

# OSHA

## UP TO DATE®



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## President Trump nominates Scott Mugno to head OSHA

President Donald Trump on Oct. 27 nominated Scott Mugno, vice president of safety, sustainability and vehicle maintenance at FedEx Ground, to lead OSHA as the assistant secretary of labor.

If confirmed, Mugno would take over from Loren Sweatt, who has served as acting assistant secretary of labor since July 24. Sweatt is the agency's deputy assistant secretary of labor and President Trump's first OSHA appointee.

Mugno has worked at FedEx since August 1994, joining the company as a senior attorney. From February 2000 to December 2011, he was managing director of corporate safety, health and fire prevention until his promotion to vice president.

In his most recent role at FedEx, Mugno was in charge of "developing, promoting and facilitating the safety and health program and culture," a White House press release states.

Sweatt's predecessor, Jordan Barab, on his Confined Space blog, wrote that "Mugno is clearly knowledgeable about

safety and health, although he has a few upsetting notions."

Barab points to a 2006 article in *Business Insurance* that reported on an event



Mugno

at which Mugno, the current OSHA subcommittee chairman of the U.S. Chamber of Commerce's Labor Relations Committee, said, "We've got to free OSHA from its own statutory and regulatory handcuffs." The report also notes that Mugno said some of the agency's regulations should have a fixed time period until

discontinuation – known as sunset provisions. The Chamber of Commerce is a noted regulatory opponent and filed suit against OSHA's Improve Tracking of Workplace Injuries and Illnesses final rule in January.

"There is currently nothing in the law that allows standards to be sunsetted, unless OSHA goes through a regulatory process determining whether they are still needed or not," Barab wrote.

Mugno also has served on a number of American Trucking Associations committees and is the chairman of the American Transportation Research Institute's Research Advisory Committee. ATA congratulated Mugno on his nomination in an Oct. 27 press release. "Scott is a very familiar face to ATA, having been a longtime and active member in our organization," ATA President and CEO Chris Spear said in the release. "Throughout that whole time, he has been a strong and committed voice for safety and responsibility.

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# OSHA delays crane operator certification requirements

OSHA is again delaying its crane operator certification requirements by one year, publishing a final rule in the Nov. 9 *Federal Register* – just one day before the regulation was set to go into effect.

The attempts at crane operator certification requirements began in 2010 with OSHA’s Cranes and Derricks in Construction Standard. The agency proposed that crane operators become certified via an accredited testing service, an independently audited employer program, military training, or compliance with qualifying state or local licensing requirements.

The regulation also required employers to ensure operators were adequately

skilled and properly instructed on how to operate the machines safely.

Those requirements initially were slated to go into effect in November 2014, but that deadline was pushed back for three years because of two still-unresolved issues. The first was that the standard required certification for both the type of crane and its capacity.

The second issue brought forth by stakeholders was that “certification” did not mean a crane operator was competent or experienced enough to control a machine safely. OSHA states in the notice that it is “not prepared to make a determination whether certification alone is insufficient.”

National Commission for the Certification of Crane Operators CEO Graham Brent “reluctantly” offered his support for the delay in a letter sent Sept. 29, one month after OSHA initially proposed a delay of one more year.

“Given the continued uncertainty among operators and employers regarding OSHA’s ultimate requirements for crane operator certification, NCCCO urges OSHA to act with all speed to ultimately issue its final rule well within the extension year on this vitally important safety issue, so that this matter may be resolved once and for all, for the benefit of industry as a whole,” Brent wrote.

## ASK THE EXPERT

with Rick Kaletsky

**Q:** *You’ve talked about not relying on OSHA (or similar) checklists. What have you seen that would not typically be found on a checklist?*

**A:** Various hazards generally are not included in such lists, as they aren’t clearly covered by OSHA standards. Other hazards are unlisted because it’s difficult to believe they would exist, or they’re too darned detail-dependent to note.

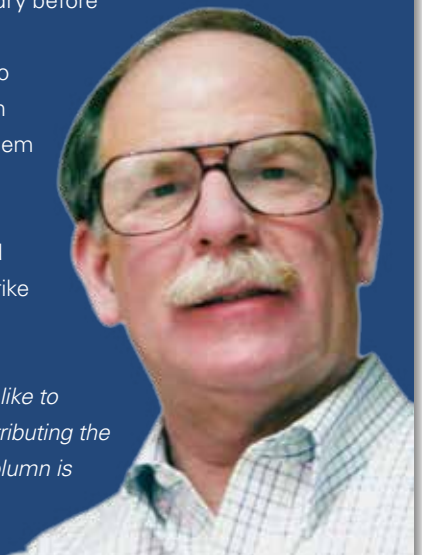
I’ll explain two situations I saw that were never on an inspection tip sheet. The lesson is not as much in these specific scenarios, but in the idea that you should observe, think and imagine what could go wrong.

1. Picture a cluttered janitorial closet. A long-handled mop is stored with the mop head at the top, incredibly close to an electrical duplex. Although the head didn’t appear wet during the inspection (the company’s defense), the excuse was weak, cutting it a little too closely to what could be an

imminent danger. Considering normal practice was to store mops in this inverted position near the duplex, what if the worker – who most recently used the mop – lacked diligence in ensuring the head was dry before abandoning it?

2. To access a shop sink, workers had to step around a more-or-less knee-high machine arm. There was no big problem when approaching the sink. Alas, the problem was in exiting the sink area. It was easy to back away/turn around from the sink, forget the obstacle, strike the arm, and then trip and fall.

*Editor’s Note: OSHA Up To Date would like to thank Rick Kaletsky for his years of contributing the “Ask the Expert” column. The above column is Rick’s last one for us. Thank you, Rick!*



Former OSHA inspector turned consultant **Rick Kaletsky** is a 46-year veteran of the safety industry. He is the author of “OSHA Inspections: Preparation and Response,” published by the National Safety Council. Now in its 2<sup>nd</sup> edition, the book has been updated and expanded in 2016. Order a copy at [www.nsc.org](http://www.nsc.org).

## In Other News...

### DOL releases draft of Strategic Plan, seeks comment

The Department of Labor is looking to expand OSHA's Voluntary Protection Programs and the Mine Safety and Health Administration's compliance assistance for mine operators, DOL states in a draft of its Strategic Plan for fiscal years 2018 to 2022.

The agency published a notice in the Nov. 7 *Federal Register* seeking comment on the draft.

The deadline for comments is Dec. 7. They should be emailed to [dolstratplan@dol.gov](mailto:dolstratplan@dol.gov).

### OSHA releases fact sheet on evaluation of Shipyard Competent Person programs

OSHA recently released a fact sheet on evaluating Shipyard Competent Person programs.

Before work is performed in a confined space on a vessel, a Shipyard Competent Person or a marine chemist certified by the National Fire Protection Association must decide whether the area is safe and recommend the proper protective measures. The confined area also must undergo atmospheric testing for flammability, oxygen content and toxicity.

The fact sheet outlines the knowledge and skill requirements for Shipyard Competent Person and certified marine chemists, along with the expected tasks for each job. It also includes a checklist for assessing Shipyard Competent Person programs, which features the following note: "Where assessment results indicate inadequacies in the program, it is recommended that a Certified Marine Chemist or a qualified safety and health professional examine the program and suggest methods for improvement."

Access the fact sheet at [www.osha.gov/Publications/OSHA3923.pdf](http://www.osha.gov/Publications/OSHA3923.pdf).

## OSHA STANDARD INTERPRETATIONS

*OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.*

### Walking-Working Surfaces and Fall Protection Systems

**Standard:** 29 CFR part 1910, subparts D and I

**Date of response:** Aug. 18, 2017

**Question/Comment 1:** The final rule includes a 6-month extension of the deadline to train workers on fall hazards and fall protection equipment (1910.30). (The National Association of Tower Erectors) does not believe that 6 months is sufficient for some NATE employers to complete that training. NATE requests that OSHA give NATE employers until November 18, 2017, to comply with the training requirements in the final rule. NATE said some of their employers who perform maintenance on antennas on commercial building roofs also need additional time to analyze fall hazards on thousands of roofs before they can provide fall protection equipment and train their maintenance technicians. Therefore, NATE requests that OSHA also extend the deadline for providing fall protection for employers who perform that maintenance work.

**Response:** The final rule's extension of the deadline to train workers on fall hazard and equipment ended on May 17, 2017, and the agency does not think it is necessary to extend it. NATE employers perform work covered by OSHA's Telecommunications (29 CFR 1910.268) and Construction Fall Protection (29 CFR part 1926, subpart M) Standards. Those standards require employers provide training on fall hazard and fall protection equipment to their workers. OSHA believes the training requirements in the Telecommunications and Construction Fall Protection Standards are equivalent to what the final rule requires since OSHA adopted the training requirement in the final rule from those standards. For example, the Telecommunications Standard, which applies to field work performed at field installations, requires that employers provide training on "various precautions and safe practices." OSHA has interpreted this as including personal fall protection equipment, such as personal climbing equipment (1910.268(c)). Employers also must ensure that workers do not engage in activities the standard covers until they have received required training. Similarly, the Construction Fall Protection Standard, which applies to NATE employers who perform construction activities on elevated walking-working surfaces (e.g., installing and repairing telecommunications equipment on towers and commercial building roofs), requires that employers train workers exposed to fall hazards (1926.503). That training must include the nature of fall hazards in the work area and how to recognize them; the procedures to be followed to minimize fall hazards; the correct use and operation of fall protection systems, including guardrail, personal fall protection, safety net, and warning line systems; the correct procedures for erecting, inspecting, disassembling, and maintaining fall protection equipment; and the correct procedures for handling and storing fall protection equipment (1926.503(a)(2)). In addition, the construction standard, like the final rule, requires retraining when the employer has reason to believe a worker does not have the required understanding and skills (1926.503(c)).

**Loren Sweatt**

*Deputy Assistant Secretary, OSHA*

Excerpted from [www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=31373](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=31373).

**To be continued in the January 2018 issue of OSHA Up To Date.**

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He is an outstanding choice to lead OSHA, and I look forward to working with him after his swift confirmation.”

Advocacy group National Council for Occupational Safety and Health urged a “rigorous and thorough” review of Mugno’s nomination in an Oct. 30 press release. Mugno’s next formal chance to meet senators likely will come when he appears before the Senate Health, Education, Labor and Pensions Committee. At press time, no hearing had been scheduled.

The HELP Committee then would vote on sending Mugno’s nomination to the full Senate for confirmation. Sen. Patty Murray (D-WA), ranking member of the HELP Committee, said she

“In his most recent role at FedEx, Mugno was in charge of “developing, promoting and facilitating the safety and health program and culture.”

wants to know how Mugno will protect workers.

“Mr. Mugno has spent his career working for big business, so I look forward to hearing how he plans to stand up for workers and continue OSHA’s active role in deterring corporations from endangering workers’ health and safety,” Murray said in an Oct. 31 press release.

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