



National Safety
Management
Society

DIGEST

Updating Members on Safety Management News

April 2009

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Welcoming Our New 2009 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 2009 National Safety Management Society memberships. We would also like to acknowledge, recognize and welcome the following new members to our professional organization:

- **Frank P. Caliendo**, Safety Manager – Candelaria Corporation (Glendale, Arizona)
- **Rose Comstock**, Consultant – Comstock Consulting Service (Quincy, California)
- **Jeanne L. Hathaway**, Quality Specialist II – Burt's Bees, Inc. (Morrisville, North Carolina)
- **Michael A. Lauff**, Safety Coordinator – American Electric Power (Conesville, Ohio)
- **Joseph A. Pinon**, Safety Manager – Turner, Russell & OLH (Temple, Georgia)
- **Juan Diego Araya Quiros**, Professor - Latin American University for Science and Technology; Senior Consultant - CASSO (Alajuela, Costa Rica)
- **Perry L. Seals**, District Safety Manager – Kiewit Energy Company (Houston, Texas)
- **Douglas R. Shelton**, Safety, Health and Environment Manager – Parsons, Inc. (Miami, Florida)
- **Gaye E. Smothers**, Staff Safety Specialist – Ethicon Endo Surgery (Albuquerque, New Mexico)

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!

NSMS 2009 Membership Certificates and Cards Have Been Mailed to You

NSMS is very grateful for renewing or joining our organization and we look forward to a productive and interactive 2009. We are in a challenging economic period, but investment and participation in NSMS provide you with integrated safety, health and business resources and a peer network to pursue operational experience. Our goal is to equip you with the skills, knowledge and abilities to practice your job and have your company see you not as a cost center, but a return on investment. We strive to help your professional development, move toward CSHM certification, implement best practices and help you and your business succeed.

Your dues will support a number of critical initiatives, both new and ongoing. NSMS will strive to further: engage in outreach activities, maintain the website, offer online and live technical and management training workshops (with significant course fee reductions for current members), maintain certification programs for safety technicians and supervisors, prepare for annual conferences, offer CSHM exam preparation workshops, support the establishment of new state chapters and student chapters at higher educational institutions, and any other initiatives based on member needs and recommendations. These are ambitious goals and it will take a group of

dedicated members stepping up and volunteering to help NSMS achieve them. Please consider offering your expertise and time to these important initiatives.

For those who had not had an opportunity to renew or submit your dues after applying for membership online, we ask that you do so by March 31, 2009. We do not wish to drop you off our monthly NSMS Safety Digest distribution and online communications list. We also encourage those visiting and/or discovering our website to officially join our Society and benefit from the networking, lower fee online professional development courses and special registration rates for attending our conference and regional workshops. A growing membership base will increase our ability to develop, deliver and subsidize programs and resources to all. Thank you.

The ISHM “Certified Safety and Health Manager” (CSHM) Accreditation Has Been Achieved!

The vision of our early NSMS founders to develop a safety management-focused credential to recognize professional competence in safety leadership has culminated in the official accreditation of the NSMS-created Certified Safety and Health Manager credential by the Council on Engineering and Scientific Specialty Boards (CESB). CESB is a self-sustaining, independent body which accredits certification programs organized and operated consistent with sound credentialing practices tailored to the needs of engineering and technology specialties. CESB is the recognized accreditation body for engineering and scientific certification and specialty certification programs for professional credentials such as the Board Certified Environmental Engineer, Certified Industrial Hygienist and Certified Hazardous Materials Manager.

Our sister organization, the Institute for Safety and Health Management (ISHM) and its Board of Directors deserve all the credit for their leadership, diligence, determination and perseverance in marshalling this monumental effort to fruition. Our CSHM credential holders deserve our gratitude for their patience as this initiative effort went through many trials and tribulations over the years. The Institute for Safety and Health Management is the credentialing organization which administers the CSHM to recognize safety and risk management professionals who, through demonstrated professional experience and the passing of a comprehensive exam, have met ISHM's requirements for mastering the safety management body of knowledge.

The CSHM credential recognizes safety and health professionals who demonstrate knowledge of health and safety management skills and techniques through examination and experience. The CSHM certification program promotes the integration and practice of safety management principles throughout all levels and activities of an organization. In addition to technical knowledge of safety and industrial hygiene, a successful safety and health manager must possess working knowledge of a broad range of business and financial principles and an understanding of related issues such as hazard analyses, accident/incident investigations, safety audits/surveys, workers' compensation, risk management, product safety, human factors, environmental laws, quality, and labor relations. The CSHM program is designed to provide recognition of those who can apply such a broad range of health and safety management tools. NSMS offers to be a resource and facilitator to help those interested in pursuing such a certification.

SPECIAL ADVANCED ANNOUNCEMENT:

NATIONAL SAFETY MANAGEMENT SOCIETY Upcoming Special Professional Development Workshop Tentatively – Fall 2009 Houston, Texas Area

Many emails have been coming in recommending to NSMS that we offer an interdisciplinary two-day professional development workshop that will enable safety professionals/managers sharpen their skills, knowledge and abilities in interacting with employees and company leadership. We are considering a pilot workshop beginning in the Houston, Texas area and going forth to other regions where our membership would like to have it presented. If we come to your locale or college campus, we hope this will be a more cost-effective opportunity to learn and expand your skills, knowledge and abilities (SKAs).

The tentative workshop fee (early, pre-registration) for NSMS members is \$125 and \$250 for non-members and an on-site (or late) registration of \$160 for NSMS members and \$275 for non-members (includes lunch and program materials). College students majoring in this field of study are also invited to attend (NSMS Student (Affiliate) Members workshop fee is \$100). We need a minimum of 50 attendees to cover this event. Please email us at nsmsinc@yahoo.com if you are interested in possibly attending so we can begin to establish a headcount. Thank you.

“Enhancing Safety Management SKAs: 2-Day Professional Development Workshop”

Instructor: Dr. Jeffrey Chung, CSHM CHFP – NSMS Executive Director

Day One –

- Administrative Business, Introductions and Workshop Overview
- Safety Management Principles and Practices
- Safety Attributes for Best-in-Class Organizations
- Emerging Safety and Health Issues – Aging Workforce, Green Jobs and Special Needs of Foreign Workers
- Psychology of Safety – A Behavior-based Approach; Human Performance Improvement
- Developing Effective Training/Presentation Skills
- Role of Safety Committees; Conducting/Facilitating Effective Meetings

Day Two –

- Understanding Self/Others/Your Organization – SMART Profile
- Strategic Planning Concepts and Process
- Problem Solving and Analytical Tools
- Performance Metrics for Continuous Improvement
- Corporate Communication Strategies for Safety/Risk Management Professionals
- Ethics for the Safety Practitioner and Manager
- Stress and Health Management for the EH&S Professional
- Wrap-up and Workshop Evaluation

NSMS Blog: Ask a Question – Share Your Knowledge!

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. The NSMS Blog can only thrive with the enthusiasm and expertise of its members and readership. We encourage and invite everyone who has an interest in workplace health and safety to be a part of the NSMS Blog and help create a community that helps all organizations be safer, healthier and compliant places to work.

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 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.

Government Funding of OSHA Increases

Fed-OSHA will receive more funding for enforcement of workplace safety rules under a bill signed by President Barack Obama. *The Charlotte Observer* reports that the 2009 appropriations package includes a \$27 million increase to ensure employers provide safe work environments and track injuries accurately. OSHA’s total 2009 fiscal year budget stands at \$513 million.

The package also includes \$52 million additional dollars for the Bureau of Labor Statistics (BLS), which tracks workplace injury data. A portion of the BLS budget increase will be used to improve the accuracy of workplace injury statistics.

OSHA Issues New Inspection, Respiratory Resources

OSHA published a new resource to help employers select respirators based on assigned protection factors (APFs). In addition, the agency revised its *Field Operations Manual* to provide OSHA compliance officers with a single comprehensive resource of updated guidance.

The guidance document *Assigned Protection Factors for the Revised Respiratory Protection Standard* covers the new selection guidelines that were added to the Respiratory Protection Standard in 2006. APF refers to the workplace level of respiratory protection that a respirator or class of respirators is able to provide to workers. The higher the APF number (5 to 10,000), the greater the level of protection provided to the user. APFs are used to select the appropriate class of respirators that will provide the necessary level of protection against airborne contaminants. Such exposures can come from particles or a gas or vapor.

View the APF document at <https://www.osha.gov/Publications/3352-APF-respirators.pdf>

The Field Operations Manual, formerly called the *Field Inspection Reference Manual*, includes OSHA's general enforcement policy and procedures for the agency's field offices in conducting inspections, issuing citations and proposing penalties.

The manual is available online at: http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-148.pdf.

NIOSH's Initiative of Integrating Work, Home Safety

The National Institute for Occupational Safety and Health (NIOSH) released the first issue of its *WorkLife* newsletter. The publication covers the association between safety in the workplace and safety practices at home and supports NIOSH's WorkLife Initiative introduced in 2004. The first issue includes information on developing workplace safety programs, health and safety for older workers, and wellness programs. The WorkLife initiative approaches worker health and well being in a comprehensive way. The program considers hazards in the workplace as well as the personal health-related decisions of individuals. The aims of the WorkLife Initiative are as follows:

- Encourage and support evaluation of methods to integrate work and health.
- Promote policies and practices that protect and improve worker health.
- Encourage collaboration among investigators who preserve and improve the health of people who work.
- Overcome the separation between occupational health and health promotion communities.

For updates on the WorkLife initiative, visit <http://www.cdc.gov/niosh/worklife>.

View the WorkLife Initiative fact sheet at <http://www.cdc.gov/niosh/worklife/pdfs/worklifefsummary8.pdf>.

PMA Releases White Paper Examining Impact of an Aging Workforce

New white paper by the PMA Companies studies the positive impact of an aging workforce and examines how employers can capitalize on the strengths of older adults while minimizing high-severity risks

While the increase in older workers in the American workforce could suggest a corresponding decrease in workplace productivity and increase in accident claims, the opposite has proven to be true. Older workers are a benefit to the companies that employ them. However, injuries to older adults tend to be of higher severity, so U.S. companies should consider making workplace modifications that prevent injuries.

These conclusions were published in a new white paper by the PMA Companies, "Capitalizing on an Aging Workforce." The paper, which is the first in a quarterly series by the PMA Companies called *PMA Insights*, can be viewed at www.pmagroup.com.

Authored by Ken Nogan, Risk Control Consultant at PMA Insurance Group, the paper reports that since 1977, the number of people 65 and older in the workforce has increased more than 100 percent. In addition:

- It is estimated that workers in the age groups 65-74 and 75 and up will grow more dramatically than any other workforce age group - more than 80 percent.
- More than half of older workers are working full-time, up from 44 percent in 1995.

"Not surprisingly, as people age, their skills and faculties, including strength, range of motion, motor skills, sensory acuity and ability to heal, diminish," Nogan wrote. "While this may suggest that older workers would have a negative effect on workplace productivity and safety, statistics prove otherwise."

In fact, the paper notes that as over-55 workers increase in the workplace, so does productivity and overall workplace safety. However, when older workers do experience injuries, severity can be significant, which is an issue that must be considered by safety professionals.

These findings lead to two conclusions, according to the paper: one, older workers are a benefit to the company that employs them and, two, it pays to make modifications to work environments to prevent injuries and limit the severity of injuries commonly sustained by older workers.

Key Preventative Measures

The chief risk management concerns that were identified in the paper for older workers are increased falls, increased fatality rates, longer healing times, greater overall severity of injuries and more severe musculoskeletal disorders. The paper recommends that companies consider implementing risk control measures designed for the needs of older workers. Among the specific recommendations are:

- Slip and fall prevention - Falls alone account for more than one-third of all injuries sustained by workers 65 and older, and it takes an older worker two to three times longer to recover from an injury than a younger counterpart.
- Ergonomics - Ergonomic evaluations of workstations and workspaces can identify causes of fatigue and strain for older workers.

- Safe driving - Death rates for work-related roadway crashes increase steadily beginning at around age 55, and older drivers (55 and above) are more likely than other drivers to have a crash at an intersection or when merging or changing lanes on a highway.
- Return to work - Because claim statistics reflect a connection between increased healing time and age, there is a need for highly responsive return to work efforts for older workers.

Showing How Workplace Stress Hurts the Bottom Line *(By Glenn Demby, Esq., Safety-X-Change – December 16, 2008)*

Work-related stress has been around for as long as workplaces themselves. But recognition of stress as an occupational hazard is a product of modern times. Unfortunately, not all CEOs have gotten the message. As a safety director, you must persuade your CEO that stress really is a problem to take seriously. The best way to do that is to relate the problem to dollars.

Here's how to educate your CEOs to the dangers of workplace stress and gain their support for programs to combat it. There's also a Model Worksheet in Tools you can use to calculate the financial impact of stress on *your* company.

The Business Case for Preventing Workplace Stress

The case is a simple one: Workplace stress hurts profits because it increases absences and cuts productivity. 'Want some good hard data that you can use to make this point? According to a press release from the World Congress on Health and Safety at Work, of the 40.2 million working days annually lost by businesses worldwide, 13.4 million are from stress, anxiety and depression, the representatives found.

To put these numbers into perspective for your CEO, relate stress to more "familiar" hazards. According to one of the delegates, "in the U.S. alone, stress is creating a workplace hazard every bit as damaging as chemical and biological hazards."

Demonstrating the Hidden Costs of Stress

These statistics should help you capture the CEO's attention. But you'll probably need to drill deeper to make your case. To persuade your CEO to invest company resources, you must clearly explain exactly *how* workplace stress hurts the business. This is tricky because stress isn't a line item cost listed on the typical profit and loss statement. It's a bundle of hidden costs. There are five elements in this bundle that you should point to:

1. Higher Injury & Illness Rates

The more stress workers experience at work, the more likely they are to engage in unsafe behavior. The result is more incidents involving personal injury and/or damage to equipment and machinery. The link between stress and incidents isn't just a matter of common sense; it's well documented. If you want a good study to cite, see F. Gordon & D. Risley (1999) "The costs to Britain of workplace accidents and work-related ill health in 1995/96, Second Edition," HSE Books, London; and P. Dorman (2000), *The Economics of Safety, Health and Well-being at Work: An Overview*, International Labour Organization, Geneva.

2. Increased Absenteeism

Studies confirm that workers under stress are more apt to call in absent—either because they're genuinely ill or they're feigning illness to avoid having to go to work.

3. Higher Turnover

Stress at work also causes people to leave the company. In addition to losing good people, companies incur high administrative costs in seeking replacements. And, replacement costs tend to rise to the extent that the company gains a reputation for being a stressful place to work. There's a Worksheet in Tools that you can use to calculate just how much stress-related turnover costs your business in a given year.

4. Premature Retirement

Stress causes older and more senior workers to retire before they're ready. **Result:** High replacement costs and in many cases lump sum and pension payments.

5. Reduced Productivity

Workplace stress harms workers' productivity and performance. The effect of stress on productivity is hard to measure; but it is real. (For help showing the link between safety and productivity, see the newsletter published by Bongarde Media called, *Safety Compliance Insider*, Vol. 1, No. 6, page 13).

Conclusion

There's nothing mystical about workplace stress. It can be managed. For example, Employee Assistance Programs have proven very effective at reducing stress on the job. But these solutions cost money. And time. The only way to secure the necessary resources is to persuade your CEO that workplace stress poses a serious threat to your workers and your company's bottom line.

Safety Professionals' Number One Safety Concern: Worker Compliance

Safety professionals continue to battle worker noncompliance with safety rules as their top concern. For the past three years, respondents to a survey by Kimberly-Clark Professional have stated that increasing the number of workers who regularly follow safety precautions is their main challenge. Results of the survey, which was taken by 153 safety professionals at the National Safety Congress in September, reports that respondents rated their concerns as follows:

1. Noncompliance = 33%
2. Insufficient management support and/or resources for health and safety functions = 27%
3. Under-reporting of workplace injuries and illnesses = 14 percent
4. Training a multilingual, multicultural workforce = 7 percent
5. Escalating worker compensation costs = 5 percent

The survey also found that respondents plan to improve education and training and seek out more comfortable personal protective equipment to encourage worker compliance.

"Work-related injuries in the U.S. cost more than \$50 billion a year," said Randy Kates, general manager of the safety business for Kimberly-Clark Professional. "Our research has shown that comfort and style are major drivers for compliance with PPE protocols. In the current economic climate it is more important than ever to invest in PPE that workers will want to wear."

Survey respondents were also asked to rate a list of statements describing safety philosophies. "Safety doesn't cost it pays" and "Organizations must create safety based cultures" tied for first place with each slogan receiving a 43 percent share of the votes.

"These results did not surprise us," said Scott Gaddis, global safety leader for Kimberly-Clark Professional. "Workplace safety must be managed like every other strategic business objective that is important to an organization's success."

Lessons Learned: OSHA Levies \$119,000 Fee on Pasco Contractor *(ByTampa Bay Business Journal – January 23, 2009)*

The U.S. Department of Labor's Occupational Safety and Health Administration is proposing \$119,000 in penalties against WDG Construction Inc. for seven safety violations that exposed its employees to possible injury or death at two of its construction sites.

OSHA is proposing two willful citations with \$99,000 in penalties after inspections conducted in July and August 2008 revealed that the Wesley Chapel-based company violated OSHA standards by "failing to provide employees with protection from cave-ins while they worked in trenches," a release said. The agency defines a willful violation as one committed with plain indifference to or intentional disregard for employee safety and health.

The agency is proposing a repeat violation with an \$8,000 penalty after it found that material excavated from a trench was placed too close to the edge of the excavation, making it possible for the soil to fall back into the trench where employees were working. The company had been cited for a similar violation following a 2007 inspection, a release said.

Four serious violations with penalties totaling \$12,000 are being proposed for the company's failure to control water from seeping and accumulating in trenches, not providing proper ladders for employees working in trenches, not training employees to recognize unsafe conditions and failing to instruct employees in ladder safety. "These proposed penalties reflect the seriousness of the dangers faced by employees and management's indifference to their employees' safety," said Les Grove, OSHA's area director in Tampa, in a prepared statement.

OSHA's staff inspected the site. OSHA said it operates a vigorous enforcement program, conducting almost 39,000 inspections and finding nearly 88,000 violations of its standards and regulations in fiscal year 2008. Under the Occupational Safety and Health Act of 1970, employers are responsible for providing a safe and healthy workplace for their employees.

Lessons Learned: University of Pittsburg Issued Fine for Monkey's Attack on Lab Worker *(By David Templeton, Pittsburg Post-Gazette – December 5, 2008)*

The University of Pittsburgh (Pitt) has been issued citations that contain fines of \$5,250 for the Sept. 24 macaque attack that left a laboratory employee with serious hand injuries. The Occupational Safety & Health Administration cited the university Nov. 21 for two "serious" violations, including failing to provide adequate training for lab technicians and insufficient safety equipment at Pitt's \$18 million Regional Biocontainment Laboratory in Biomedical Science Tower 3 in Oakland.

Inside the lab, the university uses primates to develop vaccines with a focus on dengue, influenza, avian flu and tuberculosis. Patricia "Trish" Boyle, 54, of Avalon, was feeding a macaque, known as a cynomolgus monkey, when it bit her right hand below the index and middle fingers. The monkey refused to release her hand, so Ms. Boyle was unable to pull her hand away. She spent eight days in the hospital, underwent three surgeries and sustained bone, tendon and neurological damage to the hand, she said. She's still undergoing rehabilitation therapy but has returned to work full time in the lab.

Leni Fortson, OSHA spokeswoman, said the university failed to provide training and protective gloves, among other safety equipment, which could have help to prevent the injuries. The university has 15 days to appeal the fines, she said. Pitt spokesman John Fedele said Pitt will appeal the citations.

Lessons Learned: Former Employee Sues National Beef Over Firing *(By Eric Swanson, Dodge City Daily Globe – December 4, 2008)*

A former employee of National Beef's Dodge City plant is suing the company, alleging that he was fired because he had previously filed a worker's compensation claim against the company. Garden City resident Natividad Fierro is seeking at least \$75,000 in damages — a general figure that could change as the lawsuit progresses — plus any other relief the court thinks is appropriate.

Fierro suffered a laceration to his right finger while on the job on May 31, 2006, and he tore his right rotator cuff nearly two months later, according to the lawsuit. He was reassigned to light duty work and later filed a workers' compensation claim against the company. Fierro was still on light duty on Dec. 19, 2006, when he received a phone call saying that his daughter had an emergency and needed his help, according to the lawsuit. The lawsuit says that he attempted to notify his supervisor that he needed to leave, but she was unavailable. "He checked out, left his designated work area and waited in the parking lot from approximately 8:45 a.m. to approximately 10 a.m., when she (the daughter) arrived and picked him up," the lawsuit says. "Plaintiff Fierro was immediately suspended as a result, and the following day his employment was terminated."

National Beef's employee handbook indicates that an unauthorized absence from work is an offense that warrants progressive discipline, as opposed to a violation that warranted discipline up to and including firing for the first offense, according to the lawsuit. The lawsuit alleges that National Beef fired Fierro in retaliation for his filing a workers' compensation claim against the company. Additionally, the lawsuit says that the company violated its duty to treat Fierro fairly when it fired him without following an implied promise of progressive discipline, which was contained in the employee handbook.

National Beef will set out its defense against Fierro's claims when it files its answer to the lawsuit within the next several days, National Beef's attorney, David Rebein, told the Globe on Wednesday. "National Beef takes care of its employees, including employees that have workers' compensation claims," he said. "The employee was terminated, but it was for reasons that had nothing to do with his workers' compensation claim. And we're confident that we'll be vindicated when it's all said and done." Rebein said he could not comment on why Fierro was fired until he files National Beef's answer to the lawsuit.

Fierro referred a reporter seeking comment on the lawsuit to his attorney, Peter Antosh of Dodge City. Antosh said that the case boiled down to his client's decision to file a workers' compensation claim against National Beef after he was injured. "It's our position that National Beef saw him as less valuable and was looking for kind of a 'gotcha,'" Antosh said. "And they treated him differently as an injured worker, as somebody that had a claim against them, than they would have if he had been a production line worker that was not injured and making money for them. And we believe that's illegal."

Safety Law Quiz: U.S. or Canada or Both?

U.S. and Canadian occupational health and safety laws are similar but not exactly the same. Here's a little quiz to illustrate some of the basic differences and similarities between the laws of the two countries.

Instructions: We'll list a statement that describes the law. If you think the statement is about Canadian law, list "C"; if you think it's about American law, list "A"; and if you think it's about both countries' law, list "B".

1. Workplace safety law is primarily enforced by the federal government:
2. States/provinces may set their own health and safety standards:
3. Supervisors can be held liable for safety violations:

4. Workers' compensation prohibits workers from suing their companies for injuries:
5. Workplace health and safety laws may incorporate standards adopted by non-governmental standards agencies such as ANSI:
6. Workers can be held liable for safety violations:
7. Egregious violations of the workplace safety laws can lead to criminal liability:
8. Most companies are required to establish health and safety committees or appoint a health and safety representative:
9. Seven-figure fines happen with some frequency:
10. Employers can eliminate surprise inspections by voluntarily submitting to higher standards:

ANSWERS:

1. A
2. B
3. C
4. B
5. B
6. C
7. B
8. C
9. A
10. A

Avoiding Personal Liability for OSHA Violations (*Abridged Version from Safety-X-Change, December 2005*)

OSHA uses a legal doctrine called "piercing of the corporate veil" to hold corporate officers and directors *personally* responsible for the OSHA violations committed by their companies. This article will analyze the cases and what they might portend for future OSHA enforcement.

What Is Piercing the Corporate Veil?

Corporate officers, directors and shareholders (which, for simplicity sake, we'll refer to collectively as "officers") normally aren't personally liable for OSHA violations committed by their companies. That's because the corporation is considered an independent legal entity that's responsible for its own debts and liabilities. The money needed to satisfy those debts and liabilities thus must come from corporate coffers, not officers' pockets.

But the protection against liability enjoyed by corporate officers is subject to limits. If a court thinks that officers are using the corporation to cover what are essentially their individual decisions and actions, the court will disregard the corporate form and hold the officers personally responsible for the corporation's liabilities. This is called piercing the corporate veil.

Courts pierce the veil when they think that corporate officers, directors or shareholders (collectively "officers") are using the corporate form to disguise what are essentially individual actions. Officers can avoid the piercing of the veil then by keeping the corporation's legal identity separate from their own.

On an operational level, officers must engage in an ongoing analysis of the way the corporation conducts its business, and the way officers interact with the company. If you're an officer, there are three questions you should ask to determine if you're doing enough to protect against individual liability:

- Are you and the other officers observing all corporate formalities?
- Are you keeping your personal assets separate from the company's business assets?
- Are you avoiding conduct that could suggest that the corporation is your alter ego?

1. Corporate Formalities

Corporations are organized under state corporation laws. The people who create and run a corporation must observe certain formalities including:

- Filing all incorporation papers;
- Filing all annual reports;
- Holding shareholder meetings at least once a year;
- Holding director meetings at least once a year;
- Keeping minutes of all shareholder and director meetings;
- Properly documenting all issuances of corporate stock;
- Issuing consents in lieu of meetings for actions taken without a formal meeting; and
- Keeping other records.

2. Keeping Corporate and Personal Assets Separate

The corporation is supposed to be a distinct "person" under the law, one that's separate from its owners. For a corporation to be treated as a separate person, its assets must be truly its own and not the personal assets of its officers. The corporation's assets must be kept separate from and not "commingled" with the officers' assets. Accordingly, officers should make sure the corporation:

- Has its own bank accounts;
- Maintains separate offices;
- Owns or leases its own equipment;
- Documents any loans to or from officers; and
- Refrains from paying the officers' personal obligations.

3. Treating the Corporation as the Officers' Alter Ego

Officers need to understand that if they act like the corporation is there to serve their personal interests, OSHA and the courts may consider the corporation their alter ego and pierce the veil.

When officers act in the corporation's name, those actions should be for legitimate business purposes, not for the officer's personal gain. And, as a general matter, one person shouldn't be the sole officer, director and shareholder of the corporation. Otherwise, OSHA and the courts may find that the corporation was in fact that individual's "alter ego."

Conclusion

Keep in mind that piercing the corporate veil can be used to hold officers responsible not just for OSHA violations but any liabilities incurred by the corporation, including violations of other statutes and regulations and contractual obligations. But also keep in mind that it's a measure used only when there has been pronounced abuse. Officers who respect the corporate form and maintain a separate identity have little to fear.

Safety Training/Meeting Strategies: "Pass the Pumpkin" *(by Cynthia Zarsky - ExxonMobil, Safety Stuff by Richard Hawk – February 11, 2009)*

There are about 25 people on our safety team. They range from new employees to folks with 25+ years of service. In addition, there are 3-4 different crafts. So, the challenge is to find topics that engage this diverse group. I decided to have a "Pass the Pumpkin" game. At the start of the meeting, I had a CD player and pumpkin on the table, plus I'd prepared a list of generic (not craft specific) safety questions.

I asked everyone to stand in a circle, then I showed them the safety pumpkin (a small ornamental squash). The goal was to pass the pumpkin around the circle (no throwing!) when they heard music playing and the person holding the pumpkin when the music stopped would be asked a safety question. (Similar to musical chairs.) An incorrect answer meant you had to sit down and cheer on your buddies. Watching each other hurriedly try to get that pumpkin out of their own hands and to the next person provided a lot of laughter and high spirits.

Some of the folks laughing the hardest were the eliminated players when they realized that the answers were on several safety posters around the room, so it also served as a good reminder to read our safety signs and not put up so many that they become a blur to the employees.

I used "Pass the Pumpkin" with a different group and in February but then I called it "Pass the Heart." The safety item can be easily changed to match a theme or season.

10 Reasons to Be Thankful (for the times we live in) – By John Tierney, Readers Digest.com [<http://www.rd.com/advice-and-know-how/10-reasons-to-be-thankful/article117676.html>]

Count your blessings, we're told, but it's just not in our nature. We'd rather count our problems. Our species survived by reacting instantly to threats, and the ancient humans who stopped to smell the roses made easier targets for predators.

Today, the predators are mostly gone, but we're still so primed to pay attention to bad news that we tend to ignore what's going well. As soon as we solve one problem, we take the progress for granted and find a new cause for alarm. Every now and again it doesn't hurt to take stock of just how good we have it. Start counting:

1. Free time

As much as we complain about being busy, the typical American has more free time than ever—more than five hours per day, according to time surveys by the U.S. Census Bureau and researchers at the University of Maryland and Penn State. That's a gain of nearly an hour since 1965 and a gain of about four hours since the 19th century. In Victorian England, when life expectancy was only about 50, workers put in 60-hour weeks, from age ten until they died.

If you feel too busy, it's probably only because you're doing so many other things than work. Over the course of a lifetime, you typically spend no more than 20 percent of your waking hours on the job, and experts say there'll be even more free time in the future as life expectancy keeps increasing and work hours keep shrinking. By 2050 in the industrialized world, others project, the average workweek will be just 27 hours.

2. Peace

Wars and terrorist attacks will always make headlines, but it's remarkable how many of the world's 6.7 billion people now live in peace. In recent decades, despite the growth in population, the number of war casualties around the world has declined, according to the Human Security Report Project from Canada's Simon Fraser University. And despite a new fear of terrorism following 9/11, terrorist casualties have been declining in recent years.

In some earlier generations, a quarter of the male population died violent deaths. Over the past century, even counting the world wars, a person's chance of dying from war or violent civil strife was less than 2 percent, according to John Mueller, a professor of political science at Ohio State University. That means that the scourge of war is now comparable to the statistical risk of driving a car in the United States.

3. A roomier American dream

While some people are struggling to keep their homes, the vast majority of Americans still have plenty to be thankful for when they walk through the front door. In 1950 the typical new American house had one floor with 1,000 square feet, two bedrooms, and one bathroom—and even that bungalow was beyond many people's means. Nearly half of Americans didn't own their homes, and more than a third of homes lacked complete plumbing facilities.

Today, more than two thirds of Americans own their homes, and the typical new house has two floors, at least three bedrooms, two and a half baths, and more than 2,200 square feet of space for the family.

4. The reader's revolution

In 1970 barely half the people in the world were literate, and many of them could afford only a few books. Middle-class people needed installment plans to afford an encyclopedia. Local libraries offered a limited selection of books; new titles went on sale in bookstores but soon disappeared unless they were bestsellers.

Today, more than 80 percent of the world's people can read, and 22 percent have access to the greatest library in history. The Web provides classic books and reference works like Wikipedia free of charge, and the online network of booksellers means that no book ever really goes out of print. Whatever it is, old or new, someone somewhere will sell it to you, often at a bargain price.

5. The horn of plenty

The royal dinners at Versailles might have had glitzier place settings, but Louis XVI would gaze enviously at the food in a middle-class home or restaurant today: kiwifruits from New Zealand, South African peppers, Thai pineapples, Italian gelato. He'd be amazed, too, at the way we take fresh produce, fish, and meat for granted in every season.

The king's subjects, of course, would be even more envious. France was one of the world's richest countries in the late 18th century, but the average Frenchman consumed less than 2,000 calories per day—about the same level as people in the world's poorest countries consumed in the middle of the 20th century. Today, the typical person in a poor country consumes 2,700 calories daily, a nutritional improvement made possible by farmers growing more food at lower cost.

While the occasional food shortage or price spike grabs our attention, the long-range trend is what really matters. While incomes have risen since 1950, the inflation-adjusted price of food has declined by 75 percent, according to the World Resources Institute. So it represents a smaller and smaller portion of our paychecks.

Food is so plentiful that in many countries, the old concerns about hunger have been replaced by worries about obesity.

6. More wilderness

Once you travel beyond the sprawling exurbs of America, you'll find plenty of open space and peaceful forests. Many of the prairies and woodlands cleared by settlers have returned now that the land is no longer needed for agriculture.

In recent decades, America has gained 70 million acres of wilderness, which is more than all the land currently occupied by cities, suburbs, and exurbs, according to Peter Huber, a fellow at the Manhattan Institute. And more people than ever can get to that wilderness because of a technology that we now routinely curse ...

7. The modern automobile

Granted, cars emit greenhouse gases and create maddening traffic jams, but consider what else they do. Compared with the models on the road in 1970, today's cars burn less gasoline per mile and emit 98 percent fewer pollutants. That's why, despite the doubling of the number of cars, there's much less smog in the air.

The basic sedan today offers more creature comforts and safety than the luxury cars of old. The fatality rate has declined sharply, and cars have become so reliable that it's rare to come upon that once-routine sight on the shoulder of the road: a driver forlornly staring under the hood.

8. The platinum age of television

Forget the so-called golden age of TV. Shows from the '50s look positively primitive compared with *Mad Men*, *30 Rock*, or *The Amazing Race*. When a few networks had to appeal to the lowest common denominator, television really was a wasteland—just as Hollywood so often churns out mediocrity when it's aiming for box office blockbusters.

With hundreds of channels today, TV producers don't have to please everyone, so they can appeal to niche audiences with quirky programs: sophisticated dramas, edgy comedies, and documentaries that aren't just educational but riveting. When children are happily learning about Mayan engineering on the History Channel or quasars on the Discovery Channel, that box is no longer the boob tube.

9. Retreat from Armageddon

During the Cold War, the United States and the former Soviet Union had about 50,000 nuclear warheads aimed at each other. Since then, they've agreed to get rid of 90 percent of them, and tens of thousands of those weapons have already been eliminated. As Gregg Easterbrook observes in his book *The Progress Paradox*, “Historians will view nuclear arms reduction as such an incredible accomplishment that it will seem bizarre in retrospect so little attention was paid while it was happening.”

10. Memories

The gift of longer life has usually been accompanied by the loss of memories, but we'll be luckier than our grandparents. Besides the new memory-improvement drugs being developed, we've got digital photos and videos and e-mails to recall our best personal moments and the Web to instantly help us remember who sang that song or which year the blizzard hit.

In the past, only nobles could hire scribes to write their histories and artists to depict their deeds. Today, we all have records of our lives to pass on to our descendants, to comfort us as we age, and to remind us, every now and then, to count our blessings.

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

- About 85 percent of people killed in highway work zones are drivers or passengers.
- Chronic exposure to noise loud enough to make you raise your voice can also increase heart attack rates.
- Grape-Nuts cereal was once advertised as an aid to sobriety.
- A survey of one stretch of road in Maryland found that a piece of information was presented every two feet, which at 30 miles per hour, the study reasoned, meant the driver was exposed to 1,320 "items of information," or roughly 440 words, per minute.
- Only 2 percent of Americans say they're in a good mood every day.
- Washington, D.C., has more psychiatrists per capita than any other city in the country.
- Neuroscientists have determined that motherhood makes female rats smarter, calmer, and more courageous.
- This one you probably already know: People laugh least in the first hour after waking up in the morning.