IS YOUR PALLET RACKING A LATENT OSHA VIOLATION AND ABATEMENT NIGHTMARE?

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In October 2018, OSHA's Region 2 (NY, NJ, Puerto Rico) and Region 9 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands) adopted Regional Emphasis Programs ("REPs") that target warehousing, storage and distribution operations. The REPs have an initial effective period of up to five years (2023), which likely means a good number of warehousing inspections will be conducted over that period of time. While the REPs are primarily focused on enforcing regulations relating to powered industrial trucks and material handling equipment, they also target unsafe practices and inadequate training relating to the hazards associated with standing on and falling from equipment and vehicles, falls from pallets and stacked product, struck-by/caught-between injuries, unchocked trailers, egress issues, and fire suppression. Curiously, the REPs make no direct mention of perhaps one of the most obvious tie-ins to nearly all of these hazards, and the one piece of equipment that may be ubiquitous in the targeted industries - warehouse racking and storage systems. It would seem nearly impossible for OSHA to conduct an REP inspection of the targeted hazards in a warehousing operation without walking past and observing a considerable quantity of pallet racking in the process. And, of course, even passing observations of damaged or deficient racking create the potential for violations to be found and cited under the "plain view" exception.

Now, OSHA may not have mentioned pallet racking in the REPs because OSHA doesn't exactly have a specific standard governing pallet racking under the "Materials Handling and Storage" regulations found in Part N of 29 C.F.R. 1910. The most potentially relevant standards would seem to be: 1910.176(a) relating to the use of materials handling equipment in aisles and passageways; 1910.176(b) setting forth the general requirement for secure storage of materials; 1910.176(c) and 1910.22(a)(1) governing housekeeping in aisles and passageways; fall protection and falling objects under 1910.28; and 1910.159(c)(10) requiring a minimum of 18 inches clearance between fire suppression sprinklers to the "material" (i.e., racked product) below. Any or all of these may have indirect relevance to the installation, placement or use of warehouse racking, depending upon the circumstances. None of these regulations, however, speak directly to the condition or crush-by and caught-between hazards presented by the possible tipping or collapse of the racking itself. As a result, employers sometimes fail to recognize or timely correct damage, defects, or hazards associated with the racking that is being used, and to which employees are

exposed, on a daily basis.

Rather than articulating racking requirements in a specific regulation, OSHA instead exploits the General Duty Clause under Section 5(a)(1) of the Occupational Safety and Health Act as the enforcement mechanism for racking-related defects and hazards. So it is important for employers who utilize racking to understand what those hazards are in order to train employees to recognize them and better manage and eliminate them in the workplace.

While one can surely debate the propriety of using the General Duty Clause in lieu of OSHA undertaking the administrative rulemaking process necessary to promulgate specific regulatory requirements, that debate is beyond the scope of this article. For present purposes, employers should instead take note of the common types of violations that OSHA issues through the General Duty Clause for racking-related hazards. Employers should also be aware that OSHA will sometimes identify ANSI standards such as the MH16.1-2008 "Specification for the Design, Testing and Utilization of Industrial Steel Storage Racks" as a reference point for abatement compliance and guidance on how to inspect and maintain the integrity of racking systems. Employers conducting warehousing and distribution operations would do well to familiarize themselves with that ANSI standard (and relevant updates and amendments) and develop a racking inspection and repair protocol around its principles.

Perhaps the most commonly issued racking violation results from the continued use of racking that has bent or damaged stanchions, vertical columns, or cross members. Section 1.4.9 of the above ANSI standard ostensibly recommends that racking exhibiting visible damage should be immediately unloaded, taken out of service, and properly repaired before being returned to service. The updated 2012 version of Section 1.4.9, however, goes a step further and calls for a design professional to certify that the repair restores the system to its original design capacity. Without adopting a specific OSHA regulation or ANSI standard reference, it is not made clear to employers what OSHA expects or requires.

Other commonly issued General Duty Clause violations include: (1) failure to bolt down or anchor the racking to the floor or other appropriate anchor points; (2) lack of load or capacity ratings on the racking; (3) overloading racking beyond its designed load capacity; (4) replacing cross-members, cross-beams, or other damaged racking parts with non-equivalents; (5) failure to maintain and inspect racking; and (6) lack of baseplates or feet on racking. Notably, all of these contribute to crushed-by, caught-between, and struck-by hazards that are a primary focus of the REPs.

Putting aside the hazard exposures to workers and the penalties that may issue in an OSHA inspection, the actual penalty amount may prove to be rather insignificant relative to the abatement costs an employer may face. Where racking has been neglected for a lengthy period of time, the cost and time involved to repair and replace large quantities of damaged racking, plus the disruption that would cause to operations, is likely to be quite significant. Therefore, from a safety, efficiency, and economic standpoint, employers whose business includes warehousing or distribution activities should develop a racking inspection, reporting, and repair protocol to ensure that racking is maintained in a safe condition on an ongoing, real-time basis.

If you have questions about this alert, you may contact Jason Markel, the Hodgson Russ OSHA Compliance Capabilities Practice Leader. If you received this alert from a third party or from visiting our website, and would like to be added to our OSHA mailing list or any other of our mailing lists, please visit us at: https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications..html.