No. 2011-2013

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO
CASE NO. 10-96138

LARRY HEWITT,
Plaintiff-Appellee,

v.

THE L.E. MYERS COMPANY,
Defendant-Appellant.

REPLY BRIEF OF APPELLANT THE L.E. MYERS COMPANY

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I. INTRODUCTION

This Court accepted this appeal to address two propositions of law that present a straightforward question of statutory interpretation: What must a plaintiff show in an employment intentional tort case to trigger the rebuttable presumption of intent for the "deliberate removal" of "an equipment safety guard" in R.C. 2745.01(C)? The opinion below held that a coworker's alleged statement to Plaintiff-Appellee Larry Hewitt that he "shouldn't need" his personal rubber gloves and sleeves while tying-in a deenergized power line to a utility pole "amounted to" the "deliberate removal" of an "equipment safety guard," triggering a rebuttable presumption of intent to injure that was sufficient to support the jury verdict in his favor. (App. Op. at 18, Merit Appx. 24.) It did so based on a policy judgment that the presumed intent theory must be broadly construed so as to be available to every employee using any "equipment" that may shield against "exposure" to some workplace "danger." (*Id.* at 10, 17, Merit Appx. 16, 23.)

In its Opening Brief, L.E. Myers pointed out that: (1) personal rubber gloves and sleeves do not fall within the plain and ordinary meaning of "equipment safety guard," which refers to a safety device on a machine (Merit Br. at 12-26); (2) such items are not "deliberately removed" when another worker suggests, however mistakenly, that an employee "shouldn't need" to use them (*id.* at 27-31); and (3) the broad construction adopted below is inconsistent with the structure of Ohio's workers' compensation system and a legislative history that reveals repeated attempts by the General Assembly to confine a liability it did not create (*id.* at 13, fn. 4, 17-21, 28), subject to limited and narrow exceptions.

Hewitt's Opposing Brief ("Opp. Br.") responds by proposing a rule of law tailored for a case-specific result. He leads with a request for a remand to address the alternative argument that injury under the circumstances of this case was "substantially certain" to occur (Opp. Br. at 13-15) — a request that is futile, since the broad "substantial certainty" theory he advocates was abolished by R.C. 2745.01(B). And, rather than explaining what "deliberate removal" and "equipment safety guard" mean, Hewitt focuses on the jury charge and suggests jurors could "sensibly" interpret these "undefined" terms to permit recovery for his failure to wear his rubber gloves and sleeves (*id.* at 17-23) where statements by other members of his crew "effectively removed" his "incentive to utilize" them (*id.* at 27-28).

Hewitt's focus on what jurors might think the statute means is a red-herring: the dispute here centers on whether there is sufficient evidence to support the jury verdict in his favor, and the law vests courts — not jurors — with the power to construe the statutory standards that govern the answer to that question. Thus, the issue is not what jurors think R.C. 2745.01(C) means, but what this Court determines the statute means.

On that topic, Hewitt's Opposing Brief offers little guidance. Hewitt argues that jurors could conclude his rubber gloves and sleeves "qualify as equipment," but does not offer a construction of the phrase "equipment safety guard" as a whole. And, by focusing on what jurors might think the statute means, Hewitt avoids addressing the issue of how this Court should construe the rebuttable presumption of intent within the context in which it was enacted – i.e., as an exception to a specific intent statutory cause of action, which functions as a limited exception to the workers' compensation exclusivity

mandated by Section 35, Article II of the Ohio Constitution. *Compare* Opp. Br. at 17-23 *with* Merit Br. at 17-21. L.E. Myers respectfully submits that Hewitt fails to offer a construction of the relevant statutory text in light of this statutory context because he knows the plain language of the statute as illuminated by the context in which it was enacted does not support his claim. The judgment below should be reversed and judgment entered in L.E. Myers' favor.

II. FACTUAL REBUTTAL

Instead of focusing on facts relevant to the Propositions of Law over which this Court accepted jurisdiction, Hewitt's Statement of the Case and Facts attempt to establish that harm was substantially certain to result from the actions of his fellow linemen on June 14, 2006. (Opp. Br. at 2-12.) Hewitt's reliance on that standard is legally flawed: the substantial certainty intentional tort theory was eliminated by the adoption of R.C. 2745.01(B), which heightens the standard for employment intentional torts to one of deliberate intent to injure. *Stetter v. R.J. Corman Derailment Servs. L.L.C.*, 125 Ohio St.3d 280, 2010-Ohio-1029, ¶ 26 ("It was the General Assembly's intent in enacting R.C. 2745.01, as expressed particularly in R.C. 2745.01(B), to permit recovery for employer intentional torts *only* when an employer acts with specific intent to cause an injury."). Moreover, many of the "facts" recited by Hewitt are not supported by the record.

Company management did not "deliberately remove" Hewitt's rubber gloves and sleeves. Hewitt falsely accuses L.E. Myers of making "deliberate decisions * * * to forego bothersome safety requirements that threatened to impede operations and impair company profits[.]" (Opp. Br. at 7.) The only management employee of L.E. Myers

involved in the incident, Superintendent Jack Ehle, testified at trial that company policy *required* L.E. Myers' employees to wear their personal rubber gloves and sleeves when working on deenergized lines. (Tr. 66-67, Supp. 17-18.) When Superintendent Ehle discovered that this and other company safety policies had been violated by the union crew to which Hewitt was assigned, he fired the three union workers whom he determined were responsible for the safety lapses that led to Hewitt's accident.[1] (*Id.* at 50, 86, Supp. 9, 20.)

Moreover, no one told Hewitt he *could not wear* his rubber gloves and sleeves. The only evidence of a "decision" to tell Hewitt he *should not need* his rubber gloves and sleeves shows this "decision" was made, if at all, by one or more crew members sent to L.E. Myers by the local union and was predicated on a judgment that he would not be harmed. *See* Tr. 249-50, Supp. 106-07 (Lineman Cromity testifies that "we didn't think the apprentices would need to wear their gloves and sleeves because they wouldn't be coming in contact with any energized conductor"); *id.* at 180-91, Supp. 68-69 ("Dennis told me that I didn't need my rubber gloves, I shouldn't come into contact with anything."); *id.* at 141-42 (Hewitt claims Dennis Law told him he "*shouldn't need no rubber*" because he "shouldn't come into contact with anything") (emphasis added).

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[1] Contrary to Hewitt's insinuations (Opp. Br. at 8), Superintendent Ehle was not aware of any violations of company policy prior to Hewitt's accident. The Daily Job Briefing Logs prepared by the foremen in the weeks leading up to the accident consistently showed that workers were required to wear their rubber gloves and sleeves. (Tr. 172-79.) It was not until Superintendent Ehle investigated Hewitt's accident that he learned of the apparent failure of crew members to follow this requirement. (*Id.* at 51, Supp. 10.)

Additionally, while Hewitt claims he was required to work "under circumstances which were destined to result in catastrophe" (Opp. Br. at 3), the record belies that assertion. Superintendent Ehle explained that the reason for requiring an employee to wear rubber gloves and sleeves while working on deenergized lines is to protect against the "highly unlikely" possibility that those lines may become energized. (Tr. at 66-67, Supp. 17.) No evidence refutes Superintendent Ehle's observation that injury is "highly unlikely" to result from failing to wear rubber gloves and sleeves while working on deenergized lines. Hewitt claimed at trial that he had been working on deenergized lines without rubber gloves and sleeves in the days prior to the incident without injury (Tr. 139, 169, Supp. 51, 62); Lineman Cromity (who has been assigned by his local union to several different electrical contractors during his career) testified that his preference is not to wear rubber gloves and sleeves to tie-in a deenergized line (*id.* at 250, Supp. 107); Hewitt admitted that he could not have touched the energized lines with his hands while he was working on the deenergized line in the bucket (*id.* at 198, Supp. 83); everyone who testified at trial agreed Hewitt should not have come into contact with an energized line (*e.g., id.* at 248, Supp. 105); and there was no evidence of any similar incident ever occurring at L.E. Myers.[2]

[2] In an attempt to manufacture evidence of certain injury where none exists, Hewitt blurs the distinction between working in proximity to "hot" (or live) electrical lines and working on a "hot" line. (Opp. Br. at 10.) Journeyman Lineman Law referred to the former as working in "a primary zone." (*Id.*, citing Tr. 125-26.) Contrary to Hewitt's assertion, Superintendent Ehle did not testify that working near "hot" lines posed grave dangers. Rather, Ehle testified that working *on* a "hot" line without rubber gloves and sleeves "would be like committing suicide." (Tr. at 70-71.)

There is no evidence that Hewitt's failure to wear his personal rubber gloves and sleeves violated OSHA regulations. Finally, while Hewitt claims repeatedly that L.E. Myers violated certain Occupational Safety and Health Administration (OSHA) regulations (Opp. Br. at 9-10, 19), he introduced no evidence of any OSHA citation during trial. Nor did he introduce any evidence establishing the OSHA standards applicable to linemen working on a deenergized line, nor argue at any point during trial that any such standards were violated. (Tr. 370-86.) Rather, the only evidence establishing a requirement to wear rubber gloves and sleeves was L.E. Myers' own corporate policy, which Ehle explained existed "as an extra precaution just in case we cannot foresee something else happening." (*Id.* at 67, Supp. 18.)

III. REBUTTAL ARGUMENT

The first and most fundamental flaw of the decision below — which also permeates the briefs filed by Hewitt and his amicus curiae — is the failure to appreciate the context in which the presumed intent theory of R.C. 2745.01(C) must be interpreted. *See Stetter*, 2010-Ohio-1029, at ¶ 27 (interpretation of R.C. 2745.01 must reflect "the history of employer intentional-tort law in Ohio and the dynamic between the General Assembly's attempts to legislate in this area and this court's decisions reacting to those attempts"). R.C. 2745.01 is the General Assembly's third attempt to restrict the employment intentional tort claim this Court created in *Blankenship v. Cincinnati Milacron Chems, Inc.*, 69 Ohio St.2d 208 (1982). *See Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027, ¶¶ 34-46, 57, 78-87. It borrows portions of

the language contained in the first such attempt, which was passed "in the wake of *Blankenship* and *Jones*[3][.]" *Kaminski*, 2010-Ohio-1027 at ¶ 27.

This Court held in *Kaminski* and *Stetter* that R.C. 2745.01(A) and (B) permit recovery for employer intentional torts *only* when an employer acts with specific intent to cause an injury. *Kaminski*, 2010-Ohio-1027, at ¶¶ 55-56; *Stetter*, 2010-Ohio-1029, at ¶ 26. This heightened specific intent standard does not violate an employee's constitutional rights, this Court explained, because "workers' compensation recovery is a meaningful remedy for workers whose injuries result from conduct committed with an intent less than deliberate intent[.]" *Stetter*, 2010-Ohio-1029, at ¶ 59. Further, "when an injury results from an employer's violation of a specific safety requirement [VSSR], an additional recovery by the injured worker is constitutionally available." *Id.* Thus, at least where an employee cannot prove his employer acted with a specific intent to harm him, the administrative remedies available through the workers' compensation system including, where applicable, VSSR awards fully satisfy the employee's right to a remedy. Here, Hewitt sought and secured both of these administrative remedies.

The propositions of law before the Court in this case address the standards applicable to lawsuits filed by a subset of claimants who: a) were not injured as the result of an act taken by their employer with the specific intent to injure them; b) received their meaningful workers' compensation recovery (and, perhaps, a VSSR award as well); yet c) still seek to recover in the court system under R.C. 2745.01(C), which establishes a

[3] *Jones v. VIP Development Co.*, 15 Ohio St.3d 90 (1984).

rebuttable presumption of intent to injure that applies when an employer "deliberately removes" "an equipment safety guard" and "injury * * * occurs as a direct result." R.C. 2745.01(C). Relying on a recent Sixth Appellate District opinion, Hewitt and his amicus curiae argue that R.C. 2745.01(C) cannot be read literally because "to interpret the statutory terms so narrowly to exclude all protective equipment simply because it is not attached to a machine is to produce an absurd result." (Opp. Br. at 21, quoting *Beyer v. Reiter Automotive N. Am., Inc.*, 6th Dist. No. L-11-1110, 2012-Ohio-2807, ¶ 11.) But there is nothing absurd about limiting a worker who cannot satisfy the specific intent standard to his meaningful workers' compensation recovery.

As this Court explained in *Stetter*, the specific intent standard is neither unreasonable nor arbitrary and "conform[s] Ohio's law of employer intentional torts to that of a majority of jurisdictions." 2010-Ohio-1029, at ¶ 73. The compromise embodied in R.C. 2745.01(C) merely preserves an employment intentional tort claim in cases with factual allegations that mirror the removal-of-a-machine-guard scenario in *Jones*, *supra*, while heightening the general standard to a specific intent tort. (Merit Br. at 18-19.) Consistent with the law in a majority of jurisdictions, and in the absence of any evidence that L.E. Myers deliberately removed a safety device from a machine, the judgment below should be reversed and judgment entered in L.E. Myers' favor as a matter of law. Additional flaws in the arguments appearing in Hewitt's Opposing Brief are addressed below.

A. An Equipment Safety Guard is a Safety Device on a Machine.

Nothing in Hewitt's Opposing Brief refutes L.E. Myers' basic contention that the presumed intent theory created by R.C. 2745.01(C) applies only to the "deliberate removal" of safety devices on machines. (Merit Br. at 13-26.) Contrary to Hewitt's pervasive theme, L.E. Myers is not attempting to "engraft additional terms and conditions" into R.C. 2745.01. (Opp. Br. at 23.) The Eighth District observed that "guard" may be defined as "a device for protecting a machine part or the operator of a machine." (App. Op. at 14, Appx. 20 (internal quotation omitted).) Recognizing that "an equipment safety guard" encompasses only safety devices on machines is consistent with this definition of "guard," is the only construction that gives meaning to each word in that phrase, and the only one consistent with the purposes underlying the enactment of R.C. 2745.01.

1. The meaning of "equipment safety guard" is an issue of law for this Court, not a question for the jury.

Hewitt's argument that the Trial Court properly sent his presumed intent theory to the jury ultimately amounts to a contention that juries may "supply" meaning to undefined statutory terms, according to "the particular facts of each case." (Opp. Br. at 17.) Not so. Indeed, it is well-settled that statutory construction and interpretation are questions of law for the court, not fact issues for a jury. *E.g.*, *Akron Central Plaza, LLC v. Summit County Bd. of Revision*, 128 Ohio St.3d 145, 2010-Ohio-5035, ¶ 10 ("the dispute calls for a construction of the statutory language — which is a question of law"); *City of Cincinnati v. Timberline Properties, Inc.*, 113 Ohio App.3d 329, 330 (1st Dist.

1996) (question of statutory construction cannot be submitted to the jury because "[s]tatutory construction and interpretation are issues for legal resolution").

None of the authorities cited by Hewitt holds otherwise. Rather, they hold only that certain words commonly used in everyday language, such as "use" and "effect," need not be defined in a jury charge. (Opp. Br. at 17-18, citing *State v. Jones*, 2d Dist. No. 5745, 1978 WL 216208, at *3 (Mar. 1, 1978) (no error in jury charge that "the word use is to be applied in its 'ordinary, everyday meaning which each of you in your collective experience ascribe to that word"); *State v. Risner*, No. 6-91-21, 1992 WL 195311, at *5 (no error in failing to further define "stealth" and "deception" in jury charge); *Harman Group Corp. Finance, Inc. v. Academy of Med. of Columbus & Franklin Cty.*, 94 Ohio App.3d 712, 722 (10th Dist. 1994) ("it was not error for the trial court not to define the word 'effect'").)

Those authorities do not apply here, because L.E. Myers is challenging whether the evidence is sufficient to support the jury's verdict as a matter of law, *see Eastley v. Volkman*, Slip Opinion No. 2012-Ohio-2179, ¶ 11, *not* the level of detail in the jury charge. Additionally, even within the context of determining the appropriate level of detail in a jury charge, *Jones* and the other authorities cited by Hewitt merely give jurors the power to *apply* the existing, "simple" meaning of commonly used words. *E.g., Jones*, 1978 WL 216208, at *2 ("Any attempt by the judge to be a talking dictionary of common words * * * obscures rather than clarifies *the true, simple meaning*.") (emphasis added). None suggest that jurors may *supply* a meaning to statutory terms on a case-by-case basis.

2. The only reasonable construction of "equipment safety guard" is a safety device attached to a machine.

As L.E. Myers explained in its Opening Brief, the only way to give meaning to each word in the phrase "equipment safety guard" is to recognize that "equipment" tells the reader that "guard" is being used in its specific sense as a device that protects the operator of a machine. (Merit Br. at 14-15.) This construction is consistent with the weight of appellate authority that has considered the issue. (*Id.*) And it is also consistent with this Court's prior guidance in *Fyffe v. Jeno's, Inc.*, 59 Ohio St.3d 115 (1991), which held that identical language in a predecessor statute required an employee to establish that the "employer has deliberately removed a safety guard from equipment which employees are required to operate[.]" *Id.* at 119-20.

Hewitt's Opposing Brief and the primary authority on which he relies confirm this point. Hewitt argues that he was entitled to the benefit of a presumption of intent to injure because a juror could conclude that his personal rubber gloves and sleeves "qualif[y] as '*equipment.*'" (Opp. Br. at 19; emphasis added.) By suggesting that his rubber gloves and sleeves give rise to a rebuttable presumption of intent to injure because they are "equipment," Hewitt's interpretation makes "guard" superfluous. The Sixth District's opinion in *Beyer v. Reiter Automotive N. Am., Inc.*, 6th Dist. No. L-11-1110, 2012-Ohio-2807, suffers from the same flaw. *Beyer* held that face masks shielding against silica dust fall within the scope of "equipment safety guards" under R.C. 2745.01(C). It did so by reasoning that R.C. 2745.01(C) should be "more broadly construe[d] * * * to include *free standing equipment, such as face masks*, within the

scope of an 'equipment safety guard.'" 2012-Ohio-2807, at ¶13 (emphasis added). But if all "free standing equipment" may be considered "equipment safety guards," then "guard" does no work.

Contrary to Hewitt's assertions, construing "equipment safety guard" as referring to safety devices on machines does not "artificially constrain" any word in that phrase. (Opp. Br. at 22-23.) The only publicly available uses of "equipment safety guard" that L.E. Myers has been able to locate consistently refer to items placed on mechanized equipment (which can be described as a "machine"), and distinguish "equipment safety guards" from "personal protective equipment," such as the rubber gloves and sleeves at issue in this case.[4] In addition, recognizing that "equipment safety guards" are distinct from personal protective equipment is also consistent with the "federal mandates" upon which Hewitt now purports to rely — personal protective equipment is not a subset of machine guards, which appear in a different subpart of the Code of Federal Regulations.

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[4] *See, e.g.*, Connectra, *Fusion Machine Operation Checklist*, http://www.connectrafusion.com/pdfs/resources/fusionmachineoperationchecklist.pdf (accessed July 6, 2012) ("Before operating equipment, confirm that the equipment safety guards are in place, safety features are fully functional and operating personnel are wearing the appropriate personal protective equipment."); Star Diamond, *Safety Recommendations*, http://www.stardiamondtools.com/glossary.aspx (accessed July 6, 2012) (containing separate safety recommendations advising saw operators to "[a]lways use full personal safety equipment when operating diamond blades," and "[a]lways operate blades with equipment safety guards in place"); First Iowa, *Limiting Your Liability for Summer Employees*, http://www.firstiowa.com/index.php/articles/38-insurance-articles/82-limiting-your-liability-for-summer-employees (accessed July 6, 2012) (advocating as safety measures to "make sure that any equipment to be used is * * * operational" with "all legally required equipment safety guards * * * in place," and "[i]nstruct[ing] all workers using hazardous equipment or processes to always use required protective gear such as gloves, hearing protectors, safety visors, and hard hat or safety shoes").

Compare 29 C.F.R. 1910.212, Merit Appx. 67 (discussing OSHA machine guarding requirements) *with* 29 C.F.R. 1910.132, Reply Appx. 1-4 (discussing OSHA personal protective equipment requirements). In sum, construing "equipment safety guard" as referring to a safety device on a machine will not only give effect to each word in that phrase, but also conform its meaning in Ohio's intentional tort statute to the way that term is used in industry.

3. Hewitt's position that jurors may "supply" meaning to "equipment safety guard" conflicts with the purposes of R.C. 2745.01.

Finally, Hewitt's argument that jurors possess the power to "supply" meaning to "equipment safety guard" based on "the particular facts of each case," and that this power includes the ability to deem anything that qualifies as "equipment" an "equipment safety guard," conflicts with the purposes underlying R.C. 2745.01. In *Stetter*, this Court recognized two purposes furthered by R.C. 2745.01: "first, to maintain the balance of sacrifices between employer and employee in the substitution of no-fault liability for tort liability and, second, to minimize litigation, even litigation of undoubted merit." 2010-Ohio-1029, at ¶ 74, *quoting* 6 Larson's Workers' Compensation Law, Section 103.03. With respect to the first, this Court noted that since "a claimant's fault is irrelevant in most situations to his or her workers' compensation remedy, it is not incongruous to likewise provide * * * that an employer's liability for most injuries is limited to the claimant's recovery of workers' compensation benefits." *Id.* at ¶ 75. With respect to the second, this Court emphasized that "every presumption is on the side of avoiding the

imposition of the complexities and uncertainties of tort litigation on the compensation process." *Id.*, at ¶ 76, *quoting* 6 Larson's Workers' Compensation Law, Section 103.03.

Giving jurors the power to supply a meaning to "equipment safety guard" that could encompass anything an ordinary juror might consider "equipment" would fatally undermine both of these purposes. Far from *avoiding* the complexities and uncertainties of tort litigation, Hewitt's proposal would *create* complexity and uncertainty. The meaning of "equipment safety guard" would vary from jury-to-jury on a case-by-case basis, and in many cases impose on employers the extraordinary burden of disproving an intent to injure an employee who has already received a meaningful workers' compensation recovery. Moreover, employers in one county might be subject to different standards than employers in another county, and an employer within any county could not rely on any particular verdict in its favor as confirmation that its conduct complied with the applicable law — for the interpretation of "equipment safety guard" on which that verdict rested could always be reexamined in a later case. This unsettled and unsettling legal regime would make employment intentional tort litigation more complex, more uncertain and more prevalent — exactly what the General Assembly was trying to avoid.

In the end, Hewitt rests his argument on the policy concern that the cost of injuries caused by employer conduct that allegedly exhibits "deliberate indifference to workplace safety" will be borne by the administrative system, if R.C. 2745.01(C) is read literally. (Opp. Br. at 26-27.) But this policy judgment is embodied in the Ohio Constitution, which reserves to the workers' compensation system the power to impose penalties on

employers for violating specific safety requirements. *See* Section 35, Article II (vesting the system "with full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employees" and providing that "its decision shall be final"); *State ex rel. AK Steel Corp. v. Davis*, 123 Ohio St.3d 458, 2009-Ohio-5865, ¶ 19 (a VSSR award "is a penalty to the employer"). Moreover, contrary to Hewitt's suggestion, the ultimate responsibility for VSSR awards rests solely on the employer responsible for the violation. *See* Section 35, Article II (explaining that, *if* a VSSR award is initially paid from the state fund, then the employer's premiums increase to "recoup the * * * amount of such additional award").

Thus, interpreting R.C. 2745.01(C) in a manner that gives juries a general power to police alleged "indifference to workplace safety" is not only inconsistent with the statutory text, it would also violate fundamental principles of separation of powers by intruding on the workers' compensation system's province to make that determination.

The examples of items that, in Hewitt's view, fall within a "sensible understanding" of an "equipment safety guard" illustrate this intrusion. Hewitt criticizes a literal reading of the statute on the grounds that employers allegedly could "pry-off the face shields from the helmets that welders are required to wear" yet "remain impervious to any civil claims for the inevitable injuries that are suffered." (Opp. Br. at 16.) But eye protection for welding operations is already covered by specific safety requirements contained in the Ohio Administrative Code. *See* Ohio Adm.Code 4123:1-5-17(D)(2)(a)(iii), Reply Appx. 41 (requiring eye protection for welding operations).

Similarly, Hewitt's criticism that "there would be no liability against an employer that disassembled all of the safety railings from platforms" ignores the availability of a VSSR award for using scaffolding more than ten feet above the ground without "[s]tandard guardrails and toeboards[.]" Ohio Adm.Code 4123:1-3-10(C)(4), Reply Appx. 9. In each of these instances, employees may receive both their meaningful workers' compensation remedy and a VSSR award funded by the employer as a penalty for the safety violation.

B. "Deliberate Removal" Means a Deliberate Decision to Eliminate a Guard from a Machine.

L.E. Myers established in its Opening Brief that "deliberate removal" as used in R.C. 2745.01(C) means a deliberate decision to eliminate a safety guard from a machine. (Merit Br. at 27-28.) Even assuming that Hewitt's rubber gloves and sleeves were equipment safety guards (and they are not), there was no evidence that these items were "deliberately removed" by L.E. Myers. Hewitt's Opposing Brief does not claim otherwise. Rather, Hewitt argues only that L.E. Myers "effectively removed" his "incentive to utilize" his personal rubber gloves and sleeves. (Opp. Br. at 27-28.)

That argument is legally flawed and factually wrong. It is legally flawed because "effective" removal is *not* removal. The phrase "*deliberate removal*" plainly requires "an affirmative, over act" by the employer that results in the elimination of an equipment safety guard. *Trichon v. Wright Tool & Forge*, 9th Dist. No. 26071, 2012-Ohio-3147, ¶ 10. Where the equipment safety guard remains available for use, it has not been deliberately removed — regardless of whether the employee possesses "incentive to

utilize" it. Because arguments asserting "effective" removal tacitly concede that the equipment safety guard at issue has not, in fact, been removed, they are insufficient to trigger the rebuttable presumption of intent under R.C. 2745.01(C).

Hewitt's claim that his rubber gloves and sleeves were "effectively" removed is also factually wrong. Hewitt rests this argument on an erroneous factual assumption that Hewitt was "instructed not to wear" his rubber gloves and sleeves. (Opp. Br. at 28.) To the contrary, the evidence at trial established at most that Hewitt was told he *should not need* to wear them. (Tr. 141) (Hewitt testifies that Law told him he "*shouldn't need* no rubbers going up to work on the line") (emphasis added); *see also id.* at 143 ("Q. And you were told you *didn't need* [your rubber gloves and sleeves] that day? A. *Yes*") (emphasis added); *id.* at 180-81, Supp. 68-69 ("Dennis told me that I *didn't need* my rubber gloves, I shouldn't come into contact with anything.") (emphasis added); *id.* at 229, Supp. 93 (Lineman Cromity testifies the crew was told they "*wouldn't have to wear* their rubber gloves and sleeves because the primary [line] was deenergized") (emphasis added).) No one told Hewitt he could not wear his rubber gloves and sleeves.

Finally, Hewitt's citation to *Dudley v. Powers & Sons, Inc.*, 6th Dist. No. WM-10-015, 2011-Ohio-1975, merely illustrates the difference between evidence establishing deliberate removal and evidence which, as in this case, is insufficient to do so. *Dudley* involved in-house modifications to a two-ton hydraulic press that included removing original equipment dual actuating buttons and replacing that feature with an optical sensor. There was no dispute that these in-house modifications to the press "deliberately removed" the dual actuating buttons; the questions on appeal were 1) whether that

removal was a direct cause of the plaintiff's injury; and 2) whether the dual actuating buttons functioned as safety guards on the hydraulic press. *Id.*, at ¶¶ 19, 23-24.

But here, unlike the dual actuating buttons at issue in *Dudley* (which were no longer on the machine), Hewitt's rubber gloves and sleeves remained available for Hewitt to use on the day of the injury. (Tr. 170, Supp. 63 ("Q. They were on the bucket truck, were they not? A. Yes, they [were] on the bucket truck."); *id.* at 251, Supp. 108 ("Q. And there were rubber gloves and sleeves that were there that day if somebody wanted to use them, right? A. Yes.").) *Dudley* merely highlights the insufficiency of Hewitt's evidence, and further supports the entry of judgment as a matter of law in L.E. Myers' favor.

IV. CONCLUSION

For all of the above reasons, this Court should reverse the judgment of the Eighth District and enter judgment as a matter of law in L.E. Myers' favor.

Respectfully submitted,

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PROOF OF SERVICE

A copy of the foregoing **Reply Brief of Appellant The L.E. Myers Co.** was served on July 20, 2012 pursuant to Civ.R. 5(B)(2)(c) by mailing it by United States mail to:

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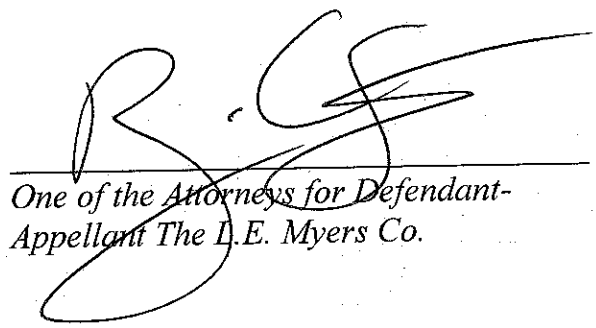

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APPENDIX

Code of Federal Regulations
Title 29. Labor
Subtitle B. Regulations Relating to Labor
Chapter XVII. Occupational Safety and Health Administration, Department of Labor
Part 1910. Occupational Safety and Health Standards (Refs & Annos)
Subpart I. Personal Protective Equipment (Refs & Annos)

29 C.F.R. § 1910.132

§ 1910.132 General requirements.

Effective: July 8, 2011

Currentness

(a) Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

(b) Employee-owned equipment. Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

(c) Design. All personal protective equipment shall be of safe design and construction for the work to be performed.

(d) Hazard assessment and equipment selection.

(1) The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

(i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

(ii) Communicate selection decisions to each affected employee; and,

(iii) Select PPE that properly fits each affected employee.

Note: Non-mandatory Appendix B contains an example of procedures that would comply with the requirement for a hazard assessment.

(2) The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

(e) Defective and damaged equipment. Defective or damaged personal protective equipment shall not be used.

(f) Training.

(1) The employer shall provide training to each employee who is required by this section to use PPE. Each such employee shall be trained to know at least the following:

(i) When PPE is necessary;

(ii) What PPE is necessary;

(iii) How to properly don, doff, adjust, and wear PPE;

(iv) The limitations of the PPE; and,

(v) The proper care, maintenance, useful life and disposal of the PPE.

(2) Each affected employee shall demonstrate an understanding of the training specified in paragraph (f)(1) of this section, and the ability to use PPE properly, before being allowed to perform work requiring the use of PPE.

(3) When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (f)(2) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

(i) Changes in the workplace render previous training obsolete; or

(ii) Changes in the types of PPE to be used render previous training obsolete; or

(iii) Inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the requisite understanding or skill.

(g) Paragraphs (d) and (f) of this section apply only to §§ 1910.133, 1910.135, 1910.136, and 1910.138. Paragraphs (d) and (f) of this section do not apply to §§ 1910.134 and 1910.137.

(h) Payment for protective equipment.

(1) Except as provided by paragraphs (h)(2) through (h)(6) of this section, the protective equipment, including personal

protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(3) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(4) The employer is not required to pay for:

(i) The logging boots required by 29 CFR 1910.266(d)(1)(v);

(ii) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(iii) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(5) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(6) Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (b) of this section, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (h)(2) through (h)(5) of this section.

(7) This paragraph (h) shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1910.132(h): When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

Credits

[59 FR 16360, April 6, 1994; 59 FR 33910, July 1, 1994; 59 FR 34580, July 6, 1994; 72 FR 64428, Nov. 15, 2007; 76 FR 33606, June 8, 2011]

SOURCE: 39 FR 23502, June 27, 1974; 51 FR 24526, 24527, July 7, 1986; 58 FR 35309, June 30, 1993; 59 FR 4435, Jan. 31, 1994; 59 FR 16360, April 6, 1994; 61 FR 19548, May 2, 1996; 63 FR 1270, Jan. 8, 1998; 68 FR 75780, Dec. 31, 2003; 69 FR 46993, Aug. 4, 2004; 71 FR 16672, April 3, 2006; 71 FR 50187, Aug. 24, 2006; 72 FR 64428, Nov. 15, 2007; 73 FR 75584, Dec. 12, 2008; 74 FR 46356, Sept. 9, 2009; 76 FR 33606, June 8, 2011, unless otherwise noted.

AUTHORITY: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355), as applicable; and 29 CFR 1911.; Sections 1910.132, 1910.134, and 1910.138 of 29 CFR also issued under 29 CFR 1911.; Sections 1910.133, 1910.135, and 1910.136 of 29 CFR also issued under 29 CFR 1911 and 5 U.S.C.

553.

Notes of Decisions (49)

Current through July 12, 2012; 77 FR 41106.

End of Document

Baldwin's Ohio Administrative Code Annotated
4123 Workers' Compensation Bureau (Refs & Annos)
4123:1 Safety and Hygiene Division (Refs & Annos)
Chapter 4123:1-3. Construction Safety (Refs & Annos)

OAC 4123:1-3-10

4123:1-3-10 Scaffolding

Currentness

(A) Reserved.

(B) Definitions.

(1) "Bearer" means a horizontal member of a scaffold upon which the platform rests and which may be supported by ledgers.

(2) "Boatswain's chair" means a seat supported by slings attached to a suspended rope, designed to accommodate one employee in a sitting position.

(3) "Brace" means a tie that holds one scaffold member in a fixed position with respect to another member.

(4) "Bricklayer's square scaffold" means a scaffold the platform of which is supported on built-up squares secured to each other by full and continuous diagonal bracing.

(5) "Carpenter's bracket scaffold" means a scaffold the platform of which is supported on triangular braced brackets fastened to the side of the structure.

(6) "Chimney, stack, or tank bracket scaffold" means a scaffold composed of a platform supported by wood or steel brackets, hooked over a steel wire rope which surrounds the circumference of the chimney, stack, or tank.

(7) "Coupler" means a device for locking together the component parts of a tubular metal scaffold.

(8) "Double pole or independent pole scaffold" means a scaffold supported from the base by a double row of uprights, independent of support from the walls and constructed of uprights, ledgers, horizontal platform bearers, and diagonal bracing.

(9) "Elevating assembly" means a mechanical, hydraulic, or other type of mechanism used to elevate and lower a work platform.

(10) "Float or ship scaffold" means a scaffold hung from overhead supports by means of ropes and consisting of a platform having diagonal bracing underneath, resting upon and fastened to two parallel plank bearers at right angles to the span.

(11) "Foot scaffold" means a scaffold used to give additional height, the platform of which does not exceed eighteen inches above the supporting surface.

(12) "Heavy duty scaffold" means a scaffold designed and constructed to carry a working load in excess of fifty pounds but no more than seventy-five pounds per square foot.

(13) "Horizontal wire rope supported scaffold" means a scaffold the platform of which is supported at two or more points by horizontal wire ropes.

(14) "Horse scaffold" means a scaffold or light or medium duty, composed of horses supporting a work platform.

(15) "Interior hung scaffold" means a scaffold suspended from the ceiling or roof structure.

(16) "Ladder jack scaffold" means a light duty scaffold supported by brackets attached to ladders.

(17) "Lean to, or shore, scaffold", use prohibited (see paragraph (C)(16) of this rule), means scaffold the platform of which is supported on members consisting of a putlog or bearer, knee braced to two diverging inclined legs that are in a plane substantially transverse to the putlog and that support the outer end of the putlog or bearer, while the inner end of the bearer or putlog rests on or against the structure or on a bearing block attached to the structure.

(18) "Ledgers" or "stringers" means a horizontal scaffold member which extends from post to post at right angles to the putlogs or bearers, supports the putlogs or bearers, and forms a tie between the posts and becomes a part of the scaffold bracing.

(19) "Light duty scaffold" means a scaffold designed and constructed to carry a working load of no more than twenty-five pounds per square foot.

(20) "Manually propelled mobile scaffold" means a portable rolling scaffold equipped with casters.

(21) "Mason's adjustable multiple-point suspension scaffold" means a scaffold having a continuous platform supported by bearers suspended by wire rope from overhead supports, so arranged and operated as to permit the raising or lowering of the platform to desired working positions.

(22) "Maximum rated load" means the total of all loads including the working load, the weight of the scaffold, and such other loads as may be reasonably anticipated.

(23) "Medium duty scaffold" means a scaffold designed and constructed to carry a working load in excess of twenty-five pounds but no more than fifty pounds per square foot.

(24) "Needle beam scaffold" means a cantilevered light duty scaffold consisting of two parallel horizontal beam called needle beams supporting a platform.

(25) "Outrigger scaffold" means a scaffold supported by outriggers or thrustouts projecting beyond the wall or face of the building or structure, the inboard ends of which are secured inside the wall or face of such building or structure.

(26) "Pick, or kick, plank" means a platform, similar in construction to a narrow ladder with light decking strung upon and attached to the rungs, which rests upon horizontal and parallel stringers, or other bearers, and is movable along the course of the stringer.

(27) "Platform" means the temporary flat working surface used to support employees, material, and equipment.

(28) "Putlog" means a scaffold member upon which the platform rests (also see "bearer").

(29) "Runner" means the lengthwise horizontal bracing or bearing members, or both.

(30) "Scaffold" means any temporary elevated platform and its supporting structure used for supporting employees, materials, or equipment.

(31) "Single-point adjustable suspension scaffold" means a manually or power operated unit designed for light duty use, supported by a single wire rope from an overhead support so arranged and operated as to permit the raising or lowering of platform to desired working positions.

(32) "Single-pole scaffold" means platforms resting on putlogs or cross beams, the outside ends of which are supported on ledgers secured to a single row of posts or uprights, and the inner ends of which are supported on or in a wall.

(33) "Stack bracket scaffold" - see "chimney bracket scaffold".

(34) "Suspended scaffold" means a scaffold supported from above, the platform of which is supported at more than two points from overhead outriggers which are fastened to the framework of the structure.

(35) "Tank bracket scaffold" - see "chimney bracket scaffold".

(36) "Tube and coupler scaffold" means an assembly consisting of tubing which serves as posts, bearers, braces, ties, and runner, a base supporting the posts, and special couplers which serve to connect the uprights and to join the various members.

(37) "Tubular welded frame scaffold" means a sectional panel or frame metal scaffold built up of prefabricated welded sections which consists of posts and horizontal bearers with intermediate members.

(38) "Two-point suspension scaffold" or "swinging scaffold" means a scaffold the platform of which is supported by stirrups or hangers at two points to permit raising or lowering, suspended from overhead supports.

(39) "Window jack scaffold" means a scaffold the platform of which is supported by a jack or thrustout which projects through a window opening.

(40) "Working load" means the load on the scaffold imposed by employees, material, and equipment.

(C) General requirements for all scaffolds.

See appendix to this rule for examples of various scaffolds mentioned throughout this rule.

(1) The footing or anchorage for scaffolds shall be sound, rigid, and capable of supporting the load without settling or

displacement. Unstable or loose objects shall not be used to support scaffolds.

(2) Scaffolds and their components shall be capable of supporting without failure no less than four times the maximum rated load.

(3) Any scaffold including accessories, such as braces, brackets, trusses, screw legs, ladders, etc., damaged or weakened from any cause shall be immediately repaired or replaced.

(4) Guardrails and toeboards.

Standard guardrails and toeboards shall be installed on all open sides and ends of platforms more than ten feet above the ground or floor, except on needle beam scaffolds and floats.

(5) Where employees are required to work or pass under the scaffold each employee on a scaffold shall be provided with a additional protection from falling hand tools, debris, and other small objects through the installation of toeboards, screens, or guardrail systems, or through the erection of debris nets, catch platforms, or canopy structures that contain or deflect the falling objects.

(6) Nails provided for the construction of scaffolds shall be no less than eight-penny common.

(7) All planking shall be "Scaffold Grade," or equivalent, as recognized by approved grading rules for the species of wood used.

(8) All planking of platforms shall be overlapped a minimum of twelve inches or secured from movement.

(9) An access ladder or equivalent safe access shall be provided for all scaffolds.

(10) Scaffold planks shall extend over end supports no less than six inches and no more than twelve inches.

(11) The poles, legs, or uprights of scaffolds shall be plumb and securely and rigidly braced to prevent swaying and displacement.

(12) Overhead protection shall be provided for employees on a scaffold exposed to hazards from overhead.

(13) Reasonable care shall be taken to maintain all scaffold surfaces free of debris and slippery substances.

(14) No welding, burning, riveting, or open flame work shall be performed on any scaffolding suspended by means of fiber or synthetic rope. Only fiber or synthetic ropes, properly treated or protected, shall be used for or near any work involving the use of corrosive substances or chemicals.

(15) Wire, synthetic, or fiber rope used for scaffold suspension shall be capable of supporting no less than six times the maximum rated load.

(16) The use of shore or lean-to scaffolds is prohibited.

(17) When there is danger of material being hoisted striking against the scaffold, a tag line shall be provided.

(18) The free ends of fall lines from scaffolds shall be guarded.

(D) Wood pole scaffolds.

See appendix to this rule for examples of wood pole scaffolds.

(1) Scaffold poles shall bear on a foundation of sufficient size and strength to spread the load from the pole over a sufficient area to prevent settlement. All poles shall be set plumb.

(2) Where poles are spliced, the ends shall be squared and the upper section shall rest squarely on the lower section. Wood splice plates shall be provided on no less than two adjacent sides and shall be no less than four feet in length, overlapping the abutted ends equally, and have the same width and no less than the cross-sectional area of the pole. Splice plates or other materials of equivalent strength may be used.

(3) Independent pole scaffolds shall be set as near to the wall of the building as practicable.

(4) All pole scaffolds shall be securely guyed or tied to the building or structure. Where the height or length exceeds twenty-five feet, the scaffold shall be secured at intervals no greater than twenty-five feet vertically and horizontally.

(5) Putlogs or bearers shall be set with the greater dimension vertical, long enough to project over the ledgers of the inner and outer rows of poles no less than three inches for proper support.

(6) Every wooden putlog on single pole scaffolds shall be reinforced with a three-sixteenths - by two-inch steel strip, or equivalent, secured to its lower edge throughout its entire length.

(7) Ledgers shall be long enough to extend over two pole spaces. Ledgers shall not be spliced between the poles. Ledgers shall be reinforced by bearing blocks securely fastened to the side of the pole to form a support for the ledger.

(8) Diagonal bracing shall be provided to prevent the poles from moving in a direction parallel with the wall of the building, and from buckling.

(9) Cross bracing shall be provided between the inner and outer sets of poles in independent pole scaffolds. The free ends of pole scaffolds shall be cross braced.

(10) Full diagonal face bracing shall be erected across the entire face of pole scaffolds in both directions. The braces shall be spliced only at the poles. The inner row of poles on medium and heavy duty scaffolds shall be braced in similar manner.

(11) Platform planks shall be laid with their edges butted together so the platform shall be tight with no spaces through which tools or fragments of material can fall.

(12) Where planking is lapped, each plank shall lap its end support no less than twelve inches. Where the ends of planks abut each other to form a flush floor, the butt joint shall be at the centerline of a pole. The abutted ends shall rest on separate bearers. Intermediate beams shall be provided where necessary to prevent dislodgment of planks due to deflection, and the ends shall be secured to prevent their dislodgment.

(13) When a scaffold materially changes its direction, the platform planks shall be laid to prevent tipping. The planks that meet the corner putlog at an angle shall be laid first, extending over the diagonally placed putlog far enough to have a good safe bearing, but not far enough to involve any danger from tipping. The planking running in the opposite direction at an angle shall be laid so as to extend over and rest on the first layer of planking.

(14) When moving platforms to the next level, the old platform shall be left undisturbed until the new putlogs or bearers have been set in place, ready to receive the platform planks.

(15) All wood pole scaffolds sixty feet or less in height shall be constructed and erected in accordance with "Tables 10-1 to 10-6." If they are over sixty feet in height, they shall be designed by a professional engineer competent in this field, and shall be constructed and erected in accordance with such design.

Table 10-1. Minimum nominal size and maximum spacing of members of single-pole scaffolds--light duty.

	Maximum height of scaffold

	20 ft.	60 ft.
Uniformly distributed load	Not to exceed 25 p.s.f.	
Poles or uprights	2 x 4 in.	4 x 4 in.
Pole spacing (longitudinal)	6 ft. 0 in.	10 ft. 0 in.
Maximum width of scaffold	5 ft. 0 in.	5 ft. 0 in.
Bearers or putlogs to 3 ft. 0 in. width	2 x 4 in.	2 x 4 in.
Bearers or putlogs to 5 ft. 0 in. width	2 x 6 in. or 3 x 4 in.	2 x 6 in. or 3 x 4 in. (rough).
Ledgers	1 x 4 in.	1 ¼ x 9 in.
Planking	1 ¼ x 9 in. (rough)	2 x 10 in.
Vertical spacing of horizontal members	7 ft. 0 in.	9 ft. 0 in.
Bracing, horizontal and diagonal	1 x 4 in.	1 x 4 in.
Tie-ins	1 x 4 in.	1 x 4 in.
Toeboards	4 in. high (minimum)	4 in. high (minimum).
Guardrails	2 x 4 in.	2 x 4 in.

All members except planking shall be used on edge.

Table 10-2. Minimum nominal size and maximum spacing of members of single-pole scaffolds--medium duty.

Uniformly distributed load.	Not to exceed 50 p.s.f.
Maximum height of scaffolds.	60 ft.
Poles or uprights	4 x 4 in.
Pole spacing (longitudinal).	8 ft. 0 in.

Maximum width of scaffold.	5 ft. 0 in.
Bearers or putlogs	2 x 10 in. or 3 x 4 in.
Spacing of bearers or putlogs.	8 ft. 0 in.
Ledgers	2 x 10 in.
Vertical spacing of horizontal members.	7 ft. 0 in.
Bracing, horizontal	1 x 6 in. or 1 ¼ x 4 in.
Bracing, diagonal	1 x 4 in.
Tie-ins	1 x 4 in.
Planking	2 x 10 in.
Toeboards	4 in. high (minimum).
Guardrails	2 x 4 in.

All members except planking shall be used on edge.

Table 10-3. Minimum nominal size and maximum spacing of members of single-pole scaffolds--heavy duty.

Uniformly distributed load.	Not to exceed 75 p.s.f.
Maximum height of scaffold.	60 ft.
Poles or uprights	4 x 6 in.
Pole spacing (longitudinal).	6 ft. 0 in.
Maximum width of scaffold.	5 ft. 0 in.
Bearers or putlogs	2 x 10 in. or 3 x 5 in.
Spacing of bearers or putlogs.	6 ft. 0 in.
Ledgers	2 x 10 in.

Vertical spacing of horizontal members.	6 ft. 6 in.
Bracing, horizontal and diagonal.	2 x 4 in.
Tie-ins	1 x 4 in.
Planking	2 x 10 in.
Toeboards	4 in. high (minimum).
Guardrails	2 x 4 in.

All members except planking shall be used on edge.

Table 10-4. Minimum nominal size and maximum spacing of members of independent pole scaffold--light duty.

	Maximum height of scaffold	
	20 ft.	**60 ft.**
Uniformly distributed load	Not to exceed 25 p.s.f.	
Poles or uprights	2 x 4 in.	4 x 4 in.
Pole spacing (longitudinal)	6 ft. 0 in.	10 ft. 0 in.
Pole spacing (transverse)	6 ft. 0 in.	10 ft. 0 in.
Ledgers	1 ¼ x 4 in.	1 ¼ x 9 in.
Bearers to 3 ft. 0 in. span	2 x 4 in.	2 x 4 in.
Bearers to 10 ft. 0 in. span	2 x 6 in. or 3 x 4 in.	2 x 10 (rough) or 3 x 8 in.
Planking	1 ¼ x 9 in.	2 x 10 in.
Vertical spacing of horizontal members	7 ft. 0 in.	7 ft. 0 in.
Bracing, horizontal and diagonal	1 x 4 in.	1 x 4 in.

Tie-ins	1 x 4 in.	1 x 4 in.
Toeboards	4 in. high	4 in. high (minimum)
Guardrails	2 x 4 in.	2 x 4 in.

All members except planking shall be used on edge.

Table 10-5. Minimum nominal size and maximum spacing of members of independent pole scaffolds--medium duty.

Uniformly distributed load.	Not to exceed 50 p.s.f.
Maximum height of scaffold.	60 ft.
Poles or uprights	4 x 4 in.
Pole spacing (longitudinal).	8 ft. 0 in.
Pole spacing (transverse).	8 ft. 0 in.
Ledgers	2 x 10 in.
Vertical spacing of horizontal members.	6 ft. 0 in.
Spacing of bearers	8 ft. 0 in.
Bearers	2 x 10 in.
Bracing, horizontal	1 x 6 in. or 1 ¼ x 4 in.
Bracing, diagonal	1 x 4 in.
Tie-ins	1 x 4 in.
Planking	2 x 10 in.
Toeboards	4 in. high (minimum).
Guardrails	2 x 4 in.

All members except planking shall be used on edge.

Table 10-6. Minimum nominal size and maximum spacing of members of independent pole scaffold--heavy duty.

Uniformly distributed load.	Not to exceed 75 p.s.f.
Maximum height of scaffold.	60 ft.
Poles or uprights	4 x 4 in.
Pole spacing (longitudinal).	6 ft. 0 in.
Pole spacing (transverse).	8 ft. 0 in.
Ledgers	2 x 10 in.
Vertical spacing of horizontal members.	6 ft. 0 in.
Bearers	2 x 10 in. (rough).
Bracing, horizontal and diagonal.	2 x 4 in.
Tie-ins	1 x 4 in.
Planking	2 x 10 in.
Toeboards	4 in. high (minimum).
Guardrails	2 x 4 in.

All members except planking shall be used on edge.

(E) Tube and coupler scaffolds.

(1) The material used for couplers shall be of a structural type, such as drop-forged steel, malleable iron, or structural grade aluminum.

(2) A light duty tube and coupler scaffold shall have all posts, bearers, runners, and bracing of nominal two-inch outside-diameter (O.D.) steel tubing. The posts shall be spaced no more than six feet apart in width and ten feet apart in

length. Other structural metals when used must be designed to carry an equivalent load. No dissimilar metals shall be used together.

(3) A medium duty tube and coupler scaffold shall consist of no less than nominal two-inch O.D. steel tubing in all posts, runners, and bracing. Where the posts are spaced no farther apart than five feet by eight feet, the bearers shall also be no less than nominal two-inch O.D. steel tubing. Where the posts are spaced at greater distances apart than five feet by eight feet, the bearers shall be of not less than nominal two and one-half inch O.D. steel tubing but, in no event, may the posts of a medium duty tube and coupler scaffold be spaced farther apart than six feet by eight feet. Other structural metals, when used, must be capable of carrying a load equivalent to the load supportable by the prescribed tube and coupler scaffold. No dissimilar metals shall be used together.

(4) A heavy duty tube and coupler scaffold shall have all posts, runners, and bracing of nominal two-inch O.D. steel tubing, with the posts spaced no more than six feet by six feet six inches. Other structural metals, when used, must be designed to carry an equivalent load. No dissimilar metals shall be used together.

(5) Tube and coupler scaffolds shall be limited in heights and working levels to those permitted in Tables 10-7 to 10-9. Drawings and specifications of all tube and coupler scaffolds above the limitations in Tables 10-7 to 10-9 shall be designed by a qualified engineer competent in this field.

(6) Posts shall be accurately spaced, erected on suitable bases, and maintained plumb.

(7) Runners shall be erected along the length of the scaffold, located on both the inside and the outside posts at even heights. Runners shall be interlocked to the inside and the outside posts at even heights. Runners shall be interlocked to form continuous lengths and coupled to each post. The bottom runners shall be located as close to the base as possible. Runners shall be placed no more than six feet six inches on centers.

(8) Bearers shall be installed transversely between posts and shall be securely coupled to the posts bearing on the runner coupler. When coupled directly to the runners, the coupler must be kept as close to the posts as possible.

(9) Bearers shall extend past the post and runners.

(10) Cross bracing shall be installed across the width of the scaffold no less than every third set of posts horizontally and every fourth runner vertically. Such bracing shall extend diagonally from the inner and outer runners upward to the next outer and inner runners.

(11) Longitudinal diagonal bracing on the inner and outer rows of poles shall be installed at approximately a forty-five degree angle from near the base of the first outer post upward to the extreme top of the scaffold. Where the longitudinal length of the scaffold permits, such bracing shall be duplicated beginning at every fifth post. In a similar manner, longitudinal diagonal bracing shall also be installed from the last post extending back and upward toward the first post.

Where conditions preclude the attachment of this bracing to the posts, it may be attached to the runners.

(12) The entire scaffold shall be tied to and securely braced against the building at intervals not to exceed thirty feet horizontally and twenty-six feet vertically.

Table 10-7. Tube and coupler scaffolds--light duty.

Uniformly distributed load ..... Not to exceed 25 p.s.f.

Post spacing (longitudinal) ..... 10 ft. 0 in.

Post spacing (transverse) ..... 6 ft. 0 in.

Working levels	Additional planked levels	Maximum height
1	8	125 ft.
2	4	125 ft.
3	0	91 ft. 0 in.

Table 10-8. Tube and coupler scaffolds--medium duty.

Uniformly distributed load ..... Not to exceed 50 p.s.f.

Post spacing (longitudinal) ..... 8 ft. 6 in.

Post spacing (transverse) ..... 6 ft. 0 in.

Working levels	Additional planked levels	Maximum height
1	6	125 ft.
2	0	78 ft. 0 in.

Table 10-9. Tube and coupler scaffolds--heavy duty.

Uniformly distributed load ..... Not to exceed 75 p.s.f.

Post spacing (longitudinal)..... 6 ft. 6 in.

Post spacing (transverse) ..... 6 ft. 0 in.

Working levels	Additional planked levels	Maximum height
1	6	125 ft.

(F) Tubular welded frame scaffolds.

(1) Scaffolds shall be properly braced by diagonal braces for securing vertical members together laterally, and the cross braces shall be of such length as will automatically square and align vertical members so that the erected scaffold is always plumb, square, and rigid. All brace connections shall be made secure.

(2) Scaffold legs shall be set on adjustable bases or plain bases placed on mud sills or other adequate foundations .

(3) The frames shall be placed one on top of the other with coupling or stacking pins to provide proper vertical alignment of the legs.

(4) Where uplift may occur, panels shall be locked together vertically by pins or other equivalent suitable means.

(5) Supported scaffolds with a height to base width (including outrigger supports if used) ratio of more than four to one shall be secured to the building or structure at intervals not to exceed thirty feet horizontally and twenty-six feet vertically.

(6) Maximum permissible spans or planking shall be in conformity with paragraph (C)(7) of this rule.

(G) Manually propelled mobile scaffolds.

(1) When free-standing mobile scaffold towers are used, the height of the work platform shall not exceed four times the minimum base dimension.

(2) Casters shall be properly designed for strength and dimensions to support four times the maximum rated load. All casters shall be provided with a locking device to hold the scaffold in position.

(3) Scaffolds shall be properly braced by cross bracing and horizontal bracing conforming with paragraph (F)(1) of this rule.

(4) Platforms shall be tightly planked for the full width of the scaffold except for necessary entrance opening. Platforms shall be secured in place.

(5) A ladder or stairway shall be provided for proper access and exit and shall be affixed or built into the scaffold and so located that when in use it will not have a tendency to tip the scaffold. A landing platform must be provided at intervals not to exceed thirty-five feet.

(6) Provision shall be made to stabilize the tower during movement from one location to another.

(7) The employer shall not require employees to ride on manually propelled scaffolds unless the following conditions exist:

(a) The floor or surface is within three degrees of level and free from pits, holes, or obstructions;

(b) When ready for rolling the height of the work platform shall not exceed two times the narrowest dimension of the base; when outriggers are used they shall be included in the base dimension and shall be installed on both sides of the staging;

(c) The wheels are equipped with rubber or similar resilient tires;

(d) All tools and materials are secured or removed from the platform before the mobile scaffold is moved.

(H) Elevated work platforms and self-propelled elevated work platforms.

(1) The minimum rated work load of a platform shall be no less than two hundred fifty pounds. The work platform and all structural components shall have a factor of safety of no less than four.

(2) Any work platform when raised to its maximum working height shall be capable of sustaining without reaching

instability, a horizontal force of fifty pounds applied to any point on the platform while the platform is carrying the working load.

(3) The base shall not be used or placed on an inclined surface unless leveled by a device that is part of the unit.

(4) Work platform elevating assemblies.

(a) Factors of safety of elevating assembly.

(i) Where the platform is supporting its working load by a system of wire ropes or lift chains, or both, the factor of safety of the wire or chain shall be no less than six.

(ii) All critical components of a hydraulic or pneumatic system used in a work platform shall have a bursting strength that exceeds the pressure attained when the system is subjected to the equivalent of four times the maximum rated load. Critical components are those in which a failure would result in a free fall. All noncritical hydraulic components shall have a bursting factor of safety of no less than two.

(b) Systems protection.

(i) Where the elevation of the platform is accomplished by an electromechanical assembly, or a hydraulic or pneumatic cylinder assembly, the system shall be so equipped as to prevent free fall in the event of a power failure.

(ii) Where the elevation of the platform is accomplished by a hydraulic or pneumatic cylinder assembly, the system shall be so equipped as to prevent free fall in the event of a hydraulic or pneumatic line failure.

(iii) Where the elevation of the platform is accomplished by a single hoist cable, the system shall be protected by a broken-cable safety device.

(iv) Where the elevation of the platform is accomplished by manual-mechanical or manual-hydraulic assembly, the assembly shall be equipped to prevent free fall in case of failure.

(c) Controls.

(i) Any powered work platform shall have both upper and lower control devices. Controls shall be plainly marked as to their function and guarded to prevent accidental operation. The upper control device shall be in or beside the platform, within easy reach of the operator. The lower control device shall have the capability to lower the platform where the operator's safety is in jeopardy.

(ii) Each elevated work platform shall be equipped with a clear visible instruction plate stating:

(a) Rated capacity;

(b) Maximum platform height;

(c) Special warning or restrictions necessary for safe operation.

(iii) Protection to personnel.

(a) Pinch points and shear points shall be guarded with a barrier to prevent accidental or inadvertent entrapment of personnel while the work platform is being operated.

(b) All rotating shafts, gearing, and other moving parts shall be guarded.

(I) Outrigger scaffolds.

See appendix to this rule for examples of outrigger scaffolds.

(1) Outrigger beams shall extend no more than six feet beyond the face of the building. The inboard end of the outrigger beams, measured from the fulcrum point to anchorage point, shall be no less than one and one-half times the outboard end in length. The beams shall rest on edge, the sides shall be plumb, and the edges shall be horizontal. The fulcrum point of the beam shall rest on a secure bearing no less than six inches in each horizontal dimension. The beam shall be secured in place against movement and shall be securely braced at the fulcrum point against movement and shall be securely braced at the fulcrum point against tipping.

(2) The inboard ends of outrigger beams shall be securely anchored either by means of struts bearing against sills in contact with the overhead beams or ceiling, or by means of tension members secured to the floor joists underfoot, or by both if necessary. The inboard ends of outrigger beams shall be secured against tipping and the entire supporting structure shall be securely braced in both directions to prevent any horizontal movement.

(3) Unless outrigger scaffolds are designed by a professional engineer competent in this field, they shall be constructed and erected in accordance with "Table 10-10." Outrigger scaffolds, designed by a professional engineer, shall provide equivalent or greater safeguards than those required herein.

(4) Planking shall be laid tight and shall extend to within three inches of the building wall. Planking shall be secured to the beams.

Table 10-10. Minimum nominal size and maximum spacing of members of outrigger scaffolds.

	Light duty	Medium duty
Maximum scaffold load.	**25 p.s.f. ..**	**50 p.s.f.**
Outrigger size	2 x 10 in.	3 x 10 in.
Maximum outrigger spacing	10 ft. 0 in.	6 ft. 0 in.
Planking	2 x 10 in.	2 x 10 in.
Guardrail	2 x 4 in.	2 x 4 in.
Guardrail uprights	2 x 4 in.	2 x 4 in.
Toeboards	4 in. (minimum)	4 in. (minimum).

(J) Masons' adjustable multiple-point suspension scaffolds.

See appendix to this rule for examples of masons' adjustable multiple-point suspension scaffolds.

(1) The scaffold shall be capable of sustaining a working load of fifty pounds per square foot and shall not be loaded in excess of that figure.

(2) The scaffold shall be provided with hoisting machines that meet the requirements of "Underwriters' Laboratories or Factory Mutual Engineering Corporation."

(3) The platform shall be supported by wire ropes, capable of supporting no less than six times the intended load,

suspend from overhead outrigger beams.

(4) The scaffold outrigger beams shall consist of structural metal securely fastened or anchored to the frame or floor system of the building or structure.

(5) Where an outrigger beam does not project more than six feet six inches beyond the bearing point, it shall be equivalent in the strength to no less than a standard seven-inch, fifteen and three-tenths-pound steel I-beam no less than fifteen feet long.

(6) Where the overhang exceeds six feet six inches, outrigger beams shall be composed of stronger beams or multiple beams, providing proportionally greater strength than that required in paragraph (J)(5) of this rule.

(7) All outrigger beams shall be set and maintained with their webs in a vertical position.

(8) A stop bolt shall be placed at each end of every outrigger beam.

(9) The outrigger beam shall rest on suitable wood bearing blocks.

(10) The free end of the suspension wire ropes shall be equipped with proper size thimbles and secured by splicing or other equivalent means. The running ends shall be securely attached to the hoisting drum and no less than four turns of wire rope shall at all times remain on the drum. The use of fiber rope is prohibited.

(11) Where a single outrigger beam is used, the steel shackles or clevises with which the wire ropes are attached to the outrigger beams shall be placed directly over the hoisting drum.

(12) The scaffold platform shall be equivalent in strength to no less than two-inch planking.

(13) When employees are at work on the scaffold and a hazard exists from overhead, overhead protection shall be provided on the scaffold, no more than nine feet above the platform, consisting of two-inch planking, or material of equivalent strength, laid tight, and extending no less than the width of the scaffold.

(K) Two-point suspension scaffolds (swinging scaffolds).

See appendix to this rule for examples of swinging scaffolds.

(1) Two-point suspension scaffold platforms shall be no more than thirty-six inches wide overall. The platform shall be securely fastened to the hangers by U-bolts or by other equivalent means.

(2) The hangers of two-point suspension scaffolds shall be made of mild steel, or other equivalent materials, having a cross-sectional area capable of sustaining four times the maximum rated load, and shall be constructed to accommodate a guardrail, intermediate rail, and toeboard.

(3) When hoisting machines are used on two-point suspension scaffolds, such machines shall be of a design tested and approved by "Underwriters' Laboratories or Factory Mutual Engineering Corporation."

(4) Employees shall not be required to use a bridge between, or to move directly from, one swinging scaffold and another unless the platforms are at the same height, are abutting, and walk through stirrups specifically designed for this purpose are used.

(5) The roof irons or hooks shall be of mild steel, or other equivalent material, of proper size and design, securely installed and anchored. Tiebacks of three-quarter-inch manila rope, or the equivalent, shall serve as an additional means of anchorage, installed at right angles to the face of the building, whenever possible, and secured to a structurally sound portion of the building.

(6) Two-point suspension scaffolds shall be suspended by wire, synthetic, or fiber ropes capable of supporting no less than six times the maximum rated load. All other components shall be capable of supporting no less than four times the maximum rated load.

(7) The sheaves of all blocks shall fit the size and type of rope used.

(8) No more than two employees shall be required to be on a two-point suspension scaffold designed for a working load of five hundred pounds at any time. No more than three employees shall be required to be on a two-point suspension scaffold designed for a working load of seven hundred pounds, at any time. Each employee shall be protected by an approved safety belt or harness attached to a lifeline. The lifeline shall be securely attached to substantial members of the structure (not scaffold) or to securely rigged lines, which will safely suspend the employee in case of a fall.

(9) Two-point suspension scaffolds shall be securely lashed to the building or structure to prevent from swaying. Window cleaners' anchors shall not be used for this purpose.

(10) The platform of every two-point suspension scaffold shall be one of the following types:

(a) Ladder-type platforms.

Ladder-type platforms shall be capable of sustaining four times the maximum rated load and shall be constructed in accordance with "Table 10-11."

(b) Plank-type platforms.

Plank-type platforms shall be composed of no less than "Scaffold Grade" two-inch by ten-inch unspliced planks, properly cleated together on the underside, starting six inches from each end; intervals in between shall not exceed four feet. The plank-type platform shall not extend beyond the hangers more than twelve inches. A bar or other effective means shall be securely fastened to the platform at each end to prevent its slipping off the hanger. The span between hangers for plank-type platforms shall not exceed eight feet.

(c) Beam-type platforms.

Beam-type platforms shall have side stringers of lumber no less than two inches by six inches set on edge. The span between hangers shall not exceed twelve feet when beam platforms are used. The flooring shall be supported on two-inch by six-inch cross beams, laid flat and set into the upper edge of the stringers with a snug fit, at intervals of no more than four feet, securely nailed in place. The flooring shall be of one-inch by six-inch material, or equivalent, properly nailed. Floor boards shall be spaced no more than one-half-inch apart.

(d) Light metal-type platforms.

Approved light metal-type platforms shall meet the requirements of paragraph (C)(2) of this rule.

Table 10-11. Schedule for ladder-type platforms.

	Length of Platform (feet)				
	12	14 and 16	18 and 20	22 and 24	28 and 30
Side Stringers, minimum cross section (finished sizes):					
At ends (inches)	1- ¾ x 2- ¾	1- ¾ x 2- ¾	1- ¾ x 3	1- ¾ x 3	1- ¾ x 3- ½
At middle (inches)	1- ¾ x 3- ¾	1- ¾ x 3- ¾	1- ¾ x 4	1- ¾ x 4- ¼	1- ¾ x 5
Reinforcing strip (minimum)	A ⅛ x ⅞ -inch steel reinforcing strip or its equivalent shall be attached to the side or underside, full length.				
Rungs	Rungs shall be 1- ⅛ inches minimum diameter with at least ⅞ -inch diameter tenons, and the maximum spacing shall be 12 inches center to center.				

Tie Rods:					
Number (minimum)	3	4	4	5	6
Diameter (minimum)	¼ inch	¼ inch	¼ inch	¼ inch	¼ inch
Flooring, minimum finished size (inches)	½ x 2- ¾	½ x 2- ¾	½ x 2- ¾	½ x 2- ¾	½ x 2- ¾

(L) Single-point adjustable suspension scaffolds.

(1) The scaffolding, including power units or manually operated winches, shall be of an approved type and meet the requirements of paragraph (C)(2) of this rule.

(2) All power-operated gears and brakes shall be enclosed.

(3) In addition to the normal operating brake, all power-driven units shall have an emergency brake which engages automatically when the normal speed of descent is exceeded.

(4) The units may be combined to form a two-point suspension scaffold. Such scaffold shall then comply with paragraph (K) of this rule.

(5) The supporting cable shall be vertical for its entire length.

(6) Suspension methods shall conform to applicable provisions of paragraphs (J) and (K) of this rule.

(7) The employee shall be protected by a safety belt or harness and lifeline in accordance with paragraph (J) of rule 4123:1-3-03 of the Administrative Code. The attachment point of the lifeline to the structure shall be appropriately changed as the work progresses.

(M) Boatswains' chairs.

(1) When constructed of wood the chair seat shall be no less than twelve inches by twenty-four inches by one-inch thickness, reinforced by cleats on the underside to prevent splitting. A chair of the same size may be constructed of material of equal strength.

(2) Seat slings shall be of no less than five-eighths-inch diameter, "First Grade" manila rope, or its equivalent, which shall be reeved through the four seat holes so as to cross each other on the underside of the seat.

(3) Seat slings shall be of no less than three-eighths-inch wire rope when an employee is conducting a heat-producing process, such as gas or are welding.

(4) The employee shall be protected by a safety belt or harness and lifeline in accordance with paragraph (J) of rule 4123:1-3-03 of the Administrative Code. The attachment point of the lifeline to the structure shall be appropriately changed as the work progresses.

(5) The tackle shall consist of correct size ball bearing or bushed blocks and properly spliced five-eighths-inch diameter, "First Grade" manila rope, or equivalent.

(6) The roofirons, hooks, or the object to which the tackle is anchored, shall be securely installed. Tiebacks shall be installed at right angles to the face of the building and securely fastened when using wall hooks.

(N) Carpenters' bracket scaffolds.

(1) The brackets shall consist of a triangular wood frame no less than two inches by three inches in cross section, or of metal of equivalent strength. Each member shall be properly fitted and securely joined.

(2) Each bracket shall be secured to the structure by a means which shall provide a factor of safety of no less than four.

(3) The brackets shall be spaced no more than eight feet apart.

(4) The platform shall consist of no less than two two-inch by ten-inch "Scaffold Grade" planks extending no more than twelve inches or less than six inches beyond each and support.

(O) Bricklayers' square scaffolds.

(1) Bricklayers' square scaffolds shall conform to "Table 10-12" and the square shall not exceed five feet in width and five feet in height.

(2) The squares shall be reinforced on both sides of each corner with one-inch by six-inch gusset pieces. They shall also have diagonal braces one inch by eight inches on both sides running from center to center of each member, or other means to secure equivalent strength and rigidity.

(3) The squares shall be set no more than five feet apart for medium duty scaffolds, and no more than eight feet apart for light duty scaffolds. Bracing, one inch by eight inches, extending from the bottom of each square to the top of the next square, shall be provided on both front and rear sides of the scaffold.

(4) Platform planks shall be no less than two-inch by ten-inch "Scaffold Grade." The ends of the planks shall overlap the bearers of the squares and each plank shall be supported by no less than three squares.

(5) Bricklayers' square scaffold shall not exceed three tiers in height and shall be so constructed and arranged that one square shall rest directly above the other. The upper tiers shall stand on a continuous row of planks laid across the next lower tier and be nailed down or otherwise secured to prevent displacement.

(6) Scaffolds shall be level and plumb and set upon a firm foundation.

Table 10-12. Minimum dimensions for bricklayers' square scaffold members.

Members	Dimensions
Bearers or horizontal members	2 x 6 in.
Legs	2 x 6 in.
Braces at corners	1 x 6 in.
Braces diagonally from center frame	1 x 8 in.

(P) Foot scaffolds.

(1) Foot scaffolds shall not exceed eighteen inches in height, measured from the level upon which the supports are placed.

(2) Foot scaffolds imposed on other scaffolds when supported on brick or tile, shall be limited to eighteen inches in height and have a bearing surface of no less than ninety-six square inches. Supports shall be no more than seven feet cent to center.

(Q) Horse scaffolds.

(1) Horse scaffolds shall not be constructed or arranged more than two tiers in height.

(2) The members of the horses shall be no less than those specified in "Table 10-13."

(3) Horses shall be spaced no more than five feet for medium duty and no more than eight feet for light duty.

(4) When arranged in tiers, each horse shall be placed directly over the horse in the tier below.

(5) On all scaffolds arranged in tiers, the legs shall be nailed down or otherwise secured to the planks to prevent displacement or thrust and each tier shall be substantially cross braced.

(6) Defective or damaged horses or parts shall not be used.

Table 10-13. Minimum dimensions for horse scaffold members.

Members	Dimensions
Horizontal members or bearers	3 x 4 in.
Legs	1- ¼ x 4- ½ in.
Longitudinal brace between legs	1 x 6 in.
Gusset brace at top of legs	1 x 8 in.
Half diagonal braces	1- ¼ x 4- ½ in.

(R) Chimney, stack, or tank bracket scaffolds.

(1) Minimum width.

The minimum width of platform shall be no less than eighteen inches.

(2) Spacer blocks.

Spacer blocks, large enough to hold the suspending cable away form the structure, shall be provided.

(3) Ascending and descending.

For ascending to and descending from a chimney, stack or tank bracket scaffold, a scaling ladder or boatswain's chair shall be provided.

(4) Platforms on masonry chimneys or stacks.

Platforms supported on the rim of masonry chimneys or stacks are prohibited.

(5) Inside scaffolds.

In construction of chimneys or stacks where an inside scaffold is being used, the working platform shall be no less than eighteen inches below the top of the wall.

(6) Guardrails.

Chimney, stack, or tank bracket scaffolds shall be provided with standard guardrails, but no guardrail is required when safety belts or harness with lifelines are provided.

(S) Needle beam scaffolds.

(1) Wood needle beams shall be no less than four inches by six inches in size, with the greater dimensions placed in a vertical direction. Metal beams or the equivalent, conforming to paragraph (C)(2) of this rule may be used and shall not be altered or moved horizontally while they are in use.

(2) Ropes or hangers shall be provided for supports. The span between supports on the needle beam shall not exceed ten feet for four-inch by six-inch timbers. Rope supports shall be equivalent in strength to one-inch diameter "First Grade"

manila rope.

(3) The scaffold shall be rigged so as to prevent the needle beam from rolling or becoming otherwise displaced.

(4) The platform span between the need beams shall not exceed eight feet when using two-inch "Scaffold Grade" planks. For spans greater than eight feet, platforms shall be constructed based on design requirements for the special span. The overhang of each end of the platform planks shall be no less than six inches and no more than twelve inches. Planks shall be secured against displacement.

(5) All unattached tools, bolts, and nuts used on needle beam scaffolds shall be kept in suitable containers, properly secured.

(6) One end of a needle beam scaffold may be supported by a permanent structural member conforming to paragraph (C)(2) of this rule.

(7) Each employee working on a needle beam scaffold shall be protected by a safety belt or harness and lifeline in accordance with paragraph (J) of rule 4123:1-3-03 of the Administrative Code.

(T) Interior hung scaffolds.

(1) An interior hung scaffold shall be hung or suspended from a structure capable of providing a factor of safety of no less than four.

(2) The suspending wire or fiber rope shall be capable of supporting no less than six times the maximum rated load.

(3) The scaffold shall be designed to sustain a working load with a factor of safety of no less than four.

(4) For wood scaffolds, the following minimum "Scaffold Grade" material shall be used:

(a) Supporting bearers, two inches by ten inches on edge;

(b) Planking, two inches by ten inches, with maximum span of seven feet for heavy duty and ten feet for light duty or medium duty.

(5) Steel tube and coupler members may be used for such type scaffolds.

(U) Ladder jack scaffolds.

(1) All ladder jack scaffolds shall be limited to light duty and shall not exceed a height of twenty feet above the floor or ground.

(2) All ladders used in connection with ladder jack scaffolds shall be heavy duty ladders. Cleated ladder shall not be used for this purpose.

(3) The ladder jack shall be so designed and constructed that it will bear on the side rails in addition to the ladder rungs, or if bearing on rungs only, the bearing area shall be no less than ten inches on each rung.

(4) Ladder used in conjunction with ladder jacks shall be so placed, fastened, held, or equipped with devices so as to prevent slipping.

(5) The platform shall be "Scaffold Grade," two-inch by ten-inch plank, or material of equal strength. Planks shall overlap the bearing surface no less than twelve inches. The span between supports shall not exceed eight feet. Platform width shall be no less than eighteen inches and provide a factor of safety of no less than four.

(V) Window jack scaffolds.

(1) Window jack scaffolds shall be used only for the purpose of working at the window opening through which the jack is placed.

(2) Window jacks shall not be used to support planks spaced between one window jack and another or for other elements of scaffolding.

(3) Window jack scaffolds shall be provided with standard guardrails unless safety belts or harnesses with lifelines are attached and provided for the employee.

(4) No more than one employee shall be required to occupy a window jack scaffold.

(W) Float or ship scaffolds.

See appendix to this rule for examples of float or ship scaffolds.

(1) No more than three employees shall be required to occupy a float or ship scaffold.

(2) The platform shall be no less than three feet wide and six feet long, made of three-quarter-inch plywood, equal to "American Plywood Association Grade B-B, Group I, Exterior," or other equivalent material.

(3) Under the platform, there shall be two supporting bearers made from two-inch by four-inch, or one-inch by ten-inch, rough, select lumber or better. Bearers shall be free of knots or other flaws and project six inches beyond the platform on both sides. The ends of the platform shall extend six inches beyond the outer edges of the bearers. Each bearer shall be securely fastened to the platform.

(4) An edging of wood no less than three-fourths by one and one-half inches shall be placed around all sides of the platform to prevent tools from rolling off.

(5) Supporting ropes shall be one-inch diameter manila rope, or equivalent, providing a factor of safety of no less than six. Rope connections shall be such that the platform cannot shift or slip. Two ropes shall be used with each float, arranged so as to provide four ends which are to be securely fastened to an overhead support. Each of the two supporting ropes shall be securely fastened around one end of the bearer and pass under the platform to the other end of the bearer where it shall be securely fastened again, leaving sufficient rope at each end for the supporting ties.

(X) Form scaffolds.

See appendix to this rule for examples of various types of form scaffolds covered under this rule.

(1) General requirements for all form scaffolds.

(a) All form scaffolds and their components shall be capable of supporting without failure no less than four times the maximum rated load.

(b) Maximum permissible spans shall not exceed eight feet on centers for two-inch by ten-inch "Scaffold Grade" planking. Scaffold planks shall be securely fastened to the ledgers or of such length that they overlap the ledgers no less than six inches. Unsupported projecting ends of scaffolding planks of all form scaffolds shall be limited to a maximum overhang of twelve inches.

(2) Figure-four form scaffolds.

Figure-four form scaffolds are intended for light duty and shall not be used to support loads exceeding twenty-five pounds per square foot unless specifically designed for heavier loading. Frames shall be spaced no more than eight feet on centers. (For minimum design criteria, see "Table 10-14").

Table 10-14. Minimum design criteria for figure-four form scaffolds.

Members	Dimensions
Uprights	2 x 4 in. or 2 x 6 in.
Outrigger ledgers (two)	1 x 6 in.
Braces	1 x 6 in.
Guardrails	2 x 4 in.
Guardrail height	Approximately 42 in.
Intermediate guardrails	1 x 6 in.
Toeboards	4 in. (minimum)
Maximum length of ledgers	3 ft. 6 in. (unsupported)
Planking	2 x 10 in.
Upright spacing	8 ft. 0 in. (on centers)

(3) Metal bracket form scaffolds.

(a) Metal brackets or scaffold jacks which are an integral part of the form shall be securely bolted or welded to the form. Folding type brackets shall be either bolted or secured with a locking type pin when extended for use.

(b) "Clip-on" or "hook-over" brackets may be used, provided the form walers are bolted to the form or secured by snap ties or shea-bolt extending through the form and securely anchored.

(c) Metal brackets shall be spaced no more than eight feet on centers.

(d) Scaffold planks shall be either bolted to the metal brackets or of such length that they overlap the brackets at each end by no less than six inches. Unsupported projecting ends of scaffolding planks shall be limited to a maximum overhang of twelve inches.

(e) Metal bracket form scaffolds shall be equipped with standard guardrails and toeboards, meeting the minimum dimensions shown in "Table 10-15."

Table 10-15. Minimum design criteria for metal bracket form scaffolds.

Members	Dimensions
Uprights	2 x 4 in.
Guardrails	2 x 4 in.
Guardrail height	Approximately 42 in.
Intermediate guardrails	1 x 6 in.
Toeboards	4 in. (minimum)
Planking	2 x 9 in.

(4) Wooden bracket form scaffolds.

Wooden bracket form scaffolds shall be an integral part of the form panel.

The minimum design criteria set forth herein and in "Table 10-16" cover scaffolding intended for light duty and shall not be used to support loads exceeding twenty-five pounds per square foot, unless specifically designed for heavier loading.

Table 10-16. Minimum design criteria for wooden bracket form scaffolds.

Members	Dimensions
Uprights	2 x 4 in. or 2 x 6 in.
Support ledgers	2 x 6 in.
Maximum scaffold width	3 ft. 6 in.
Braces	1 x 6 in.

Guardrails	2 x 4 in.
Guardrail height	Approximately 42 in.
Intermediate guardrails	1 x 6 in.
Toeboards	4 in. (minimum)
Upright spacing	8 ft. 0 in. (on centers)

(Y) Pump jack scaffolds.

(1) Pump jack scaffolds shall:

(a) Not carry a working load exceeding five hundred pounds; and

(b) Be capable of supporting no less than four times the maximum rated load.

(c) The manufactured components shall not be loaded in excess of the manufacturer's recommended limits.

(2) Each pump jack bracket shall have two gripping mechanisms to prevent any failure or slippage.

(3) The platform bracket shall be fully decked and the planking secured. Planking, or equivalent, shall conform with paragraph (C)(7) of this rule.

(4) Poles and bracing.

(a) When wood scaffold planks are used as platforms, poles for pump jacks shall be spaced no more than ten feet center to center. When fabricated platforms are used that fully comply with all other provisions of this section, pole spacing may exceed ten feet center to center.

(b) Poles shall not exceed thirty feet in height.

(c) Poles shall be secured to the work surface by rigid triangular bracing, or equivalent, at the bottom, top and other points as necessary, to provide a maximum vertical spacing of no more than ten feet between braces. Each brace shall be capable of supporting a minimum of two hundred twenty-five pounds tension and compression.

(d) For the pump jack bracket to pass bracing already installed, an extra brace shall be used approximately four feet above the one to be passed until the original brace is reinstalled.

(e) All poles shall bear on mud sills or other firm foundations.

(f) Pole lumber shall be two-by-fours, of Douglas fir, or equivalent, straight-grained, clear, free of cross-grain, shakes, large knots, and other defects which might impair strength.

(g) When poles are constructed of two continuous lengths, they shall be two-by-fours, spiked together with the seam parallel to the bracket, and with ten-penny common nails, no more than twelve inches center to center, staggered uniformly from opposite outside edges.

(h) If two-by-fours are spliced to make up the pole, the splices shall be so constructed as to develop the full strength of the member.

(5) A ladder shall be provided for access to the platform during use.

(6) No more than two employees shall be required at any time to be on a pump jack scaffold between any two supports.

(7) Pump jack scaffolds shall be provided with standard guardrails, but no guardrail is required when safety belts or harnesses with lifelines are provided for employees.

(8) When a work bench is used at an approximate height of forty-two inches, the top guardrail may be omitted in the space occupied by the work bench, if the work bench is fully decked, the decking is secure, and is capable of withstanding two hundred pounds pressure in any direction.

(9) Employees shall not be required to use a work bench as a scaffold platform.

(Z) Stilts.

Stilts shall be equipped with "feet" of skid resistant material. Means shall be provided to securely fasten the stilts to employee's feet and legs. The floor in the work area shall be maintained free of debris and other possible hazards.

Credits

HISTORY: 2010-11 OMR pam. #6 (A), eff. 1-1-11; 2009-10 OMR pam. #9 (A), eff. 5-3-10, (W), eff. 4-21-10; 2009-10 OMR pam. #1 (A), eff. 8-1-09, (W), eff. 7-22-09; 2003-04 OMR 1206 (A-TF 4121:1-3-10), eff. 11-1-03

RC 119.032 rule review date(s): 1-15-14; 1-16-09; 3-1-03; 3-1-98

Notes of Decisions (27)

Rules are complete through April 30, 2012; Appendices are current to February 28, 2010

4123:1-3-10, OH ADC 4123:1-3-10

End of Document

Baldwin's Ohio Administrative Code Annotated
4123 Workers' Compensation Bureau (Refs & Annos)
4123:1 Safety and Hygiene Division (Refs & Annos)
Chapter 4123:1-5. Workshop and Factory Safety (Refs & Annos)

OAC 4123:1-5-17

4123:1-5-17 Personal protective equipment

Currentness

(A) Reserved.

(B) Reserved.

(C) Specific requirements of general application.

(1) Personal protective equipment furnished by the employer shall be issued to the employee in sanitary and proper condition so that it will effectively protect against the hazard involved.

(2) Where employees provide their own protective equipment, such equipment shall give equal or greater protection than that furnished by the employer.

(D) Eye and face protection.

(1) Responsibility.

The employer shall provide eye protection for all employees engaged in the operations listed in paragraph (D)(2) of this rule and exposed to an eye hazard. Eye protection shall also be provided for any other employees in the immediate area and who are exposed to the hazards of the operations listed. It shall be the responsibility of the employee to use the eye protection provided by the employer (see appendix to this rule for eye and face protector selection guide).

(2) Operations requiring eye protection.

(a) Eye protection shall be provided to employees performing the following operations:

(i) When using hand tools or mechanical equipment to cut, chip, drill, clean, buff, grind, polish, shape, or surface masonry, brick, concrete, plaster, stone, plastics, or other hardened substances. This also covers demolition work where the material listed are part of the operation;

(ii) Where acids, sand, or shot blast are used in building cleaning operations;

(iii) Welding, brazing, soldering, or cutting operations involving the use of gas flames or electric arc. (See appendix to this rule);

(iv) Where portland cement is taken from an elevated bin, hopper or similar structure by a chute;

(v) All spray paint operations where the operator's eyes are exposed to paint mist in the atmosphere;

(vi) All sand or shot blast operations where the operator's eyes are exposed to the blasting;

(vii) The opening or closing of the tap holes of cupolas or melting furnaces;

(viii) In the handling of molten metal, molten glass, and molten plastic;

(ix) Metal and plastic chipping, cutting, cleaning, grinding, conditioning, or machining where there is danger of flying particles;

(x) Dressing grinding wheels;

(xi) Cleaning operations where wire wheels are used;

(xii) In handling injurious acids, alkalis, or other chemicals;

(xiii) Cutting, drilling, turning, planing, jointing, and sanding of wood with power tools;

(xiv) Operation of portable powder-actuated, pneumatically powered, and other powered fastening tools;

(xv) Operations requiring the use of compressed air;

(xvi) When working in close proximity to a laser beam in excess of five milliwatts;

(xvii) Pruning trees or cutting underbrush.

(b) This rule does not apply where a shield or exhaust equipment provides adequate eye protection for employees otherwise exposed to the hazards covered in paragraphs (D)(2)(a)(i) to (D)(2)(a)(xvii) of this rule.

(3) Face shields.

(a) Face shields may be provided in lieu of other forms of eye protection if they provide the required protection against the particular hazards for which they are designed.

(b) Face shields, in addition to eye protection, shall be provided where danger to the face exists, such as in the following operations:

(i) Welding operations;

(ii) All sand or shot blast operations;

(iii) Cleaning operations where wire wheels are used;

(iv) Metal and plastic chipping, cutting, cleaning, grinding, conditioning, or machining where there is danger of flying particles;

(v) The handling of molten metal, molten glass, and molten plastic;

(vi) The handling of injurious acids, alkalis, or other chemicals.

(4) Material requirements for eye protection shall meet ANSI Z87.1 - 1968.

(E) Foot (toe) protection.

Foot protection shall be worn by the employee where an employee is exposed to machinery or equipment that presents a foot hazard or where an employee is handling material which presents a foot hazard.

(F) Respiratory protection.

(1) Where there are air contaminants as defined in rule 4123:1-5-01 of the Administrative Code, the employer shall provide respiratory equipment approved for the hazard. It shall be the responsibility of the employee to use the respirator or respiratory equipment provided by the employer, guard it against damage and report any malfunction to the employer. Note: See appendix to this rule for basic guides for the selection of respirators.

(2) This requirement does not apply where an effective exhaust system (see rules 4123:1-5-18 and 4123:1-5-992 of the Administrative Code) or where other means of equal or greater protection have been provided.

(G) Head and hair protection.

(1) Responsibility.

(a) Employer.

(i) Whenever employees are required to be present where the potential hazards to their head exists from falling or flying objects, or from physical contact with rigid objects, or from exposures where there is a risk of injury from electric shock, employers shall provide employees with suitable protective headgear.

Where required, head protection shall meet the requirements of ANSI Z89.1 - 1969.

(ii) When head protection is required employers shall provide accessories designed for use with the headgear.

(iii) Damaged parts of protective headgear shall be replaced. Protective helmets and bump caps or parts thereof and hair enclosures shall be sanitized before reissue.

(b) Employees.

Employees shall not alter any head or hair protective equipment and shall use such equipment in accordance with instructions and training received.

(c) Hair enclosures.

(i) A hat, cap or net shall be provided where there is danger of hair entanglement in moving parts of machinery or equipment, or where there is exposure to means of ignition. It shall be designed to enclose all loose hair and be adjustable to accommodate all head sizes. Material used for a hair enclosure shall be durable, fast-dyed, nonirritating to the skin, and capable of withstanding frequent cleaning. It shall not be reissued from one employee to another unless it has been thoroughly sanitized.

(ii) Hair enclosures used in areas where there is exposure to sparks, hot or molten metals, or ignition from heat, flames, or chemical reaction shall be made of materials that are nonburning or flame retardant and do not melt.

(H) Hearing protection.

Employees exposed to continuous noise levels of ninety or more decibels (dBA) slow response shall be provided with approved ear protection. (If variations in noise level involve maxima at intervals of one second or less, the noise is considered continuous.) If ear plugs that require fitting are provided, they shall be fitted to the individual employees by a competent person.

(I) Protection of the body and exposed parts and other protective equipment.

(1) All persons required to work in such a manner that their clothing may become wet with acids caustics or other injurious liquids shall be provided with such gloves, aprons, coats, jackets, sleeves, or other garments made of rubber, or other materials impervious to such liquids as are required to keep their clothing dry. Aprons shall extend well below the top of boots to prevent such liquid from splashing into the boots. Provision of dry clean cotton clothing along with rubber shoes or short boots and an apron impervious to such liquids shall be considered a satisfactory substitute where small parts are cleaned, plated, or acid-dipped in open tanks and rapid work is required.

(2) Facilities for quick drenching or flushing of the eyes and body shall be provided within the work area, where employees are exposed to injurious corrosive materials. Where plumbing is not available and where storage batteries of the enclosed type with explosion-proof vents are serviced exclusively, portable, self-contained eyewash equipment may be provided in lieu of the quick drenching or flushing facilities. Where portable self-contained eyewash equipment is used in lieu of drenching or flushing facilities, it shall be capable of delivering to the eye no less than 1.5 liters (0.4 gallons) per minute for a minimum of fifteen minutes.

(3) Welding, cutting, brazing, and molten metal exposures.

All employees exposed to the hazards created by welding, cutting, brazing, or molten metal operations shall be protected by protective clothing. This includes:

(a) Flameproof gauntlet gloves.

(b) Flameproof aprons made of leather, or other material which provides equivalent protection.

(c) Exterior clothing made of wool, cotton, or other material chemically treated to reduce combustibility.

(d) Capes or shoulder covers made of leather or other material which provides equivalent protection.

(e) Protection for the ears from the overhead welding and cutting or welding and cutting in extremely confined spaces.

(4) Working by hand on energized circuits.

When an employee is required to work on, or in proximity to, energized lines, the employer shall provide and the employee shall use protective equipment approved for the hazard involved.

(5) Climbers.

(a) Where employees are required to climb poles or trees, the employer shall provide climbers, the gaffs (spurs) of which shall not be less than one and one-eighth inches in length, measured on the underside.

(b) Storage.

Storage facilities shall be provided so that the sharp points of the climber gaffs will not cause damage to other equipment or cause injury to employees.

(6) Safety belts, harness, lifelines and lanyards.

(a) Lifelines, safety belts or harnesses and lanyards shall be provided by the employer, and it shall be the responsibility of the employee to wear such equipment when exposed to hazards of falling where the operation being performed is more than six feet above the ground or above a floor or platform, except as otherwise specified in this chapter, and when required to work on stored material in silos, hoppers, tanks, and similar storage areas. Lifelines and safety belts or harnesses shall be securely fastened to the structure and shall sustain a static load of no less than three thousand pounds.

(b) Where the lifeline may be subjected to cutting or abrasion, a minimum seven-eighths-inch wire core manila rope, or equivalent, shall be provided. For all other lifeline applications, a minimum of three-fourths-inch manila rope, or equivalent, shall be provided.

(c) Safety belt, harness, or strap lanyards shall be a minimum of one-half inch nylon, or equivalent, with a maximum length to provide for a fall of no more than six feet. The lanyard shall have a breaking strength of no more than three thousand pounds.

(d) All safety belt, harness, or strap and lanyard hardware shall be drop-forged or pressed steel, cadmium plated. Surface shall be smooth and free from sharp edges.

(e) All safety belt, harness, or strap and lanyard hardware shall be capable of withstanding a tensile loading of three thousand pounds without cracking, breaking, or becoming permanently deformed.

(7) Safety nets.

(a) Safety nets shall be provided when workplaces are more than thirty feet above the ground, water, or other surface where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts is impractical.

(b) Where safety net protection is required by this rule, operations shall not be undertaken until the net is in place and has been tested.

(c) Nets shall extend outward from the outermost projection of the work surface in accordance with the following table to this rule and shall be installed as closed under the work surface as practical but in no case more than thirty feet below such work surface with the exception of bridge construction where only one level of nets is required. Nets shall be hung with sufficient clearance to prevent the falling employee's contact with the surface or structures below. Such clearance shall be determined by impact load testing.

Table

Vertical distance from working level to horizontal plane of the net.	Minimum required horizontal distance of net from the edge of the working surface.

Up to five feet	eight feet
More than five feet up to ten feet	ten feet
More than ten feet	thirteen feet

(d) The mesh size of nets shall not exceed six inches. All new nets shall meet accepted performance standards of seventeen thousand five hundred foot-pounds minimum impact resistance as determined and certified by the manufacturer, and shall bear a label of proof test. Edge ropes shall provide a minimum breaking strength of five thousand pounds.

(e) Forged steel safety hooks or shackles shall be used to fasten the net to its supports. Attachment of safety nets to the working platform is prohibited.

(f) Connections between net panels shall maintain the full strength of the net.

(8) Working over or near water.

(a) Where employees are working over or near water, and where the depth or current of the water creates a danger of drowning, the employer shall provide U.S. coast guard-approved life jackets or buoyant work vests for each employee.

(b) Ring buoys with no less than ninety feet of line attached shall be provided and readily available for emergency rescue operations. Distance between ring buoys shall not exceed one hundred fifty feet.

(c) At least one lifesaving skiff shall be immediately available at locations where employees are working over or adjacent to water.

(d) In cribs and cofferdams where employees are exposed to danger of falling inside of the enclosure containing water, a life raft shall be provided.

(9) Night work.

When working at night, spotlights or portable lights for emergency lighting shall be provided as needed to perform the work safely.

(10) Barriers and warning devices.

The employer shall provide barriers and effective warning devices such as flasher lights, "Men Working" signs, cones, flares, lanterns, flags and reflectors, for the protection of employees when work is performed in congested areas and where employees are exposed to traffic hazards or other working conditions where a hazard may exist.

(J) Employee's responsibility.

It shall be the responsibility of the employee to properly use the equipment provided by the employer as required in this rule.

Credits

HISTORY: 2010-11 OMR pam. #9 (A), eff. 4-10-11; 2003-04 OMR 1287 (A-TF 4121:1-5-17), eff. 11-1-03.

RC 119.032 rule review date(s): 3-1-16; 3-3-10; 3-1-03; 3-1-98

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