitework was "grossly negligent" in failing to provide protective systems for the trench. Company officials "were aware of the dangerous condition imposed on Luis Garcia and others and yet failed to warn or in any way protect such workers," the lawsuit says.

Company officials didn't return calls seeking comment.

According to online records with the U.S. Department of Labor Occupational Safety and Health Administration, John Stuart Sitework has been cited at least twice before for safety violations.

The complaints came in 2006 during a road project. The first had to do with "specific excavation requirements" and the second concerned "requirements for protective systems."

OSHA officials continue to investigate Garcia's death.

## Health Advice for Desk Jockeys

Americans spend nearly eight hours a day sitting (and another four hours watching TV and playing computer games) according to a Harris poll conducted by the America On the Move Foundation. Now consider your own day. How many hours per day do you spend sitting at a desk, either in your office or at home?

Chances are it's a pretty substantial amount of time. Between work and the endless number of things people now use computers for, you may easily be spending more time at your desk than anywhere else, which is why learning how to sit at a desk and still be healthy is so important.

### The Downfalls of Sitting Too Much

In general, sitting for too long is not a health-promoting thing to do. Sitting at a desk all day also puts you at risk of back pain, particularly if you sit with poor posture, leg cramps, tense muscles and, of course, boredom.

### Healthy Tips for Sitting at Your Desk

- **Keep your body in a neutral position.** This means that your joints are naturally aligned, reducing your risk of stress and strain on the muscles, tendons, and skeletal system and developing a musculoskeletal disorder (MSD), according to the Occupational Safety and Health Administration (OSHA). To achieve a neutral body position:
  - Adjust your chair so your thighs are parallel with the floor.
  - Choose a chair that supports your back, including the curve in your lower back (if not, place a rolled up towel or pillow behind your lower back for support).
  - Your hands, wrists and forearms should be in-line and roughly parallel to the floor.
  - Your head should be in-line with the torso and at a level, balanced position (or just slightly forward).
  - Your elbows should be close to your body, bent at a 90- to 120-degree angle.
  - Your shoulders should be relaxed and upper arms hanging naturally next to your body.
  - Your feet should be flat on the floor or supported by a footrest.
  - Your chair should be well-padded.
- **Move around often.** Your body can only tolerate being in one position for about 20 minutes before it starts to feel uncomfortable, according to the Mayo Clinic. About every 15 minutes, stand, stretch, walk around or change your position for at least 30 seconds.
- **Reduce repetitive movements.** Movements that you repeat over and over (such as answering the phone or reaching for a book) can lead to strains and stress. Reduce unnecessary movements as much as possible by keeping items you use often within arm's reach and using tools, such as a phone headset, to reduce repetitive movements. You should also alternate the hand you use to operate your computer's mouse.
- **Keep your computer monitor in a healthy position.** This means directly in front of you, but at least 20 inches away. The top of the screen should be at or below your eye level, and it should be perpendicular to the window (to reduce glare), according to OSHA.

- **Look away from your computer screen often.** Focusing on a computer screen for too long can lead to dry eyes and eye fatigue. Be sure to change your focus often, looking at a point in the distance, and blink regularly to keep your eyes moist.
- **Use a document holder.** It should be at the same height and distance as your computer monitor (holders mounted to the monitor are ideal).
- **Keep your keyboard and other office accessories clean.** Keyboards, phones and other office equipment are breeding grounds for germs. Desks themselves can even harbor more bacteria than a toilet seat!
- **Declutter your desk.** About 40 percent of U.S. office workers say they are "infuriated" by too much clutter on their desks. Save yourself this mental strife by taking a few minutes each day to go through papers. Throw away those you don't need and file those you do.
- **Don't keep junk food at your desk.** The temptation is simply too high to eat the junk, and subsequently feel sluggish, tired or guilty. Instead, keep a supply of healthy snacks nearby to satisfy your hunger in a smart way. Great snack ideas include cut-up vegetables, a few nuts, fresh fruit, a hard-boiled egg, etc.
- **Make your desk your own.** While keeping away from too much clutter is good, adding a few items that mean something to you will make your desk more enjoyable to work at. Some items to consider include a few pictures of family or friends, a plant, inspirational posters or paintings for the wall, and any other mementos that make you feel good.

## **Foulke Provides Corporate Communication Strategies for Safety Professionals** (By Katherine Torres – Occupational Hazards, March 17, 2008)

*During a panel presentation at the American Society of Safety Engineers (ASSE) "The Business of Safety – A Matter of Success" symposium in Baltimore, Md., OSHA Administrator Edwin Foulke discussed how safety professionals can meet the expectations of senior management, stressing that they should be placed in the same professional caliber as company CEOs and CFOs.*

“We need to start enhancing the safety professional to bring them up in their business organization,” Foulke stated. “We should make sure the safety professional is in the 'C-room,' where the CEOs [and] CFOs are. If we can get to that point, then I think upper management will be more focused on safety and health.”

Foulke explained that safety professionals can get senior management’s attention by conducting and using research to demonstrate the importance of safety within the company. When doing so, safety professional should address the following questions:

- What practices are best for lasting success?
- What is the return on investment?
- How can safety and health be a part of the way our business runs?

Foulke also touted some OSHA resources safety professionals can use when approaching senior leadership, such as the Making the Business Case for Safety and Health topics Web page and its online calculator, which allows employers to estimate savings earned by preventing injuries.

## **Hidden Costs in Workplace Injuries and Illnesses**

Foulke stressed that it makes business sense to ensure employees go “home safe and sound to their families and loved ones.” Doing so would reduce costs and boost worker efficiency and productivity, he said.

He also emphasized that workplace injuries and illnesses are “upsetting, expensive, wasteful and unnecessary.” Hidden costs are tied to injuries and illnesses, he said, as they often involve time lost from work, training costs for new workers and replacement costs for damaged tools.

Liberty Mutual, in its 2006 Workplace Safety Index, estimated that employers pay almost \$1 billion per week to injured employees and their medical care providers.

Foulke discouraged employers from drifting toward the notion that writing a check for workers’ compensation would solve their problems. Those expenses can make a drastic impact on the health and success of a company, he asserted. He also pointed out that safety and health professionals are the best candidates to point this out to company leadership.

“Allowing people to go home every night safe and sound to their families and loved ones is something that I talk about in all my speeches as being the real bottom line for every business,” he said.

### **“Watch the Hips, Not the Lips”**

Maureen Steinwall, president of Steinwall Industries, and Thomas Krause, chairman of Behavior Science Technology, also pointed to ways safety professionals can communicate effectively and achieve ongoing support from senior company management.

Steinwall stressed it is vital for safety professionals to study their respective corporate cultures to understand the values and belief systems instead of simply relying on company Web sites or promotional materials for knowledge.

“Watch where the hips go, not where the lips go,” Steinwall said, adding that doing so enables safety professionals to comprehend management’s priorities and to align safety goals with those priorities.

According to Krause, one way for safety professionals to accomplish these goals is to understand what kind of company they work for. A compliance-driven organization, for example, likely aims to avoid penalties and OSHA visits. Professionals working for this type of company are challenged to change how leadership views safety as well as develop a strategy that clarifies and builds on safety objectives.

A safety-improvement organization, meanwhile, views safety as an important value, and these safety professionals can focus on executing and accomplishing their goals.

“Safety professionals should understand what kind of company they are working in order to know how to get senior leadership's attention,” Krause said. “Once that's done, all you need to worry about is getting [safety and health goals] done.”

## **When OSHA Knocks** (By Patricia Poole, Esq., a partner with the Law Firm of Baker Hostetler) – article from Occupational Hazards, 2/1/08

Will you know what to do if OSHA shows up at your door? Attorney Patricia Poole offers some valuable advice to keep you and your employer out of trouble.

With a plethora of investigative agencies that may show up at your company's door, it is important to understand the purpose of a visit from OSHA. It equally is important for employers to take action during the course of the inspection to place themselves in a favorable legal position.

Because OSHA inspections are unannounced, a company should preplan its strategy in the event of an inspection. The federal government looks at OSHA penalties not only as a deterrent, but also as a source of revenue enhancement, so six-figure penalties are not uncommon. In addition, OSHA citations require that employers "abate" violations, and corrective action may, in some cases, be more expensive than the actual penalties.

(Note: The OSH Act allows states to elect to assume responsibility for the administration and enforcement of occupational safety and health regulations within the state. In order to establish a "state plan," the state must demonstrate that its regulations and enforcement will be "at least as effective" as the worker protection provided by federal law. Approximately half of all states have exercised the right to submit and obtain approval of state plans. Although this article is geared toward federal OSHA, many federal procedures are similar to those in the various states.)

### **When a Complaint is Received**

In an effort to reduce their caseload and expedite inspections, many local OSHA offices evaluate each incoming complaint to determine the potential risk to employee safety. For low-risk complaints, the OSHA office calls the employer to notify it of the complaint and then follows up with a letter requesting a response within 10 days. Employers should provide a thorough response in a timely manner, as well as evidence of compliance or correction such as photographs, invoices for the purchase of safety equipment or proof of employee training. The employer's response letter closes virtually all of the phone and fax cases.

If the phone and fax procedures are not being used by a particular OSHA region or state, or if OSHA determines the particular situation warrants more action, the OSHA area office or state may send a complaint letter. The procedure operates much the same as the phone/fax method, except employers are notified by letter instead of by phone. The employer should respond in the same manner as for the phone/fax procedure.

Sometimes, though, OSHA chooses to reach out and touch an employer.

### **If an Inspector Knocks**

The OSHA Field Inspection Reference Manual (FIRM) outlines the majority of inspection duties of federal OSHA inspectors or compliance officers. Many states also have manuals that guide the inspection process. Compliance officers are required to begin inspections with an "opening conference," presenting credentials and explaining the inspection procedure. If an OSHA inspector shows up at your door, you should consider the following:

**1) Restrict admittance until management personnel are on site.** Never allow the opening conference or the inspection process to commence until the appropriate pre-established management persons are present. Establish procedures for receptionists and facility guards in the event a compliance officer appears on site.

**2) Determine the reason for the inspection.** Is it a complaint-based inspection, fatality-based inspection, targeted inspection (government focus on specific industries), media-based inspection (from a press report of a fire, explosion, incident, etc.) or random inspection?

**3) Obtain a copy of the complaint.** Most inspections are the result of employee complaints. The compliance officer or inspector should provide the employer with a copy of the specific complaint(s). The employee's name will not appear on the document. Do not comment about the reason for the complaint or about the party who may have made the complaint. Employees who have registered safety complaints or instituted any proceeding under the OSH Act are protected from discrimination or retaliation by their employer.

**4) Distinguish whether the inspection is related to safety or industrial hygiene.** If the OSHA officer is a safety specialist or compliance officer, the inspector will not conduct hygiene samplings. If the inspector is an industrial hygienist, it is likely that the inspection will focus on industrial hygiene issues such as noise monitoring, air sampling, etc. If possible, perform simultaneous sampling to verify OSHA results.

**5) Identify whistleblower protection inspections.** Certain OSHA inspectors in each area office are assigned to conduct investigations into complaints of alleged discrimination and retaliation against employees as a result of safety-related complaints. These investigations generally do not involve any physical inspection of the plant.

**6) Designate an employee representative.** OSHA inspectors are required to ask for the participation of an employee representative. If the plant is organized, the union safety chairman, shop steward or other union official will be asked to participate. If the facility is not organized, the employer may choose to have an employee representative participate if there is an employee safety committee.

**7) Limit the scope of an inspection.** Define the areas that the inspector will need to see and confine the visit to those areas or departments. Under no circumstances should you offer a plant tour. OSHA inspectors can cite any violations they see in "plain view," regardless of the purpose of the inspection. For most inspections, escort the compliance officer to the targeted area(s) via a route where he or she is least likely to notice safety violations, even if that route involves walking outdoors.

**8) Maintain records.** Inspectors will routinely review the current and prior 3 years' illness logs and annual summaries of injuries. They will check to ensure the OSHA poster is in place, as well as for the following programs: hazard communication, lockout/tagout, emergency evacuation and bloodborne pathogens.

**9) Take photographs and videos.** OSHA inspectors are instructed to take photographs or create videos or DVDs to document safety violations. Most employers allow photographs unless there is a trade secret or security issue. Companies should have cameras available and should take photographs, videos or DVDs of the same items as OSHA.

**10) Debrief employees following interviews.** OSHA will ask to conduct employee interviews in private during the inspection. Company representatives may be present in any interviews with management employees (generally foreman through plant manager). You should “debrief” hourly employees after their OSHA interviews in an effort to determine the scope of the questioning. This also enables you to prepare other employees prior to their OSHA interviews. The extent to which an employer prepares and debriefs employees will vary depending upon the culture of the workplace.

**11) Protect trade secrets.** OSHA is required to protect the confidentiality of any items which are asserted to be trade secrets. Verification of trade secrets should be done at the opening conference, and a follow-up letter asserting the trade secret nature of the processes or workplace should be sent to the OSHA area director.

**12) Demand search warrants.** An employer has the right to refuse to allow an inspection without the presentation of a search warrant. Request for a warrant will buy time before OSHA returns to conduct the inspection, but OSHA will obtain a warrant prior to any subsequent inspections.

### **The Inspection Walk-Around**

During the OSHA inspector’s walk-around, you should stay with the inspector and accompany him or her at all times with as few personnel as possible.

Do not volunteer information. Take notes on all observations an inspector makes, particularly departments or equipment inspected, approximate times spent in various areas and the individuals who were interviewed.

OSHA compliance officers are authorized to review relevant employer records during inspections. Relevant records include those required to be kept by the employer under the OSHA Act and OSHA standards or regulations. Provide only those records specifically requested (e.g., crane inspection reports). Compliance officers generally agree to accept requested records by mail after the on-site visit.

If OSHA requests a copy of a record or document, make additional copies to keep with your OSHA inspection file. Keep a record of the documents provided to or reviewed by the inspector. Duplicate all pictures that OSHA takes and if OSHA takes a picture of an isolated violation, take pictures of similar areas which show no violation.

Repair any small violations immediately (fix a broken handrail, readjust grinding wheel work rest, etc.). This demonstrates good faith and may prevent a citation.

During an industrial hygiene inspection, determine what tests or monitoring OSHA plans to conduct. Find out OSHA’s intended test procedures – the number of individuals to be tested, duration of test, type of equipment being used and chemicals being sampled. Consider simultaneous testing by plant safety personnel or through an outside consultant.

OSHA industrial hygiene inspectors usually are willing to defer sampling for a short period of time if the employer wants to conduct simultaneous testing. Be aware of any unusual production problems or weather conditions that may affect the outcome of industrial hygiene tests.

## The Closing Conference

OSHA inspectors are required to conduct a closing conference that immediately may follow after a very simple inspection or may follow a major inspection by several weeks. Industrial hygiene inspection closing conferences generally are delayed because of the need to obtain test results.

The closing conference is an opportunity to promote the company's safety programs and commitment to safety and health. This is a factor OSHA considers in establishing penalty amounts. Be a good listener and take notes on all of the specific alleged violations identified by the compliance officer.

You may be asked to establish timelines for correcting alleged violations. Be cautious in setting dates and allow ample time. You should point out any obvious mistakes of fact or disputed issues with respect to the allegations, but do not argue with the inspector.

For industrial hygiene inspections, ask for a copy of specific test results and findings. Citations may be issued for items which were not identified at closing and at times items under discussion will not be cited. OSHA has 6 months from the date of its first notice of the alleged violation to issue a citation.

## After Citations are Received

Most citation items are for alleged violations of specific OSHA standards. However, the general duty clause, Section 5(a)(1), requires that every employer furnish to each employee "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." The clause covers "serious" hazards for which no specific standard applies. Therefore, if a specific standard applies, a general duty citation is inappropriate. OSHA also has the authority to impose criminal penalties. The most common classifications are:

- **Other** – Lowest OSHA classification, defined as not likely to cause serious injury. The maximum penalty is \$7,000; most "other" penalties are either zero or a few hundred dollars.
- **Serious** – Most common form of citation and classified as any condition that may cause serious physical harm, but this is broadly defined by OSHA. This essentially is the same definition as the "general duty" clause. The maximum penalty maximum is \$7,000. Under OSHA penalty calculation guidelines, virtually every serious penalty will exceed \$1,000.
- **Repeat** – Any violation of the same standard within 3 years of a final order of a previous citation, or within 3 years of the final abatement date of the citation, whichever is later. The violations must be "substantially similar" to be considered to be "repeated." The maximum penalty for a repeat or willful violation is \$70,000.
- **Willful** – Not necessarily an intentional flaunting of regulations. This may mean an employer is found to knowingly commit non-compliance while understanding OSHA requirements.

## **Penalties**

OSHA will consider certain factors such as the gravity of the violation, the size of the business, the company's history of violations and the company's good faith in its dealings with OSHA when calculating penalty amounts.

Abatement dates for alleged violations either will be immediate (i.e., immediately upon receipt of the citation) or OSHA will specify a future date.

## **The Employer's Options**

An employer receiving notice of citations from OSHA has several available options.

Employers may request an informal conference with the area director within 15 working days of the receipt of citation. Attorneys sometimes participate, but it is not necessary. If the company employees are represented, the union will be invited by OSHA to participate.

There are advantages to an informal conference, including possible penalty reduction, possible extension of abatement dates, possible deletion and/or reclassification of citations, discovery of more facts to ascertain whether to contest the citation and the opportunity to create open communication with the area director.

OSHA expects the employer to make the presentation. Time is limited, so employers should focus only on items where there is a controversy. Point out facts in dispute or interpretive questions. Employers should conclude by stating exactly what form of relief they want.

The area director may propose amendment to citations and likely will ask for the employer to sign a preprinted settlement agreement. Employers can negotiate with OSHA and make counterproposals. Informal conference settlement agreements must be posted in the facility. A non-admission clause should be included in any settlement agreement to indicate that the employer does not admit to any violations or wrongdoing under the OSH Act.

If an informal settlement is not reached, employers must file a Notice of Contest within 15 working days from date of receipt. There are no exceptions to this requirement. There is no specified form and a simple letter generally is used. Refer to the date and OSHA identification number of the citation and list the specific items, penalties and abatement dates being contested. When in doubt, employers should file a Notice of Contest as it can be withdrawn at any time.

Employees have the right to participate in a contested OSHA case. The employer must post the Notice of Contest on a company bulletin board and must subsequently post a notice to employees advising them of their right to participate in the OSHA process.

Once an OSHA case is contested, it is assigned to an Administrative Law Judge from the Occupational Safety and Health Review Commission. An attorney from the solicitor's office of the U.S. Department of Labor will act as prosecutor. Companies will require legal representation to participate in this administrative proceeding.

A complaint will be filed by the Solicitor and an answer filed by the company's counsel. Eventually, the case will be set for hearing before the Administrative Law Judge. Many OSHA cases are settled prior to formal hearings, but the agreement must be approved by the Administrative Law Judge. Although infrequent, highly contested cases may be appealed to court.

## **Two Inquiries Look at Threat Diacetyl May Pose to Cooks (By Andrew Schneider, seattlepi.com – March 17, 2008)**

A federal investigation into the hazards facing cooks exposed to diacetyl, a sometimes deadly artificial butter flavoring, is under way in New York City restaurants while in Seattle, state worker-safety agents are starting a similar inquiry.

These health evaluations come as two major federal studies confirm that even short exposures to the artificial flavoring can cause tissue damage.

Three teams of physicians and industrial hygienists from the National Institute for Occupational Safety and Health took samples last week of the cooking oils and sprays being used and the air inhaled by cooks and other workers at kitchens in the Manhattan financial offices of JPMorgan Chase and Goldman Sachs.

The cooks are employees of Aramark, an international corporation running 3,500 food service operations in the U.S.

NIOSH launched the investigation at the request of Unite Here, a union representing 440,000 hotel, restaurant and hospitality industry workers.

"A government study like this is long overdue," said Eric Frumin, director of occupational safety and health for the international union. "Cooks throughout the country are breathing oil mist for hours every day. It's unknown how much diacetyl they're inhaling with it and that's what we hope NIOSH will determine."

The union requested the study after the Seattle P-I published in December the results of laboratory analysis the newspaper commissioned of almost two dozen butters, margarines, oils and sprays used by home and professional cooks. Cooking was simulated and the air coming off the skillets and grill surfaces was collected and measured for diacetyl. The chemical flavoring agent was found in everything tested, with the highest level in the oils, sprays and butters used by professional cooks.

### **Inspection Begins**

The inspections that NIOSH conducts -- Health Hazard Evaluations -- can be requested by three employees who fear there is danger in a workplace, or by a union or by the employer.

"The request was made by Local 100 of the union. They were concerned about their members being exposed to diacetyl, and we agreed to come," said Dr. Kathleen Kreiss, chief of the Respiratory Disease Field Studies Branch of NIOSH, which is the worker health and safety research arm of the Centers for Disease Control and Prevention.

Kreiss and her colleagues have been studying workers exposed to diacetyl since 2000 when the first reports surfaced of employees at Missouri popcorn plants whose lungs were damaged or destroyed by a rare respiratory disease called bronchiolitis obliterans.

She and her colleagues were looking for signs of the disease in New York when they questioned the workers on their health and work habits. Other occupational health experts attached personal air monitors to the uniforms of the cooks to sample the air they were breathing as they prepared the food. The researchers checked for ventilation systems, and checked their effectiveness. Large vacuum monitors tested the air throughout the kitchen and samples of the oils and sprays were collected. The analysis of all the samples could take weeks, Kreiss said.

But Aramark said NIOSH gave it a clean bill of health in an exit interview Thursday.

"They see no risk to our employees and say they have no concerns about diacetyl exposure," Kristine Grow, who heads the company's corporate communications.

However, Fred Blosser, NIOSH's chief of public affairs, said no conclusions were reached.

"We don't know at this time whether the cooks in these Aramark facilities have or do not have increased risk of respiratory disease. The investigators hope to learn more through medical testing, which has been scheduled for the end of the month."

Meanwhile, Aramark has "completely eliminated butter-flavored spray oils from our entire system and we're working to find an alternative to other oils," Grow said.

The process that Kreiss used in New York will be repeated at two Aramark-run operations in Seattle, the Washington State Trade and Convention Center and KeyArena.

Local 8, the Seattle chapter of Unite Here, requested that SHARP, the state Safety and Health Assessment and Research for Prevention program, do the evaluation instead of NIOSH.

SHARP was the first in the nation to release a guide for cooks and kitchen workers on handling diacetyl-containing products. Monday, they posted a Spanish version of the guide on their Web site.

"We had hoped to begin our evaluation this week but with the Society of Toxicology using the convention center we've moved the official kickoff for March 28," said David Bonauto, associate medical director for the state Department of Labor and Industries, of which SHARP is a part.

"We will get it done," he said. "But the main public health message here is that every restaurant owner or employee should be looking at what they're using and getting rid of products that contain diacetyl."

Dr. Barbara Silverstein, SHARP's chief and research director, said her group is eager to do the evaluation of the kitchens.

"We're facing a very serious illness from this flavoring agent which can destroy people's lives," Silverstein said, "and we feel there is sufficient evidence that diacetyl is an important part of what appears to be a massive assault on the lungs of workers exposed to it."

## **Unusual Choices**

While NIOSH and SHARP are eager to get into commercial kitchens where diacetyl may be present, it is puzzling to some why the unions asked for the evaluation of Aramark operations. In New York, the kitchens operated just one shift and were opened to only select diners.

Even more difficult to understand is the selection of the Seattle sites.

Both the convention center and arena have bare-bone kitchens, open only when there is an event and then serving a very limited menu, prepared by cooks who switch job locations frequently. For public health investigators trying to ascertain or characterize the potential hazard to the country's 3 million professional cooks, these kitchens selected by the unions present a very limited opportunity.

"The union is in a campaign to try to organize more of our workers and we believe that is what's driving the selection of our facilities," said Aramark's Grow.

However, Stefan Moritz, a research analyst with the Seattle local, said they started with Aramark "here, in New York and elsewhere, because it's the largest company in the cafeteria and institutional food service industry that employs over 400,000 cooks nationally."

Silverstein pointed out that "restaurants that are in constant operation would be easier to characterize but the choice of location is not SHARP's. We'll have to wait and see what we find."

She added, "Workers in high-volume restaurants who are concerned about diacetyl might want to look at the SHARP Web site and see if their workplace needs an evaluation."

The same day earlier this month that SHARP industrial hygienist Carolyn Witaaker collected samples of cooking oil and sprays used at the convention center, a few miles south at a Denny's in SeaTac, four cooks, Moritz and union organizer Jeanne Cameron sat at a back table discussing what diacetyl-containing products might be in the kitchens of the Hilton and Doubletree hotels where they work.

They agreed that some of the pan spray they used might contain butter flavoring but said only clarified butter, not oils, were used to cook the eggs, hash browns and vegetables.

However the 30-pound blocks of butter they slowly melt each day to make the clarified butter are nonsalted butter, into which artificial diacetyl is added as a preservative, the manufacturer told the P-I.

## **Diacetyl Hazard**

Two recently released animal studies by federal scientists have documented that low-level exposure to diacetyl can cause damage.

The studies, one led by Dr. Ann Hubbs, a toxicologist and veterinary pathologist at NIOSH, and the other headed by Dr. Daniel Morgan, chief of the Respiratory Toxicology Group at the National Institute of Environmental Health Sciences, are complementary.

Hubbs' research examined the acute toxicity of inhaled diacetyl in rats and compared different exposure patterns. Morgan's work looked at longer-term exposures.

"Both show that diacetyl vapors alone can injure the lung," Hubbs said, "and are part of the information needed to protect workers."

They are the first studies to evaluate the respiratory toxicity of the chemical flavoring agent at levels relevant to human health.

"I think the results of our study reinforce the concern expressed for professional cooks, as well as other workers who are exposed to diacetyl vapors," Morgan said.

Back at NIOSH, Kreiss says the field inspections are among several ongoing diacetyl operations that her agency has undertaken:

- Chemists at both the Occupational Safety and Health Administration and NIOSH are trying to develop new methods and new approaches for measuring diacetyl.
- NIOSH's Industry-wide Study Branch in Cincinnati is working to inspect three flavor-manufacture operations and three food-producing plants.
- Another division is studying control technology, new ventilation systems that can be placed over flavor-mixing vats and other areas in the production line where vapors from flavoring agents can be released.

Kreiss says that if the ongoing series of evaluations in New York and Seattle don't provide enough information on diacetyl exposures in commercial kitchens, NIOSH will attempt to duplicate "experimental situations in a test kitchen or laboratory."

## **United Kingdom Corporate Manslaughter Law: No Place to Hide (By Ross Bentley, Personneltoday.com – March 17, 2008)**

***When the long-awaited Corporate Manslaughter and Corporate Homicide Act 2007 comes into force on 6 April it will create an offense that in England, Wales and Northern Ireland will be called corporate manslaughter and in Scotland, corporate homicide. What does the new Corporate Manslaughter Act mean for employers?***

The Act will make it possible for employers to be prosecuted if someone has been killed at (or by) work because of a failure in how the organization's activities are managed or organized, amounting to a 'gross breach of duty'. Not only are employees encompassed under this duty of care, but also customers - for example, train passengers, and members of the public, such as people living in the vicinity of a power plant.

Companies operating in all sectors are covered by the Act but those with the highest fatal injury rates, such as construction and agriculture, will undoubtedly find themselves under the spotlight.

And HR directors could be in the firing line under the new regulations if it is found that a death came about due to a failure at senior level to put in place adequate health and safety systems and procedures.

Kevin Elliott, a partner at law firm [Eversheds](#), says organizations that are found culpable are likely to face unlimited fines.

So what are employers doing to avoid any possibility of a fatality and make sure they don't get prosecuted?

Mark France, a senior health and safety adviser at risk management consultancy [National Britannia](#), says the arrival of this new law should spur all employers to revisit their health and safety procedures and ensure "there are no gaps".

He said: "Organizations should be looking at their safety plans and asking themselves a number of questions: Are the right structures in place? Is everyone, especially senior managers, competent in this area and aware of their responsibilities? Are senior managers ensuring that line managers and their teams are equipped with the right resources and knowledge?"

### **Proactive senior managers**

Neil Murray, head of health and safety at scaffolding specialist the [SGB Group](#), says it is an issue that most organizations are acutely aware of.

"This Act is all about the corporate entity, the culture of a company. Directors and senior managers need to be informed to ensure they know what role they must play in terms of strategic safety," Murray says.

"Even the financial director, as a member of the senior management team, must be actively involved and have a real understanding of why the business is dedicating so much of its resources to health and safety."

At the [Chartered Institute of Personnel and Development](#), employee relations adviser Ben Wilmott welcomes the new legislation and says it should bring no further obligations for employers who already comply with existing health and safety laws.

He points to the Health and Safety at Work Act 1974, which legislates that employers have a duty of care towards their employees, and the Management of Health and Safety at Work Regulations 1999, which oblige organizations to conduct adequate risk assessments.

"Providing HR is already focusing on health and safety in the way they should, the new Act should hold no fear," Wilmott says.

### **Critical focus**

Richard Jones, policy and technical director at the [Institution of Occupational Safety and Health](#), believes the impending law will focus the minds of senior management, especially HR.

"HR should make certain that the organization has access to competent health and safety assistance, and that job descriptions include health and safety responsibilities, which are included in performance reviews," he advises.

Ensuring that the workforce is sufficiently trained, supervised and resourced and that an adequate disciplinary process is in place is critical, Jones adds.

He believes that the Corporate Manslaughter Act was triggered by a number of high profile disasters, as prosecutors found it impossible to act against organizations.

"There was a lot of public disquiet following the [Zeebrugge disaster](#) in 1987 where 193 deaths occurred because the cross-channel ferry the Herald of Free Enterprise capsized after leaving port with its bow doors open, and the investigation found problems of safety culture and management," Jones says.

Prior to this Act it proved very difficult to prosecute large corporations for gross negligence, manslaughter or culpable homicide because the law required proof that a "directing mind" (that is, an individual at the very top of the organization who can be said to embody its decisions or actions) was guilty of the offence.

Now the law creates a variant of this offence specific to organizations where criminal liability can be attributed where the way the organization's activities are managed by its senior managers is grossly in breach of a duty of care it owes a person, causing their death.

Guilty organizations will be ordered to take remedial measures to ensure they put in place adequate safety systems and procedures. And they may well face a publicity order requiring them to make public what went wrong and what is being done to repair the situation. "This could mean organizations having to take out an advert in a national newspaper or trade journal. There's an element of name and shame and culpable organizations may experience huge damage to their brand and reputation," warned Elliott.

Although the latest figures from the [Health and Safety Executive](#) show 241 workers were fatally injured in the workplace during 2006/07, it is predicted that only a handful of organizations will face prosecution under the new Act each year. This comes from an impact assessment carried out by the [Home Office](#) in 2006, where it was estimated the proposed law would lead to a possible 10-13 extra prosecutions annually.

## **Corporate Manslaughter and Corporate Homicide Act 2007 - employer checklist**

- Assess your organizational structure to determine who could be considered a 'senior manager' - these individuals should be appropriately trained and competent for their role.
- Review job titles and job descriptions to ensure they represent the seniority of the post-holders' position.
- Provide update training for senior managers on their health and safety responsibilities.
- Review all health and safety policies to ensure that statements made and standards set are achievable and do not exceed legal obligations, unless there are good reasons.
- Check that your insurance cover includes legal protection in the event of criminal charges for corporate manslaughter.
- Review your health and safety culture to promote a safer environment for your employees and, where relevant, the public.
- Revisit your disaster management plan and ensure there is a protocol for dealing with the authorities and working with legal advisers if a fatality occurs.
- Consider insurance and indemnity policies for staff members who may need legal support during any investigation.

## **Nine European Union (EU) Agencies Honored for MSD Prevention Programs**

Nine agencies in Britain, Germany, Cyprus, the Czech Republic, the Netherlands, and Slovenia were honored last week by the European Agency for Safety and Health at Work (EU-OSHA, <http://osha.europa.eu/>) for helping to prevent musculoskeletal disorders in a variety of industries. Each of the nine received a European Good Practice Award, and EU-OSHA said their efforts may help millions of workers. MSDs are the most common form of work-related illness in Europe, with 25 percent of workers complaining of back aches and 23 percent of muscle pains.

The winners were announced at the closing event of the Lighten the Load campaign.

"Musculoskeletal disorders are the number-one workplace illness in Europe, affecting millions of workers and costing the economy up to 1.6 percent of GDP. We can no longer afford to waste Europe's potential and have to 'lighten the load' on all workers suffering from MSD," said Vladimír Špidla, the EU commissioner for Employment, Social Affairs and Equal Opportunities. "This campaign has helped to raise awareness of this huge issue, and the good practices will help us prevent future suffering."

The campaign promoted an integrated approach to MSD prevention and helping workers affected by them continue in work. EU-OSHA considers it complementary to the EU's 2007-2012 strategy for reducing work-related incidents by 25 percent. "We firmly believe that this year's European campaign has contributed to improving the work environment of the European worker, making it better, less stressful, and healthier, and that the joint European campaign will contribute to reducing the levels of work-related injury and professional disease," said Marjeta Cotman, minister of Labour, Family and Social Affairs representing the Slovenian EU Presidency.

Jukka Takala, EU-OSHA's director, said its Prevention Report gives many clues about how to tackle MSDs at work. "It suggests, for example, that the introduction of additional breaks into repetitive work will significantly decrease MSDs and may be achievable without loss of productivity. It also emphasizes that only a multidisciplinary approach -- including organizational, technical, and personal measures -- will succeed in effectively preventing MSDs. Workers, employers, and occupational safety and health professionals must work hand in hand."

### **Safety Training Strategies – “Message From Home”** (Allan Leopold from Copano Energy) [from "Safety Stuff" by Richard Hawk Inc.]

I would like to share an idea I tried recently that made a big impact on our personnel. I work in a gas processing plant with about 30 employees ranging from recently hired to almost retired. I secretly asked the spouses of about eight of the employees (recently hired and veterans) if they would like to record a personal safety message to their loved ones. The response was excellent.

We all live within a few miles of each other so I was able to visit with the volunteers or have them come by my home to film their short presentation. I compiled the videos and projected it up on a large screen.

One employee who is on the safety team was totally surprised when he saw his fiancé came up on the screen asking him to make sure he is safe at work because they have a wedding and honeymoon coming up in the next few months. One spouse reminded her husband of his approaching retirement and that now is the time he really needs to keep his guard up.

A couple of the employees have young children and some of messages were comical yet made a very good point. They could see the main reasons that they needed to be safe right in front of their eyes. It is not for management but for your loved ones.

Nothing was rehearsed or read, just spoken from their hearts. I was really amazed at what some of the spouses had to say. I think all of the employees now realize that their spouse is very concerned for their safety and willing to help. Everyone loved it and are now wondering what I may pull next.

### **How Big a Fall Can a Person Survive?**

While even short drops can be lethal, (thousands of people die each year falling down on a "level surface"!) people have survived horrendous falls. In 1972, Vesna Vulovic, a cabin attendant, survived a 30,480 ft fall when the DC-9 she was in exploded over what is now the Czech Republic. A 102-year-old woman survived after toppling from her fourth-floor balcony in Turin. Fortunately, her fall was broken by a children's playhouse.

Vulovic undoubtedly reached terminal velocity (the speed at which air resistance becomes so high it cancels out the acceleration due to gravity) before hitting the ground. (A 120 lb woman would have to fall around 501 ft, which is nearly 55 stories high to reach terminal velocity.)

Falls can kill by inflicting damage to any number of vital organs, but the most common reason is due to a key artery's route through the body. "Most people who fall from a height die because they fracture their spine near the top and so transect the aorta which carries blood out of the heart," says Sean Hughes, professor of surgery at Imperial College London.

It doesn't take much of a fall to cause damage. "From a height of 9 ft. you could fracture your spine," he says. "At around 30 ft., you're looking at very serious injuries.

**Safety Tidbits** (from "Safety Stuff" by Richard Hawk Inc. <http://www.richardhawkin.com>)

- To your fish, tapping on the aquarium glass is as loud as a rock concert.
- According to *The Book of Risks* by Larry Laudan, the risk that a professional piano player will injure herself with her instrument: 1 in 2. Principal site of injury: neck.
- A mind-boggler: about 40,000 Americans annually are injured by their toilets.
- Noted eating, champion Mort Hurt once ate 16 double-deck Moon pies in 10 minutes and 38 eggs in 29 seconds (which resulted in a stroke, in 1991).
- Each year, Americans consume 8 million pounds of guacamole on Super Bowl Sunday.
- In fact, it is the second highest day of food consumption in the United States after Thanksgiving.
- Fifty-two percent of all fatal car crashes on Super Bowl Sunday last year were alcohol-related.