

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of a Petition by:)
)
James F. Sherman,) PETITION FILE NO. 553
) DECISION
Area Steward, CWA Local 9400)
2098 Orange Street)
Highland, CA 92346)

Applicant.)

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

DAVID THOMAS, Chairman



ROBERT BLINK, M.D, Member



DAVE HARRISON, Member



PATTY QUINLAN, Member



BARBARA SMISKO, Member



LAURA STOCK, Member

By: 

Marley Hart, Executive Officer

DATE: 5/19/2016
Attachments

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 553)**

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on December 31, 2015, from James Sherman, Area Steward for the Communication Workers of America (CWA) Local 9400 (Petitioner). The Petitioner requests the Board to amend the High-Voltage Electrical and Telecommunication Safety Orders to remove an exception to the use of fall protection during point to point travel on poles, towers, and similar structures, except where the employer demonstrates that such protection is infeasible or creates a greater hazard.

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit an evaluation regarding the proposal.

SUMMARY

The Petitioner points out that under current California regulations, qualified employees are allowed to “free climb,” or climb without any fall protection, during point to point travel on poles, towers, and similar structures, as long as the worker has a “firm hand [and] foothold while traveling.” He states that since 1998, wooden pole climbing industries have worked with manufacturers to develop fall arrest equipment that will prevent a worker from falling more than two feet while ascending or descending poles.

He also points out that as of April 1, 2015, federal OSHA requires qualified climbers on poles, towers, and similar structures to use fall protection “unless the employer can demonstrate that climbing or changing location with fall protection is infeasible or creates a greater hazard than climbing without it.”

The Petitioner requests that the Board remove the exceptions for qualified employees to “free climb” and require that fall protection be used in accordance with federal regulations.

DIVISION'S EVALUATION

In an evaluation dated March 8, 2016, the Division explains the existing regulations for fall protection on poles, towers, and similar structures in the Electrical and Telecommunications Safety Orders for both the California and federal programs. Citing recent changes to federal electrical safety orders, the Division recommends amending the current California exceptions to fall protection in the Electrical and Telecommunications Safety Orders with the following:

Exception: Fall protection is not required where the employer can demonstrate that climbing or changing location with fall protection is infeasible or creates a greater hazard than climbing or changing location without it.

STAFF'S EVALUATION

Current California regulations addressing fall protection for work on poles, towers, and similar structures are found in the High-Voltage Electrical Safety Orders (HV-ESO), Low-Voltage Electrical Safety Orders (LV-ESO) and the Telecommunication Safety Orders (TSO). All three safety orders read essentially as follows:

Fall Protection. When work is performed at elevated locations more than 4 feet (1.2 meters) above the ground on poles, towers or similar structures, the employer shall require the employees to use either fall arrest equipment, work positioning equipment, or travel restricting equipment, if other fall protection methods have not been provided (e.g., guardrails, safety nets, etc.). The use of body belts for fall arrest systems is prohibited.

Exception: Point to point travel by a qualified person, unless conditions such as ice, high winds, design of the structure, or other condition (e.g., chemical contaminants) prevents the employee from gaining a firm hand or foothold while traveling.

(See LV-ESO Section 2320.8(a), HV-ESO Section 2940.6(b), or TSO Section 8615(g) for specific language.)

Under federal regulations, work at elevated locations associated with electric power generation, transmission, or distribution requires employers to protect workers by employing a personal fall arrest system, work-positioning equipment, or fall restraint system, as appropriate, if other fall protection methods have not been provided (e.g., guardrails, safety nets, etc.). Work at heights in the telecommunications industry requires only safety straps and body belts, which allow an employee to lean against the strap and “rest” while working on a tower, pole, or similar structure, but do not constitute personal fall arrest equipment. Neither regulation contains an exception for providing fall protection for “point to point travel by a qualified person.”

In April, 2014, federal OSHA published an update to its electrical orders, which included the requirements for fall protection described above. Board staff is currently working on updating California's LV-ESO and HV-ESO to incorporate the federal language, including the

requirement to provide fall protection without an exception for point to point travel. Therefore, the process to remove the exception from the LV-ESO and HV-ESO as requested by the Petitioner has already begun.

The Petitioner's request to update the TSO, however, has not been evaluated by the Board. Because of the intermingled nature of electrical and telecommunications work, where high voltage transmission and distribution poles and towers often double as telecommunication towers, telecommunications employers are often subject to the provisions of both the Electrical and Telecommunication Safety Orders while performing the same job.

Although federal requirements for fall protection in the telecommunications industry do not require the use of personal fall protection equipment, it stands to reason that employees should be provided with such equipment to reduce the likelihood of a fall from a tower, pole, or similar structure, regardless of where the work falls within the scopes of the Electrical and Telecommunication Safety Orders. The nature of the fall hazard is identical.

Due to the availability of fall protection devices for work on towers, poles, and similar structures, employers now have options for protecting employees working at height that did not exist in the past. Federal regulations provide for an exception to personal fall protection when the use of such equipment is infeasible or creates a greater hazard to the climbing employee.

Consistent with the foregoing discussion, Board staff believes the Petitioners' request has merit and recommends that the Board grant the Petition. Board staff is currently working on proposed amendments to the HV-ESO Section 2940.6(b) and LV-ESO Section 2320.8 exceptions.

CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Mr. James Sherman, Area Steward for the Communication Workers of America Local 9400, to amend the High-Voltage Electrical and Telecommunication Safety Orders to remove an exception to the use of fall protection during point to point travel on poles, towers, and similar structures, except where the employer demonstrates that such protection is infeasible or creates a greater hazard. Having carefully read and considered the petition, Division Evaluation, and Board Staff Evaluation, the petition is hereby GRANTED as follows: Board staff is directed to prepare rulemaking documents to amend the exception in Section 8615(g) of the Telecommunication Safety Orders with language commensurate with federal requirements for fall protection on poles, towers, and similar structures as developed for the Electrical Safety Orders.