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EDITORIAL

We can hear the moaning and groaning and almost feel the gnashing of teeth. Yep, it is time to submit the COC worksheet for many CSHMs. Almost always the due date sneaks upon us and we find ourselves scrambling to put together a log of all the activities we have done for the last five years. Twice we made a new year’s resolution to do a better job of maintain a log and twice we failed.

This year ISHM added webinars and recruiting as a way to earn COC points. Hopefully this will help some folks.

ISHM continues to grow and be more influential in the safety management community. We can always use your assistance to help with the process. If you have a skill set and would like to share it with us drop a note and we will get you on a committee that matches your skills and desires.

To all of you from the ISHM staff: Happy New Year!!!!!!!!!!

[Signature]

Ask the Lawyer:
Question: An incident occurred at our facility. OSHA conducted an investigation but did not issue any citations related to the incident. Now our Company was sued. I was advised that even though our facility operated in full OSHA compliance, we could still lose in court over the incident. Why is that?

Answer: For purposes of this answer, I am making the assumption that the incident was related to some aspect of your facility’s equipment or operations, resulting in either a personal injury or property damage. Without knowing the nature of the incident or the basis of the lawsuit, I can still explain certain general legal principles, with the understanding that every incident and every lawsuit is unique and stands on its own merits.

Personal injury and property damage lawsuits are usually based on the theory of negligence. In other words, the injured party, who is known as the plaintiff, files a lawsuit in court against the party that allegedly caused the injury, who is known as the defendant. In a negligence lawsuit, the plaintiff must allege facts that support the following legal elements:

1) The defendant owed the plaintiff a duty to exercise due care;
2) The defendant breached that duty;
3) The breach of the duty proximately caused the incident; and
4) As a result, the plaintiff suffered damages.

To determine whether the defendant breached a duty to exercise due care, the plaintiff must establish that the defendant violated a standard of care based on what a “reasonable person” would do under like circumstances. Not surprisingly, this is known as the “reasonable person” standard.

Compliance with OSHA’s standards and regulations is one aspect of what a “reasonable person” would do under like circumstances, but does not necessarily reflect the complete picture of what a “reasonable person” would do. Of note, OSHA prescribes only minimum safety standards, but in certain circumstances a “reasonable person” may need to exceed OSHA’s minimum requirements. A “reasonable person” may also need to demonstrate compliance with any number of other things, such as applicable consensus standards including ANSI, ordinance provisions, contract terms, internal company procedures and plain old common sense. Every case and every circumstance is different -- what is reasonable in one case may not necessarily be reasonable in another case.

Although compliance with OSHA’s standards does not serve as a complete defense in a negligence lawsuit, it is the crucial first step. After all, it is far more likely that a defendant will be found liable in a negligence lawsuit if he did not act in full compliance with OSHA’s standards.

Darren Hunter is a partner and an experienced OSHA practitioner in the Chicago law firm of Rooney Rippie & Ratnaswamy LLP. This column does not constitute legal advice or the formation or proposal of an attorney-client relationship to or with any person or entity. In addition, this column should not be understood to represent the views of ISHM, the law firm, the individual attorneys at the firm, or of any of the firm’s clients or former clients.

Darren J. Hunter
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Managing lifting equipment

It seems that we constantly hear about incidents involving crane operations, I suppose one reason is that they tend to be spectacular. We do not hear so much about incidents involving smaller cranes such as boom trucks even though they are more likely to suffer an incident than the larger cranes.

OSHA chimed in with new and revised rules concerning crane operations to include a mandate for certified operators. Sadly this is now mired in political maneuvering and negotiations.

What has resulted is certified crane operators where these individuals have to demonstrate ability to calculate crane capacity for a given condition and the ability to operate a crane by controlling a load through a prescribed course.

This has been followed by rigger and signal person certifications. All in the hope that with so many certified individuals involved in lift operations that incidents would decline.

Yet another welcome certification will be the Lift Director. According to the CIC LD committee:

CIC’s Rigging Committee is currently working on a new certification category for Lift Directors. “Much of the knowledge, skills, and abilities needed to be a Lift Director are already identified under the Rigger exams,” explained Mike Parnell, Rigging Committee Chairman and President of Industrial Training International, Woodland, Wash. “Additional knowledge areas include mobile crane operations, lift planning and procedural and personnel activities during load handling,” Parnell said.

The reason CIC felt it was important to develop a certification for this position is because the designation of lift director is increasingly being identified in various standards, including ASME B30, OSHA 1926.1400, and the yet-to-be-released ASME P30 standard, explained Parnell. Item writing and initial development has already begun on the Lift Director certification program, and the goal is to have it ready to launch by ConExpo-Con/Agg 2014.

For years cranes were not afforded enough attention for a lot of reasons:

1. OSHA inspectors did not understand cranes and were not sure what was safe or unsafe

2. Safety managers faced the same dilemma

3. Estimators did not fully understand cranes and if they specified a 100 Ton crane for a 90 ton object they thought it to be sufficient not realizing that the crane capacity decreases significantly as we add distance or decrease boom angle or have unneeded lifting attachments installed

4. Upper level managers did not fully understand crane operations

It is difficult to find recent crane statistics but a review of those available point to a wide range of causes of incidents. In my mind most of those causes could be eliminated by management. Total oversight of a crane lift
reduces the incident rate that is why the large and expensive lifts generally do not have the same incident rate as other lifts.

Should we require a written plan for every lift? I have been at job sites that instituted that requirement and of course it generated mass complaining, most notably that the job just could not be completed in a timely fashion with these onerous requirements but they could not explain how much money or time would be lost due to an incident.

How many safety managers really understand crane operations to include reading a load chart? When we get more educated concerning this function we will be better able to help prevent a disruptive occurrence.

How can we get senior company managers on the same page and require strict attention to safe crane operations. They hear the complaints about reduced production, but are we able to explain, in $$ how much an incident costs. Generally a crane is the most important piece of equipment on a construction site or a busy plant or warehouse. Operations come to a skidding stop when the crane is not available, what is that cost?

We can do better as safety professionals to improve safety in lifting operations.

Larry

This is my opinion and in no way expresses the opinion of ISHM or any other entity.

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**Board of Director Thoughts: John Principe III**

As safety professionals, we focus a large portion of our effort and attention on protecting people, property and the environment. For some, the safety profession came about through a desire to serve and help others, while many of us fell into the safety profession through other assigned duties. Regardless of how you entered the profession, all who call safety their career have a passion to protect the health and safety of others and the environment in which they work. As another year comes to a close and we prepare to welcome a new one, what a great time to reflect on accomplishments and look forward to setting new goals.

Is this the year that attaining a safety certification is on your strategic list of goals and objectives? You may ask yourself, when is the right time to consider pursuing certification? I would challenge you to make this a priority in your professional career. As our daily lives evolve both personally and professionally, there will always be other priorities that seem to demand one’s attention. For this year, try to add a focus on certification to your professional goals and strategic plans.

I challenge you to include certification in your professional and personal goals this year. As we continue to see economic and financial uncertainty in the workplace, we need to ensure safety as a value-added necessity, not a potential front line cut to produce cost savings. One way to add value is through professional certification. As the marketplace becomes more competitive, most employers are seeking professional certification as a key qualification component. While employers seek to hire the most talented team members, we must evaluate the complete package of education, training, work experience and professional certification. Professional certification does not necessarily mean competence, but like it or not, in today’s competitive market it is often required to meet job qualifications.

ISHM has a certification to fit your needs. Whether you are a seasoned safety professional or new to the profession, ISHM has an array of certifications to fit your personal and professional goals. ISHM certifications
are the only certifications that focus entirely on the safety management process. If you make the choice to invest in your career through gaining professional certification, the professional staff and board members at ISHM are here to provide assistance and guidance throughout this process. As we ring in a new year, I encourage everyone that has been considering certification to include it in this year’s resolutions and follow it through to realization. I guarantee it will be a decision you will not regret, and one that will help foster your career for years to come. I wish everyone a safe and very prosperous new year!