



MONTHLY NEWSLETTER

FEB 2023

VOLUME 15

ISSUE 2

As we move into 2023

## MJS Legacy Safety Consulting Services LLC

will continue to focus our attention to

*'Providing Great Service and Building Lasting Relationships'*

It has been our distinct pleasure to serve the needs of businesses both big and small since 1995. MJS Safety transitioned to **MJS Legacy Safety Consulting Services** in 2021 with the passing of our founder, Mike Stookey. But our goal has not changed. We will continue to grow the legacy of customized service and individual attention that we have provided to so many companies in Colorado, Wyoming, Montana, and surrounding states. Meeting your unique safety and regulatory needs is our mission.

We look forward to continuing a productive and successful business relationship with you through **MJS Legacy Safety Consulting Services** for many years to come.

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*Training facility and offices: 1760 BROAD ST, UNIT H, MILLIKEN, CO 80543*

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## DOL Announces Annual Adjustments to OSHA Civil Penalties for 2023

The U.S. Department of Labor announced changes to **Occupational Safety and Health Administration** civil penalty amounts based on cost-of-living adjustments for 2023.

In 2015, Congress passed the **Federal Civil Penalties Inflation Adjustment Act Improvements Act** to advance the effectiveness of civil monetary penalties and to maintain their deterrent effect. Under the Act, agencies are required to publish "catch-up" rules that adjust the level of civil monetary penalties and make subsequent annual adjustments for inflation no later than January 15 of each year. This year, January 15 falls on a Sunday and January 16 is a federal holiday. Therefore, new **OSHA** penalty amounts became effective Jan. 17, 2023.

**OSHA's** maximum penalties for serious and other-than-serious violations will increase from \$14,502 per violation to \$15,625 per violation. The maximum penalty for willful or repeated violations will increase from \$145,027 per violation to \$156,259 per violation.

- Visit the [OSHA Penalties page](#) and read the [final rule](#) for more information.
- Inspections, Citations, and Proposed Penalties Standard Number: [1903.15](#)
- [Enforcement Memo](#)

## COVID INFORMATION/RESOURCES

For your convenience, we have moved all COVID information and resource [links](#) to the last page of the newsletter.

### ▶ **DOL Announces Annual Adjustments to OSHA Civil Penalties for 2023**

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### ▶ **Drug Testing**

More and more of the 3<sup>rd</sup> Party Auditing companies like NCMS and TPS Alert are requiring drug testing levels slightly above the levels of some of the regulatory levels to ensure drug testing is being completed each quarter. [read more...](#)



### ▶ **Report a Fatality or Severe Injury**

▪ All employers are required to notify **OSHA** when an employee is killed on the job or suffers a work-related hospitalization, amputation, or loss of an eye..... [read more...](#)

### ▶ **Read This Before Submitting 2022 Injury and Illness Data** [read more...](#)

### ▶ **Hydrogen Sulfide Release**

**BRIEF DESCRIPTION OF INCIDENT – What is Hydrogen Sulfide?** [read more...](#)

### ▶ **Concerned About Health and Safety on the Job?**

Learn how OSHA protects you, and what to do if you think you are not protected at work. [read more...](#)

### ▶ **National Safety Stand-Down To Prevent Falls in Construction — May 1-5, 2023** [read more...](#)

### ▶ **10 Tips for Safer Winter Generator Use**

Not having power when you need it is frustrating..... [read more...](#)

### ▶ **US DOL Revises Combustible Dust National Emphasis Program**

Any combustible material can burn rapidly when in a finely divided form. [read more...](#)

### ▶ **Construction Company Owner Arrested After Fatal Trench Collapse**

Owner faces charges after an investigation that "deteriorating conditions" led to a deadly trench collapse [read more...](#)

### ▶ **Heroes in Hardhats: HIRING VETERANS IN CONSTRUCTION**

While veterans bring their skills to a wide range of industries, some find construction a fantastic fit. [read more...](#)

### ▶ **just a quick reminder...**

As a new year begins, it's a good time to revisit your workplace safety and health plan, identify hazards, and address worker safety and rights on the job. [read more...](#)

### ▶ **What are the Different Types of Materials for Construction Work Pants?**

Learn about the properties and benefits of each material [read more...](#)

## TRANSPORTATION NEWS SUMMARY

### ▶ **Reminder - Revised Federal Drug Testing Custody and Control Form Mandatory...** [read more...](#)

### ▶ **DOT Implements Annual Regs Violation Penalty Increases** [read more...](#)

### ▶ **Hours Regs Waived for Propane Haulers in Three States**

Three states issue hours waivers over propane shortages [read more...](#)



### ▶ **EPA Eyeing More Strict Particulate Matter Regulation**

EPA's proposal will specifically take comment on strengthening the primary (health-based) annual PM2.5 standard from a level of 12 micrograms per cubic meter to a level between 9 and 10 micrograms per cubic meter [read more...](#)

### ▶ **Trucking, Carrier Orgs Push Back on Final Rule**

TCA, alongside numerous trucking groups, cautioned the EPA against enacting this rule "because it outpaces available technology and would worsen an already-tight equipment market." [read more...](#)

### ▶ **Women In Trucking Announces New Leadership**

The Women in Trucking Association recently announced Jennifer Hedrick is the incoming president and chief executive officer of the association. [read more...](#)

## TRANSPORTATION NEWS SUMMARY cont'd

- ▶ **Proposed Legislation Would Grease Skids For Under-21 Drivers to Work Port Drayage**  
Under **current federal law**, picking up **freight from a port** is considered **interstate transportation**, even if the **freight stays within** the state where the **port is located**. [read more...](#)
- ▶ **Most Owner-Ops Opposed To Allowing Under-21 CDL Drivers an Interstate Option**  
According to recent polling by *Overdrive*, a solid majority sounded off against the **notion**. [read more...](#)
- ▶ **Trucking Law: HOW TO PROTECT YOUR BUSINESS AFTER A CRASH**  
Experiencing an **accident is every owner-operator's worst nightmare**, and in the heat of the moment it can be **easy for even professionals to act against** their best interests. [read more...](#)

## MSHA NEWS SUMMARY

- ▶ **The Mine Safety and Health Administration is now on FACEBOOK!** [read more...](#)
- ▶ **DOL Offers Safety App for Spanish-Speaking Miners**  
With this recent launch for **iOS and Android devices**, **Spanish-speaking miners** will have access to the **app's benefits**. [read more...](#)
- ▶ **MSHA Reports First Fatality of 2023**  
MSHA reported that a miner at a quarry was **fatally injured** while performing maintenance inside a **jaw crusher**. [read more...](#)
- ▶ **What Is MSHA Doing With The Silica Rule?**  
*MSHA Must Continue To Recognize Engineering Controls As The Primary Means To Eliminate Respirable Dust Within The Mine Atmosphere And Achieve Compliance.* [read more...](#)



## MONTHLY SAFETY & HEALTH TIP NEWS SUMMARY

### ▶ **Poorly-Written Job Descriptions Expose Organizations to Unnecessary Risk**

Well-written **job descriptions** don't just help an employee understand their role and responsibilities; they also **protect organizations** in the event of **legal action**. [read more...](#)

## COVID INFORMATION/RESOURCES SUMMARY

For your convenience, we have moved all COVID information and resource [links](#) to the last page of the newsletter.



“Training Spotlight”

(a different course will be featured monthly)

> CONFINED SPACE ENTRY RESCUER TRAINING

This course is designed to train your employees to perform the duties of the designated rescuer for confined space entry operations. This 2 day hands-on course will take employees through a variety of scenarios, equipment use, and rescue techniques. Additional training for respiratory protection, medical evaluation & fit testing, and 1st Aid / CPR is needed to complete the rescuers credentials.

For all of our Course Offerings visit the [MJS Legacy Safety website](#)

Schedule of classes February 2023: • TRAINING CENTER - 1760 BROAD ST, UNIT H, MILLIKEN, CO 80543

- \*PEC Safeland Basic Orientation: **NEW 2021 SAFELAND**: Feb 16, 27, 30; 8 – 4:30;  
*This class available through video conference instructor led distance learning thru 6/30/22 - only upon request*
- \*First Aid/CPR/AED/BLOODBORNE PATHOGENS (We offer MEDIC FIRST AID): Feb 13; 8 – noon;  
*In Person Classes*  
*This class is also available for blended learning (online) with remote or in-person skills assessment*
- \*Hydrogen Sulfide Awareness [ANSI Z390 -2017 Course]: Feb 13; 12:30 – 4:30;  
*This class available via Instructor Led video conference*
- \*OSHA 10 hour – Construction: Feb 2 & 3; also offered Feb 23 & 24;  
Each session *Spread over 2 days -10 total contact hours*
- \*Fall Protection Training: Feb 8;
- \*Confined Space Entry Training - Attendant, Supervisor, Competent Person & Entrant [NUCA Course]: Feb 9;
- \*Confined Space Rescuer [2 day course]: Feb 10;  
*(Students must complete Confined Space Entry Training to be eligible for the 2nd day Rescue Course)*

SOURCES FOR THIS ISSUE

- INCLUDE:
- OSHA
  - FMCSA
  - ISHN
  - Brian Hendrix
  - US DOL
  - MSHA
  - For Construction Pros
  - Ironpros
  - Rock Products
  - Atlas Injury Prevention
  - Solutions – Legal Counsel
  - Curt DeWeese, Director
  - Overdrive
  - Brad Klepper, Interstate Trucking Law Firm
  - Bureau of Labor Statistics
  - 9 News

▶ MJS Legacy Safety also offers custom classes to fit the needs of your company ◀

— FEATURED TRAINING PROGRAMS —

- Safeland Basic Orientation
- Hydrogen Sulfide Awareness
- First Aid/CPR
- OSHA 10 Hour for General Industry or Construction
- Confined Space for Construction
- Competent Person for Excavations
- HAZWOPER 8, 24 & 40 hr Courses

Unable to attend a class?

MJS Legacy Safety offers multiple

“ONLINE TRAINING COURSES”

including

OSHA Construction, General Industry, Environmental, Hazardous Waste Public Safety, DOT, Human Resource, and Storm Water & ISO

or you can

Schedule training at our Training Center or On-Site at your facility

Need Help With

- ISNetworld
- PEC/Veriforce
- NCMS
- Avetta/BROWZ
- TPS ALERT

CALL US!!!

Order First Aid & other Safety Supplies [www.mjssafety.com](http://www.mjssafety.com)  
Jeremy 720-203-6325  
Carrie 720-203-4948

- ➔ **Distance Learning & Video Conference classes:** *Through the Pandemic we have been able to offer Safeland and the PEC H2S Clear courses via video conferencing, and Veriforce has extended the authorization to continue this until at least June 2023. We are also able to offer the 1st aid/ CPR classes with an online blended learning option, and remote skills verification – as well as our In-House H2S Awareness Course. Ask about other distance learning opportunities for more information.*
- ➔ **Video Conference Courses** *Must Be Scheduled Separately and Are Available Upon Request.*

► MJS Legacy Safety can help guide you through training requirements. Call us! ◀

## Drug Testing

More and more of the 3<sup>rd</sup> Party Auditing companies like NCMS and TPS Alert are requiring drug testing levels slightly above the levels of some of the regulatory levels to ensure drug testing is being completed each quarter.

MJS Legacy Safety Services conducts both drug testing and Auditing account management for our in-house consortium clients as well as the management of other client drug testing consortium accounts, such as DISA. Many have modified their random selections process to work more effectively when a policy is tied to multiple auditing agencies. In specific situations, this may result in slightly more random selections being generated than clients are previously used to seeing to ensure compliance with both the regulatory requirements as well as client specific requirements.

Drug testing policies typically mirror the requirements of an auditing agency (e.g. DOT, DCC, DISA Monitoring, NCMS, etc.). When customers setup a single policy for more than one monitoring agency, and these auditing agencies require different random percentages, the number of random selections generated may be lower than one of the two agencies requires.

**If you have questions on the selection process,  
need assistance with the management of your TPS Alert, NCM, or  
other drug testing audit accounts,  
or need to sign up for a consortium, give us a call!**



### Report a Fatality or Severe Injury

- All employers are required to notify **OSHA** when an employee is killed on the job or suffers a work-related hospitalization, amputation, or loss of an eye.
- A fatality must be reported within 8 hours.
- An in-patient hospitalization, amputation, or eye loss must be reported within 24 hours.

#### **To Make a Report**

- Call the nearest [OSHA office](#).
- Call the OSHA 24-hour hotline at [1-800-321-6742](tel:1-800-321-6742) (OSHA).
- [Report online](#)

Be prepared to supply: Business name; names of employees affected; location and time of the incident; brief description of the incident; contact person and phone number. [FAQ's](#)





## Read This Before Submitting 2022 Injury and Illness Data

Collecting data on workplace injuries and illnesses is an important element of the **Occupational Safety and Health Administration's** mission to improve workplace safety and health.

Establishments in [certain industries](#) are required to report injuries and illnesses for each calendar year by **March 2** of the following year using Form 300A.

If your establishment is required to submit this data, you must use **OSHA's [Injury Tracking Application](#)**, or ITA.

The DOL recently updated the ITA as part of the Department of Labor's information technology modernization and security enhancement efforts.

**What's different?** All current and new account holders must connect your ITA account to a [Login.gov account](#) with the same email address in order to submit your 2022 data by March 2, 2023.

**Why must employers create a Login.gov account to submit their 2022 workplace injury and illness data to OSHA?**

Login.gov is a secure sign-in service that allows the public to access government applications using one account and password. Since October 2022, the **OSHA Injury Tracking Application** requires you to create an ITA account and then a Login.gov account to report your establishment's injury and illness data.

A new [video](#) explains how to create an account or log in to an existing account using *Login.gov*.

You can find answers to other [FAQs](#) as well as detailed instructions for entering injury and illness information in the ITA.

**Need more assistance?** Use the [help request form](#) at the end of the FAQs.

To report safety and health violations, file a complaint, or ask safety and health questions, call 800-321-6742 or visit [osha.gov/ContactUs](#).

## Hydrogen Sulfide Release

### BRIEF DESCRIPTION OF INCIDENT

A worker died of acute hydrogen sulfide (H<sub>2</sub>S) poisoning while responding to an alarming water pump involved in the process of extracting crude oil and natural gas. The worker was alone in the pump house attempting to close process valves to isolate the pump. Either before the worker's arrival or during his work, the pump unexpectedly energized, releasing water containing H<sub>2</sub>S gas into the pump house.



H<sub>2</sub>S monitors in and around the building were not functioning, and the worker was not wearing a personal H<sub>2</sub>S gas detector. The H<sub>2</sub>S concentration reached fatal levels killing the worker. A few hours later, out of concern that she had not heard from her husband in a while, the worker's spouse entered the facility and died from H<sub>2</sub>S poisoning.

Emergency responders noted they could smell H<sub>2</sub>S as soon as they entered the facility. As they approached the pump house, the smell of H<sub>2</sub>S was overwhelming even though the pump houses' bay doors were partially open and there were no H<sub>2</sub>S alarms.

Read the [full](#) FATAL Facts Bulletin

*H<sub>2</sub>S is a colorless, flammable, and corrosive gas with an odor similar to rotten eggs. People can lose their ability to smell H<sub>2</sub>S, even at low concentrations, a condition called olfactory fatigue. Because of olfactory fatigue, OSHA warns that the sense of smell should not be used as a detection method.*

*According to the National Institute for Occupational Safety and Health (NIOSH), H<sub>2</sub>S environmental concentrations of 100 ppm are immediately dangerous to life or health, concentrations greater than 500 ppm can cause a person to collapse within five minutes, and concentrations exceeding 700 ppm can cause immediate collapse, and death, within just one or two breaths.*

*The OSHA permissible exposure limit (PEL) for H<sub>2</sub>S is 20 ppm (29 CFR 1910.1000 Table Z-2) and is not to be exceeded at any time during an 8-hour shift, except if the exposure is 50 ppm for no more than 10 minutes in an 8-hour shift so long as no other measurable exposure occurs.*

## National Safety Stand-Down

To Prevent Falls in Construction

### Save the Date:

The next annual **National Safety Stand-Down to Prevent Falls** will be held May 1-5, 2023.

Visit the [campaign webpage](#) for updates.

Do your part to prevent every workplace fall hazard!

## Concerned About Health and Safety on the Job?

Learn how OSHA protects you, and what to do if you think you are not protected at work.

### Know Your Rights

Federal law entitles you to a safe workplace. Your employer must keep your workplace free of known health and safety hazards. You have the right to speak up about hazards without fear of retaliation. You also have the right to:

- Receive workplace safety and health training in a language you understand
- Work on machines that are safe
- Receive required safety equipment, such as gloves or a harness and lifeline for falls
- Be protected from toxic chemicals
- Request an OSHA inspection, and speak to the inspector
- Report an injury or illness, and get copies of your medical records
- Review records of work-related injuries and illnesses
- See results of tests taken to find workplace hazards

### When to File a Complaint

#### Safety and Health Complaint

If you believe working conditions are unsafe or unhealthful, you may file a confidential complaint with OSHA and ask for an inspection. If possible, tell your employer about your concerns.

[How to File a Safety and Health Complaint](#)

#### Protection from Retaliation

It is illegal for an employer to fire, demote, transfer or otherwise retaliate against a worker who complains to OSHA and uses their legal rights. If you believe you have been retaliated against in any way, file a whistleblower complaint within 30 days of the alleged retaliation.

[How to File a Whistleblower Complaint](#)

[Read FAQ's here](#)

## 10 Tips for Safer Winter Generator Use

Not having power when you need it is frustrating, so a generator can provide emergency backup power at a reasonable cost. Here are 10 tips to ensure they are used safely in the wintertime.

If your electricity goes out due to snow and ice, a generator can keep power flowing to your home or business. The Outdoor Power Equipment Institute (OPEI) reminds home and business owners to keep safety in mind when using generators this winter.



### More tips include:

1. **Take stock of your generator.** Make sure equipment is in good working order before starting and using it. Do this before a storm hits.
2. **Review the directions.** Follow all manufacturer's instructions. Review the owner's manuals (look manuals up online if you cannot find them) so equipment is operated safely.
3. **Install a battery-operated carbon monoxide detector in your home.** This alarm will sound if dangerous levels of carbon monoxide enter the building.
4. **Have the right fuel on hand.** Use the type of fuel recommended by the generator manufacturer to protect this important investment. It is illegal to use any fuel with more than 10 percent ethanol in outdoor power equipment. (For more information on proper fueling for outdoor power equipment visit [www.LookBeforeYouPump.com](http://www.LookBeforeYouPump.com)). It's best to use fresh fuel, but if you are using fuel that has been sitting in a gas can for more than 30 days, add fuel stabilizer to it. Store gas only in an approved container and away from heat sources.
5. **Ensure portable generators have plenty of ventilation.** Generators should **NEVER** be used in an enclosed area or placed inside a home, a building, or a garage, even if the windows or doors are open. Place the generator outside and away from windows, doors, and vents that could allow carbon monoxide to drift indoors.
6. **Keep the generator dry.** Do not use a generator in wet conditions. Cover and vent a generator. Model-specific tents or generator covers can be found online for purchase and at home centers and hardware stores.
7. **Only add fuel to a cool generator.** Before refueling, turn the generator off and let it cool down.
8. **Plug in safely.** If you don't yet have a transfer switch, you can use the outlets on the generator. It's best to plug in appliances directly to the generator. If you must use an extension cord, it should be heavy-duty and designed for outdoor use. It should be rated (in watts or amps) at least equal to the sum of the connected appliance loads. Make sure the cord is free of cuts, and the plug has all three prongs.
9. **Install a transfer switch.** A transfer switch connects the generator to the circuit panel and lets you power hardwired appliances. Most transfer switches also help avoid overload by displaying wattage usage levels.
10. **Do not use the generator to "backfeed" power into your home electrical system.** Trying to power your home's electrical wiring by "backfeeding," where you plug the generator into a wall outlet, is dangerous. You could hurt utility workers and neighbors served by the same transformer. Backfeeding bypasses built-in circuit protection devices, so you could damage your electronics or start an electrical fire.

## US DOL Revises Combustible Dust National Emphasis Program

The U.S. Department of Labor's [Occupational Safety and Health Administration](#) recently issued a revised **Combustible Dust National Emphasis Program**. Any combustible material can burn rapidly when in a finely divided form. If such a dust is suspended in air in the right concentration, under certain conditions, it can become explosible. The purpose of the revised emphasis program is to continue **OSHA** inspections of facilities that generate or handle combustible dusts likely to cause fire, flash fire, deflagration and explosion hazards.

The **NEP** was revised based on enforcement history and combustible dust incident reports. In 2018, wood and food products made up an average of 70 percent of the materials involved in combustible dust fires and explosions. Incident reports indicate that the majority of the industries involved in combustible dust hazards are wood processing, agricultural and food production and lumber production, but others are susceptible as well.

The [revised program](#) (*pdf*) sets forth a new approach for locating and inspecting subject establishments. The following industries were added to the program because **OSHA** found they had a higher likelihood of having combustible dust hazards or experienced combustible dust-related fatalities/catastrophes:

- 311812 - Commercial Bakeries
- 325910 - Printing Ink Manufacturing
- 321912 - Cut Stock, Resawing Lumber, and Planning
- 316110 - Leather and Hide Tanning and Finishing
- 321214 - Truss Manufacturing
- 424510 - Grain and Field Bean Merchant Wholesalers

**OSHA** initiated the **Combustible Dust NEP** in October 2007 after a number of combustible dust incidents that resulted in numerous fatalities and serious injuries. The agency reissued the emphasis program in March 2008 after a combustible dust explosion at a sugar refinery in Georgia. Since 2007, the agency has conducted about 600 inspections annually under this emphasis program.

*"The combustible dust **NEP** is one the agency's important programs for proactively inspecting the nation's most hazardous facilities before a catastrophic incident occurs,"* stated Assistant Secretary for **Occupational Safety and Health** Doug Parker. *"The results of a combustible dust fire or explosion can be catastrophic to workers and the facilities that they work."*

This revised **NEP** directive replaces the March 2008 directive and remains in effect until **OSHA** issues a cancellation notice. This revised directive does not replace another similar **OSHA** directive referred to as the [Grain Handling Facility Directive](#) but it may cover operations involving grain processing that are outside the scope of the grain handling directive.

## Construction Company Owner Arrested After Fatal Trench Collapse

The owner of a Vail construction company faces charges after an investigation that "*deteriorating conditions*" led to a **deadly trench collapse** at a site in November 2021, the **Department of Labor (DOL)** said.

The owner of the now-defunct company turned himself into **authorities in Summit County** after a **warrant was issued** for his arrest on Jan. 24.

That **warrant was issued** following a **federal safety investigation** into the fatality.

In **May of last year**, **OSHA** cited the **construction company owner** after a 23-year-old worker installing **residential sewer pipes** died when the **trench around him caved in**.

The collapse resulted from **deteriorating conditions** at the project, which the company "*could have prevented*" if it had used "*legally required trench protection systems*," according to the Department of Labor.

**OSHA** issued **three willful citations** to the construction company for **not ensuring the excavation was inspected by a competent person**, failing to **instruct employees** on the recognition and **avoidance of unsafe conditions** and not having a **trench protective system in place**.

Investigators also issued an **additional serious citation** for **not having a safe means of egress within 25 lateral feet of employees** working in a **trench**.

The agency proposed **penalties of \$449,583** and placed the company in **OSHA's Severe Violator Enforcement Program**.

The department referred the case to the **5th Judicial District Attorney's office** and recommended charges.

The company has since shuttered with the owner agreeing to **forfeit any future ownership, leadership or management position** that involves **trenching or excavation** or the **oversight of workplace safety and health**. He **posted a cash bond** and is **due in court** on Feb. 15.

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***Collapses and cave-ins pose the greatest threat to trenching and excavation workers. In 2022, OSHA reported that at least 39 industry workers died, 22 of them in the first six months of the year. The Bureau of Labor Statistics reports that [166 workers died in trench collapses from 2011 to 2018.](#)***

# Heroes in Hardhats: HIRING VETERANS IN CONSTRUCTION



While veterans bring their skills to a wide range of industries, some find that construction is a fantastic fit for their interests and capabilities.

Each November, we publicly honor the contributions of the men and women who have served in the U.S. Armed Forces. With about 200,000 service men and women leaving the U.S. military every year, Veterans Day can also be a time for construction industry leaders to consider how to support these veterans as they enter civilian life.

While veterans bring their skills to a wide range of industries, some find that construction is a fantastic fit for their interests and capabilities. As a result, veterans are a vital segment of the construction workforce; approximately 13.2% of all veterans enter the construction industry after completing their service. Thanks in part to the labor shortage, there are over 412,000 open jobs in construction in the U.S.

An oftentimes untapped, overlooked resource by business owners, veterans bring an overabundance of skills to the workplace. Although Veterans Day is just one day a year, industry leaders can implement year-long initiatives that support current and former military members by hiring veterans. Here we share the key benefits veterans offer, how to recruit and how to support our heroes in hardhats. Construction companies should consider the following.

## Solution to a Tight Labor Market

In this tight labor market, businesses are constantly on the lookout for good talent. Today, the construction industry faces skilled labor shortages, cost escalation, a potential recession and supply chain snafus. The sector needs talent who are up to these challenges. Military veterans have trained to respond and adapt to most situations, so they are well equipped to respond accordingly as a civilian.

Recently, the Department of Labor reported the veteran unemployment rate at nearly 1% lower than the national average, illustrating that employers recognize the competitive advantage veterans bring to businesses. By hiring stalwart employees like veterans, employers can persevere through various industry challenges with a plethora of technical and non-technical skills.

## Transferable Skills

Military veterans have transferable skills that can benefit construction companies. After being instilled with a strict regimen and training while in the military, veterans have the necessary skills to become invaluable employees.

- **Team player:** *At its essence, the military is a workplace comprised of small teams driven by collaboration, working toward a common goal. Likewise, on a jobsite, cooperation among different groups is essential to the success of a project.*
- **Adaptable:** *Service in the military can be unpredictable and veterans have learned to be flexible. Many can handle sudden changes and pick up new information quickly. Similarly, construction is rapidly evolving thanks to new technology, economics and client needs. Yet, veterans in the field have the ability to remain focused, finish tasks, and discover solutions, even in the most complex circumstances.*
- **Multi-skilled:** *Members of the military are trained in numerous areas on and off the battlefield. For example, veterans are used to working with everything from advanced machinery to IT systems. Therefore, a veteran's knowledge spans the organizations, making them a valuable hire to plug in nearly any position.*

- **Organized:** *Building projects require careful planning and many moving parts. Veterans are used to juggling complex missions and their challenges. Managing supplies and vendors on a jobsite will be second nature.*

- **Leadership:** *Military veterans are natural leaders with dual capacities to take orders and lead when situations arise. Leadership skills are crucial in construction in terms of decision-making and team motivation. Construction needs servant leaders who can lead under pressure and motivate teams to work toward the end goal. Veterans have this skill.*

For construction leaders, the skills and expertise veterans bring to the workforce can make a significant difference in the current and future success of their organization.

## How to Attract Veterans

Business leaders should look at alternative credentials and skill sets veterans bring to the position, even though they may not have direct experience in the industry. With the skills veterans possess from their military training, the technical construction skills are easy to teach.

Veteran organizations are a great place to find these ideal candidates, and you can use their programs or platforms to post and advertise open positions. Additionally, it's helpful to connect with military bases and assistance groups regularly to meet potential hires and garner interest from military personnel before they depart the military. By connecting with these future candidates before their exit, construction firms can collect contact information and develop a military-friendly recruitment plan.

As firms work to attract and retain this valuable segment of the labor force, many should consider highlighting employee benefits such as compensation, retirement plans and other benefits like education and training opportunities. After service, veterans seek ways to grow their skills and build new careers. Organizations promoting work-life balance will also stand out to veterans looking to make a healthy transition to civilian life.

Companies struggling to recruit veterans should connect with associates and initiatives focused on providing mentorship and direction to veterans and employers. A few organizations to consider include [Hiring Our Heroes](#), [Helmets to Hardhats](#) and [Hardhat Heroes](#).

## How to Show Support

Simply put, construction companies can support veterans by considering them as viable job candidates. Hiring veterans makes good business sense; employers can stay ahead of the labor shortage, gain loyal and talented employees, and military men and women can discover fulfilling careers.

Skanska's 1550 on the Green project is an example of how welcoming veterans into the industry is a win-win situation. Construction companies focusing on hiring veterans will develop a highly skilled workforce to meet jobsite and industry challenges head-on. It's time to encourage more veterans to enter construction to help create a better industry.

## just a quick reminder...

As a new year begins, it's a good time to revisit your workplace safety and health plan, identify hazards, and address worker safety and rights on the job.

Con el comienzo de un nuevo año, es un buen momento para revisar su plan de seguridad y salud en el trabajo, identificar los peligros, y en el trabajo.

**MJS Legacy Safety** can help with your  
**Workplace Safety Solutions**

**We are your One Stop Safety Shop**

**Give us a call!**

Employers will find that implementing **OSHA** recommended practices brings several benefits. Safety and health programs help businesses:

- **Prevent** workplace injuries and illnesses
- **Improve** compliance with laws and regulations
- **Reduce** costs, including significant reductions in workers' compensation premiums
- **Engage** workers
- **Enhance** their social responsibility goals
- **Increase** productivity and enhance overall business operations

## What are the Different Types of Materials for Construction Work Pants?

*Cotton, material blends and denim are common choices for construction work pants. Learn about the properties and benefits of each material in this article.*

Robust materials are the foundation of reliable work pants. Work pants made from durable materials can improve your performance on construction sites and protect your legs from rough elements. Therefore, it is important to commit to a pair that matches your personal preferences, job and working environment.

The three types of materials commonly used for construction work include the following:

- **Cotton**
- **Material blends (cotton, polyester, etc.)**
- **Jeans (denim)**

### Cotton

Some of the highest rated work pants are made from cotton. Cotton can withstand a wide range of weather conditions. It is also very comfortable, making cotton pants ideal for working long hours on the jobsite. This material is a great choice for winter, due to its thermal insulating properties. Interestingly, cotton is 30 percent stronger when wet. For people with skin allergies, cotton is hypoallergenic, so it doesn't irritate the skin. Cotton work pants are mostly used for carpentry, mechanical work, vehicle operation and more.

The downside with cotton pants is that it shrinks easily and can get stretchy at different parts over time. Cotton absorbs moisture quickly, which is beneficial for people who are prone to sweating. However, this feature is not favorable in damp or wet work areas, as you'll have a hard time staying dry. **Notable features:** *Breathable and hypoallergenic*

### Material Blends

Construction work pants can incorporate a blend of materials to enhance performance in rugged conditions. A standard blend of materials includes 60 percent cotton and 40 percent polyester, though you may also encounter blends of rayon, wool and elastane. The addition of polyester for standard blends addresses the limitations of cotton, allowing the pants to be more flexible and highly water repellent.

You get the best of both worlds with a blend of materials. Work pants with a blend of cotton and polyester are moderately breathable and more resilient to shrinking. High-visibility safety pants frequently utilize material blends. Electricians, woodworkers, piping specialists and welders typically work in pants with a blend of materials.

You should choose work pants with a blend of materials for projects requiring extra protection from rough elements. The specific blend is entirely up to you, but consider that dense polyester material blends can irritate sensitive skin. **Notable features:** *Flexible and stronger than cotton fabric*

### Denim

You can't go wrong with a pair of heavy-duty jeans for construction work. This type of work pants is made from denim, a cotton fabric in a twill weave pattern. Jeans aren't always 100 percent cotton and may incorporate a blend of materials, such as polyester and elastane.

There are two types of denim: wet and dry. Out of the two types, dry denim is more durable and thicker than wet denim. This makes dry denim more suitable for construction work and rugged areas. Jeans are top choice for asphalt jobs, as the material can withstand exposure to abrasive substances and chemicals.

The drawback with jeans is its heavy weight and non-breathable properties. The work pants easily trap heat when working under direct sunlight. Jeans do not absorb water easily. However, when they do get wet it takes a long time for the pants to fully dry. It is very difficult to rip jeans, but the trade off here is that material isn't very flexible. **Notable features:** *Extremely durable and long lasting*



## Reminder - Revised Federal Drug Testing Custody and Control Form Mandatory



- As of August 30, 2021, DOT-regulated employers and their service agents [collectors, laboratories, Medical Review Officers (MRO)] must use the '[revised CCF](#)'. ◀

[Learn more](#) about what this means for DOT drug testing.



**COLORADO**  
Department of Revenue

Home page for State of Colorado/ Colorado Department of Revenue –  
Division of Motor Vehicles - [link](#)

### DOT Implements Annual Regs Violation Penalty Increases

The Department of Transportation published a final rule in the *Federal Register*, Monday, March 21, 2022 updating the civil penalty amounts (*effective immediately*) that may be imposed for violations of certain DOT regulations, including **Federal Motor Carrier Safety Administration** regulations focused on in trucking-company audits.

[The updated fines for FMCSA regulations violations can be seen here.](#)

## Hours Regs Waived for Propane Haulers in Three States

*Three states issue hours waivers over propane shortages*

Governors in Nevada, South Dakota and Wyoming each recently issued emergency declarations related to propane shortages, waiving hours of service regulations for drivers hauling propane.

Nevada Gov. Joe Lombardo issued a proclamation Jan. 23 waiving [Part 395.3](#) (maximum driving time) of the hours of service regulations through Feb. 1 due to Nevada continuing “to suffer from a propane shortage which impacts the ability for people and businesses to heat homes and power essential government and business equipment.” The proclamation added that “extreme weather conditions are anticipated to continue, and Nevada’s propane shortage remains critically low.”



South Dakota Gov. Kristi Noem’s declaration waived [Part 390-399](#) of the federal regulations through Feb. 18. “Drivers of propane transport vehicles are required to deliver propane necessary to maintain the supply of this product in order to enable the people of South Dakota to continue normal heating functions,” the declaration stated.

Finally, Wyoming Gov. Mark Gordon issued a declaration Jan. 20, effective through Feb. 19, that waives [Part 395.3](#) of the regs. Gordon said Wyoming citizens “are faced with low supplies of propane with which to heat their homes and businesses.”

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# EPA Eyeing More Strict Particulate Matter Regulation

***EPA's proposal will specifically take comment on strengthening the primary (health-based) annual PM2.5 standard from a level of 12 micrograms per cubic meter to a level between 9 and 10 micrograms per cubic meter***

Environmental Protection Agency (EPA) on Jan 6<sup>th</sup> proposed tighter particulate matter/soot regulations, citing health concerns that the fine particles penetrate deep into the lungs and can result in serious health effects that include asthma attacks, heart attacks and premature death. EPA will accept public comment for 60 days once the proposal is published in the **Federal Register**.

Of particular air quality concern are residents of disadvantaged areas, which tend to be located along highways, near industrial parks and transportation hubs.

EPA just recently updated emission standards for heavy-duty commercial vehicles for the 2027 model year, tightening tailpipe NOx limits to a level 80%-plus below the current standard – a benchmark truck and engine OEMs nearly universally called "challenging."

Diesel-powered vehicles, vessels, locomotives and equipment account for more than 60% of all nitrogen oxides (NOx) and more than 70% of all fine particulate matter (PM2.5) emissions from U.S. transportation sources, according to the Union of Concerned Scientists. Diesel exhaust particulate matter includes soot and aerosols like ash particulates, metallic abrasion particles, sulfates and silicates.

EPA said in June 2021 it would reconsider the Trump administration's December 2020 decision to retain the 2012 PM2.5 standards, citing available scientific evidence and technical information indicated that the standards may not be adequate to protect public health and welfare.

"This proposal to deliver stronger health protections against particulate matter is grounded in the best available science, advancing the Biden-Harris Administration's commitment to scientific integrity and a rigorous scientific process," said EPA Administrator Michael Regan.

The move by EPA would bolster the national ambient air quality standard (NAAQS) for PM2.5, to better protect communities, including those most overburdened by pollution. These particles may be emitted directly from a source, such as construction sites, unpaved roads, fields, smokestacks, or fires; other particles form in the atmosphere as a result of complex reactions of chemicals such as sulfur dioxide and nitrogen oxides, which are pollutants emitted from power plants, industrial facilities and vehicles.

EPA's proposal will specifically take comment on strengthening the primary annual PM2.5 standard from the current level of 12 micrograms per cubic meter to a level between 9 and 10 micrograms per cubic meter. The agency is also taking comment on the full range included in the Clean Air Scientific Advisory Committee's (CASAC) latest report (between 8 and 11 micrograms per cubic meter).

"No one should be sickened by the environment they live in, and EPA's proposal marks the start of changes that will have lasting impacts in communities all over, especially Black and Brown communities that often experience increased PM pollution," said Dr. Doris Browne, former president of the National Medical Association.

*"Harmful air pollution can have lasting and devastating impacts on people's health, but by strengthening air quality standards, we can ensure healthier, more sustainable communities across this country."*

Since EPA completed its last review of the PM NAAQS in 2012, the agency said thousands of new scientific studies have demonstrated the dangers of soot exposure. Strengthening the primary annual PM2.5 standard is expected to address disparities and would result in significant public health benefits. EPA estimates that if finalized, a strengthened primary annual PM2.5 standard at a level of 9 micrograms per cubic meter, the lower end of the proposed range, would prevent up to 4,200 premature deaths per year; 270,000 lost workdays per year; and result in as much as \$43 billion in net health benefits in 2032.



EPA said it will work with state, local, and Tribal Nations' air agencies to implement the revised primary annual PM2.5 standard when finalized.

The recent proposal is the latest in a broad suite of programs under President Biden's leadership to reduce air pollution in communities, including the proposed Good Neighbor Plan to address smog that affects downwind states; rules to address air pollution from oil and gas operations, including methane pollution; and other critical rules to reduce emissions from power plants and the transportation sector, such as the recently finalized Clean Trucks Rule that slashes smog- and soot-forming pollution from heavy-duty trucks.

Additionally, funding from the President's Bipartisan Infrastructure Law and the Inflation Reduction Act aimed at cutting pollution from school buses and trucks, port operations, and electricity generation are also expected to reduce soot and other harmful air pollutants.

EPA is also proposing to revise other aspects related to the PM standards – such as monitoring requirements and the Air Quality Index (AQI) – that will help states and Tribal Nations meet the revised standards while making significant strides toward protecting the health of all people, including at-risk populations.

The agency is proposing to retain the primary 24-hour PM2.5 standard of 35 micrograms per cubic meter, while taking comment on revising this level to as low as 25 micrograms per cubic meter.

**[Reaction from TCA/trucking groups below](#)**



## Trucking, Carrier Orgs Push Back on Final Rule

**Truckload Carriers Association (TCA)** President Jim Ward said recently that **TCA**, alongside numerous trucking groups, had cautioned the **EPA** against enacting this rule "because it outpaces available technology and would worsen an already-tight equipment market."

Indeed, **EPA** conceded in its final rule that fleets and/or **OEMs** may need to lean on current "prototypes" or multiple solutions – like cylinder deactivation, closed crankcase ventilation, heated DEF dosers and/or **dual-SCR** aftertreatment – to clear the **lower emissions hurdles**.

Ward said **TCA** is concerned the new emissions standards for heavy-duty trucks will limit equipment options for carriers and worsen environmental outcomes in the long run by raising prices and, in effect, disincentivizing fleet turnover, "which is the key to reducing emissions in trucking," he said. "TCA maintains that a more comprehensive strategy is needed to guide fleet advancements, that realistically accounts for ongoing equipment shortages and price increases, and encourages solution-maximizing technology without restricting equipment options prematurely. We are committed to continuing to innovate in this space and our association is working with fellow stakeholders to advance climate-positive outcomes, in a forward-thinking, but practical manner, that thoroughly considers present challenges."

**American Trucking Associations** President and CEO Chris Spear said his agency is still reviewing details and assessing the rule's impact on its members but added, however, **ATA** was troubled that these recent rule requirements are inconsistent with similar standards proposed by the **California Air Resources Board (CARB)**.

"ATA remains extremely concerned over the potential growth of state patchworks of **NOx emission standards** that will create havoc for an industry that operates across local, state and international boundaries," he said. "We hope **EPA** and the **California Air Resources Board** will ultimately agree to a uniform, single standard that best achieves our nation's environmental goals."

**Owner-Operator Independent Drivers Association** President Todd Spencer noted the legislation could potentially slow the migration toward cleaner burning, more modern trucks that is currently underway, leaving small fleets and independent drivers to choose between compliance and going out of business.

"If small business truckers can't afford the new, compliant trucks, they're going to stay with older, less efficient trucks, or leave the industry entirely," he said. "Once again, **EPA** has largely ignored the warnings and concerns raised by truckers in this latest rule."

The **American Truck Dealers** group has voiced similar concerns with the more stringent standards, noting that the standards could increase the cost of heavy-duty trucks by an average of **\$42,000**, according to analysis conducted by Ricardo Strategic Consulting.

"A model year 1990 truck emits more **NOx** in one year than a new modern truck generates over a 30-year period," **ATD** Chairman Scott McCandless said. "If truck buyers are deterred from purchasing trucks due to increased costs and new, untested technology, these older trucks will stay on the road much longer."



## Women In Trucking Announces New Leadership

The **Women in Trucking Association** recently announced Jennifer Hedrick is the incoming president and chief executive officer of the association. She will work closely with WIT's board of directors and staff to oversee initiatives that support WIT's mission to encourage the employment of women in the trucking industry, promote their accomplishments and minimize the obstacles they face.

Hedrick will formally take on full leadership responsibilities on March 16. She assumes the role from Ellen Voie, who has been president and CEO since she founded WIT in 2007.

"Through WIT's mission we have created a community of 8,000 members to advance gender diversity in a male-populated industry," said Voie. "I'm thrilled to have an association executive like Jennifer Hedrick who will continue to advance the critical mission of the association I started 16 years ago."

Hedrick has 17 years of association leadership experience and is an accredited executive by the American Society of Association Executives. For five years she led the National Industrial Transportation League focusing on issues across highway, rail and ocean freight transportation. In that role, she advocated on behalf of members to create efficiencies throughout the commercial freight transportation network.

Initially, Hedrick will focus on becoming familiar with the members and key stakeholders of the association. According to Rachel Christensen, WIT chair and vice president of operations for J.B. Hunt Transport, Hedrick has already begun collaborating with WIT's board of directors on future opportunities for the association during a strategy meeting in Dallas recently.



## Proposed Legislation Would Grease Skids For Under-21 Drivers to Work Port Drayage

Under current federal law, picking up freight from a port is considered interstate transportation, even if the freight stays within the state where the port is located. This, of course, means 18- to 21-year-old truck drivers cannot pick up freight from ports, even though they are allowed to operate in intrastate commerce in most states.

A new bill introduced in the U.S. House by Rep. Brian Mast (R-Florida) would change that federal law so that freight moved from a port to another location within the same state is considered intrastate commerce rather than interstate.

Dubbed the **Ceasing Age-Based Trucking Restrictions Act (CAB)**, Mast said the bill would eliminate "logistical hurdles in order to maximize the labor force in the United States and address a contributing factor of the supply chain crisis."

The text of the bill states that "the transportation of goods from a port of entry and another place within the same state as part of trade, traffic, or transportation originating outside such state or the United States by commercial motor vehicle shall not be considered interstate transportation for purposes of requirements relating to commercial driver's licenses."

The bill was introduced in the House on Jan. 10 and as of Jan. 20th had 19 Republican co-sponsors. It has been referred to the House Committee on Transportation and Infrastructure, where it would need to be passed before moving to the full House floor.

Around 12% of responders signaled possible willingness to support an interstate option for intrastate drivers and flagged boosted training as the key to making it work. Another 4% felt a mileage-range limitation might be a better jurisdictional marker for under-21 CDL drivers than today's use of state lines, a single percent suggesting required monitoring technology could be the best route toward making such a program work.

A vocal minority supported the notion fully, with many commenters at *Overdrive's* Facebook page pointing to the seeming absurdity of treating 18-year-olds fundamentally differently than other newbies in the business. One commenter wrote, "What's the difference between an 18 year old fresh out of driving school and a 50 year old fresh out of driving school?" Combine those Maybe responses with those in support and nearly a third of responders did favor a move away from the state-line limitation for most among under-21 CDL holders.

Others comments were, "I don't think crossing an imaginary line between states is going to make them drive any different."

"With the proper training, can't be any worse than some of the 'drivers' out there now."

Recently a retired owner-operator hailing from Colfax, Illinois, viewed the current intrastate limitation as arbitrary, at best. "I live about an hour from a state line. It makes no logical sense why an 18-20-year-old can drive 400 miles north or south within the state but can't drive 65 miles East. There are ways to make this work as safe as intrastate" does today.

Yet others brought home the point that insurers seem to make with generally higher premiums for young drivers.

Another commenter said she had been a driver trainer "for years, and I taught public school, too, and the vast majority of younger drivers are just not mature enough."

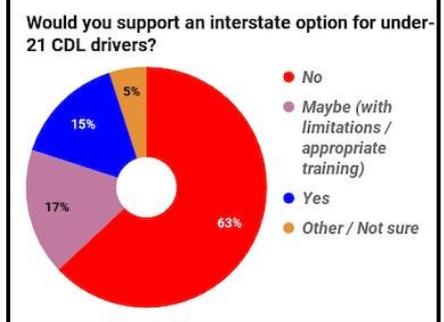
"Most accidents happen in cars to drivers under 25," she continued, "so we could expect the accident rate to increase if drivers under 21 are hired. This impacts the safety of our families, too. I vote no! What we need are better training programs, better trainers, better treatment from DOT and law enforcement, more parking places, and other incentives to help drivers stay and not quit."

Another Facebook commenter shared his effort to insure his 23-year-old son trucking with his company, with just a single year of experience. "\$19,000 per year. Good luck."

## Most Owner-Ops Opposed To Allowing Under-21 CDL Drivers an Interstate Option

With continued movement made in Congress toward raising the profile of the question of whether to allow some interstate option for under-21 CDL drivers, according to recent polling by *Overdrive*, a solid majority sounded off against the notion. Asked whether they'd support interstate work being allowed for under-21 CDL holders (limited to intrastate today, with narrow exceptions in a pilot program for former military), 63% offered a definitive no, "especially when seeing what schools are turning out," added one responder of what he saw as lax training efforts for new, over-21 interstate drivers today.

In some ways, the provisions of the recently reintroduced [DRIVE Safe Act](#) (pdf) anticipate such objections. The legislation would "establish an apprenticeship program" for such drivers that would "require a total of 400 on-duty hours and 240 driving hours to complete," according to news about the Senate's introduction of the bill recently, following the House. "The programs would be split into a 120-hour probationary period and a 280-hour probationary period. To complete each period, under-21 drivers would have to meet certain training requirements."



# Trucking Law: HOW TO PROTECT YOUR BUSINESS AFTER A CRASH

SOURCE: Brad Klepper, Interstate Trucker law firm. Also president of Drivers Legal Plan



Experiencing an accident is every owner-operator's worst nightmare, and in the heat of the moment it can be easy for even professionals to act **against their best interests**. While it's right to offer aid or comfort to parties to the accident, keep your wits about you. Because the second you get involved in an accident, you need to begin to legally protect yourself.

Here are a few steps you should take:

- **Be mindful of information you volunteer.**
- **Ensure an established procedure is followed to a tee**, whether that's your leasing carrier's safety-department procedure or your own, supported by your insurer, if you're independent.
- **Gather key contact information and visual records at the scene.**
- **Record your story of the crash and scene in the immediate aftermath for possible future use.**

In almost every case, drivers should protect themselves by being very careful with what they do and the information they volunteer at the scene of a crash.

Let's say you're involved in an accident that results in serious injury to another person. If you feel you are not at fault, your instinct may be to cooperate fully with law officers. After all, you're a professional with nothing to hide. An officer asks questions so you respond, think you're being helpful. Three days later, the injured person dies. The prosecutor decides to file a vehicular homicide charge against you. The slightest details could later be turned against you in court.

If you're employed by a carrier or leased, be sure your company's accident related procedures are followed. Even if you are familiar with the company's procedure, and you should be, one of the first things you should do when you are involved in an accident is to call the company and ask what they want you to do. You may be excited and you may be scared, but a big part of any safety department's job is to handle accidents, so follow their instructions. If you're an independent owner-operator with your own authority, your insurance company may well be your best source of support.

Many insurers may not get their adjusters or investigative teams out to the scene of every crash themselves, but it's not unheard of. Once the scene is secured in terms of checking on any involved parties, a call to the insurer makes sense. That call can be passed through to an adjuster to help guide you through documenting necessary evidence.

You may want to collect information that could prove helpful to your own case. Snap some pictures of surroundings, vehicular damage, positions of all involved vehicles relative to each other, the highway and relevant signage such as a stop sign or traffic light. Also photograph other vehicles and people on the scene. Your smartphone is likely perfectly suited to these tasks. You want a picture of every car tag and person if you can get it, because you never know what they saw.

Next, collect potential witnesses' names and phone numbers. Don't try to talk to these people about the accident. You're not trained to interviewing people and you don't want to take the chance of accidentally hurting your own case in the event one of them ends up on a witness stand. You simply want contact information so that your company and defense lawyer can talk to them if litigation rears its head.

As soon as you've finished your responsibilities on the scene, one of the best things you can do is record. Whether as a voice message on your phone or as a written note, record everything that happened before, during, and after the incident. This information could be valuable to refresh your memory should you become a witness on the stand.

In court, data recorded at the time of the incident usually is considered more accurate than your memory months later. In addition, your written or recorded information appears more accurate in the court's mind than that of an investigating officer who deals with dozens of traffic stops and wrecks every week and yet has to recall the specifics of your incident months after it happened.

While some of this may seem extreme, you never know when an accident or even a basic traffic stop, major or minor, will land you in court defending yourself with an outcome that could destroy your future livelihood. You have only a brief window at the scene to collect information that could be of tremendous help to you.



## Connect with MSHA

The Mine Safety and Health Administration is now on [FACEBOOK!](#)

FOLLOW NOW FOR MINING NEWS, REGULATIONS, AND  
SAFETY AND HEALTH BEST PRACTICES.



## DOL Offers Safety App for Spanish-Speaking Miners

The U.S. Department of Labor announced that its **Miner Safety and Health app** for **iOS** and **Android devices** is now available in Spanish.

In **August 2022**, the **Mine Safety and Health Administration** launched the **app's original version**. With this recent launch, **Spanish-speaking miners** will have access to the **app's benefits**. Users will need to **switch their phone settings to Spanish** to use the app in that language.

The **Miner Safety and Health app** provides miners with a **tool to use while working** at mines and **outside of working hours** to review **best mine safety and health practices**, find resources on **miners' rights and responsibilities**, and **report hazardous work condition complaints**. The app **also sends users** notifications of mining **fatalities and information** on how to **prevent them**.

The **app includes** a way to **contact the agency** to report **accidents and hazards**.

"Spanish-speaking miners throughout the **United States** now have **access to important mine safety and health information** and their **rights as miners** in the **palm of their hands**," said Assistant Secretary of **Labor for Mine Safety and Health** Chris Williamson.

The **Miner Safety and Health app** provides **another way for miners** to get access to **important safety and health information**. The tool **supplements existing** education and **training materials** made **available by unions**, miners' representatives, **mine safety offices** or managers, **training programs**, **MSHA** inspectors and **industry groups**.

In **developing the app**, **MSHA** collaborated with **labor and industry** to determine **useful features and designs** for the **app**.

"The **Miner Safety and Health app** is a resource that **empowers miners** and helps them **play active roles in mine safety and health**," Williamson added. "Even so, the **Mine Act** makes clear that **mine operators** have the **primary responsibility** for **maintaining safe and healthy** working conditions, including to provide required **training for miners**."

Downloads are available for [IOS devices](#) and [Android devices](#).

## MSHA Reports First Fatality of 2023

**MSHA** reported that on **Jan. 4**, a miner at a quarry in **Sevier, Tenn.**, was **fatally injured** while performing maintenance inside a **jaw crusher**. The **pitman assembly (moving jaw)** rotated, pinning the miner against the **crusher housing**.

This is the **first fatality** reported in **2023**, and the first classified as "**Machinery**."

**MSHA** recommends the following **Best Practices** to avoid this type of accident:

- *Block machinery components against motion before beginning maintenance or repairs.*
- *Position miners in a safe location and away from potential pinch point areas.*
- *Conduct repairs according to manufacturer's recommendations.*
- *Develop procedures for working safely in confined spaces.*

## What Is MSHA Doing With The Silica Rule?

*MSHA Must Continue To Recognize Engineering Controls As The Primary Means To Eliminate Respirable Dust Within The Mine Atmosphere And Achieve Compliance.*

SOURCE: Brian Hendrix, Husch Blackwell LLP - [brian.hendrix@huschblackwell.com](mailto:brian.hendrix@huschblackwell.com)



Just a few days after the midterm elections in 2022, Sen. Joe Manchin and four of his colleagues in the Senate sent a letter to MSHA Assistant Secretary Chris Williamson to “formally request additional information on the forthcoming rule to establish an updated respirable crystalline silica standard.”

Sen. Manchin noted that in September of 2021, MSHA announced that it would publish its new respirable crystalline silica standard in January, and “it has been over a year since that correspondence and still no new proposed silica standard has been promulgated.” Sen. Manchin had three questions for the Assistant Secretary:

1. What is the current status of a new silica standard and what, if any, progress has been made on it over the past year?
2. What, if any, barriers exist to releasing a timely proposal?
3. What is your current anticipated timeline for the promulgation of a new silica standard?

Sen. Manchin almost certainly was aware that MSHA had a final or near-final draft of a proposed rule ready to go out the door many months ago, before the Senate even confirmed Williamson. It is also safe to assume that that draft proposal covered coal and metal/non-metal mines and included a new exposure limit of 50 mg/m<sup>3</sup>. MSHA almost certainly could have published that proposed rule in early 2022, before or shortly after Williamson started at the agency. It didn't. It still hasn't.

### New Rule

MSHA has been working on a new silica rule for many years. After OSHA finalized its silica rule in 2016, the then-MSHA Assistant Secretary Joe Main said that MSHA would use OSHA's work on its rule to support the proposed rule MSHA was drafting. In the next administration and under new leadership, MSHA's work continued.

MSHA published a Request for Information on silica in 2019, accepted comments and testimony and assured stakeholders that it would soon publish a proposed rule. What this almost certainly means is that MSHA is making significant changes to the rule that it drafted and intended to publish in early January 2022.

I do not have any inside information about the changes MSHA is making. However, I do know that, in addition to Sen. Manchin's support, the Assistant Secretary enjoys the support of the United Mine Workers of America (UMWA). UMWA's president, Cecil Roberts, has referred to Williamson (*who has no mining experience*) as “the most knowledgeable expert on mine safety and health in Washington today.” As such, I expect Williamson to propose a rule that the UMWA will support.

### What Would UMWA Support?

What does it want? For an answer to that question, we can look to the UMWA's testy response to MSHA's 2019 Request for Information (RFI). The UMWA started by expressing its “frustration and displeasure with the Agency for issuing an RFI rather than take concrete action.” MSHA has long known what measures it must take in order to ensure healthful work environments for the nation's miners. MSHA has a responsibility to enact those measures. The UMWA must question MSHA's motives in its decision to shirk that responsibility.” In other words, back in 2019, the UMWA was not happy with the agency.

**Specifically, the UMWA maintained “that new standard must include language that:**

- 1. Lowers the Personal Exposure Limit (PEL) from 100 µg/m<sup>3</sup> . . . to no greater than 50 µg/m<sup>3</sup>.*
- 2. Requires MSHA to fully commit to developing and deployment a real-time silica monitoring device for use in the mining industry, with the aid of NIOSH and the private sector.*
- 3. Creates a new regulatory standard requiring that the PEL for silica be separate and distinct from the Respirable Dust Standard and enforceable in accordance with all other standards established by the Agency.*
- 4. Requires MSHA to implement a sampling program for silica similar to the current Respirable Dust Sampling Program, including sampling frequency.*
- 5. Requires MSHA to be responsible for conducting all respirable dust sampling used to ensure mine operators are in compliance with all aspects of the silica standard.”*

Additionally, the **UMWA was and, no doubt, still is, firmly opposed to any proposal** that allows for or **recognizes** the use of **personal protective equipment (PPE)** – including **powered air-purifying respirators (PAPR)**, as a **means of compliance**. As the **UMWA put it:** the assertion by **MSHA** that “**existing engineering or environmental controls may not be adequate** to continuously **protect miners’ health** in **areas where there** are high levels of **quartz dust**” is not an **established fact**.

Rather, the **union believes MSHA is considering using respirators** in order to **illegally achieve compliance** and lessen the **regulatory burden** on **mine operators**. Permitting such **action would** open the **door for the agency** to promulgate a **standard in the future** that would **reduce or eliminate** engineering and **environmental** as the **primary methods** of controlling **respirable coal mine dust**. The **UMWA** completely and **emphatically rejects** this attempt to **circumvent the intent** of Congress and **demands** that **MSHA does so as well**.

**MSHA** must **continue to recognize** engineering controls as the **primary means** to eliminate **respirable dust** within the **mine atmosphere** and achieve **compliance**. The **UMWA supports** the voluntary utilizing personal protective equipment as a supplement to engineering controls. However, the Union **deems mandatory** use of **respirators to be illegal** and beyond **MSHA’s authority**. The use of **respirators as a means** of complying with the **dust standard is contrary** to the **Mine Act**, provides miners with a **false sense of protection** and is not **feasible for all miners**.

That’s what the **UMWA wants** from **MSHA**. I **do not know** if the **UMWA will get** all that it wants, but I **doubt** that the **proposed rule will disappoint the union**. **MSHA will likely publish the proposed rule** in 2023, so **we’ll soon find out**.



## Poorly-Written Job Descriptions Expose Organizations to Unnecessary Risk

Consider these best practices to protect your company



Well-written **job descriptions** don't just help an employee understand their role and responsibilities; they also **protect organizations** in the event of **legal action**. Unfortunately, many companies are unaware of the vital role job descriptions **play and are not managing** them with the **necessary care**.

As a result, **outdated and often incomplete** job descriptions are the norm, and **internal stakeholders** are making less educated decisions that can **significantly impact the health** of their organization. Thankfully, controlling the process is possible **when you adopt a few best practices** for job descriptions.

### The Most Significant Risks Of Poor Job Descriptions

There are **three main areas** where poor job descriptions add **additional risk for companies**; *hiring, employment law compliance, and returning injured employees to work.*

#### Hiring

Let's say a trucking company is interviewing for a new driver position. Company policy is that drivers secure their load with a heavy cover before beginning a route. This cover is over 50 pounds and takes great strength to position and secure.

Accurate job descriptions help candidates understand what to expect. If the description does not list the above portion of the job, but the hiring manager uses it as a reason not to select an applicant they view as not physically capable, it could look like a discriminatory action. However, a functionally accurate job description could help prove the applicant's inability to perform essential job functions and that the hiring decisions were non-discriminatory.

#### Employment law compliance

Many employment laws that guide employers in their dealings with job candidates and employees focus heavily on the duties, functions, and requirements listed in an employee's job description. For that reason, incomplete or inaccurate job descriptions can make these often sensitive decisions about employees and job applicants much riskier.

For example, courts lean heavily on written job descriptions in establishing the essential functions of a position when looking at the **Americans with Disabilities Act (ADA)**. **Atlas Injury Prevention Solutions** and their **Legal Counsel** explain why good job descriptions are vital.

***'An employee must be able to perform the essential functions of the job, with or without accommodation and, as such, if a disabled employee is unable to perform an essential function of the job, even with an accommodation, the employer is not legally required to keep the employee in that position or accommodate him or her. Because courts give deference to a written job description in establishing the essential functions of a position, it is important that an employee's job description accurately identifies the position's essential functions.'***

A well-written job description gives employers something to base their decisions on and can offer protection from discrimination lawsuits based on disability, age, race, color, religion, sex, and national origin.

#### Return to work

When returning an employee to work after a work-related or disability leave, supervisors and human resources compare the employee's original job demands with doctor-prescribed work restrictions. Returning employees may need new tasks or positions if their restrictions prevent them from returning to their original duties. However, poorly written, inaccurate job descriptions complicate this process.

For example, let's say an employee has a doctor prescribed 15-pound lifting restriction. If their job description does not refer to weight, or how frequently it is handled, how can their HR representative be sure the employee can return safely? In addition, an inaccurate description might say there is a 15-pound limit, but the reality is that workers regularly lift much heavier weights. Therefore, if the returning employee returns to their original position, re-injury is possible.

**Well-written job descriptions** reduce the guesswork and **allow managers and human relations** departments to make well-educated **decisions about the return-to-work process**.

## How to write better job descriptions that protect your company

Companies that want to **protect themselves must take** a proactive approach and conduct **regular job demand analyses** for every position. Doing so will **close many gaps that leave** companies open for liability.

Getting **insight from the people performing** the work and involving them in the writing **process is an excellent start**. By shadowing these individuals, your **company will see what a typical day** is like and write better job descriptions.

Companies must **inform potential hires of the essential** functions and physical demands of the **position they are applying for**. Therefore, as the job and its **demands change**, so should its physical demand description.

According to the **Bureau of Labor Statistics**, "*Physical demands refer to the level and duration of physical exertion generally required to perform critical tasks in support of critical job functions, for example - sitting, standing, walking, lifting, carrying, reaching, pushing, and pulling.*"

Curt DeWeese, **Director at Atlas Injury Prevention**, explains why this matters. "*Accurate and current Physical Demand Descriptions support the hiring and return to work processes within an organization and maintain compliance with several legal standards. It is important to understand the essential functions of a job title and objectively measure the forces and postures required to perform those functions. In addition, updating the documents regularly ensures they are applicable to support job placement activity within required parameters.*"

Often **physical demand descriptions** are too vague and only include **estimates or words like "may" or "sometimes"**. Therefore, it's essential to **reduce gray areas when selecting** terms and to use official **definitions whenever possible**. For example, The **Department of Labor** classifies work into **three main categories**, **Occasional** (1-33% of the shift), **Frequent** (34-66% of the shift), and **Continuous** (67-100% of the shift).

Job descriptions **should use clear, unbiased**, non-discriminatory language. Use **caution not to set mental and physical** requirements higher than necessary for the position; **creating requirements that are unnecessary** or above the actual job **may be viewed as discriminatory**.

### **Job descriptions should include the following:**

- *Work postures*
- *The physical demands of the weights and forces required*
- *The duration of exposure during a work shift*

### **Examples of physical demands:**

- *Lifting and carrying 50 pounds*
- *Frequent bending, kneeling, reaching, and twisting*
- *Standing or sitting for long periods*
- *Climbing ladders*

Finally, **keeping an eye out for common legal** mistakes and traps when **writing job descriptions is critical**. That's why working with **human resources and legal professionals** with the necessary knowledge to guide the **process is crucial**.

Many companies **inadvertently expose themselves** to unnecessary risk by **using incomplete, inaccurate** job descriptions. On the **other hand, a well-written job description** sets clear employee **guidelines and expectations** while providing **businesses with valuable legal protection**. Companies that **understand the risk**, and follow a few **best practices when managing** job descriptions, will be **well on their way to closing** these gaps.

Navigating the landscape of COVID-19 and its continuing variants has seemingly become less confusing. Hopefully this will be the path for the future. So that you can access the most updated information, we'll continue to provide links for your convenience.

Here are Resources containing the most current information and guidance for your workplace.

- [CDC – Centers for Disease Control](#) – Important info: [COVID-19 vaccine & boosters](#)  
(This season seems to have brought a couple of other viruses that are causing some issues. Visit the [CDC site](#) for latest information and recommendations for the Flu and RSV.)
- [CDPHE – Colorado Department of Public Health and Environment](#)
- [WHO - World Health Organization](#)
- [OSHA Guidance](#)
- [DOL Resources](#)
- [Covid19.colorado.gov](#)

**COVID-19 Resource - Filing Whistleblower Complaints Related to COVID-19**

OSHA's [new fact sheet](#) explains how workers can protect their right to raise workplace health and safety concerns relating to COVID-19 without fear of retaliation.

Visit OSHA's [COVID-19 Frequently Asked Questions](#) page for current information

**OSHA's Recordkeeping Requirements During the COVID-19 Pandemic**

OSHA issued enforcement guidance related to the COVID-19 pandemic for [Recording and Reporting Occupational Injuries and Illnesses](#) required under *29 CFR Part 1904*.

For more information see the [Enforcement Memoranda](#) section of OSHA's [COVID-19 Safety and Health Topics page](#).

