

New Logo & New Name ...

*BUT OUR CONTINUED ATTENTION TO GREAT SERVICE
AND BUILDING LASTING RELATIONSHIPS IS THE SAME*

With the passing of our founder, it has become necessary to make a few technical adjustments. Over the next few months **MJS Safety LLC** will be transitioning to a new company name –

MJS Legacy Safety Consulting Services LLC

All of the services provided to you through **MJS Safety LLC** will remain the same and be available to you through **MJS Legacy Safety Consulting Services LLC** with no interruption. We are committed to carrying on the legacy that Mike envisioned for both the company and our clients, and will continue to make ‘*caring for our client’s needs*’ our top priority.

The contact information for both Carrie Jordan and Jeremy Jordan will remain the same.

Please note a new shipping address as: 1026 N. 1st Street, Johnstown CO 80534.

There is no change to the mailing address as: P.O. Box 10, Johnstown CO 80534.

Our training facility and offices will not change: 1760 BROAD ST, UNIT H, MILLIKEN, CO 80543.

It has been our distinct pleasure to serve your business needs for the past 26 years under **MJS Safety**. We look forward to continuing a productive and successful business relationship with you under the **MJS Legacy Safety** brand for many years to come.

carriejordan@mjssafety.com — jeremyjordan@mjssafety.net

Continuing to feel ‘COVID weary’? It’s a topic we still need to think about often, staying informed about restrictions, being safe for our co-workers, our friends and our families. Until we can move on from thinking daily about COVID-19, we’ll do our best to provide you with as much helpful information as possible.

Here are Resource links that will provide the most current information and guidance for your workplace.

- [CDC – Centers for Disease Control](#) – Important info re: **COVID-19 vaccine**
- [CDPHE – Colorado Department of Public Health and Environment](#)
- [WHO - World Health Organization](#)
- [OSHA Guidance](#)
- [DOL Resources](#)
- [Covid19.colorado.gov](https://www.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.



▶ [Training Summary/Class Schedule](#) • TRAINING CENTER - 1760 BROAD ST, UNIT H, MILLIKEN, CO 80543 • [read more...](#)

→ **Distance Learning & Video Conference classes:** We are excited to announce that PEC will be allowing us to temporarily offer Safeland and the PEC H2S Clear courses via video conferencing until June 2022. 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.**

OSHA / CONSTRUCTION NEWS SUMMARY

▶ [Visit OSHA's COVID-19 Frequently Asked Questions page...](#) [read more...](#)

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

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

▶ **Drug Testing**

More and more of the 3rd 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...](#)



▶ **State Labor Dept: Paid Sick Leave Continues in 2022**

new requirements took effect Jan 1.

The Colorado Department of Labor and Employment (CDLE) is reminding workers and employers about paid sick leave requirements under the Healthy Families and Workplaces Act (HFWA). [read more...](#)

EMERGENCY TEMPORARY STANDARD

Statement from Secretary of Labor Marty Walsh on Supreme Court Ruling on OSHA Emergency Temporary Standard on Vaccination, Testing

U.S. Secretary of Labor Marty Walsh issued a statement on the Supreme Court ruling on [OSHA's Emergency Temporary Standard on vaccination and testing](#): "I am disappointed in the court's decision.... [read more...](#)

▶ **important reminder... Injury Reporting**

US DOL reminds specific employers to submit required 2021 injury, illness data by March 2, 2022 [read more...](#)



▶ **Save the Date: National Safety Stand-Down to Prevent Falls — May 2-6.**

Fatalities caused by falls from elevation continue to be a leading cause of death for construction employees, accounting for 351 of the 1,008 construction fatalities recorded in 2020 (BLS data). [read more...](#)

▶ **Refusing to Try is the Worst Choice for Employers Facing OSHA's COVID-19 Emergency Standard**

The Supreme Court has not yet ruled on the [OSHA Emergency Temporary Standard](#) but the standard is currently in effect. [read more...](#)



▶ **OSHA Penalties Increase**

On Jan. 16, [OSHA](#) civil penalties increased based on 2022 cost-of-living adjustments. [read more...](#)

▶ **OSHA Standard Resource**

A new [Code of Federal Regulations website](#) provides easy access to a [complete list of OSHA standards](#). [read more...](#)



▶ **UPDATE... Statement on the Status of the OSHA COVID-19 Vaccination and Testing ETS**

The U.S. Department of Labor's [Occupational Safety and Health Administration](#) is **withdrawing** the **vaccination and testing emergency temporary standard** issued on Nov. 5, 2021, to protect unvaccinated employees of large employers with 100 or more employees from workplace exposure to coronavirus. [read more...](#)

▶ Closing the Door on Asbestos Usage Loopholes

Many industries once used asbestos in a wide range of products, from insulation to fire retardants. [read more...](#)



▶ What You Need to Know About the Recently Revised Full-Body Harness Standard

Full-body harnesses are critical elements of effective fall protection systems. [read more...](#)



TRANSPORTATION NEWS SUMMARY

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

▶ New OSHA Information Confirms That Most Solo Truck Drivers Would Not Be Subject to the COVID-19 Vaccine-Or-Test Mandate

That rule, which is under review by the Supreme Court, requires companies with more than 100 employees to ensure workers are vaccinated against COVID-19. [read more...](#)

▶ FMCSA to Issue More Warning Letters for Unsafe Driving BASIC

If you've gotten an unexpected warning letter from the Federal Motor Carrier Safety Administration based on your Unsafe Driving BASIC percentiles recently, that's no accident. [read more...](#)

▶ Can Truck Drivers Use CBD?

ALL YOU NEED TO KNOW ABOUT CANNABIS, HEMP, TESTING AND THE CLEARINGHOUSE [read more...](#)



▶ FMCSA Updates Vision Standard for Certain Truck Drivers

The FMCSA has published a final rule that, when it takes effect March 22.... [read more...](#)



▶ How to Confront the Post-Crash Litigation Threat — Start at the Scene of the Accident [read more...](#)

▶ OOIDA Says Report on Drivers' Drug Use 'Meaningless'

OOIDA refutes report claiming operators' hard-drug use [read more...](#)



MSHA NEWS SUMMARY

▶ MSHA Stresses Power Haulage Safety

It is fair to say that powered haulage safety is one of – if not THE – highest priority for MSHA. [read more...](#)

▶ WINTER SAFETY CHECKLIST FOR SURFACE MINES [read more...](#)



▶ Safety Program for Surface Mobile Equipment

MSHA proposes to require that mine operators employing six or more miners develop a written safety program for mobile equipment and powered haulage equipment... [read more...](#)

MONTHLY SAFETY & HEALTH TIP NEWS SUMMARY

▶ How to leverage your safety skills for career opportunities

Few people are happy to be stuck in the same position for their entire careers. [read more...](#)

MJS Legacy Safety OFFERS DRUG & ALCOHOL TESTING

to comply with DOT/FMCSA, PHMSA & Non-DOT requirements.

We offer an in-house drug testing consortium pool with customer service that cannot be beat.

We also provide assistance with 3rd party Drug Testing Compliance Auditing through NCMS, TPS Alert & Veriforce, as well as DISA account management.

“Training Spotlight”

(there will be a different course featured monthly)

LOCKOUT/TAG OUT TRAINING - AWARENESS AND AUTHORIZED/AFFECTED EMPLOYEES

Employees engaged in activities that involve the control of hazardous energy must be trained to ensure that they understand the proper procedures to utilize during Lockout / Tag Out operations. This course covers the requirements of the 29 CFR 1910.147.

Awareness level training is 4 hours. Authorized / Affected Employee training is 1 day.

For all of our Course Offerings visit the MJS Safety website

Schedule of classes February 2022: • TRAINING CENTER - 1760 BROAD ST, UNIT H, MILLIKEN, CO 80543

- *PEC Safeland Basic Orientation: NEW 2021 SAFELAND: Feb 15, 25; 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): In Person Classes: Feb 14, 28; 8 – noon; This class is also available for blended learning (online) with remote or in-person skills assessment
• *Hydrogen Sulfide Awareness [ANSI Z390 -2017 Course]: Feb 14, 28; 12:30 – 4:30; This class available via Instructor Led video conference
• *OSHA 30 HOUR - CONSTRUCTION - SPANISH - 4 day class: Jan 24, 25 & Feb 3, 4;
• *Fall Protection Training (4 hour Awareness and 8 hour Competent Person available): Feb 9;
• *Confined Space Entry Training Attendant, Supervisor, Competent Person & Entrant [NUCA Course]: Feb 10;
• *Confined Space Rescuer - 2 day course: Feb 11; (Students must complete the Confined Space course to be eligible for the 2nd day Rescue Course)
• *PEC H2S CLEAR - 4 hour (This course meets the ANSI Z390.1-2017 standard and may be required by some Oil & Gas Operators) [We are also able to offer this course through video conference instructor led distance learning upon request only through 6/30/2022] Scheduled upon request - Call Carrie to schedule to fit your needs - 720-203-4948

[For any last minute schedule updates, go to www.mjssafety.com]

▶ NEED ANY OF THESE CLASSES IN SPANISH? CONTACT carriejordan@mjssafety.com TO SCHEDULE TODAY ◀

To sign up for one of these classes, or inquire about scheduling a different class Call Carrie at 720-203-4948 or Jeremy at 720-203-6325

▶ 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

Need Help With

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

CALL US!!!

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

SOURCES FOR THIS ISSUE

- INCLUDE:
OSHA
FMCSA
ISHN
EPA
US DOL
MSHA
NTA
CDLE
Rock Products
SHRM
For Construction Pros.com
Marty Walsh, Sec of Labor
Overdrive
CCJ
Robert Duston, atty
Saul, Ewing, Arnstein & Lehr
Bob Nichols, atty
Bracewell LLP
Truckinginfo.com
Dr Alexander E. Underwood, KT
Health Clinic
ADAO
OODA



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

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](#).

Drug Testing

More and more of the 3rd 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 Service 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!**

State Labor Dept: Paid Sick Leave Continues in 2022 *new requirements took effect Jan 1.*

The Colorado Department of Labor and Employment (CDLE) is reminding workers and employers about paid sick leave requirements under the Healthy Families and Workplaces Act (HFWA). As of January 1, 2022, **no employers** — **public or private**, and **any size or industry** — are exempt (*other than the federal government*), and no employees are exempt either (*other than some railroad employees*).

HFWA provides two types of leave: public health emergency leave and accrued leave.

For both emergency and accrued leave:

- *It must be paid for time on leave, and at the same pay rate the employee earns during time worked.*
- *It can't be counted against employees as absences that may lead to firing or other negative action.*
- *No "waiver" is allowed; employers and employees can't choose, for example, to have higher pay for time worked instead of the paid sick leave that HFWA requires.*
- *Employers can require documentation for accrued paid sick leave (not for COVID-related public health emergency leave), but only for absences of four or more consecutive days — and employees can provide the documentation after the leave ends.*

Public health emergency leave

WHAT: Two weeks of paid leave (80 hours if full-time, less if part-time) for COVID-related needs. This requirement took effect July 14, 2020, and remains in effect.

Emergency leave is usable for a range of COVID-related needs, not just for confirmed cases. Covid-related needs include:

- *illness with COVID symptoms*
- *quarantining or isolating due to COVID exposure*
- *COVID testing*
- *vaccination and side effects*
- *inability to work due to health conditions that may increase susceptibility or risk of COVID*
- *COVID-related needs of family (illness, school closure, etc.).*

Employers can't require documentation from employees to show that leave is for COVID-related needs. The emergency leave requirement remains ongoing, as long as a federal or a state "emergency" remains. As of the New Year, both federal and state emergency declarations remain in effect* Employees still have however many of their 80 hours they didn't use in 2021. They don't get a new 80 hours each time they have a COVID-related need, and don't have a new 80 hours in 2022, except that newly hired employees do get a new 80 hours.

Accrued leave:

WHAT: One hour of paid leave per 30 hours worked, up to 48 hours per year. This requirement took effect January 1, 2021, and is permanently in effect, not just during the COVID emergency.

Accrued leave is usable for a wide range of health and safety needs, not just COVID-related: Needs include:

- *any mental or physical illness, injury, or health condition that prevents work;*
- *diagnosis, care, or treatment of such conditions;*
- *preventive care (including vaccination);*
- *needs due to suffering domestic violence, sexual abuse, or criminal harassment; or caring for family with such conditions or needs.*

New in 2022

Starting January 1, 2022, small and large employers alike have the same accrued leave responsibilities. In 2021, employers with 15 or fewer employees had to provide emergency leave, but were exempt from accrued leave until the end of 2021. Paid leave in a PTO policy, or a Collective Bargaining Agreement, can satisfy HFWA, if it covers all the same conditions or needs, at the same pay rate, and with no tougher requirements (*documentation, notice, etc.*) than HFWA.

For more information on HFWA, see [INFO #6B](#), our main published HFWA guidance — available along with a great deal of other guidance on Colorado labor laws.

January 13, 2022

Statement from Secretary of Labor Marty Walsh on Supreme Court Ruling on OSHA Emergency Temporary Standard on Vaccination, Testing

U.S. Secretary of Labor Marty Walsh issued the following statement on the Supreme Court ruling on the department's **Occupational Safety and Health Administration's Emergency Temporary Standard on vaccination and testing**:

"I am disappointed in the court's decision, which is a major setback to the health and safety of workers across the country. **OSHA** stands by the **Vaccination and Testing Emergency Temporary Standard** as the best way to protect the nation's workforce from a deadly virus that is infecting more than 750,000 Americans each day and has taken the lives of nearly a million Americans.

"**OSHA** promulgated the **ETS** under clear authority established by Congress to protect workers facing grave danger in the workplace, and **COVID** is without doubt such a danger. The emergency temporary standard is based on science and data that show the effectiveness of vaccines against the spread of coronavirus and the grave danger faced by unvaccinated workers. The commonsense standards established in the **ETS** remain critical, especially during the current surge, where unvaccinated people are 15-20 times more likely to die from **COVID-19** than vaccinated people. **OSHA** will be evaluating all options to ensure workers are protected from this deadly virus.

"We urge all employers to require workers to get vaccinated or tested weekly to most effectively fight this deadly virus in the workplace. Employers are responsible for the safety of their workers on the job, and **OSHA** has comprehensive [COVID-19 guidance](#) to help them uphold their obligation.

"Regardless of the ultimate outcome of these proceedings, **OSHA** will do everything in its existing authority to hold businesses accountable for protecting workers, including under the [COVID-19 National Emphasis Program](#) and [General Duty Clause](#)."



important reminder

Injury Reporting

US Department of Labor reminds specific employers to submit required 2021 injury, illness data by March 2, 2022

The U.S. Department of Labor's Occupational Safety and Health Administration reminds employers that the agency began collecting calendar year 2021 Form 300A data on Jan. 2, 2022. Employers must submit the form electronically by March 2, 2022.

Electronic submissions are required by establishments with 250 or more employees currently required to keep OSHA injury and illness records, and establishments with 20-249 employees classified in [specific industries](#) with historically high rates of occupational injuries and illnesses.

Visit the [Injury Tracking Application Electronic Submission of Injury and Illness Records to OSHA](#) for more information and a link to the Injury Tracking Application.

[Spanish version](#) available.



Join the
National Safety
Stand-Down
To Prevent Falls in Construction

MAY 2-6, 2022

Save the Date: This year's annual National Safety Stand-Down to Prevent Falls will be held May 2-6.

Fatalities caused by falls from elevation continue to be a leading cause of death for construction employees, accounting for 351 of the 1,008 construction fatalities recorded in 2020 (*BLS data*).

Those deaths were preventable.

The **National Safety Stand-Down** raises fall hazard awareness across the country in an effort to stop fall fatalities and injuries.

Visit the [campaign webpage](#) for updates. More information to follow in next month's newsletter.

January 10, 2022

Refusing to Try is the Worst Choice for Employers Facing OSHA's COVID-19 Emergency Standard

The Supreme Court has not yet ruled on the **OSHA Emergency Temporary Standard** but the standard is currently in effect. Lawyers suggest that the best way to draw a fine while the case is being litigated is to refuse to try and comply.

The **Supreme Court** has not yet ruled after hearing oral arguments on the **Occupational Safety & Health Administration's COVID-19 Emergency Temporary Standard** recently, but the standard is currently in effect. The first deadline was January 10.

The high court returned early from its winter break for the unusual hearing as [COVID-19 infection rates](#) set a pace to triple previous records.

The [Society for Human Resource Management spoke with Robert Duston](#), an attorney with **Saul Ewing Arnstein & Lehr in Washington, D.C.**, who said that as of January 10, employers of 100 or more must have policies in place, enforce masking requirements and comply with other obligations. Employers that choose to offer employees the option of testing don't need to start that until Feb. 9.

If the **Supreme Court** does not block the **Emergency Temporary Standard (ETS)**, employers who have not started to implement some of the hardest parts of the directive – developing a secure record of all employees' vaccination status – leave themselves open to complaints and investigations.

According to **SHRM.org**, given the scope of those covered by the rule, relative to **OSHA's** enforcement capacity, "**Duston** thinks **OSHA** will likely consider an employer's good-faith efforts to comply, and he said that covered employers are unlikely to see many citations in the next month unless they simply refuse to comply."

The **ETS** requires workers at companies with 100 or more employees to be fully vaccinated against **COVID-19** or submit to weekly coronavirus tests. As of January 10, unvaccinated employees at large companies are required to wear masks at work. Testing requirements and potential fines for employers don't kick in until Feb. 9.



OSHA estimates the **ETS** could save more than 6,500 lives and prevent over 250,000 hospitalizations in the six months that it would be in effect.

[Human Resources Director Magazine reports](#) that **Bob Nichols**, a Houston-based partner at international law firm **Bracewell LLP**, who has represented employers in matters pending with government agencies for more than 30 years, suggests that employers should take steps now to comply with the standard. "If you don't have the appropriate policy in place or unvaccinated employees wearing face coverings, you face potential fines and citations from **OSHA**," Nichols says.

"The **Supreme Court** doesn't appear to be taking on the merits of the case. Rather, they're determining whether they should put the rule on hold while it's being litigated," Nichols says.

Even if the **Supreme Court** allows the standard to go forward, underlying litigation is expected to continue. "However, the rule will likely be around long enough where the Biden administration will get its intended effect, anyway," Nichols says. "The real winner is who wins this **Supreme Court** fight."

If the **Supreme Court** blocks the **ETS**, **OSHA** will continue to issue guidance and citations for employers who fail to implement health and safety measures related to **COVID-19**. For example, **OSHA** already requires employers to maintain proper cleaning procedures and follow isolation and quarantine guidelines. And individual state **OSHA** plans will continue to enforce **COVID-19** standards within their jurisdictions.

OSHA Penalties Increase

On Jan. 16, **OSHA** civil penalties increased based on 2022 cost-of-living adjustments.

Below are the maximum penalty amounts, with the annual adjustment for inflation, that may be assessed after Jan. 15, 2022. (See [OSHA Memo, Jan 13, 2022](#)).

2022 Penalty Adjustments

<u>Type of Violation</u>	<u>Penalty</u>
<i>Serious</i>	
<i>Other-Than-Serious</i>	
<u>Posting Requirements</u>	<u>\$14,502 per violation</u>
<u>Failure to Abate</u>	<u>\$14,502 per day beyond the abatement date</u>
<u>Willful or Repeated</u>	<u>\$145,027 per violation</u>

State Plan States

States that operate their own [Occupational Safety and Health Plans](#) are required to adopt maximum penalty levels that are at least as effective as **Federal OSHA's**.

For More Assistance

OSHA offers a variety of options for employers looking for compliance assistance.

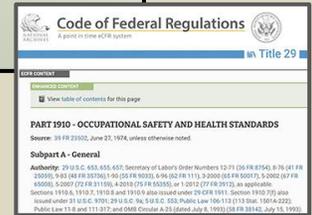
The [On-Site Consultation Program](#) provides professional, high-quality, individualized assistance to small businesses at no cost.

OSHA also has compliance assistance specialists in most of our 85 Area Offices across the nation who provide robust outreach and education programs for employers and workers.

For more information, please contact the [Regional or Area Office](#) nearest you.

OSHA Standard Resource

A new [Code of Federal Regulations website](#) provides easy access to a [complete list of OSHA standards](#).



LET MJS Legacy Safety

BE YOUR ONE STOP SHOP

FOR TRAINING.

See page 4 for classes offered this month as well as links to all of the training available.

Questions?

CALL US!!

WE'RE HERE TO HELP!

January 25, 2022

UPDATE... Statement on the Status of the OSHA COVID-19 Vaccination and Testing ETS

The U.S. Department of Labor's [Occupational Safety and Health Administration](#) is **withdrawing** the **vaccination and testing emergency temporary standard** issued on Nov. 5, 2021, to protect unvaccinated employees of large employers with 100 or more employees from workplace exposure to coronavirus. The [withdrawal](#) is effective January 26, 2022.

Although **OSHA** is withdrawing the vaccination and testing ETS as an enforceable emergency temporary standard, the agency is not withdrawing the ETS as a proposed rule. The agency is prioritizing its resources to focus on finalizing a permanent [COVID-19 Healthcare Standard](#).

OSHA strongly encourages vaccination of workers against the continuing dangers posed by COVID-19 in the workplace.

Find information on the [COVID-19 Healthcare ETS](#) or on [Coronavirus Disease \(COVID-19\)](#).

Closing the Door on Asbestos Usage Loopholes

Many industries once used asbestos in a wide range of products, from insulation to fire retardants. It is now understood that exposure to this dangerous mineral can lead to fatal diseases, such as mesothelioma and lung cancer.

In this context, public health advocates and environmental groups keep insisting on the fact that the Environmental Protection Agency (EPA) still needs to close a couple of loopholes that continue to allow asbestos to find its way into people's lungs.

Asbestos exposure and the risk of cancer

Constructors and manufacturers have used asbestos since the industrial revolution to insulate buildings and ships. The mineral was also used to make ceiling and floor tiles, car brake and clutch parts, roofing shingles, textiles, and various other items.

During the early twentieth century, mounting data suggested that breathing asbestos led to lung scarring. Asbestos fibers breathed in can stick to mucus in the throat, windpipe, or the lungs' breathing tubes. Some fibers reach the lungs' small airways' ends or enter the lung and chest wall's outer layer. These fibers irritating lung and pleural cells can cause mesothelioma and lung cancer.

As asbestos-related mesothelioma and lung cancer became better known in the mid-1950s, authorities implemented measures to limit exposure, including laws prohibiting its use in construction materials and introducing exposure standards. The Toxic Substances Control Act (TSCA) from 1976 provided the EPA the authority to position restrictions on chemicals like asbestos.

The deadly toll of asbestos is still high

Asbestos imports and usage decreased significantly in the second half of the twentieth century, and alternative insulation materials have been discovered. As a direct consequence, asbestos exposure has fallen dramatically. Asbestos, however, is still used in some items and can be found in older buildings, water pipelines, and other places.

In comparison, since 2005, the European Union has prohibited asbestos use, albeit the restriction did not mandate the removal of asbestos that had already been installed. In other nations, however, asbestos is still widely used.

It's estimated that [more than 40,000 American workers die each year](#) from asbestos exposure, and thousands more suffer from severe lung diseases, facing a lifetime of pain; yet asbestos is not banned.

People can still be exposed to asbestos in the workplace, even though its use has decreased. Consumer and automobile products, cosmetics, toys, and construction materials can all still contain asbestos.

The EPA hasn't put an outright ban on asbestos in place

Although making some progress in banning asbestos, the US still hasn't fully regulated the use of this dangerous mineral.

When the last asbestos mine closed in 2002, asbestos mining was outlawed. Because asbestos mining is no longer permitted in the United States, all asbestos must now be imported.

It is still permissible to import and use small amounts of asbestos. Due to the lack of a comprehensive ban, several products can still legally contain up to 1% asbestos.



Sheet gaskets, aftermarket automobile brakes, brake blocks, other gaskets, and friction goods are asbestos imports. The US imported twice as much raw asbestos in 2018 as it did in 2017 to support the manufacture of chlorine and caustic soda at 15 chemical plants that are outliers in their sector for failing to convert to cost-effective and safe non-asbestos technology. In 2019, the chlor-alkali industry used almost 100 metric tons of raw asbestos imported into the US.

[In 2019, the EPA issued a new regulation](#) intended to make it more challenging to domestically manufacture, import, or sell products made with asbestos.

The rule improved the EPA's authority to examine and prohibit the use of a broad list of asbestos products that aren't banned but have been abandoned by the industry for a long time. The decision was made as part of a legal process that compels the EPA to examine its asbestos regulations under the Toxic Substances Control Act (TSCA).

Despite being stricter than the initial proposal — which was widely criticized — in 2018, the agency's decision still falls short of asbestos environmental groups and anti-asbestos supporters' demands for a complete ban.

EPA ordered to revise TSCA CDR rule for asbestos

In 2020, a federal court in California ordered the EPA to amend its Chemical Data Reporting (CDR) rule, probably leading to a mandatory requirement for manufacturers and processors to report on their imports, uses, and processing of asbestos.

The court ruling was for two cases:

- *Asbestos Disease Awareness Organization v. Wheeler*, brought by several NGOs
- *California v. USEPA*, brought by several state attorneys general

Each suit appealed the EPA's denial of the Asbestos Disease Awareness Organization's citizens' petitions under TSCA section 21. The lawsuits asked the agency to amend the CDR or adopt a new rule supplementing the CDR and eliminating reporting exemptions naturally-occurring asbestos and imported articles that contain the substance.

The ruling came after the court rejected the EPA's argument that voluntary reporting and data modeling was sufficient.

In February 2021, EPA asked a federal judge to walk back his order requiring the agency to revise its CDR rule to add asbestos reporting to the program. This request sparked criticism from environmentalists.

Consequently, on June 7, 2021, the EPA and the plaintiffs in the cases filed a stipulation and order informing the federal district court for the Northern District of California that they had settled.

The EPA agreed to start a regulatory process to require asbestos reporting under Section 8(a) in a way that solves the court's information-gathering shortcomings found in the December 2020 decision.

The agency agreed to sign a proposed action within nine months and a final step within 18 months. The court approved the stipulation and order the same day.

Loopholes need to be closed as soon as possible

The 2020 court decision found that loopholes in the CDR rule prevented EPA from collecting data about asbestos-containing articles, asbestos impurities in products, and asbestos processing:

— **Exemption for chemicals in articles.** *The EPA's asbestos risk evaluation document overlooked several goods known to contain asbestos, including cement products; felt; clothing; yarn and thread; cords and string; compressed asbestos fiber jointing paper; woven or knitted fabric; millboard; asbestos paper; crocidolite footwear; asbestos articles for use in civil aircraft; accessories and headgear; window caulking; wallboard and floor tiles; adhesive mastic; recycled asphalt shingle scrap; pads for ATVs and scooters; gaskets for motorcycles.*

— **Exemption for impurities.** *In the Asbestos Disease Awareness Organization petition, they cited research regarding the presence of asbestos contamination in makeup, crayons, and other talc-based children's toys, raising the possibility that thousands of talc-based consumer products that are asbestos-contaminated could be entering the US.*

— **The exclusion for processors.** *The CDR only requires manufacturers to submit reports. The court ruled that TSCA required processors to report their data to the EPA in an unambiguous manner. The court determined that the EPA's claim that it already collects all reasonably accessible information on processing from manufacturers via a legal form and voluntary information submissions is unfounded.*

The court ordered the EPA to make significant revisions to its CDR rule regarding asbestos reporting to remedy these vulnerabilities.

In its decision, the court said the groups' original petition accurately described how little information the EPA has about the quantities of asbestos-containing products in the US chain of commerce and the overall consumer and occupational exposure for downstream uses of asbestos.

Even the agency's Science Advisory Committee on Chemicals (SACC) questioned the adequacy of the risk evaluation, the court said. The court's opinion makes it evident that the EPA lacks basic information on asbestos exposure and danger. It has no plausible reason for failing to exercise its TSCA reporting power to close these glaring knowledge gaps.

Asbestos protection and safety measures for workers

In the past, the EPA overlooked many sources of asbestos exposure and underestimated the toll the substance has on human health. When the EPA completes the second assessment related to uses of asbestos, it will expand its scope to address not only the safety of workers in the chemical, chlor-alkali, oil, construction, manufacturing, and automotive industry, as it resulted from the risk assessment from 30 December 2020, but also:

- Legacy uses (asbestos used in construction or manufacturing and still in place in existing buildings, factories, and other workplaces.)
- Take into account all six types of asbestos fibers (actinolite, amosite, anthophyllite, crocidolite, chrysotile, and tremolite.)
- Health risks of asbestos in talc products.
- Exposure of vulnerable subpopulations, such as workers who do not speak English
- Uses that were reasonably expected but not included in the first assessment.

Even though loopholes are soon to be closed, individual enterprises and employers still need to use asbestos handling best practices to ensure that their personnel are not exposed. OSHA has enacted laws to safeguard workers from harmful airborne particles. Building owners and construction employers must comply with the following requirements:

- Conduct air sampling to determine the amounts of asbestos in the air and discuss the results with their staff.
- Use respiratory protection such as HEPA (high-efficiency particulate air) respiratory masks and vacuums if necessary.
- Monitor and examine individuals working in an asbestos-contaminated environment should be monitored and examined.

Under the EPA's Clean Air Act, employers must also follow certain procedures. Before repair or demolition, for example:

- Worksites must be thoroughly assessed.
- If asbestos-containing materials are detected, the owner or operator of the renovation must notify the appropriate state agency.
- Contractors must produce a plan for removing the dangerous items.

The EPA agreed to complete the second assessment by Dec. 1, 2024.

What You Need to Know About the Recently Revised Full-Body Harness Standard

Full-body harnesses are **critical elements** of effective **fall protection systems**. Workers must **understand** how to properly wear and **use full-body harnesses** when **operating at height**. A properly fitted and **properly worn** full-body harness **can help prevent serious injury or death** when **used correctly** on the job.

The **recently updated** [ANSI/ASSP Z359.11-2021](#) standard **establishes requirements** for the **performance, design, marking, qualification, instruction, training, test methods, inspection use, maintenance** and removal from service of **full-body harnesses**.

“The **main purpose of Z359.11** is to act as a **standard** to drive **best-in-class harnesses** through rigorous design and **test requirements**,” says **Z359.11 subcommittee chair Rob Willis**, “**in addition** to having requirements for **manufacturers** to create an **ANSI-approved full-body harness**.”

Z359.11 defines a full-body harness as “**a body support designed** to contain the **torso and distribute** the fall **arrest forces** over at **least the upper thighs, pelvis, chest and shoulders**.”

“It’s the **piece of PPE** that connects the **user** to the **entire fall protection system** and is the **most personal piece** of PPE,” Willis explains.

This **update to Z359.11** includes **revisions and new requirements**, including:

- *A modified, headfirst, dynamic test procedure*
- *New stretch-out requirements for frontal connections*
- *Alternative fall arrest indicator testing and new label requirements*
- *Allowance for harnesses with integrated energy absorbers*
- *Changes to labeling requirements*

In addition, **Z359.11 now requires** harness **label packs** to have **pictograms** showing the **approved usage** of **different connections** and **diagrams** explaining the difference **between deployed and non-deployed visual load indicators**.

Harnesses **can also now** be **ANSI compliant** when they have an **integral (permanently attached) energy absorber** on the **back D-ring**. The **revisions to test procedures** **improve the safety of lab workers** and allow for **innovation in design** for harnesses that **use frontal connections**.

“**Z359.11 will give you** a level of **confidence** that when you **buy** an **ANSI-rated harness**, it has certain **design requirements** and has **gone through very rigorous testing**,” Willis says. “It provides **good insight** into what **goes into harness designs** and helps you **understand** the factors of **safety built into these harnesses**.”



If you use **full-body harnesses** on your **work sites**, Willis says to **remember the two Fs — function and fit**. These **two elements** are essential to **ensuring that workers have the right harness for their task** and that the **harness fits them properly**.

“**Safety professionals and end users** need to **think about** the **application** where the **harness will be used**,” Willis explains. “There are many **different applications** that have **different types** of harnesses, so it’s **important** to realize that **it’s not just one harness** for all types of **work**.”

Specific **full-body harnesses** are designed for **different working environments**. For example, **confined space harnesses** should be designed and **constructed so that**, in the event of a **rescue**, the **rescue subject is securely held** and suspended during the **rescue process**.

Harnesses used in welding operations are **different**, with **back D-rings** serving as the **main fall arrest** attachment points. Willis says you may **want to partner** with **harness manufacturers** to find the **right harnesses for your applications**.

“There’s a **tool for every job** and **harnesses are no different**,” Willis continues. “The **reason** the application is **important** is that sometimes the **application will dictate** part of the **harness design**.”

Once you **have the appropriate** harnesses for your **work applications**, you must **ensure** that those **harnesses fit** workers properly. **Issues can arise** from **improperly fitted harnesses** and create **hazards**.

“If I had **one piece of advice** that would make the **most impact across** the industry, it **would be to ensure** that your **team** has been **properly fitted** for a **harness** and that they **know how to don one**,” he explains. “If **someone is uncomfortable** in their **PPE**, they are **less likely to use it** and they **will be unproductive**. More critically, an **improperly worn harness** may **not work as intended** in a **fall event**.”

If a **harness is not worn properly**, webbing could **cinch up** in the event of a **fall** and cause **bodily harm**. Harnesses that **aren’t properly adjusted** can cause the **webbing to loosen**, making the user **uncomfortable** and **causing personal fall limiters or self-retracting devices to fall further down** a user’s **back**.

Willis notes that **full-body harness manufacturers** typically have **sizing charts** for **initial guidance on fitting based on a worker’s height and weight**. He encourages **end users** to try on **multiple harnesses** before **work begins** to ensure the **best and most comfortable fit**.

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.

January 13, 2022

New OSHA Information Confirms That Most Solo Truck Drivers Would Not Be Subject to the COVID-19 Vaccine-Or-Test Mandate

The Occupational Safety and Health Administration has officially addressed the issue of whether truck drivers are subject to its controversial COVID-19 vaccine-or-test emergency rule.

That rule, which is **under review** by the Supreme Court, **requires companies with more than 100 employees** to ensure **workers are vaccinated** against COVID-19. As an **alternative they may implement a weekly testing requirement and require face masks of unvaccinated employees.** Either one **would be a daunting task** when dealing with **truck drivers.**

In an **updated entry** to the **frequently asked questions** about the **Emergency Temporary Standard (ETS)** in its website, **OSHA** said:

“There is **no specific exemption** from the **standard’s requirements for truck drivers.** However, **paragraph (b)(3) provides** that, even where the **standard applies to a particular employer,** its requirements **do not apply to employees ‘who do not report to a workplace where other individuals such as coworkers or customers are present’ or employees ‘who work exclusively outdoors.**”

Therefore, the **requirements of the ETS do not apply to truck drivers who do not occupy vehicles with other individuals as part of their work duties.** Additionally, the **requirements of the ETS do not apply to truck drivers who encounter other individuals exclusively in outdoor environments.”**

In an **email to members,** the **American Trucking Associations** said, “we **believe this guidance is still too narrow** and fails to **fully address our concerns** as it relates to **team drivers** and other **segments of our workforce.”**

The **FAQ** says the **requirements do apply to “truck drivers who work in teams (e.g., two people in a truck cab) or who must routinely enter buildings where other people are present.”**

Drivers who **only occasionally go indoors** where other people **may be present,** such as using a **multi-stall bathroom** or entering an **administrative office** only to **drop off paperwork,** would still be exempted, **OSHA** said, as long as **time spent indoors is brief.**

The **FAQ** also makes clear that even **when the requirements do not apply to specific truck drivers,** those drivers are **still counted for purposes of the 100-employee threshold.**

Following the **publication of the ETS,** **ATA** said, **Labor Secretary Martin Walsh indicated in public statements that most drivers meet the criteria to be exempt from the vax-or-test mandate** for employers with **more than 100 employees.** “We sought **written confirmation** from the **agency** on this matter as well as **expansion of the exemption** toward other **trucking industry workers.”**

FMCSA to Issue More Warning Letters for Unsafe Driving BASIC

The Federal Motor Carrier Safety Administration recently announced it will begin issuing [more warning letters](#) to motor carriers for Unsafe Driving BASIC results.



If you've gotten an **unexpected warning letter** from the **Federal Motor Carrier Safety Administration** based on your **Unsafe Driving BASIC** percentiles recently, that's **no accident**.

The **FMCSA** made something of an **under-reported change** with its November **CSA Safety Measurement System** update. The agency **made it considerably** more likely that **carriers would receive** such warning letters -- generally an **official notice** that a carrier is **at risk for further intervention** (*focused audits or compliance reviews*) without **percentile improvement**.

Unsafe Driving is one of the seven **Behavior Analysis and Safety Improvement Categories** (*BASICs*) in **FMCSA's Compliance, Safety, Accountability** (*CSA*) program. **FMCSA** regards **Unsafe Driving**, along with **Hours-of-Service Compliance** and the **Crash Indicator**, as one of the **three most critical BASICs**.

Previously, **carriers received warning letters** when their scores for this **BASIC** reached a **threshold of 50%** for passenger carriers, **60% for hazardous materials carriers** or **65% for all other carriers**. Now **ALL** carriers, **regardless of category**, will receive a **warning letter** when their **Unsafe Driving BASIC** score is **50% or above**. The agency **explained its rationale** for making the change as **an attempt to help carriers "improve their safety performance** and compliance sooner, and **without further intervention**."

FMCSA added that "**percentile thresholds** for prioritization **are not changing**." Carriers that have **BASICs** with an **"Alert"** symbol (*gold triangle with an exclamation point*) may **still be prioritized** for interventions or **further monitoring**, and warning-letter **protocol isn't changed** for other **BASIC** categories.

What is Unsafe Driving?

The **Unsafe Driving BASIC** calculates its score based on violations for unsafe on-road behaviors, including:

- *Texting*
- *Using a hand-held cell phone*
- *Failure to wear seat belts*
- *Inattention*
- *Speeding*
- *Reckless driving*
- *Improper lane change*

FMCSA clearly noted the recent **National Highway Traffic Safety Administration** (*NHTSA*) report on the **dramatic rise** in **highway fatalities** in the **first half of 2021**, and the 2021 **Operation Safe Driver Week** results from the **Commercial Vehicle Safety Alliance**, where **1) speeding**, **2) failure to wear seat belts**, and **3) failure to obey a traffic control device** (*running a stoplight or stop sign*) were the **top three violations** among **motor carriers**. These **violations all fall under the Unsafe Driving BASIC**. **FMCSA** chose to **alert more carriers** to these **safety issues** before **unsafe driving practices** led to **FMCSA** intervention or worse, **highway crashes**.

What Should a Carrier Do Upon Receiving an FMCSA Warning Letter?

FMCSA sends **warning letters** to make **motor carriers aware of deficiencies** in **safety performance**. While the agency **does not require carriers** to respond in writing, the warning letters **should trigger** these **carrier actions**:

- Log onto the [CSA Safety Measurement System](#) (*SMS*) website and examine individual carrier *CSA* data or sign up as a member of [North American Transportation Association](#) for *FREE* safety Consulting.
- If there are any inaccuracies, challenge them through *NTA's* *CDL Legal & DataQs*;
- If non-preventable crashes are shown, use the *FMCSA* [Crash Preventability Determination Program](#) to have them removed from *SMS* calculations;
- Take careful note of the identified unsafe driving practices, and follow the steps to improving the **Unsafe Driving BASIC** score.

An **FMCSA** warning letter is a **heads-up alert**. More carriers **will now receive warning letters** about their **Unsafe Driving BASIC** scores. **PAY ATTENTION**. Actions **carriers take in response** can improve their **Unsafe Driving BASIC** score and their **overall SMS score**. Improved scores **can preclude** an **FMCSA** intervention and **may help the motor carrier qualify** for a **better ISS score**.

Most important, **improved driving practices** can **prevent crashes** and **save lives on the highway**.

Can Truck Drivers Use CBD? ALL YOU NEED TO KNOW ABOUT CANNABIS, HEMP, TESTING AND THE CLEARINGHOUSE



SOURCE: Dr. Alexander E. Underwood, KT Health Clinic
Oct 4, 2021/Updated Oct 8, 2021

Across the country, more and more states are decriminalizing and outright legalizing marijuana, and meanwhile CBD, an extract of industrial hemp plants, a legal cousin to marijuana, has emerged as an effective treatment for everything from chronic pain to anxiety and sleep disorders.

But despite the warming national attitudes toward the hemp plant and all its potential derivatives, CDL holders should approach any form of the substance with **extreme caution**.

This [video](#) goes over what drivers need to know about CBD, THC, and keeping their CDLs – the landscape for hemp/cannabis-derived products has only gotten more chaotic, and murky in terms of legality.

A barrage of consumer products have swept through gas stations and truck stops across the country. Recently, savvy businesspeople have started selling so-called *Delta-8* and *Delta-10 THC*, or concentrated THC derived from fully legal hemp plants.

These products exploit the federal loophole that deems industrial hemp byproducts legal but plants grown for THC illegal. While these products remain legal, for now, they too will cause a **failed drug test** as the *Delta-8* and *Delta-10* compounds produce the same metabolites as *Delta-9*, plain-old THC-bearing marijuana, the kind that's federally illegal.

Amid the madness in the market for cannabis products and the ample confusion, an untold number of truckers have had their careers sidelined due to positive drug tests for THC.

From January 6, 2020 to June 1, 2021, 80,098 urine drug tests administered under the mandatory federal program for CDL drivers came back positive. More than half of those tests found marijuana.

The video tracks the legality of different products and states the official DOT position on CBD. Learn what you need to know about the intersection of marijuana, CBD, and trucking law.

FMCSA Updates Vision Standard for Certain Truck Drivers

The Federal Motor Carrier Safety Administration has published a final rule that, when it takes effect March 22, will allow truck drivers who do not satisfy certain vision requirements with one eye or the other to still be physically qualified to drive a truck without an exemption.

The new rule applies to drivers who do not satisfy, with their worse eye, either the existing distant visual acuity standard with corrective lenses or the field of vision standard, or both.

Currently, these drivers cannot operate in interstate commerce without an exemption from FMCSA. The new alternative vision standard replaces the current vision exemption program as the basis for determining the physical qualification of these drivers.

Drivers who physically qualify under the new alternative standard for the first time will be required to complete a road test administered by their employer before driving interstate.

Drivers are exempt from the road test requirement if they have three years of intrastate or exempted interstate trucking experience with the vision deficiency, hold a valid federal vision exemption, or are medically certified under the previously administered vision waiver study program.

Before being medically certified under the new alternative vision standard, a driver must have a vision evaluation conducted by an ophthalmologist or optometrist. Then, a medical examiner performs a physical exam and determines whether the driver meets the alternative vision standard, as well as FMCSA's other physical qualification standards.

To be physically qualified, a driver must have at least 20/40 vision in the better eye and a field of vision of at least 70 degrees in the horizontal meridian, be able to recognize the colors of traffic signals, have a stable vision deficiency, and have had sufficient time pass since the vision deficiency became stable to adapt to and compensate for the change in vision.



How to Confront the Post-Crash Litigation Threat

Start at the Scene of the Accident



A trucking company's **first line of defense** against **post-crash litigation** is an **operator at the scene** of the accident, **attentive to any injured party** and **fully aware of the risk** of all moves made in the **aftermath**.

Holding onto your **humanity in the hectic, litigious, fear-inspiring post-crash environment** is a tall order, yet that **basic humanity** is an **owner-op's first weapon** against **aggressive litigation** at the scene of any **accident**, however **minor**. That's in addition to a **bevy of time-worn tactics** suggested by **defense counsel** and **insurance companies** with long **experience fighting back** against **aggressive claimants** and their **attorneys**.

If you **haven't experienced** such **litigation** before, there's **evidence to suggest** it could well **reach your business' doorstep** at some point in your career.

Ted Perryman is a **St. Louis-based defense attorney** frequently representing **trucking companies** in **crash cases**. "One of the **things** you see about **50% of the time**" immediately after an **on-highway incident**, he said, is the "**first thing the truck driver** does is call [his/her] **company**." The driver does that **before dialing 911**, before even "**checking on the other folks** involved in the **crash**."

Sentry Insurance **claims director** Larry Harlow's seen the **phenomenon**, too. "If the **driver just sits in his truck**" without **checking on/engaging** with other **parties** and/or **potential witnesses** on the scene, "you can **imagine how that looks** to a jury" **months/years later** at trial.

It's **understandable** a truck driver at the **scene of an accident** is "**nervous, scared, worried about their job**," Perryman added. He **urged** trucking company owners to **create supportive environments** to help **reduce** the fear involved in **post-accident chaos**. No matter **who's at fault** in the crash, "**we need to provide** the driver a **great deal of support**" initially. The driver "**is our first person** on the scene and the **best at** [initial] **investigation**."

Use a **camera if you carry one** on the truck – your **smartphone** is likely **perfectly suited** to the task – and **capture photos** of the **final resting place** of all vehicles, and **any physical damage** to the roadway. In **highway-crossover type cases**, guardrail damage and **tire tracks in the median**, too.

"If there are **witnesses available**," Perryman said, it's **helpful to gather** names and **contact information**. As a defense attorney, he feels it **can be** "**important** for us to get to the **witness first** – sometimes the **story changes**, otherwise."

In your **efforts to be helpful** and understanding with **other parties involved** in the crash and with **witnesses on-scene**, however, **don't forget** the threat of litigation that could **rear its head**. As **Interstate Trucker firm President** and attorney Brad Klepper has stated about **accident-scene information gathering**, "Always **keep in mind** your own **legal protection**. Part of that is **being careful** what you **volunteer at the scene**."

If you're **hauling leased to** or employed by a **motor carrier**, that carrier's **safety department** or **lead rep** will be your **go-to** for **post-accident procedures**, Klepper noted. "**You may be excited**. You may be **scared**. But the **safety department's job** is to **handle accidents**, so follow their **instructions**."

For **independents** with their **own authority**, your insurance company may well be your **best source of support**. Harlow notes his **adjusters** and/or **investigative teams** don't get to the **scene of every** crash themselves, but it's **not unheard-of**. Once the scene is **secure** in terms of **checking on** any **involved parties**, a call to the **insurer** makes sense.

"If the **insured calls** and they're **still on the scene**," he said, "we can **patch** that call through directly to **one of our adjusters** to guide the **insured through** documenting **necessary evidence**."

Backing up the front lines

For **operators on-scene**, communication is **important** for **appropriate support**, Harlow said. It's also **not uncommon** for Sentry to **send out an independent adjuster** to the scene to **help guide** a driver, and **ultimately** his **employers back** at the office, through the process. "We **find a lot** with some of our **small motor carriers** that they **don't have an office staff** that might **readily pull** needed documents – **communication** is a two-way street **when we're looking** for that **information** and we're **trying to evaluate**" responsibility and **just how to proceed**.

Oftentimes in **cases where civil litigation** is in **play**, it's common for Harlow and company to **see a 10-page letter** from a **plaintiff's attorney** demanding the **motor carrier preserve documents** and records. Don't have the **logbook records** from the day of the **crash**? Plaintiffs' attorneys can "**make an argument** that you **spoiled evidence**, and that again **gets problematic**."

That early **call to your insurer** or **safety department**, as the **case may be**, can help ensure **expectations** of document preservation are met. **Dashcam evidence** can be **key in terms** of showing the **moments of the crash**.

“A video of an accident that clearly shows somebody else was the one changing lanes can go a long way” toward arguing a driver’s/carrier’s case, Harlow said. “Even a bad video,” one that shows a measure of responsibility for the crash outcome, “keeps us from going down the path of trying to prove a liability argument that will end up failing and alienating a jury. If we know liability is reasonably clear up front,” it’s easier for insurers to take the right path, whether settling the case or pursuing a court victory.

Preservation of data can extend beyond the data that you control, too. For defense attorney Perryman, it will include data downloads from the claimants’ vehicles as well. “We want to preserve all that if we can.”

Timely reporting of claims to the insurer in any incident can also provide other evidence dividends that might not be obvious. Security cameras at businesses in the area may have captured the crash as it happens, for instance, as Harlow pointed out. Such cameras don’t often preserve every bit of footage they capture indefinitely. Getting to it quickly can make a big difference in a case.

“A gas station close by is a prime example,” Harlow added. “We can send somebody out there – if nothing else, they get a copy of it on their phone, anything to get that information as soon as possible.”

Police body cameras that may have been in use on-scene are valuable evidence, too, said Perryman, who noted a case he’d seen more than once where his client’s driver noted “the plaintiff was walking around the car and nothing was wrong with him,” yet injuries were claimed. “If police had a body camera on, there’s a possibility there” to disprove those claims.

Your own truck’s dashcam can be a similar source. Regular readers of *Overdrive* may recall the story of a trucking company’s safety director’s successful navigation of the Federal Motor Carrier Safety Administration’s DataQs system to challenge a crash that was deemed a tow-away crash and thus included on the safety director’s CSA Safety Measurement System profile. The dashcam in the truck, however, had captured a police officer driving the passenger vehicle involved in the crash out of an intersection, clearly exhibiting that the vehicle was in fact drivable.

Don’t be afraid to look for evidence in surprising places, either, said attorney Perryman. If he gets quick notice of a crash from one of his clients, “within 24 hours,” he said, “I’ll do a social media search on the people involved. You might get witness information from their relatives.” He referenced drivers who’d taken YouTube videos in the aftermath of a 40-50-vehicle pileup in Wyoming. “We could almost re-create the accident from the videos. My client was one of the last ones in and hit the claimant vehicle,” yet “the claimant vehicle had been in three crashes prior to us.”

Before he’d located the wealth of video of the scene and the last parts of the crash as it happened, it had “looked like we were the only one.”

The many mistakes carriers and operators make

As Harlow suggested above, small carriers can do themselves a favor in the back office in preparation for the worst when it comes to post-crash litigation. Carriers’ vulnerabilities extend well beyond the crash scene when it comes to effective operator support.

DialVan Safety Director Sergio Hernandez also works on a part-time, as-needed basis as a service provider to smaller motor carriers in his area, Laredo, Texas. He conducts mock audits of those businesses, carriers of sizes anywhere from 1 to around 30 trucks, he said. “There are thousands of them here in Laredo. The majority of all of them fail miserably, since they have no safety program” in place.

Plaintiffs’ attorneys know this all too well, Hernandez said. “We are their bread and butter.”

Attorney Perryman called absolutely “amazing the extent that plaintiffs’ lawyers go through carriers’ driver qualification files with fine-tooth combs. To us, we look at that being on the compliance side” of the management equation, something maintained merely to check a box for a federal or state auditor. Yet Perryman urged carriers to look at it as risk-management, too.

“Plaintiffs’ lawyers are 100 times worse than DOT officers are at making sure the qualification files are up-to-date and correct,” he said.

Perryman was speaking in June of 2021, and the prior week he’d been involved in a long deposition around a crash case where inconsistencies in the driver’s qualification file reared their head. The driver had filled out an online initial application for employment at the carrier where he said “his license has never been suspended,” Perryman noted. Yet on the paper application he filled out when he was actually physically present at the company he’d said the opposite, “and both were in the file – there was no documentation that anybody had ever talked to him” about the discrepancy.

There was no suspension noted on his Motor Vehicle Record, and it turned out a move from Pennsylvania to Louisiana and a lapse in the CDL had been the reason the driver had indicated a suspension.

“Pull that **driver qualification file** out right after the **accident**,” Perryman advised. “If there are **inconsistencies there**, we can **address that up front**. No matter how **big your size**” as a **motor carrier**, there’s **always bound to be “something in the paperwork that’s just not quite right.”**

In **prior reporting** from **CCJ**, Annette Sandberg, **CEO of TransSafe** and former **Federal Motor Carrier Safety Administration** boss, suggested that **carriers work to get in front of the narrative** post-crash.

“What you **find with people** on the **defensive** is they **don’t talk to the press**. I don’t know that that’s **always a good strategy**,” she said. “It doesn’t hurt to **make it look like** you’re **aggressively investigating** an accident. If you **fire a driver**, come out and **say it**. A lot of **companies think** they can **hunker down** and wait it out, but in **this day and age**, it never **goes away**. If your story **isn’t out there**, nobody’s **going to hear it**.”

Additionally, **if you know your driver** is at **fault**, “jump on it and **deal with it early**,” she said. “Don’t **force them** to take you **to court**.”

Don’t let your **cellphone be a liability**, either. “**Cell phones** are killing me on these **accidents**” in efforts to **defend truckers** from responsibility, said Perryman. “If a **driver is driving 9 to 10 hours a day**, **how many hours** is he or **she on the phone**? It’s incredible the **number of hours**” he’s seen. “**Six, seven, eight hours a day** on the phone. Chances are that having **drivers not on the phone** is **almost impossible**. They’re all **legal**, but let’s face it – there’s a **belief out there** that if you’re **talking on your phone** you’re **distracted**.”

In **front of a jury** drawn from among the **general population**, as has **been said** time and time again, it’s a **problematic data point**.

OOIDA Says Report on Drivers' Drug Use 'Meaningless'

OOIDA refutes report claiming operators' hard-drug use

A January 11 study from the **Trucking Alliance** and the University of Central Arkansas that alleged truck drivers use cocaine more than marijuana, and that the **FMCSA Drug and Alcohol Clearinghouse** should have booted an additional 60,000 or so drivers, has met with a sharp rebuttal from the **Owner-Operator Independent Drivers Association**.

The report circulated widely in trucking media as a piece of advocacy for the use of hair testing instead of simply urine testing. **OOIDA** took aim at the study's lack of peer-review and suggested that it was a piece of marketing rather than a true scientific publication.

Essentially, **TA's** study simply showed the results of its members' hair testing regime and compared it to **Drug and Alcohol Clearinghouse** urine testing results. Since hair testing picks up on hard drug use at a higher rate than urine testing, it then projected the results of the hair testing onto the larger urine-tested population

OOIDA raised many issues **Overdrive's** reporting previously uncovered, calling the study "meaningless" because it failed to control for possible confounding factors. Additionally, **OOIDA** suggested that hair testing likely misses the point of drug testing entirely.

"Hair testing may indeed indicate the use of other drugs, but it's important to define 'current use'. Hair testing may show drug use from weeks or months previous to the test, but hair testing does not and cannot detect current use indicating that the driver is under the influence at the time of the test, "the report read. "This is the reason that hair testing cannot be used for after-accident testing with any accuracy. It takes a period of days or weeks before there are any detectable signs of drug use."



MSHA Stresses Power Haulage Safety

In 2022, the **Mine Safety and Health Administration (MSHA)** will continue to focus on powered haulage safety. It is fair to say that powered haulage safety is one of – if not THE – highest priority for **MSHA**. Out of 36 fatalities reported by **MSHA** in 2021, 16 were power haulage accidents.



MSHA identified powered haulage safety as a priority back in 2017. In 2018, **MSHA** launched its Powered Haulage Safety Initiative. Since that time, **MSHA** has since devoted considerable resources to enforcement, education, training and outreach on powered haulage safety.

Learn about some of the safety practices and technologies that can help prevent powered haulage accidents at surface mines. Watch this [informational video](#).

WINTER SAFETY CHECKLIST FOR SURFACE MINES

- ▶ Remove snow and ice from roads and walkways
- ▶ Drive slowly and keep space between vehicles
- ▶ Check highwalls, benches and roadways, especially after each rain, freeze or thaw
- ▶ Examine equipment for exhaust leaks
- ▶ Maintain equipment to operate safely in cold weather
- ▶ Apply sand or salt to walkways to improve traction
- ▶ Always wear your seatbelt
- ▶ Check for slip and trip hazards
- ▶ Wear footgear that grips



Click this [link](#) for a Winter Safety Checklist Poster

Safety Program for Surface Mobile Equipment

MSHA proposes to **require** that mine operators employing six or more miners develop a written **safety program** for mobile equipment and powered haulage equipment (*except belt conveyors*) used at surface mines and surface areas of underground mines. The written **safety program** would include actions mine operators would take to **identify hazards** and risks to **reduce accidents, injuries, and fatalities** related to surface mobile equipment. Under this **proposal**, mine operators **would have flexibility** to develop and **implement a written safety program** that would **work best** for their **mining conditions** and **operations**.

MSHA encourages mine operators with **five or fewer** miners to mitigate **surface mobile equipment hazards** at their mines to the **greatest extent possible**.

MSHA would **provide assistance** in the **development** and **improvement of safety programs** for mines **employing five or fewer** miners. Also, **MSHA** would **encourage state grantees** to focus on **providing training** to address hazards and risks involving surface mobile equipment in small mining operators.

This is one of **several actions** **MSHA** has taken to **reduce fatal and nonfatal injuries** involving **surface mobile equipment** used at mines and to **improve miner safety** and health.

The **comment period closed** on November 8, 2021; however, in response to a **public request**, **MSHA** re-opened the **rulemaking record for public comments** and held a **virtual public hearing** on the **Agency's proposed rule**. The **virtual public hearing** was held on **January 11, 2022**; and the **comment period will close on February 11, 2022**.

See [more information](#) about the hearing and extension of comment period.



How to leverage your safety skills for career opportunities

Few people are happy to be stuck in the same position for their entire careers. This isn't just a matter of having lofty ambitions. Progression is a route to supporting the lifestyle you want. You might feel you have ideas that could be innovative in your industry. Whatever your reason for pursuing better career opportunities, you need to present yourself as a good investment.

There are various ways you can approach this, but one of the most effective is by leaning into safety skills. It doesn't matter what area of industrial operations you want to work in. A background in safety can be instrumental in pushing you above the competition.

Let's go through a few of the things to bear in mind when leveraging your safety skills.

Where are the opportunities?

Your first step is to understand where the potential opportunities for leveraging your safety skills lie. This primarily helps you to better direct your efforts in a relevant way.

Some areas for further research can include:

Safety specializations

Perhaps the most obvious place to start is specialist safety careers. Many of these revolve around maintaining Occupational Health and Safety Administration (OSHA) regulations. There is a good job growth outlook particularly for the roles of occupational health and safety technician or specialist. Both positions involve analyzing and testing workplace conditions, with the latter role integral to designing programs to make improvements. The technician position generally doesn't require specific qualifications. This means you can usually gain entry by leveraging your on-the-job safety experience.

Management

Safety is increasingly becoming a part of industrial management positions. Your responsibilities aren't limited to maintaining efficient operations. You need to be able to achieve a productive environment that also achieves the highest possible safety standards. Your safety skills can be particularly valuable to businesses looking for warehouse, industry, or plant managers. Part of your focus is being able to demonstrate you know how to integrate safety standards while keeping the business profitable.

Human resources

Human resources (HR) positions can be a good direction for your safety knowledge. This isn't just a position in which you're hiring and firing people. Industrial businesses today are placing more focus on creating a holistic culture of safety throughout the company. As such, HR professionals have a responsibility to develop safety training programs. They'll also analyze whether these are effective. Your safety skills can be instrumental in making you a part of a company's efforts to build a positive environment. You can keep workers and the public safe while also helping the company achieve a successful trajectory.

Honing your application

Once you've chosen your career goals and directions, it's time to start the application process. Don't be put off from doing this if you don't have the relevant certifications in place at the moment. Make it clear in any personal statements sections that you are dedicated to being a positive influencer in safety. Often, businesses are keen to engage with candidates they can see are open to development.

Your **resume is the most important** part of the **initial application**. Many companies today are **using application tracking systems (ATS)** in their **recruitment**, but these are **no longer just keyword-pulling** programs. As such, you **must approach writing** your resume as a **skills and experience showcase**. Be sure to give a **good balance** of your **technical skills** and your **so-called soft skills**. The latter are those which **suggest leadership**, communication, and **teamwork**. It's important not **just to list your skills**, particularly those **related to safety**. Give **context to your abilities**. Talk about how **you've used your knowledge** of safety **procedures** to make the workplace **more positive**. Outline **achievements showing** you've overcome **certain safety challenges**.

Importantly, don't just take a **scattershot approach** to your **applications**. You shouldn't be **issuing exactly the same resume** for every position. **Research the company** you're applying for and the **position they're offering**. Look into their **ethos or values** — especially in **respect of their safety** commitments. Tailor your **personal statements** on your resume and **applications to reflect** these values and **imperatives**.

Making your pitch

The **interview process** is not just one of the **final gateways** to a **new safety job**. You need to **think about it** as one of your **best opportunities** to express why your **safety skills** and your **attitude help to make** you the best **possible candidate**. In essence, you are **pitching your value** in the hope **they'll invest in you**.

Remember, most **initial interviews today** are being **conducted remotely**. This can be an **uncomfortable experience** for a lot of people, **particularly if you haven't** had much **experience communicating professionally** in this way. Your **ability to nail a remote job** interview can be **helped by taking some careful** and organized **preparatory steps**. These include **setting up a clear** and uncluttered **space around you** — consider this an expression of your **approach to a safe workspace**. Remember to **dress professionally**; this can **certainly help your confidence**, too. Wherever possible, **do some practice runs** with a colleague in the **industry**. They may be able to **throw up some safety-related** scenarios or **ideas you hadn't considered**.

One of your **primary points** of preparation here is your **contribution to the interview**. Asking the **right questions** can be important. Use this as a **chance to start discussions** demonstrating a **little more of your safety** knowledge. Ask about how the **business is planning** to approach the **security of new technology** coming down the **pipeline**. Start a **conversation** about their **safety-related business values**. This can **cement you in the minds** of the **interviewers** and also demonstrates **soft skills in communication** that businesses are **looking for** in their **environment, health, and safety professionals**.

Conclusion

Your **safety skills** and experiences can be **instrumental in opening** up new **career opportunities**. Take the time to **explore the wide variety** of roles **safety abilities** can contribute to. Take an **approach to your resume** and interviews **leaning into not just your skills** but their **relevance to the individual** business you're **engaging with**. With some **careful consideration**, you can make a **positive start** in a **rewarding new path**.

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

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