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Law of Unintended Consequences: Is AB 1127 Causing Workers to Reject Supervisory Positions?

OAKLAND — A possible side effect of 1999's landmark AB 1127 is that a provision meant to bring more accountability to management is forcing forepersons and front-line supervisors to rethink whether their positions are worth the potential liability.

Ever since AB 1127 was introduced just after Gray Davis took office as governor, safety and health managers have expressed reservations about the so-called "be a manager, go to jail" part of the bill. In recent months, there have been rumblings from an unlikely source — unions representing construction workers — that AB 1127 needs fixing to protect the very people it was supposed to protect.

The issue was raised at the recent Cal/OSHA Advisory Committee meeting by Robert Downey, a Sacramento-area safety consultant who represents the Construction Employers Association on the committee.

California Labor Code §6425(a):

"Any employer and any employee having direction, management, control, or custody of any employment, place of employment, or of any other employee, who willfully violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and that violation caused death to any employee, or caused permanent or prolonged impairment of the body of any employee, is guilty of a public offense...."

Supervisors are refusing positions, he said, because they fear prosecution for safety and health violations if there is an on-the-job accident in which a worker is killed or seriously injured. And if both the company and the supervisor are prosecuted, the supervisor could be on his or her own for legal representation. An attorney representing the company couldn't also represent the supervisor.

Michael Mason, the chief counsel for the Division of Occupational Safety and Health (DOSH), noted that supervisor prosecutions always have been possible, not just post-1127. "There have been a couple of cases" over the last 30 years or so recommended by DOSH's Bureau of Investigations (BOI), but not many, he added, and nothing since the law was passed. "Every case is factually driven," Mason said. "There are no preconceived notions."

AB 1127 continued on page 8021

Vertical Trellises Best for Vineyard Pruning, UC-Davis Researcher Finds

A study conducted by a University of California-Davis researcher shows that an increasingly popular trellising system in California vineyards also is yielding protection from musculoskeletal disorders (MSDs) for field workers.

A team headed by Dr. Fadi Fathallah, assistant professor at the university's Biological and Agricultural Engineering department, studied 23 workers using five simulated types of trellising systems. His team found that the vertical shoot positioning (VSP) system, which is commonly found in the Napa and Sonoma winegrowing regions and is finding increasing acceptance throughout California, showed the lowest level of risk, on average, wrist and back injuries during pruning and harvesting.

The optimum height range for pruning and hand-harvesting fruit is between 32 and 40 inches, the study determined. Workers using the VSP system were found to be in the "neutral" positioning range during pruning the largest percent of the time, with an average of more than 73 percent.

"We're really going to try to advocate the VSP or maintain" the optimal fruit height of other systems, Fathallah told COR. He added that VSP is easier to install than other trellising systems and produces yields similar to the others. An unanswered question is whether the fruit quality is the same as with other systems. But he has noted that vine positioning doesn't make that much difference in grape quality.

Manual pruning of dormant vines is one of the most expensive and laborious vineyard chores. Field workers may make thousands of cuts per day. Harvesting, too, can take its toll. "The [MSD] symptom rate is very high," Dr. Fathallah said. "It's been fairly well documented that there have been a lot of symptoms in the extremities and the lower back because harvesting requires both the back and the lower wrist."

IN THIS ISSUE

NEWS

00-8019 to 00-8022

- Fed-OSHA Issues Hazard Bulletin on Gas Lines
- Cal/OSHA Advisory Committee Update
- Legislative Update

DECISIONS

40-5093 to 40-5100

FILING INSTRUCTIONS: File pages 00-8019 to 00-8022 behind page 00-8018 following the NEWS tab. File pages 40-5093 to 40-5100 behind page 40-5092 following the DECISIONS tab.

The workers' actions were monitored by use of high-tech equipment, including a Motion Analysis System that captured wrist movement information, and a Lumbar Motion Monitor that tracked trunk motion in three principal anatomical planes. The information was sent by telemetry to a nearby computer and analyzed. The study measured the ways various heights affected the amount of motion required to complete the task and the amount of stress it generated. The trellises ranged from two to four feet above the ground.



A worker simulates pruning while being monitored for wrist and trunk motion in a UC study on musculoskeletal disorders in the vineyard.

Dr. Fathallah added that post-study interviews backed up the data. "When we asked [participants] to subjectively rank the trellising systems, their answers matched the motion analysis," he said. "The VSP came out the best."

The research was partially funded by the National Institute for Occupational Safety and Health. The research team included John Miles, Julia Faucett, James Meyers, Ira Janowitz, Andrew Kato, Erica Garcia, David Reiter, Brandon Miller and Diana Tejada, all of UC's Agricultural Economics Research Center.

Fed-OSHA Issues Hazard Bulletin on Underground Gas Line Danger

In the wake of a 1998 accident in which four people were killed, the federal Occupational Safety and Health Administration has issued a bulletin warning construction crews about the dangers of working around underground gas lines and the best response in case a line is breached.

The incident happened in December 1998 when a cable company installation crew ruptured an underground high-pressure gas line while installing a utility pole support. About 40 minutes after the gas leak started and while crews were working to stop the leak, accumulated gas in the basement of a pizza parlor ignited and caused a fatal explosion.

The National Transportation Safety Board (NTSB) determined that the explosion was related "to the lack of adequate procedures" by the cable company to prevent damage to underground utilities, according to Fed-OSHA. "Contributing to the severity of the accident was the company's delay in notifying the utility operator and proper authorities.

The crew notified a company supervisor within a minute of the rupture but did not immediately notify the owner of the gas line or emergency responders.

NTSB also published a 1997 study concluding that excavators should formulate an emergency response plan appropriate for the construction site and ensure that employees working at the site know the correct action to take if a buried line is damaged, OSHA noted.

OSHA recommends:

- Establishing a detailed work plan and training employees prior to excavation on the proper procedures of determining the locations of underground utilities; contact and coordinate with utilities to establish locations of the underground installations; and take all necessary precautions to prevent damaging underground lines.
- If a utility line is damaged, OSHA said, the utility operator is in the best position to determine the hazards associated with the damage and to "implement appropriate countermeasures." The agency recommends notifying the utility operator promptly. If hazardous gases or liquids are being released, emergency responders should be immediately notified.

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