



In California (and elsewhere) the Wrong Shoes Can Cost You Thousands

Insights

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Warehouses and distribution centers (DC's) are not OSHA's most frequently inspected workplaces and do not present the complex compliance issues presented by some manufacturers or refineries. But that does not mean that an OSHA inspection will not result in citations and dangerous Repeat exposure, or costly abatement actions. DC's are a great example of employers who may not realize that OSHA's evolving enforcement positions have upped their legal exposure and may catch them out of compliance.

Let's take foot protection. When are steel toed shoes required? Some DC's who handle heavy goods with equipment and use few conveyors may respond that most warehouse and operator positions require steel toed shoes, or they may do it simply as a best practice to reduce injuries even if not mandated by OSHA standards. Others may explain that their conveyors and "soft" or lighter packages make such shoes unnecessary for most activities. Both may be correct, but can they prove it if challenged? While there is extensive consensus standard guidance on the construction of PPE such as shoes, there is little case law or interpretations which provide detailed guidance to determine when steel toed or other safety shoes are required.

So how does the DC or other employer figure out how to meet it's legal obligations?

First, the DC conducts a Job Safety Analysis (JSA) under 1910.132, often called a PPE assessment, to determine if, when (and what PPE is necessary).

Unfortunately, many employers do not fully understand their JSA obligations.

- The JSA must be specific to the job or work process;
- JSA's must be specific to the site; hazards may be near identical at every DC or other work site, but the employer must still do an analysis for that site; JSA's must consider the unique issues of that site;
- A JSA must be signed and dated by the person who completed it;
- The JSA process is not just a form to complete; it is the foundation for many of your safety rules, PPE selection and training. If the JSA is mishandled, these other obligations will not be met.

If a site has a detailed well thought out JSA, OSHA is not likely to challenge the employer's PPE selection. The employer has framed the argument. When there is no JSA or it is less than adequate, OSHA gets to frame the argument. And if someone is hurt and the PPE would have protected them, there is a near presumption that you are in violation.

OSHA knows that many employers do not perform a JSA or inadequately do so. As an example, let me quote from some Cal-OSHA internal guidance:

Almost all jobs are candidates for job hazard analysis, but it is a rare organization that has up-to-date worksheets completed for every job in the workplace.

The Cal-OSHA Guidance goes on to note the common inadequacies of the documents proffered by employers as JSA's:

Job hazard analysis involves careful study and recording of each step in a job, identifying existing or potential hazards associated with each step, and determining the best way to perform the job to reduce or eliminate these hazards. Informal examination of a job does not constitute job hazard analysis. In most cases, completed worksheets will be available to document that the organization is performing job hazard analysis.

Foot Protection and the Warehouse

There are limits to when PPE such as foot protection is required. One looks for a substantial probability of a hazard. You may want to outfit every person on your job site or in your warehouse with steel toed shoes simply because it's a precaution, but that's not the legal standard. Just because forklifts and pallet jacks operate in a DC should not mean that every DC employee must wear steel toed shoes. But have you really analyzed your setting and jobs?

Procedures are not alone a solution to exposure, but they are a consideration. Do you train operators in detail about pedestrians (even beyond powered industrial truck standard's requirements)? Do you train receivers and selectors about avoiding exposure to equipment and to falling objects? Do you have well marked walking routes? But ultimately, you must complete a thoughtful analysis of whether there is a hazard by the work performed and the environment in which it occurs. I'm not opposed to safety shoes and the cost can be modest, but even the best safety shoes may be less comfortable to a selector or picker standing on a concrete floor all day. And that discomfort may lead to injuries. There may be a trade-off, so pick the "right" shoe.

Enter California

After a number of years of lack of money slowing them down, Cal-OSHA has begun to reassert itself. Cal-OSHA professionals pride themselves on having more demanding requirements than Fed-OSHA. As one experienced District Manager commented to me, "we're proud to have the most protective standards ... next is Washington State OSHA." I agree with his evaluation.

Cal-OSHA will now tell you that their position is that employees working with forklifts must have foot protection; probably steel toed shoes. Period. That's a more aggressive and inclusive approach than Fed-OSHA. And, Cal-OSHA's position is that they don't have to prove a "substantial probability of harm." They only have to prove

My concern is that California warehouse and distribution centers have not performed an adequate JSA to defend their determinations of where steel toed shoes AND other PPE is and is not required. Absent that thorough documentation, don't be surprised if Cal-OSHA cites you and simply states that you should provide steel toed shoes to employees working around forklifts. One last point, Cal-OSHA cases hold that an absence of injuries for say, ten years, is not alone proof that no hazard exists.

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