From the Rooftop

Associated Roofing Contractors of the Bay Area Counties, Inc.

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Inside this issue:

HEAT ILLNESS IS NOW THE #2 MOST CITED STANDARD

Reflecting the priority Cal-OSHA has placed on preventing heat-related deaths, citations for alleged violations of 8 CCR 3395 jumped 85% last year. The percentage of violations classified as "serious" more than doubled.

HEAT ILLNESS REGULATION AMENDMENTS: WILL THE THIRD TIME BE THE CHARM?

After suffering the embarrassment of failing on two separate occasions to secure the adoption of amendments to California's Heat Illness Prevention Standard through emergency rulemaking, Cal-OSHA has decided to change tactics. As has been repeatedly requested by stakeholders and Standards Board members, Cal-OSHA will now use an expedited advisory committee approach in an attempt to craft a consensus proposal.

Typically, when a member of the public files a petition or a Cal-OSHA staff member submits a "Form 9" request to revise an existing regulation or add a new one to Title 8, Cal-OSHA convenes an advisory committee of affected stakeholders to discuss the issue, express their concerns and compose their differences. Routine matters may only require a single meeting, while complex and/or controversial proposals may require a number of meetings over a period of months. In the overwhelming majority of cases, this approach yields consensus proposals that have

DOSH Chief Len Welsh

broad support among stakeholders and which are therefore routinely adopted by the Cal-OSHA Standards Board.

The only drawback to the advisory committee process is that it can be time-consuming, and in the case of the Heat Illness Prevention Standard, Cal-OSHA cannot afford a leisurely pace of progress. The agency is under a great deal of pressure to amend the regulation now. Governor Schwarzenegger has promised agricultural workers that the regulation will be strengthened to prevent unnecessary deaths, while state legislators have threatened to bypass Cal-OSHA and impose amendments by statute if the agency fails to act quickly.

In an effort to hasten the process, Cal-OSHA has taken the unusual step of initiating formal rulemaking in advance of the convening of an advisory committee. A proposed regulation was published on August 27th, initiating the required 45-day comment period. The public hearing on this proposal is scheduled for October 15th.

Since the new proposal is very similar to the one that failed adoption on a 3-3 vote at the Standards Board's July

(Continued on page 2)

FOES OF S.F. HEALTH CARE ORDINANCE APPEAL TO SUPREME COURT

Rebuffed by the 9th Circuit Court of Appeals, opponents of San Francisco's Health Care Security Ordinance, led by the Golden Gate Restaurant Owners Association (GGRA), have petitioned the United States Supreme Court to strike down the controversial local measure. The City of San Francisco's reply brief is due September 2nd, The Supreme Court will announce on October 5th whether it has decided to hear the case.

The Health Care Security Ordinance was unanimously passed by the San Francisco Board of Supervisors in 2006. It imposes a health care spending requirement on private employers located, doing business in or performing work in San Francisco who employ 20 or more qualifying workers. Affected employers are subject to city-mandated health care spending requirements, but are afforded several options for satisfying their obligations,

(Continued on page 2)

Employers who have questions about heat illness prevention can submit them to DOSH by e-mail at Heat@dir.ca.gov.

Heat Illness Regulation Amendments: Will the Third Time Be the Charm?

(Continued from page 1)

meeting, the concerns and views of affected stakeholders are already well known. Accordingly, it is hoped that when the advisory committee meets in September, the issues will be sufficiently narrow to allow a consensus to be arrived at in relatively short order. If additional modifications to the proposal are required to forge a consensus, these can be presented to the Standards Board on October 15th. If the modifications are accepted, an additional 15-day public comment period will follow, after which the Standards Board can consider adopting the revised Heat Illness Standard at its regularly scheduled November meeting (or sooner if a special meeting is deemed to be in order).

The core of the proposal published on August 27th is establishing clear temperature triggers for required heat illness prevention actions. With respect to the provision of shade, for example, the proposal requires that when the temperature is at or below 85 degrees Fahrenheit, employers must provide timely access to shade upon an employee's request. At temperatures above 85 degrees, employers must have and maintain one or more areas of shade at all times employees are present. The amount of shade present must be large enough to comfortably accommodate 25 percent of the employees on the shift at any time. At temperatures at and above 95 degrees, employers are required to implement additional "high heat procedures", including observing employees (especially new hires) for symptoms of heat illness and reminding employees to drink plenty of water.

The proposal also imposes additional training requirements on employers. Most significantly, the revised regulation prohibits employees and supervisors from performing outdoor work subject to the standard prior to receiving required heat illness prevention training. Employers would also be required to designate a specific person responsible for invoking emergency procedures when necessary, which procedures must include the ability to provide emergency responders with clear and precise directions to the job site. Supervisory personnel would also need to be trained in how to monitor and respond to weather advisories.

The existing regulation is unacceptably vague with respect to precisely when employers are required to take required actions to prevent heat illness. This ambiguity breeds confusion, non-compliance and uneven enforcement. Construction industry interests (including your Association) have consistently supported the idea of temperature triggers as a clear and simple way to resolve the problem.

While implementation triggers need to be more rigid, compliance options need to be more numerous and more flexible. This is especially true in construction, where jobsite conditions can vary so widely from project to project. The current regulation reflects a "one size fits all" approach that is inappropriate to and impractical for the construction industry.

Roofing and other construction contractors need to be able to draw upon a range of compliance alternatives so that heat illness prevention measures can be tailored to the demands (and the limitations) of each jobsite. Your Association and its partners will continue to fight for greater compliance flexibility when the Advisory Committee convenes next month and as the regulatory process continues to unfold. Stay tuned.

Foes of S. F. Health Care Ordinance Appeal to Supreme Court

(Continued from page 1)

including purchasing health insurance, contributing to employee health care savings accounts, reimbursing a portion of employees' health care costs and making specified payments to the City.

The heart of the GGRA's challenge is that San Francisco's health care ordinance is preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA). ERISA is a landmark law that establishes a uniform, national framework for regulating employee benefit plans, thus relieving employers from the burden of being subject to a patchwork of conflicting state and local laws. A key provision of ERISA is a broad preemption provision that covers all laws that relate to, have a connection with or make unlawful reference to employee benefit plans. The Restaurant Owners successfully argued in District Court that the San Francisco law violates ERISA by impermissibly interfering with employers' decisions regarding whether or how to provide health care. The 9th Circuit Court of Appeals, however, swiftly overturned that ruling.

The U.S. Supreme Court annually accepts for review only 1 to 2 percent of the cases submitted to it, so the odds of this case actually being heard are slim. On the other hand,

(Continued on page 4)

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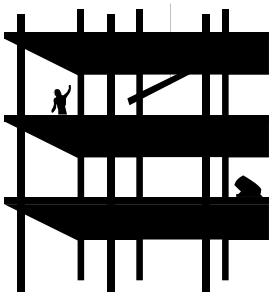
THE SAFETY ZONE

by Steve Johnson, OHST
Director of Safety and Compliance Services



Steve Johnson's SAFETY ZONE is a regular column appearing in all our issues.

Representatives from employer groups, organized labor and the Division of Occupational Safety and Health (DOSH or Cal/OSHA) recently came together once again at the Advisory Committee table. At issue this time was the use of lift trucks (forklifts) — specifically rough terrain extendable boom forklifts — to elevate employees on personnel platforms. The Advisory Committee was called together in response to a DOSH staff member having submitted the dreaded "Form 9" requesting a change in the existing regulation: 8 CCR 3657, Elevating Employees with Lift Trucks.

DOSH staff's concern is that rough terrain extendable boom forklifts "...present a significant overturning hazard, if the work platform is placed too far outside the center of gravity of the forklift itself". DOSH safety personnel are also concerned about the severe danger of ejection presented by extendable boom forklifts, which are subject to sudden horizontal movements that can cause employees to be pitched over the guardrails. DOSH accordingly feels that employees should always wear fall protection on this type of forklift.

Chaired by Cal/OSHA Standards Board Senior Safety Engineer Tom Mitchell, the advisory meeting was an all day event, made all the more difficult by an appalling lack of coffee and donuts! Attendees (who were probably suffering from sugar and caffeine withdrawal) directed their collective anger at the one major group that was not represented at the meeting: manufacturers. A number of manufacturers did weigh in on the issue via letters and e-mails, but none of them actually attended the meeting. It was somewhat bitterly noted by a construction industry attorney that manufacturers seldom actually attend advisory committee meetings, but always expect to have full weight given to their written comments. This shot across the bow at manufacturers was well received by the committee.

After the initial rumblings subsided, the meeting went about its business at the normal glacial pace.

The existing regulation (8 CCR 3657) is not terribly long. It occupies about one-half of a page in Barclay's Official California Code of Regulations. There is no relationship, however, between the length of a regulation and the ease of amending it. The introduction of new language into an existing regulation is always a time-consuming process, if only because the perspectives of affected stakeholders are naturally and predictably different.

DOSH proposed that a relatively short new subsection (k) be added to 8 CCR 3657 to further regulate personnel platforms elevated by means of a rough terrain extendable boom forklift. Reviewing and revising the proposal took the committee several hours. When the dust finally settled, consensus was reached on the following items (the exact language may be somewhat

(Continued on page 4)

Construction Industry Citations Declined in 2008

Cal-OSHA issued a total of 21,158 citations during 2008, which is a 3.5% increase over 2007. The number of citations issued to construction employers, however, declined by 11%.

IN MEMORY OF CHET RAYPHOLTZ

Your Association is deeply saddened to report the passing of one the California roofing industry's most iconic figures. Chet Raypholtz, founder of Fresno Roofing, died in his sleep on July 31st at the tender age of 90.

Like many of his fellow contractors, Chet Raypholtz got into the roofing industry by accident. He needed shingles, which were quite scarce after World War II, for a garage he had built for his father-in-law. After much haggling, Riley Sheldon agreed to sell Chet the shingles, but only if Chet agreed to come work for Sheldon Roofing for a couple of weeks. Those few weeks turned into eight years, during which time Chet came to love the roofing industry so much that in 1953 he founded his own roofing company.

A hallmark of Chet Raypholtz's philosophy of business was the signal importance he placed on industry involvement. Very early on in his roofing career, he helped to found the Roofing Contractors Association of California. Over the years, he served countless terms on the RCAC Board of Directors and two terms as its President. Chet Raypholtz's outstanding contributions to the roofing industry are reflected in the fact that he was the very first person inducted into the RCAC Hall of Fame and was the first (and remains the only) person to be designated as a "Lifetime Member" of RCAC.

Chet Raypholtz gave to many local charities, but he was particularly supportive of the SPCA. Those wishing to honor his memory with a donation to the Central California SPCA may do so online at www.ccspca.com/donate.html.

The Safety Zone

(Continued from page 3)

different when the regulation is brought forward to adoption):

1. If an information plate is provided (on the forklift) for elevating personnel, then the work platform shall be loaded and positioned within the limitations set forth on the information plate;

2. If there is no information plate provided for elevating personnel, then the combined weight of the work platform, load, and personnel shall not exceed one-third of the rated capacity of the rough-terrain lift truck (forklift) at the load center position as indicated on the information plate for regular loads;

3. The forklift must be on firm footing, and outriggers, when used, shall be placed on a solid surface. If necessary, pads or cribbing shall be employed;

4. Each person on a work platform supported by variable reach rough-terrain lift truck (forklift) shall use a personal fall restraint system or positioning device system and:

(A) Shall attach a lanyard to each person's harness or safety belt and to an anchorage provided on the platform,

(B) Anchorages shall be capable of supporting the greater of 3,000 pounds or twice the intended load,

(C) For positioning device systems, the combination of anchorage location and lanyard length shall be arranged so that workers cannot fall more than two feet from the work platform,

(D) For personal fall restraint systems, the combination of anchorage location and lanyard length shall be arranged to allow the movement of employees only as far as the side of the work truck (forklift) platform.

5. When elevating personnel with a variable reach rough-terrain lift truck (forklift) the operator shall:

(A) Maintain the personnel platform level throughout personnel lifting;

(B) Alert elevated personnel before moving the platform, then move the platform smoothly and with caution;

(C) Never travel with personnel on the work platform, except that minor movement of the lift truck is permitted for positioning the platform along a straight line, where the path of movement is free from excavations, holes, obstructions, or debris; and

(D) Do not operate on a side slope unless the rough-terrain lift truck (forklift) is leveled.

As stated above, developing these few simple additions to 8 CCR 3657 took the better part of a very long day to develop. That it can take so long to forge a consensus on what ought to be a fairly common-sense matter can be frustrating, but it's part of the price that must be paid for participating in a "fair and balanced" rulemaking process. In the end, we must be thankful for the fact that California stakeholders have a voice in shaping the safety and health regulations that apply to them. There is no Federal OSHA equivalent to the Cal/OSHA advisory committee process.

It may not be glamorous or exciting, but your Association always attends and participates in advisory committee proceedings that bear on the interests of our members. We may not get what we want every time, but our batting average is very good and we never miss a game. For questions about this proposed regulation or any other safety issue, please call me at (925) 472-8880, ext. 3012 or send an e-mail to: safety@arcbac.org.

- Steve

Foes of S. F. Health Care Ordinance Appeal to Supreme Court

(Continued from page 2)

the Supreme Court often intervenes when two or more federal appellate courts issue conflicting rulings, as is the case here. While the 9th Circuit has upheld the San Francisco health care ordinance, the 4th Circuit has struck down the Maryland "fair-share" law, which required employers to spend at least 8% of payroll on employee health insurance or pay the difference to the state as a penalty. The interpretations of ERISA in these cases are diametrically opposed. The Supreme Court may feel the issue is important enough to resolve once and for all.

The U.S. Chamber of Commerce and the National Association of Manufacturers, among other business interests, have filed *amicus curiae* (friend of the Court) briefs urging the Supreme Court to accept the case and to declare the Health Care Security Ordinance invalid. Surprisingly, although the Obama Administration has frequently praised the San Francisco health care program, it has chosen not to submit an *amicus* brief supporting it.

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