

Avoiding Lockout Tagout Violations

By Mark A. Lies, II



INTRODUCTION

As all employers should know, employees must be protected against the hazards of “unexpected energization” when performing certain functions with electrical, hydraulic, pneumatic or other applicable equipment. Despite the fact that the OSHA regulation, Control of Hazardous Energy, 29 CFR 1910.147 (also known as lockout tagout) has been in effect for many years, employers continue to receive frequent, and in many cases significant, monetary citations for non-compliance. However, it is prudent to mention that this regulation does not currently apply to construction or other sectors. Nonetheless, it is recommended that contractors are made aware of this regulation and follow the guidelines to ensure a safe working environment.

More importantly, failure to initially implement or to comply with an employer’s lockout tagout procedures has led to numerous fatalities and serious injuries due to equipment energization during servicing or maintenance. This article is a brief overview highlighting certain high profile aspects of the regulation that have occurred recently, and the potential liabilities involved.

APPLICATION

Lockout tagout (LOTO) applies to the control of all energy (e.g., electrical, hydraulic, pneumatic, gravity) which may be encountered during servicing or maintenance of machines in the general industry sector. The regulation can be confusing to employers because it does not cover normal production operations, thus, servicing and maintenance which occurs during normal production operations is only covered if it requires:

- An employee to remove a guard or safety device, or
- Place part of their body into a point of operation area or a danger zone during a machine operating cycle.

There is a further exception. This exception includes the performance of minor tool changes, adjustments or other minor servicing activities which take place during the normal production activities, providing they are “routine, repetitive and integral to the use of

the equipment for production.” However, if an employer relies upon this exception, they must develop and utilize alternative measures that will provide effective protection. Finally, there is one additional, limited exception. When the sole source of energy is electrical, and the equipment utilizes a “plug and cord” connection which can be unplugged to completely de-energize the equipment, and providing the employee maintains control over the plug and cord, then this would also be an exception.

PROCESS

In order to develop an effective LOTO program, the employer must first determine if and when LOTO applies and develop specific written procedures for each piece of equipment, identifying each and every energy source as well as the specific means and methods for de-energizing the equipment. This must also include the various energy control switches or devices for utilizing locks that are individually issued to “authorized” employees.

Authorized employees are those who have been trained and authorized by the employer to perform LOTO using the appropriate written procedure. Other employees, identified as “affected” or “other,” must generally be trained to recognize and be aware of LOTO procedures. These employees must not in any way attempt to start or re-energize machines that have been locked out, or to tamper or remove LOTO devices while LOTO is being performed by authorized employees.

After initial training, refresher training must be conducted whenever there is a change in job assignments, machines or processes that may create or present a new hazard, or if changes have been made to the actual LOTO procedures themselves.

ENFORCEMENT

Once a LOTO program has been developed and employees have been trained, the program must be enforced with ongoing observation by supervisors and discipline for violations, up to and including termination. If employers fail to develop a LOTO program, train employees and utilize aggressive enforcement, the employers cannot avail themselves of the “unavoidable employee misconduct” defense which can be an absolute legal defense to liability for an apparent violation.

PERIODIC INSPECTIONS

A recent developing area of significant liability involves the duty of an employer to conduct a periodic inspection under 29 CFR 1910.147(c)(6) of each energy control procedure at least annually; to verify that the procedure is still effective for the equipment and that the authorized employees are competent to perform the procedure (that is, their training is still effective). Basically, the employer must observe an authorized employee performing the procedure at least annually. The employer must then certify in writing, under 29 CFR 1910.147(c)(6)(ii), that the periodic inspections have been performed by:

- Identifying the machine or equipment on which the energy control procedure was being utilized,
- The date of the inspection,
- The employees included in the inspection, and
- The person performing the inspection.

Unfortunately, many employers are completely unaware of the obligation to conduct periodic inspections and prepare the certification or they risk allowing the annual periodic inspection requirement to lapse beyond a year. Recently, OSHA has begun to issue willful citations, which can carry penalties up to \$70,000 per violation, or to separately cite each machine or piece of equipment for which a periodic inspection was not conducted, resulting in significant monetary penalties.

If the periodic inspection reveals that the LOTO procedure is no longer effective due to equipment or process changes, the procedure must be rewritten and employees retrained. If the authorized employee is unable to perform the procedure properly, the employee must be retrained. In all cases, the training must be

documented. It should also be noted that if an employer prepares certification of an inspection that is falsified, there are potential criminal penalties against the employer and the individual employee who prepared the false certification.

CONCLUSION

As the regulatory climate changes within OSHA to a more aggressive enforcement structure, there is no question that LOTO compliance will be more closely evaluated by the agency, with increasing citation liability. In any regulatory inspection involving an employer in general industry, where the employer utilizes any type of equipment or machinery, OSHA will request to inspect the LOTO program, procedures, training, periodic inspection certifications and records of any disciplinary action taken for violations. An employer who develops and administers an effective program will reduce the potential for employee injury as well as regulatory liability.

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