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OSHA Observer

A review and analysis of emerging developments in occupational safety and health law

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December, 1998

NEW OSHA TRAINING STANDARD FOR FORKLIFT OPERATORS AIMS TO REDUCE INJURIES AND LOSS OF LIFE

This month the Occupational Safety and Health Administration (OSHA) released a new training standard for operators of fork lifts and other powered industrial trucks, published at 29 CFR § 1910.178. OSHA anticipates that this new standard will prevent 11 deaths and 9,500 injuries annually, and will lead to \$135 million annually in employer cost savings. The savings can be broken down as follows: \$83 million in direct reduced costs (for example, savings in medical costs, administration of workers' compensation, and value of lost output), and \$52 million in reduced accident-related property damage. OSHA estimates that the total cost of compliance for America's employers will be \$16.9 million annually.

The new standard, which takes effect on March 1, 1999, applies to all operators of powered industrial trucks in general industry. Additionally, at the same time, comparable standards were promulgated for the construction and maritime industries. The three standards require employers to ensure their employees' competence

in operating powered industrial trucks, through a training program and evaluation.

The initial training program consists of three components: formal instruction, including lectures, discussions, computerized training programs, and video and written materials; practical training, including demonstrations and exercises; and evaluation of employees' workplace performance. The content of the training program, as set forth at 29 CFR § 1910.178(3), is to include each of the following topics, unless an employer can demonstrate that a particular topic is not applicable to safe operation of powered industrial trucks in its workplace:

Truck-Related Topics:

- ≈ Operating instructions, warnings and precautions for the types of truck the operator will be authorized to operate;
- ≈ Differences between the truck and automobiles;
- ≈ Truck controls and instrumentation, including location, function and operation of instruments;
- ≈ Engine or motor operation;
- ≈ Steering and maneuvering;
- ≈ Visibility (including restrictions due to loading);
- ≈ Fork and attachment adaptation, operation, and use limitations;
- ≈ Vehicle capacity and stability;
- ≈ Any vehicle inspection and maintenance that the operator will be required to perform;
- ≈ Refueling and/or charging and recharging of batteries;
- ≈ Operating limitations; and
- ≈ Any other operating instructions, warnings, or precautions listed in the operator's manual for the type(s) of vehicle that the employee is being trained

to operate.

Workplace-Related Topics:

- ≈ Surface conditions where the vehicle is to be operated;
- ≈ Composition of loads to be carried and load stability;
- ≈ Load manipulation, stacking and unstacking;
- ≈ Pedestrian traffic in areas where the vehicle will be operated;
- ≈ Narrow aisles and other restricted places where the vehicle will be operated;
- ≈ Hazardous locations where the vehicle will be operated;
- ≈ Ramps and other sloped surfaces that could affect the vehicle's stability;
- ≈ Closed environments and other areas where insufficient ventilation or poor vehicle maintenance could cause a buildup of carbon monoxide or diesel exhaust; and
- ≈ Other unique or potentially hazardous environmental conditions in the workplace that could affect safe operation.

The initial training is to be followed by periodic re-evaluation, to be conducted at least every three years, and by refresher training, to be conducted in any of the following circumstances:

- ≈ Whenever an operator is involved in an accident or a "near-miss" incident;
- ≈ Whenever an operator is seen operating a vehicle in an unsafe manner;
- ≈ Whenever an operator is determined to need additional training by an evaluation or re-evaluation;

- ⌘ Whenever there are changes in the workplace which could affect safe operation of a vehicle; or
- ⌘ Whenever an operator is assigned to a different type of vehicle.

OSHA requires every employer employing operators of powered industrial trucks (a) to conduct initial training and evaluations; (b) to conduct re-evaluations and refresher training as described above; and (c) to certify that it has complied with these requirements. Initial training and evaluation of employees hired prior to December 1, 1999 is to be completed by December 1, 1999; and initial training and evaluation of employees hired after December 1, 1999 is to be completed before the employee begins operating a powered industrial truck.

About Vedder Price

Vedder, Price, Kaufman & Kammholz is a national, full-service law firm with approximately 180 attorneys in Chicago, New York City and Livingston, New Jersey.

The Vedder Price OSHA Group

Vedder, Price, Kaufman & Kammholz has one of the preeminent occupational safety and health law practices in the country. The practice is national in scope, with firm attorneys representing employers all over the United States and its territories with respect to federal and state plan matters under the Occupational Safety and Health Act ("OSH Act") and its state law equivalents as well as with respect to other wide-ranging workplace health and safety issues.

The firm's practice covers the broad spectrum of occupational safety and health law issues:

- ⌘ OSHA standard-setting activities;
- ⌘ defense of OSHA and state plan enforcement activities;
- ⌘ representation in contest litigation;
- ⌘ safety and health consulting and litigation avoidance;
- ⌘ safety and health auditing;

If you have questions regarding this new standard or other OSHA topics, please contact [Nina G. Stillman](#) at (312) 609-7560, [James E. Bayles, Jr.](#) at (312) 609-7785, or any other Vedder Price attorney with whom you have worked.

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OSHA ANNOUNCES DRAFT PLAN FOR DEALING WITH MULTI-EMPLOYER WORKSITES

Last month the Occupational Safety and Health Administration (OSHA) announced draft revisions to its citation policy with respect to multi-employer worksites. Historically, in a multi-employer setting, the general contractor has borne the brunt of liability for any OSHA violation at the site, but under the new draft proposal, before assessing liability or fines, OSHA will inquire into whether the general contractor has overall responsibility for enforcing safety and health requirements.

This inquiry will take the form of a two-step process, which would be completed before liability and fines are assessed. First, OSHA compliance officers will examine whether the general contractor has responsibility to enforce safety and health requirements at the worksite. This will be done either by examining the general contractor's contracts with the subcontractors, or by visiting the site to observe the nature of the general

contractor's control over the subcontractors' work. If it is determined that the general contractor controls the site, then the general contractor is deemed responsible for enforcing safety and health requirements.

But the inquiry does not stop there. The draft proposal's second step involves examining whether the general contractor, given the amount of control and knowledge it had, exercised reasonable care in attempting to discover and correct any safety violations. The idea is to hold the general contractor and the subcontractor to different levels of liability, based on their different levels of knowledge and control. In an example provided by Noah Connell, OSHA's Director of Construction Standards and Compliance, an electrical subcontractor would be expected to have a great deal of expertise on electrical safety issues, while the general contractor who oversees the work would not be expected to have the same depth of knowledge. On the other hand, the general contractor is expected to use its general oversight to ensure that the electrical subcontractor employs good safety and health practices at the site. Each party would be held liable only to the extent it failed to exercise reasonable care consistent with its level of knowledge and control.

- ⚡ defense of workplace safety and health criminal liability matters; and
- ⚡ safety and health training and lecturing.

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OSHA's Advisory Committee on Construction Safety and Health is currently reviewing the draft proposal. If and when it is approved, another OSHA Observer article will discuss the final version. In the meantime, if you have questions regarding this proposal or other OSHA topics, please contact [Nina G. Stillman](#) at (312) 609-7560, [James E. Bayles, Jr.](#) at (312) 609-7785, or any other Vedder Price attorney with whom you have worked.

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