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NO. 70568-7-1

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

NICHOLAS UHRICH, and THE MARITAL COMMUNITY
THEREOF,

Appellant/Plaintiff,

v.

MT. SI CONSTRUCTION, INC.,

Respondent/Defendant.

BRIEF OF RESPONDENT MT. SI CONSTRUCTION, INC.

Keith A. Bolton, WSBA 12588
BOLTON & CAREY
Attorneys for
Respondent/Defendant Mt. Si
Construction, Inc.
7016 – 35th Avenue N.E.
Seattle, Washington 98115-5917
(206) 522-7633

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I. TABLE OF CONTENTS

I. TABLE OF CONTENTS i, ii, iii, iv

II. TABLE OF AUTHORITIES ii, iii

III. STATUTES iii

IV. REGULATIONS iii, iv

V. COURT RULES iv

VI. STATEMENT OF ISSUES 1, 2

VII. STATEMENT OF THE CASE 2, 3, 4, 5, 6

VIII. ARGUMENT 5-30

 A. Standard of Review 6, 7

 B. The trial court properly granted Mt. Si's
 summary judgment motion because
 Mt. Si did not negligently fail to provide fall
 protection equipment for Plaintiff 7, 8

 1. Fall protection gear was available for
 Plaintiff's use 8, 9

 2. WAC 296-155-040 did not require
 Mt. Si to ensure that Plaintiff was
 using fall protection gear as part
 of his assigned scope of work 9, 10

 3. WAC 296-155-24510 did not require
 Plaintiff to use fall protection gear
 for his scope of work 10, 11

 4. WAC 296-155-24515 did not require
 Plaintiff to use fall protection gear for
 this scope of work 11, 12, 13, 14, 15

5.	RCW 49.17.010 and OSHA did not require Mt. Si to insure that Plaintiff was using fall protection gear as part of his assigned scope of work.....	15, 16, 17, 18, 19
C.	Mt. Si had no duty to warn Plaintiff, and the absence of a warning did not proximately cause Plaintiff's accident.	19
1.	Mt. Si had no duty to warn Plaintiff of the obvious risk of falling from the roof.....	19, 20, 21, 22
2.	The absence of any warning from Mt. Si to Plaintiff about the risk of falling from the roof did not proximately cause Plaintiff's accident.....	22, 23
D.	Mt. Si is entitled to judgment as a matter of law because Plaintiff assumed the risk of falling from the roof.	23, 24, 25, 26
E.	Mt. Si did not violate any requirements regarding a fall protection plan.....	26, 27, 28, 29
IX.	CONCLUSION.....	29, 30
X.	APPENDIX.....	31

II. TABLE OF AUTHORITIES

<i>Carlyle v. Safeway Stores, Inc.</i> , 78 Wn.App. 272, 896 P.2d 750 (1995).....	7
<i>Erie v. White</i> , 92 Wn.App. 297, 966 P.2d 1290 (2013).....	24, 26
<i>Jessee v. City Council of Dayton</i> , 293 P.3d 1290 (2013).....	24, 26
<i>LePlante v. State</i> , 85, Wn.App. 154, 531 P.2d 299 (1975).....	7, 8

<i>Little v. Countrywood Homes</i> , 132 Wn.App. 777, 779 133 P. 3d 944 (2006)	6,
<i>Mele v. Turner</i> , 106 Wn.2d 73, 720 P.2d 787 (1986).....	19, 20, 22, 29
<i>Olympic Fish Products v. Lloyd</i> , 93 Wn.2d 596, 611 P.2d 737 (1980)	6
<i>Seiber v. Poulsbo Marine Center, Inc.</i> , 136 Wn.App. 731, 150 P.3d 633 (2007).....	19, 20, 22, 29
<i>Stute v. PBMC, Inc.</i> , 114 Wn.2d 454, 788 P.2d 545 (1990)	15
<i>Washington Federation of State Employees v. The Office of Financial Management</i> , 121 Wn.2d 152, 157, 849 P.2d 1201 (1993)	15
<i>Young v. Keyu Pharmaceuticals</i> , 112 Wn.2d 216, 770 P.2d 182 (1989)	7

III. STATUTES

RCW 49.17.010.....	15, 16
RCW 49.17.....	22
29 USC § 651.....	16

IV. REGULATIONS

WAC 296-155.....	22
WAC 296-155-040	9
WAC 296-155-140	
WAC 296-155-24503	11, 12
WAC 296-155-24505	27, 28
WAC 296-155-24505(1)(g).....	27

WAC 296-155-24510 9, 10, 27
WAC 296-155-24515 9, 11, 12, 15, 27
WAC 296-155-24515(2) 12
29 CFR § 1926.500(a)(1) 15, 16, 17

V. COURT RULES

RAP 9.12..... 15

VI. STATEMENT OF ISSUES

1. Whether the trial court properly granted Mt. Si's summary judgment motion?

2. Whether the trial court properly granted Mt. Si's summary judgment motion where Plaintiff's scope of work did not expose him to a hazard of falling from a location of 10 feet or more in height?

3. Whether the trial court properly granted Mt. Si's summary judgment motion where the law did not require fall restraint or fall arrest systems for use on the flat roof where Plaintiff was working?

4. Whether the trial court properly granted Mt. Si's summary judgment motion because Mt. Si had no duty to warn Plaintiff about the obvious or known risks of falling off the roof?

5. Whether the trial court properly granted Mt. Si's summary judgment motion where Plaintiff failed to prove any conduct on Mt. Si's part proximately caused Plaintiff's accident?

6. Whether the trial court properly granted Mt. Si's summary judgment motion where Plaintiff assumed the risk of falling from the roof?

7. Whether the trial court properly granted Mt. Si's summary judgment motion where Mt. Si did not violate any requirements regarding the fall protection plan?

VII. STATEMENT OF THE CASE

This is a personal injury action arising out of Plaintiff Nicholas Uhrich's fall from the flat roof of a residential construction site on November 3, 2009. Plaintiff claims Defendant Mt. Si Construction, Inc. (hereinafter "Mt. Si") was negligent in failing to provide fall protection gear for Plaintiff. Plaintiff's claim is not true. Plaintiff's claim is also not relevant. The claim is not true because Mt. Si did have fall protection gear available for use on site. CP 167. In addition, Plaintiff had his own fall protection gear available in his own work van on site. CP 180. Plaintiff's claim is not relevant, because no fall protection gear was required for the task that Plaintiff was hired to perform on the flat roof in question. Consequently, Mt. Si was not negligent and did not proximately cause Plaintiff's accident.

Rather, Plaintiff's accident was caused by Plaintiff's own fault, and Plaintiff's claims are barred by his own assumption of risk. Plaintiff exceeded the scope of his work assignment and the area where he was assigned, left the safety of his assigned work area,

and leaned over the edge of the roof in an extremely dangerous way knowing full well the risk of falling that he was assuming. CP 81-82.

By way of background, Mt. Si was the general contractor for a remodel project at a house in Lake Forest Park. CP 64. The house had a flat roof. CP 64, 71. As part of the remodeling work, it was necessary to locate the path of the electrical wires just underneath the surface of the roof so that when the new roof surface was applied over the old surface the roofers would not nail into the electrical wires. CP 64. The wires in question supplied power between various light switches and lights on the main floor level. CP 64. Mt. Si hired Lander Electric to locate and mark the location of the wire paths on the roof. CP 65. Plaintiff was an employee of Lander Electric. The location of the wire paths in the roof was determined by using a circuit tracer. CP 119.

Before Plaintiff arrived at the job site, Dave Arnold, the president of Mt. Si, had marked the locations of the switches and lights with paint on the roof. CP 65. Most of those locations were towards the center of the roof. CP 65. All of the switch and light locations were well away from the edge of the roof. CP 65. All Plaintiff had to do was to identify the wire paths between those

previously marked locations for the switches and lights, so that the wire paths could then be marked with paint. CP 65-66. In order to perform his assigned scope of work, there was no need for Plaintiff to get anywhere near the edge of the roof. CP 66-67.

When Plaintiff arrived at the job site, Mr. Arnold took him up to the roof and showed him where he had previously marked all of the locations for the switches and lights. CP 65. Mr. Arnold said he needed Plaintiff to identify the wire paths between those switch and light locations and mark them. CP 65. Mr. Arnold went back down stairs to attend to other work. CP 65. Plaintiff then proceeded with his work and identified and marked most of the wire paths.

Jason Pontious, an employee of Seattle Painting Specialists, was painting a trellis at the house while Plaintiff was identifying the wire path locations. CP 80-82. The trellis that Mr. Pontious was painting was located at the southwest corner of the house just off the edge of the roof and at the same height as the roof. CP 80. The trellis at that location was structural in nature, and had several beams supporting it. CP 67, 75, 77. As Mr. Pontious was working, he became aware of Plaintiff working on the roof. CP 80. Plaintiff was muttering and tapping on his circuit tracing machine. CP 80. Mr. Pontious asked Plaintiff what he was doing, and Plaintiff said he

was trying to locate the wire paths in the roof. CP 80-81. Mr. Pontious told Plaintiff that the lights and switches were in a general area more over the center of the roof, to the northeast of where Plaintiff was standing. CP 81. As Mr. Pontious made those comments to Plaintiff he gestured towards paint marks on the roof showing the location of the switches and lights. Rather than walking towards the center of the roof, Plaintiff walked over to the west edge of the roof in the opposite direction from where Mr. Pontious had been pointing. CP 81. The flat roof had a 2 ½ foot wide gutter near the edge of the roof. CP 81. The gutter had water in it at the time. CP 81. Plaintiff stood with both feet on the east edge of the gutter and leaned over the edge of the roof while commenting that he was just going to peek over the roof and take a look. CP 81. As Mr. Pontious saw Plaintiff start to crouch down into the 3-point stance, Mr. Pontious yelled to him and reached out towards Plaintiff to try to grab him. CP 81. Plaintiff crouched down, leaned over the edge of the roof, starting to place one hand on a decorative trellis, and fell off the roof in one continuous motion. CP 81. Mr. Pontious was able to grab part of Plaintiff's shirt and pants, but Plaintiff went over the edge of the roof and Mr. Pontious

was not able to hold him. The whole incident happened very quickly. CP 81.

On June 17, 2013, the Honorable William L. Downing granted Mt. Si's summary judgment motion, and denied Plaintiff's motion for partial summary judgment. CP 278-80. This appeal followed.

VIII. ARGUMENT

A. Standard of Review.

An Appellate court reviewing a grant of summary judgment engages in the same inquiry as the trial court. *Little v. Countrywood Homes* 132 Wn. App. 777, 779, 133 P.3d 944 (2006). Summary judgment should be granted when, after viewing the pleadings, depositions, admissions and affidavits and all reasonable inferences that may be drawn there from in the light most favorable to the non-moving party, it can be stated as a matter of law that (1) there is no genuine issue as to any material fact, (2) all reasonable persons could reach only one conclusion, and (3) the moving party is entitled to judgment. *Olympic Fish Products v. Lloyd*, 93 Wn.2d 596, 611 P.2d 737 (1980). When a motion for summary judgment is supported by evidentiary matter, the adverse party may not rest on mere allegations in the pleadings but must

set forth specific admissible facts showing there is a genuine issue for trial. *LePlante v. State*, 85 Wn.2d 154, 531 P.2d 299 (1975).

A defendant in a civil action is entitled to summary judgment when the defendant shows there is an absence of evidence supporting an element essential to plaintiff's claim. *Carlyle v. Safeway Stores, Inc.*, 78 Wn. App. 272 896 P.2d 750 (1995). The defendant may support a motion for summary judgment by merely challenging the sufficiency of plaintiff's evidence as to any material issue. *Young v. Key Pharmaceuticals* 112 Wn.2d 216, 770 P.2d 182 (1989).

B. The trial court properly granted Mt. Si's summary judgment motion because Mt. Si did not negligently fail to provide fall protection equipment for Plaintiff.

In order to demonstrate negligence, Plaintiff must prove the following elements:

The tort complained of in the case at hand is negligence, which consists of (1) the existence of a duty owed to the complaining party, (2) a breach thereof, and (3) a resulting injury. *Rosendahl v. Lesourd Methodist Church*, 68 Wn.2d 180, 412 P.2d 109 (1966); *Christensen v. Weyerhaeuser Timber Co.*, 16 Wn.2d 424, 133 P.2d 797 (1943). For legal responsibility to attach to the negligent conduct, the claimed breach of duty

must be a proximate cause of the resulting injury.

LePlante v. State, supra at 159.

Plaintiff claims Mt. Si was negligent because it did not provide fall protection gear for him. The Court should reject Plaintiff's contention. First, fall protection gear was available to Plaintiff, both through Mt. Si and through Plaintiff's employer. Second, fall protection gear was not required for the work that Plaintiff was doing on this flat roof. Consequently, Plaintiff failed to show breach of duty or proximate cause.

1. Fall protection gear was available for Plaintiff's use.

It is undisputed fall protection gear was available for Plaintiff's use at the time of his accident. Mt. Si had safety harnesses and lanyards available for use on site at the project. See Dep. David Arnold, 27:12-16; CP 167. In addition, both Plaintiff and his supervisor at Lander Electric confirmed that Plaintiff had his own fall protection gear available to him in his work van at the site. See Department of Labor and Industries' interview with Plaintiff Nicholas Urich attached to Affidavit of Keith A. Bolton as Exhibit 6; CP 180.¹ It is undisputed Plaintiff had fall protection gear

¹ Plaintiff was familiar with fall protection gear, having used it numerous times before this accident. See Dep. Nicholas Urich, pages 30 and 37 attached to

available for his use if he had wanted it. Plaintiff's failure to wear fall protection gear was not proximately caused by Mt. Si, and Mt. Si has no liability for Plaintiff's failure to wear protective gear that was readily available to him.

2. WAC 296-155-040 did not require Mt. Si to ensure that Plaintiff was using fall protection gear as part of his assigned scope of work.

Plaintiff claims that WAC 296-155-040 required Mt. Si to ensure that Plaintiff used fall protection gear as part of his work. That is not true. WAC 296-155-040 was just a general statement requiring employers to do what is "reasonably necessary" to provide a safe work environment, including providing and using safety devices where their use is required. However, WAC 296-155-140 does not govern when fall protection gear is or is not required. Rather, WAC 296-155-24510 and 296-155-24515 are the

Affidavit of Keith A. Bolton as Exhibit 4; CP 110, 114. Plaintiff clearly understood the purpose of fall protection gear. He testified:

- Q So you understood before our accident that where there was a situation where there was a potential for falling at a height over ten feet, a harness and a line would be one means of protecting you against that risk, correct?
- A Yes.

Dep. Nicholas Urhich, 37:14-18; CP 114.

regulations that specify when fall protection equipment is needed and when it is not needed. As seen below, those regulations did not require fall protection gear for Plaintiff's scope of work.

3. WAC 296-155-24510 did not require Plaintiff to use fall protection gear for his scope of work.

WAC 296-155-24510 required employers to ensure that fall protection equipment was provided, installed, and implemented "when employees are exposed to a hazard of falling from a location 10 feet or more in height". In order for fall protection to be required, Plaintiff must prove two things: (1) that his work exposed him to a hazard of falling, and (2) the hazard of falling was 10 feet or more in height. Under this regulation, the dispositive issue is not simply height, as Plaintiff has argued. If there is no exposure to a hazard of falling, it does not matter what height the work area is above the ground level. Rather, pursuant to this regulation Plaintiff must first prove his scope of work exposed him to a hazard of falling.

There is no evidence whatsoever in the record that Plaintiff's scope of work exposed him to a hazard of falling. Indeed, Plaintiff has not even argued that. On the contrary, it is undisputed Plaintiff's scope of work did not expose him to any hazard of falling because the scope was all well away from the edge of the roof.

Most of the switch and light locations were towards the center of the roof. CP 65. All of the switch and light locations were well away from the edge of the roof. CP 65. The closest light or switch location to the west side of the roof where Mr. Uhrich ultimately fell was 7' 6". CP 65. It is also undisputed that Mr. Uhrich's scope of work did not include getting anywhere near the edge of the roof or working in any area where there was a potential fall hazard. CP 66. Plaintiff's assigned scope of work was in an area that was as free from the hazard of falling as if he had been in an enclosed room. Plaintiff failed to set forth any facts to support a claim that his assigned work presented any hazard of falling. Consequently, WAC 296-155-24510 did not require Plaintiff to use fall protection gear for his scope of work.

4. WAC 296-155-24515 did not require Plaintiff to use fall protection gear for his scope of work.

WAC 296-155-24515 provided that no fall restraint or fall arrest systems were required for certain types of low risk work on low pitched roofs. A "low pitched roof" was defined as a roof having a slope equal to or less than 4 in 12. See WAC 296-155-24503. It is undisputed the roof in question was a flat roof. CP 64,

137. Consequently, the roof qualified as a low pitched roof for purposes of WAC 296-155-24515. That WAC regulation provided in relevant part:

(2) Exceptions.

(a) The provisions of subsection (1)(a) of this section [relating to fall restraint or fall arrest systems] do not apply at points of access such as stairways, ladders, and ramps, or when employees are on the roof only to inspect, investigate, or estimate roof level conditions.

WAC 296-155-24515(2).

It is undisputed Plaintiff was only on the roof to inspect, investigate, and estimate the location of wire paths in the roof. He was not doing "roofing work" as defined by the regulations.² Contrary to Plaintiff's assertion, Plaintiff's scope of work of locating

² WAC 296-155-24503 defined roofing work as follows:

"Roofing work" means the hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.

Plaintiff testified:

Q The work that you were doing up there on the roof was not roofing work, was it?
A No.

Dep. Nicholas Uhrich, 80:3-5; CP 145.

and marking the wire paths fits exactly within the meaning of the terms, "inspect, investigate, or estimate roof level conditions." Plaintiff's scope of work of examining and investigating the roof wire locations and noting their estimated location on the roof fits exactly within the meaning of the regulations' exception. Plaintiff's scope of work is not only consistent with the letter of the exception, but with its purpose as well. The rationale for the exception to use of fall restraint gear with respect to a flat roof is clear. Where a worker is simply inspecting or investigating or estimating low pitched roof conditions there is no need for fall restraint or fall arrest gear. The worker is not likely to be distracted from the hazard of falling, and the low pitched nature of the roof also significantly reduces the exposure to falling. That was certainly the case with respect to Plaintiff's assigned task. He was not doing roofing work. Consequently, he was not moving backwards towards a roof edge while nailing or laying roofing material. Plaintiff was simply investigating and estimating the location of wire paths on a flat roof. It is undisputed Plaintiff's work did not require him to get anywhere near the edge of the roof. All of the switch and light locations were well away from the edge of the roof. See Declaration of David Arnold at 2-4; CP 65-67. Plaintiff further admitted he had no

evidence that any of his work required him to go over to the edge of the roof. Plaintiff testified:

Q There was no need for -- well, in tracing any of these lines that were up on the roof that day, there wasn't any need for you to get so close to the edge of the roof that there was a danger of your falling, was there?

A I don't recall.

Q At any time while you were up on the roof doing the work, did you ever believe that you had to get so close to the edge of the roof to do your work that there might have been a potential of your falling off the roof?

A Not that I can remember. . . .

Q So you can't actually testify that you know you had to go over to the edge of the roof to trace a particular wire; is that correct?

A No, I cannot say --

Q Is that correct?

A That's correct.

Dep. Nicholas Urich, 76:18-77:2; 64:11-16; CP 141-142, 132.

Since Plaintiff's scope of work did not involve roofing work, and simply involved investigation of a flat roof condition that did not require Plaintiff to be in an area where he had any potential fall

hazard, Plaintiff was not required to use fall protection gear. WAC 296-155-24515(2).³

5. RCW 49.17.010 and OSHA did not require Mt. Si to insure that Plaintiff was using fall protection gear as part of his assigned scope of work.

Finally, Plaintiff claims RCW 49.17.010 and OSHA regulation 29 CFR, § 1926.500(a)(1) required Mt. Si to insure that Plaintiff was using fall protection gear as part of his assigned scope of work. The Court should reject that argument. First, RAP 9.12 provides in relevant part:

On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court.

The purpose of this limitation is to effectuate the rule that the appellate court engages in the same inquiry as the trial court. See, e.g., *Washington Federation of State Employees v. the Office of Financial Management*, 121 Wn.2d 152, 157, 849 P.2d 1201

³ Plaintiff's reliance upon *Stute v. PBMC, Inc.*, 114 Wn.2d 454, 788 P.2d 545 (1990), is misplaced. Unlike the case at bar, the *Stute* case did not involve a flat roof. The *Stute* case did not involve WAC 296-155-24515 relating to inspection, investigation, or estimating roof level conditions on a low pitched roof. *Stute* has no bearing on whether Plaintiff was required to wear fall protection gear for his scope of work on this flat roof.

(1993). Plaintiff did not raise arguments about RCW 49.17.010 and OSHA regulations at the trial court on summary judgment. Consequently, Those arguments may not be considered by the Court of Appeals for the first time on appeal.

Second, OSHA only applies where interstate commerce is involved. See 29 USC § 651, attached as Appendix 5. There is no interstate commerce involved in this case and OSHA does not apply.⁴

Third, even if OSHA applied to Plaintiff's work here, which it does not, Plaintiff has not proved his accident was proximately caused by Mt. Si violating an applicable OSHA regulation. The regulation Plaintiff cited, 29 CFR 1926.500(a)(1), applies only to inspection, investigation, or assessment of workplace conditions that occur either prior to the actual start of construction work, or after all construction work has been completed:

§ 1926.500 Scope, application, and definitions applicable to this subpart.

⁴ RCW 49.17.010, cited by Plaintiff, simply states that the legislature's purpose is to create a state industrial safety and health program which equals or exceeds the OSHA standards. The statute does not say that in non-interstate commerce issues Washington will defer to any similar OSHA standards. Neither does the statute say that in non-interstate commerce issues Washington will deem OSHA to preempt WISHA. Finally, the statute also does not say that in non-interstate commerce issues federal interpretations of OSHA standards will apply to Washington interpretations of similar WISHA standards.

(a) *Scope and application.* (1) This subpart sets forth requirements and criteria for fall protection in construction workplaces covered under 29 CFR part 1926. Exception: The provisions of this subpart do not apply when employees are making an inspection, investigation, or assessment of workplace conditions prior to the actual start of construction work or after all construction work has been completed.

29 CFR § 1926.500(a)(1). By its express terms, the regulation had no application to the case at bar, where construction work was underway.

Even if 29 CFR § 1926.500(a)(1) did apply to the case at bar, which it does not, the Occupational Safety and Health Administration interpreted the regulation in a manner that actually supports Mt. Si's position and the trial court's dismissal of Plaintiff's lawsuit:

OSHA has set this exception because employees engaged in inspecting, investigating and assessing workplace conditions before the actual work begins or after the work has been completed are exposed to fall hazards for very short durations, if at all, since **they most likely would be able to accomplish their work without going near the danger zone.** . . . [R]equiring the installation of fall protection systems under such circumstances would expose the employee who installs those

systems to falling hazards for a longer time than the person performing an inspection or similar work.

See Appendix A to Appellant's brief (Emphasis added). In short, OSHA's interpretation of its regulation exempting inspectors from the requirement of wearing fall protection gear, states that there is no need for fall protection gear when those workers can accomplish their work without getting near the danger zone. Fall protection gear is designed for workers who are working in such close proximity to the edge of the roof that they are at risk of falling, or whose work is so distracting that they will not recognize when they get near the edge of the roof and will therefore be at risk of falling. However, in the case at bar, it is undisputed Plaintiff's scope of work did not require him to be anywhere near the edge of the roof, or anywhere near the location where there was a risk of his falling. It is also undisputed that the nature of Plaintiff's scope of work was such that he was not exposed to distractions or to the risk of his getting near the edge of the roof without his being aware of it. On the contrary, the undisputed facts show Plaintiff knew exactly where the edge of the roof was, because he walked right up to it, knelt down in a three-point stance, and leaned over the edge to look down inside a window. CP 81.

In summary, as a matter of law Mt. Si did not negligently fail to provide fall protection equipment for Plaintiff because neither OSHA nor WISHA required Plaintiff to use fall protection gear for his scope of work, and the gear was readily available for Plaintiff's use in any event.

C. Mt. Si had no duty to warn Plaintiff, and the absence of a warning did not proximately cause Plaintiff's accident.

Plaintiff claims Mt. Si is liable for not warning him about the danger of falling from the roof. That is not true. First, Mt. Si had no duty to warn Plaintiff under these circumstances. Second, the absence of a warning from Mt. Si of the obvious risk involved did not proximately cause Plaintiff's accident.

1. Mt. Si had no duty to warn Plaintiff of the obvious risk of falling from the roof.

It is well settled in Washington that a defendant has no duty to warn a plaintiff about obvious or known risks. *Mele v. Turner*, 106 Wn.2d 73, 720 P.2d 787 (1986); *Seiber v. Poulsbo Marine Center, Inc.*, 136 Wn.App. 731, 150 P.3d 633 (2007). Both *Mele* and *Seiber* involved summary judgment in favor of defendants on warning issues. In *Seiber, supra*, the court stated this well known principle as follows:

Where an alleged dangerous condition is both obvious and known to a plaintiff, the defendants owe no duty to warn of this condition.

Seiber v. Poulsbo Marine Center, Inc., supra at 740.⁵

It is undisputed the risk of falling off the roof was both obvious and known to Plaintiff. This is not a case where Plaintiff was preoccupied or distracted with "roofing work" and backed up to the edge of the roof without realizing where he was. On the contrary, it is undisputed Plaintiff knew exactly where the edge of the roof was, because he walked right up to it, got down into a 3-point stance, and leaned over the edge of the roof to try to look into a window. CP 81. Furthermore, Plaintiff admitted he was well aware of the risk (in this case the obvious risk) of getting too close to the edge of the roof, and needed no warning of that risk. Plaintiff testified:

Q You understood before your accident that if you got too close to the edge of the roof there's a potential of falling, correct?

⁵ Plaintiff claims *Mele v. Turner, supra* and *Seibert v. Poulsbo Marine Center, Inc., supra* do not apply to the case at bar because they involved products that caused injury instead of construction site risks that caused injury. The Court should reject that argument, because it is a distinction without a difference. The court's decisions in *Mele* and *Seiber* were not based upon what caused the injury, i.e., a product defect, or falling. Rather, the cases stand for the well settled legal proposition that the law does not require anyone to warn another of something the other already knows.

A What? I'm sorry.
(The pending question was read by the reporter.)

A Yes.

Q You did not need anybody to warn you about that, did you?

A No. . . .

Q Well, you can't say as you sit here today that your accident was caused because no one was there to tell you that you were getting too close to the edge of the roof, can you?

A No. . . .

Q Let me rephrase it. You don't remember how your accident happened, so because of that, you can't say that your fall occurred because you didn't know where you were in relation to the roof; isn't that correct?

A That is correct. . . .

Q Wouldn't you agree it would not be a safe work practice to try to lean over the edge of the roof to look down into the house to find a light or a switch location? Again, assuming you're not tied off.

A Was that a "would you agree" question?

Q Go ahead and read it back.
(The pending question was read by the reporter.)

A Yeah, I guess I would agree with that.

Q And it would not be consistent with ordinary care to lean over the edge of the roof without being

tied off in an effort to try to locate a switch or a light location; isn't that true?

A I would say so, yes.

Dep. Nicholas Uhrich, 90:3-12; 92:4-8; 93:5-9; 95:11-24; CP 152, 153, 154, 156.

It is undisputed the risk of falling from the roof in the manner that Plaintiff did was both obvious and known to Plaintiff. As a matter of law, Mt. Si had no duty to warn Plaintiff about that risk. *Mele v. Turner, supra*; *Seiber v. Poulsbo Marine Center, supra*. Consequently, no warning line or spotter was needed. Neither did Mt. Si have any duty to provide Plaintiff with any teaching about a written fall protection plan.⁶

2. The absence of any warning from Mt. Si to Plaintiff about the risk of falling from the roof did not proximately cause Plaintiff's accident.

⁶ Plaintiff also argues that the *Mele* and *Seibert* cases do not apply because construction sites are dangerous, and the notion that a contractor need not warn and take action to protect against those dangers is contrary to the statutory and regulatory scheme established by RCW 49.17 and WAC 296-155. Plaintiff's argument misconstrues Mt. Si's position. Mt. Si's position is not that construction sites do not contain hazards. Neither is it Mt. Si's position that there are no hazards the contractor needs to warn about or protect against. Rather, Mt. Si's position is that the law quite clearly does not require a general contractor to warn employees about every danger on a construction site, and in particular, does not require a contractor to warn an employee about hazards that he is already well aware of.

One of the required elements Plaintiff must prove in a negligence action is proximate cause. *LePlante v. State, supra* at 159. As a matter of law, Plaintiff cannot prove that the absence of a warning from Mt. Si proximately caused his accident. As seen above, Plaintiff needed no warning whatsoever about the location of the edge of the roof or the risk of falling off the roof. Both were well known to Plaintiff. Consequently, even if Mt. Si had a duty to warn Plaintiff about the risk of falling from the roof, which it did not, the failure to warn Plaintiff did not proximately cause his accident. Similarly, the absence of a warning line system on the roof did not proximately cause Plaintiff's accident. The obvious purpose of a warning line is to alert workers, who are distracted by other work near the edge of the roof, that they are getting near the edge. By Plaintiff's own admission, he needed no such warning here. He knew exactly where the edge of the roof was. Plaintiff walked right up to the edge of the roof, got down into a three-point stance, and leaned over the edge of the roof to try to look into a window. CP 81. Obviously, the absence of a warning line had nothing whatsoever to do with causing Plaintiff's accident.

D. Mt. Si is entitled to judgment as a matter of law because Plaintiff assumed the risk of falling from the roof.

It is well settled in Washington that assumption of risk bars a negligence action. See, e.g., *Jessee v. City Council Dayton*, ___ Wn.App. ___, 293 P.3rd 1290 (2013); *Erie v. White*, 92 Wn.App. 297, 966 P.2d 342 (1998). To invoke assumption of risk, a defendant must show that the plaintiff knowingly and voluntarily chose to encounter the risk. *Erie v. White, supra* at 303.

Applying this law to the facts in the case at bar, it is clear Plaintiff assumed the risk of falling from the roof and is barred from suing Mt. Si. As seen above it is undisputed Plaintiff had full understanding of the risk of falling from the roof if he got too close to the edge, and voluntarily chose to encounter that risk. It is also undisputed Plaintiff had a reasonable opportunity to act differently or proceed in an alternate course that would have avoided the danger. As Plaintiff confirmed in his own testimony, he could have safely avoided this risk by either using the fall protection gear that was available to him, or simply using the ladder, as he had previously, to go down to the main floor and check the light and switch locations rather than leaning over the edge of the roof to try to look in a window. Plaintiff testified:

Q What do you believe that Lander had by way of fall protection gear before our accident?

A I believe they had a harness, at least one. . . .

Q So you understood before our accident that where there was a situation where there was a potential for falling at a height over ten feet, a harness and a line would be one means of protecting you against that risk, correct?

A Yes. . . .

Q You understood before your accident that if you got too close to the edge of the roof there's a potential of falling, correct?

A What? I'm sorry.
(The pending question was read by the reporter.)

A Yes.

Q You did not need anybody to warn you about that, did you?

A No. . . .

Q Wouldn't you agree it would not be a safe work practice to try to lean over the edge of the roof to look down into the house to find a light or a switch location? Again, assuming you're not tied off.

A Was that a "would you agree" question?

Q Go ahead and read it back.
(The pending question was read by the reporter.)

A Yeah, I guess I would agree with that.

Q And it would not be consistent with ordinary care to lean over the edge of the roof without being tied off in an effort to try to locate a switch or a light location; isn't that true?

A I would say so, yes.

Dep. Nicholas Uhrich, 32:13-15; 37:14-18; 90:3-12; 95:11-24; CP 112, 114, 152, 156. The risk was obvious and Plaintiff knew that before his accident. He knew it was unsafe to lean over the edge of the roof without being tied off with fall protection gear. He knew fall restraint gear was available to him if he wanted it. Plaintiff knew he could safely use the ladder, as he had previously, to get off the roof and check light and switch locations on the main floor if he needed to. Despite that knowledge he voluntarily assumed the risk of leaning over the edge of the roof without fall protection gear on. Plaintiff's assumption of the risk bars his claims. *Jessee v. City Council of Dayton, supra*; *Erie v. White, supra*.

E. Mt. Si did not violate any requirements regarding a fall protection plan.

Plaintiff claims Mt. Si violated Washington regulatory requirements regarding a fall protection plan, thereby causing Plaintiff's accident. Specifically, Plaintiff claims Mt. Si was required to show the fall protection plan to Plaintiff and train him in it. The

Court should reject those arguments. The regulation governing fall protection plans that was in effect at the time of Plaintiff's accident was WAC 296-155-24505. That regulation did not require employers to furnish employees with a copy of the fall protection plan. Rather, it required employers to train employees in the plan and to implement the plan.⁷ It is undisputed Mt. Si did implement the fall protection plan. Where fall protection was required by WAC 296-155-24510, and not exempted by WAC 296-155-24515, Mt. Si required employees to use the gear. See deposition of Dave Arnold at page 25, CP 166. Where fall protection was not required by WAC 296-155-24510 and 296-155-24515, Mt. Si did not require employees to use the gear. There is simply no evidence Mt. Si failed to comply with the requirements of a fall protection plan.⁸

Plaintiff argues Mt. Si should have shown him its fall protection plan because the purpose of the plan was to allow employees to be made aware of potential hazards and how to find safety equipment on site. The Court should reject that argument.

⁷ Furthermore, WAC 296-155-24505 does not specify when fall protection is or is not required. For that information, it is necessary to look to Sections 296-155-24510, and 296-155-24515.

⁸ The only requirement for the plan to be on site was for inspection by the Department of Labor and Industries, not for inspection by employees. See WAC 296-155-24505(1)(g).

Plaintiff already knew the hazard of getting too close to the edge of the roof without fall protection gear, and he admitted he needed no warning or instruction about that. Dep. Nicholas Uhrich, 90:3-12; 92:4-8; 93:5-9; 95:11-24; CP 152, 153, 154, 156. Plaintiff also already knew how to find fall protection equipment on site, since it was in his own van. See Exhibit 6 attached to Affidavit of Keith A. Bolton, at CP 180. There is no evidence Mt. Si violated this WAC provision. Plaintiff has also failed to prove proximate cause. There is no evidence that because Mt. Si did not hand Plaintiff a copy of the fall protection plan that Plaintiff did not know the risk of falling if he got too close to the edge of the roof. Neither is there any evidence that because Mt. Si did not hand Plaintiff a copy of the fall protection plan that Plaintiff did not know when or how to use fall protection gear. On the contrary, Plaintiff admitted he knew all about how to use the gear from prior use. See Dep. Nicholas Uhrich, pages 30 and 37 attached to Affidavit of Keith A. Bolton as Exhibit 4; CP 110, 114.

Finally, Plaintiff claims Mt. Si had a duty to warn Plaintiff to use fall protection gear because WAC 296-155-24505 required employers to train employees regarding fall hazards in the work area. The Court should also reject that argument. First, there were

no fall hazards in Plaintiff's work area. His scope of work did not include roofing work and did not require him to go anywhere near the edge of the roof to be exposed to a fall hazard. The regulation in question did not require Mt. Si to train Plaintiff about the risk of falling if he leaned over the edge of a roof, because his scope of work did not require him to go anywhere near the edge of the roof. Second, the law does not require people to do useless acts. A person has no duty to train or warn someone of something they already know. See, e.g., *Mele v. Turner*, 106 Wn.2d 73, 720 P.2d 787 (1986); *Seiber v. Poulsbo Marine Center, Inc.*, 136 Wn.App. 731, 150 P.3d 633 (2007). It is undisputed that Plaintiff knew about the hazard of falling if he got too close to the edge of the roof and he needed no warning of that, as he admitted in his deposition.

IX. CONCLUSION

There were no genuine issues of material fact with respect to Mt. Si's summary judgment motion. As a matter of law, Mt. Si did not breach any duty towards Plaintiff. As a matter of law, Mt. Si did not proximately cause Plaintiff's accident. Plaintiff clearly assumed the risk of falling off the roof when he exceeded the scope of his work assignment in the area where he was assigned, left the safety of his assigned work area, and leaned over the edge of the roof

knowing full well the risk of falling that he was assuming. Mt. Si respectfully requests the Court of Appeals affirm the trial court.

Respectfully submitted this 3rd day of December, 2013.

BOLTON & CAREY

By: 

Keith A. Bolton, WSBA 12588
Attorneys for Respondent/Defendant
Mt. Si Construction, Inc.

X. APPENDIX

1. WAC 296-155-040
2. WAC 296-155-24505
3. WAC 296-155-24510
4. WAC 296-155-24515
5. 29 USC § 651
6. 29 CFR § 1926.500

WAC 296-155-040 Safe place standards. (1) Each employer shall furnish to each employee a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to employees.

(2) Every employer shall require safety devices, furnish safeguards, and shall adopt and use practices, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe. Every employer shall do everything reasonably necessary to protect the life and safety of employees.

(3) No employer shall require any employee to go or be in any employment or place of employment which is hazardous to the employee.

(4) No employer shall fail or neglect:

(a) To provide and use safety devices and safeguards.

(b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.

(c) To do everything reasonably necessary to protect the life and safety of employees.

(5) No employer, owner, or lessee of any real property shall construct or cause to be constructed any place of employment that is hazardous to the employee.

(6) No person shall do any of the following:

(a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment.

(b) Interfere in any way with the use thereof by any other person.

(c) Interfere with the use of any method or process adopted for the protection of any employee, including themselves, in such employment, or place of employment.

(d) Fail or neglect to do everything reasonably necessary to protect the life and safety of employees.

(7) The use of intoxicants or debilitating drugs while on duty is prohibited. Employees under the influence of intoxicants or drugs shall not be permitted in or around worksites.

This subsection (7) shall not apply to employees taking prescription drugs or narcotics as directed and prescribed by a physician, provided such use does not endanger the employee or others.

[Statutory Authority: Chapter 49.17 RCW. 94-15-096 (Order 94-07), § 296-155-040, filed 7/20/94, effective 9/20/94; Order 74-26, § 296-155-040, filed 5/7/74, effective 6/6/74.]

(d) Describe the correct procedures for the handling, storage, and securing of tools and materials.

(e) Describe the method of providing overhead protection for workers who may be in, or pass through the area below the work site.

(f) Describe the method for prompt, safe removal of injured workers.

(g) Be available on the job site for inspection by the department.

(3) Prior to permitting employees into areas where fall hazards exist the employer shall:

(a) Ensure that employees are trained and instructed in the items described in subsection (2)(a) through (f) of this section.

(b) Inspect fall protection devices and systems to ensure compliance with WAC 296-155-24510.

(4) Training of employees:

(a) The employer shall ensure that employees are trained as required by this section. Training shall be documented and shall be available on the job site.

(b) "Retraining." 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 subsection (1) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

- Changes in the workplace render previous training obsolete; or
- Changes in the types of fall protection systems or equipment to be used render previous training obsolete; or
- Inadequacies in an affected employee's knowledge or use of fall protection systems or equipment indicate that the employee has not retained the requisite understanding or skill

Note: The following appendices to Part C-1 of this chapter serve as nonmandatory guidelines to assist employers in complying with the appropriate requirements of Part C-1 of this chapter.

[Statutory Authority: RCW 49.17.010, [49.17]040, and [49.17]050. 00-14-058, § 296-155-24505, filed 7/3/00, effective 10/1/00. Statutory Authority: RCW 49.17.040, [49.17]050 and [49.17]060. 96-24-051, § 296-155-24505, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-24505, filed 4/25/95, effective 10/1/95; 91-03-044 (Order 90-18), § 296-155-24505, filed 1/10/91, effective 2/12/91.]

WAC 296-155-24505 Fall protection work plan. (1)

The employer shall develop and implement a written fall protection work plan including each area of the work place where the employees are assigned and where fall hazards of 10 feet or more exist.

(2) The fall protection work plan shall:

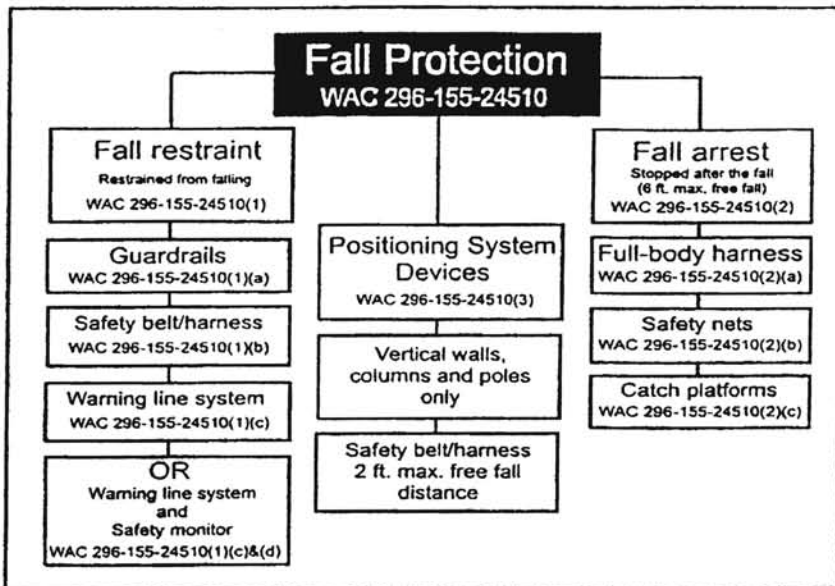
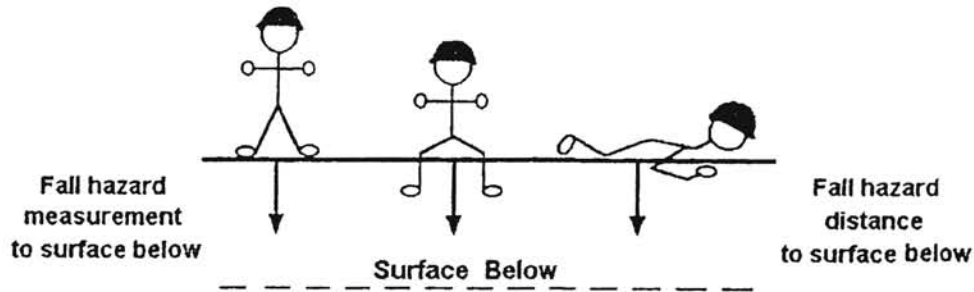
(a) Identify all fall hazards in the work area.

(b) Describe the method of fall arrest or fall restraint to be provided.

(c) Describe the correct procedures for the assembly, maintenance, inspection, and disassembly of the fall protection system to be used.

WAC 296-155-24510 Fall restraint, fall arrest systems. When employees are exposed to a hazard of falling from a location ten feet or more in height, the employer shall ensure that fall restraint, fall arrest systems or positioning device systems are provided, installed, and implemented according to the following requirements.

3



(1) Fall restraint protection shall consist of:

(a) Standard guardrails as described in chapter 296-155 WAC, Part K.

(b) Safety belts and/or harness attached to securely rigged restraint lines.

(i) Safety belts and/or harness shall conform to ANSI Standard:

- Class I body belt
- Class II chest harness
- Class III full body harness
- Class IV suspension/position belt

(ii) All safety belt and lanyard hardware assemblies shall be capable of withstanding a tensile loading of 4,000 pounds without cracking, breaking, or taking a permanent deformation.

(iii) Rope grab devices are prohibited for fall restraint applications unless they are part of a fall restraint system designed specifically for the purpose by the manufacturer, and used in strict accordance with the manufacturer's recommendations and instructions.

(iv) The employer shall ensure component compatibility.

(v) Components of fall restraint systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration, and defective components shall be

(2009 Ed.)

removed from service if their function or strength have been adversely affected.

(vi) Anchorage points used for fall restraint shall be capable of supporting 4 times the intended load.

(vii) Restraint protection shall be rigged to allow the movement of employees only as far as the sides and edges of the walking/working surface.

(c) A warning line system as prescribed in WAC 296-155-24515(3) and supplemented by the use of a safety monitor system as prescribed in WAC 296-155-24521 to protect workers engaged in duties between the forward edge of the warning line and the unprotected sides and edges, including the leading edge, of a low pitched roof or walking/working surface.

(d) Warning line and safety monitor systems as described in WAC 296-155-24515 (3) through (4)(f) and 296-155-24520 respectively are prohibited on surfaces exceeding a 4 in 12 pitch, and on any surface whose dimensions are less than forty-five inches in all directions.

(2) Fall arrest protection shall consist of:

(a) Full body harness system.

(i) An approved Class III full body harness shall be used.

(ii) Body harness systems or components subject to impact loading shall be immediately removed from service and shall not be used again for employee protection unless

[Title 296 WAC—p. 2083]

inspected and determined by a competent person to be undamaged and suitable for reuse.

(iii) All safety lines and lanyards shall be protected against being cut or abraded.

(iv) The attachment point of the body harness shall be located in the center of the wearer's back near shoulder level, or above the wearer's head.

(v) Body harness systems shall be rigged to minimize free fall distance with a maximum free fall distance allowed of 6 feet, and such that the employee will not contact any lower level.

(vi) Hardware shall be drop forged, pressed or formed steel, or made of materials equivalent in strength.

(vii) Hardware shall have a corrosion resistant finish, and all surfaces and edges shall be smooth to prevent damage to the attached body harness or lanyard.

(viii) When vertical lifelines (droplines) are used, not more than one employee shall be attached to any one lifeline.

Note: The system strength needs in the following items are based on a total combined weight of employee and tools of no more than 310 pounds. If combined weight is more than 310 pounds, appropriate allowances must be made or the system will not be deemed to be in compliance.

(ix) Full body harness systems shall be secured to anchorages capable of supporting 5,000 pounds per employee except: When self retracting lifelines or other deceleration devices are used which limit free fall to two feet, anchorages shall be capable of withstanding 3,000 pounds.

(x) Vertical lifelines (droplines) shall have a minimum tensile strength of 5,000 pounds (22.2 kN), except that self retracting lifelines and lanyards which automatically limit free fall distance to two feet (.61 m) or less shall have a minimum tensile strength of 3,000 pounds (13.3 kN).

(xi) Horizontal lifelines shall be designed, installed, and used, under the supervision of a qualified person, as part of a complete personal fall arrest system, which maintains a safety factor of at least two.

(xii) Lanyards shall have a minimum tensile strength of 5,000 pounds (22.2 kN).

(xiii) All components of body harness systems whose strength is not otherwise specified in this subsection shall be capable of supporting a minimum fall impact load of 5,000 pounds (22.2 kN) applied at the lanyard point of connection.

(xiv) Dee-rings and snap-hooks shall be proof-tested to a minimum tensile load of 3,600 pounds (16 kN) without cracking, breaking, or taking permanent deformation.

(xv) Snap-hooks shall be a locking type snap-hook designed and used to prevent disengagement of the snap-hook by the contact of the snap-hook keeper by the connected member.

(xvi) Unless the snap-hook is designed for the following connections, snap-hooks shall not be engaged:

- (A) Directly to webbing, rope or wire rope;
- (B) To each other;
- (C) To a dee-ring to which another snap-hook or other connector is attached;
- (D) To a horizontal lifeline; or
- (E) To any object which is incompatibly shaped or dimensioned in relation to the snap-hook such that unintentional disengagement could occur by the connected object being able to depress the snap-hook keeper and release itself.

(xvii) Full body harness systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration, and defective components shall be removed from service if their function or strength have been adversely affected.

(b) Safety net systems. Safety net systems and their use shall comply with the following provisions:

(i) Safety nets shall be installed as close as practicable under the surface on which employees are working, but in no case more than thirty feet (9.1 m) below such level unless specifically approved in writing by the manufacturer. The potential fall area to the net shall be unobstructed.

(ii) Safety nets shall extend outward from the outermost projection of the work surface as follows:

Vertical distance from working level to horizontal plane of net	Minimum required horizontal distance of outer edge of net from the edge of the working surface
Up to 5 feet	8 feet
More than 5 feet up to 10 feet ...	10 feet
More than 10 feet	13 feet

(iii) Safety nets shall be installed with sufficient clearance under them to prevent contact with the surface or structures below when subjected to an impact force equal to the drop test specified in (b)(iv) of this subsection.

(iv) Safety nets and their installations shall be capable of absorbing an impact force equal to that produced by the drop test specified in (b)(iv)(A) and (B) of this subsection.

(A) Except as provided in (b)(iv)(B) of this subsection, safety nets and safety net installations shall be drop-tested at the job site after initial installation and before being used as a fall protection system, whenever relocated, after major repair, and at 6-month intervals if left in one place. The drop-test shall consist of a 400 pound (180 kg) bag of sand 30 ± 2 inches (76 ± 5 cm) in diameter dropped into the net from the highest walking/working surface at which employees are exposed to fall hazards, but not from less than forty-two inches (1.1 m) above that level.

(B) When the employer can demonstrate that it is unreasonable to perform the drop-test required by (b)(iv)(A) of this subsection, the employer (or a designated competent person) shall certify that the net and net installation is in compliance with the provisions of (b)(iii) and (b)(iv)(A) of this subsection by preparing a certification record prior to the net being used as a fall protection system. The certification record must include an identification of the net and net installation for which the certification record is being prepared; the date that it was determined that the identified net and net installation were in compliance with (b)(iii) of this subsection and the signature of the person making the determination and certification. The most recent certification record for each net and net installation shall be available at the job site for inspection.

(v) Defective nets shall not be used. Safety nets shall be inspected at least once a week for wear, damage, and other deterioration. Defective components shall be removed from service. Safety nets shall also be inspected after any occurrence which could affect the integrity of the safety net system.

(vi) Materials, scrap pieces, equipment, and tools which have fallen into the safety net shall be removed as soon as possible from the net and at least before the next work shift.

(vii) The maximum size of each safety net mesh opening shall not exceed 36 square inches (230 cm²) nor be longer than 6 inches (15 cm) on any side, and the opening, measured center-to-center of mesh ropes or webbing, shall not be longer than 6 inches (15 cm). All mesh crossings shall be secured to prevent enlargement of the mesh opening.

(viii) Each safety net (or section of it) shall have a border rope for webbing with a minimum breaking strength of 5,000 pounds (22.2 kN).

(ix) Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than 6 inches (15 cm) apart.

(c) Catch platforms.

(i) A catch platform shall be installed within 10 vertical feet of the work area.

(ii) The catch platforms width shall equal the distance of the fall but shall be a minimum of 45 inches wide and shall be equipped with standard guardrails on all open sides.

(3) Positioning device systems. Positioning device systems and their use shall conform to the following provisions:

(a) Positioning devices shall be rigged such that an employee cannot free fall more than 2 feet (.61 m).

(b) Positioning devices shall be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall or 3,000 pounds (13.3 kN), whichever is greater.

(c) Connectors shall be drop forged, pressed or formed steel, or made of equivalent materials.

(d) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of this system.

(e) Connecting assemblies shall have a minimum tensile strength of 5,000 pounds (22.2 kN).

(f) Dee-rings and snap-hooks shall be proof-tested to a minimum tensile load of 3,600 pounds (16 kN) without cracking, breaking, or taking permanent deformation.

(g) Snap-hooks shall be a locking type snap-hook designed and used to prevent disengagement of the snap-hook by the contact of the snap-hook keeper by the connected member.

(h) Unless the snap-hook is designed for the following connections, snap-hooks shall not be engaged:

(i) Directly to webbing, rope or wire rope;

(ii) To each other;

(iii) To a dee-ring to which another snap-hook or other connector is attached;

(iv) To a horizontal lifeline; or

(v) To any object which is incompatibly shaped or dimensioned in relation to the snap-hook such that unintentional disengagement could occur by the connected object being able to depress the snap-hook keeper and release itself.

(i) Positioning device systems shall be inspected prior to each use for wear, damage, and other deterioration, and defective components shall be removed from service.

(j) Body belts, harnesses, and components shall be used only for employee protection (as part of a personal fall arrest system or positioning device system) and not to hoist materials.

(4) Droplines or lifelines used on rock scaling operations, or in areas where the lifeline may be subjected to cutting or abrasion, shall be a minimum of 7/8 inch wire core

manila rope. For all other lifeline applications, a minimum of 3/4 inch manila or equivalent, with a minimum breaking strength of 5,000 pounds, shall be used.

(5) Safety harnesses, lanyards, lifelines or droplines, independently attached or attended, shall be used while performing the following types of work when other equivalent type protection is not provided:

(a) Work performed in permit required confined spaces and other confined spaces shall follow the procedures as described in chapter 296-62 WAC, Part M.

(b) Work on hazardous slopes, or dismantling safety nets, working on poles or from boatswains chairs at elevations greater than six feet (1.83 m), swinging scaffolds or other unguarded locations.

(c) Work on skips and platforms used in shafts by crews when the skip or cage does not occlude the opening to within one foot (30.5 cm) of the sides of the shaft, unless cages are provided.

(6) Canopies, when used as falling object protection, shall be strong enough to prevent collapse and to prevent penetration by any objects which may fall onto the canopy.

[Statutory Authority: RCW 49.17.010, [49.17].040, and [49.17].050. 00-14-058, § 296-155-24510, filed 7/3/00, effective 10/1/00. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. 96-24-051, § 296-155-24510, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-24510, filed 4/25/95, effective 10/1/95; 95-04-007, § 296-155-24510, filed 1/18/95, effective 3/1/95; 93-19-142 (Order 93-04), § 296-155-24510, filed 9/22/93, effective 11/1/93; 91-24-017 (Order 91-07), § 296-155-24510, filed 11/22/91, effective 12/24/91; 91-03-044 (Order 90-18), § 296-155-24510, filed 1/10/91, effective 2/12/91.]

WAC 296-155-24515 Guarding of low pitched roof perimeters. (1) General provisions. During the performance of work on low pitched roofs with a potential fall hazard greater than ten feet, the employer shall ensure that employees engaged in such work be protected from falling from all unprotected sides and edges of the roof as follows:

(a) By the use of a fall restraint or fall arrest systems, as defined in WAC 296-155-24510; or

(b) By the use of a warning line system erected and maintained as provided in subsection (3) of this section and supplemented for employees working between the warning line and the roof edge by the use of a safety monitor system as described in WAC 296-155-24521.

(c) Mechanical equipment shall be used or stored only in areas where employees are protected by a warning line system, or fall restraint, or fall arrest systems as described in WAC 296-155-24510. Mechanical equipment may not be used or stored where the only protection is provided by the use of a safety monitor.

(2) Exceptions.

(a) The provisions of subsection (1)(a) of this section do not apply at points of access such as stairways, ladders, and ramps, or when employees are on the roof only to inspect, investigate, or estimate roof level conditions. Roof edge materials handling areas and materials storage areas shall be guarded as provided in subsection (4) of this section.

(b) Employees engaged in roofing on low-pitched roofs less than fifty feet wide, may elect to use a safety monitor system without warning lines.

Note: See Appendix A to Part C-1—Determining roof widths nonmandatory guidelines for complying with WAC 296-155-24515 (2)(b).

(3) Warning lines systems.

(a) Warning lines shall be erected around all sides of the work area.

(i) When mechanical equipment is not being used, the warning line shall be erected not less than six feet (1.8 meters) from the edge of the roof.

(ii) When mechanical equipment is being used, the warning line shall be erected not less than six feet (1.8 meters) from the roof edge which is parallel to the direction of mechanical equipment operation, and not less than ten feet (3.1 meters) from the roof edge which is perpendicular to the direction of mechanical equipment operation.

(b) The warning line shall consist of a rope, wire, or chain and supporting stanchions erected as follows:

(i) The rope, wire, or chain shall be flagged at not more than six foot (1.8 meter) intervals with high visibility material.

(ii) The rope, wire, or chain shall be rigged and supported in such a way that its lowest point (including sag) is no less than 36 inches (91.4 cm) from the roof surface and its highest point is no more than 42 inches (106.7 cm) from the roof surface.

(iii) After being erected, with the rope, wire or chain attached, stanchions shall be capable of resisting, without tipping over, a force of at least 16 pounds (71 Newtons) applied horizontally against the stanchion, thirty inches (0.76 meters) above the roof surface, perpendicular to the warning line, and in the direction of the roof edge.

(iv) The rope, wire, or chain shall have a minimum tensile strength of 200 pounds (90 kilograms), and after being attached to the stanchions, shall be capable of supporting, without breaking, the loads applied to the stanchions.

(v) The line shall be attached at each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in adjacent sections before the stanchion tips over.

(c) Access paths shall be erected as follows:

(i) Points of access, materials handling areas, and storage areas shall be connected to the work area by a clear access path formed by two warning lines.

(ii) When the path to a point of access is not in use, a rope, wire, or chain, equal in strength and height to the warning line, shall be placed across the path at the point where the path intersects the warning line erected around the work area.

(4) Roof edge materials handling areas and materials storage. Employees working in a roof edge materials handling or materials storage area located on a low pitched roof with a ground to eave height greater than ten feet shall be protected from falling along all unprotected roof sides and edges of the area.

(a) When guardrails are used at hoisting areas, a minimum of four feet of guardrail shall be erected on each side of the access point through which materials are hoisted.

(b) A chain or gate shall be placed across the opening between the guardrail sections when hoisting operations are not taking place.

(c) When guardrails are used at bitumen pipe outlet, a minimum of four feet of guardrail shall be erected on each side of the pipe.

(d) When safety belt/harness systems are used, they shall not be attached to the hoist.

(e) When fall restraint systems are used, they shall be rigged to allow the movement of employees only as far as the roof edge.

(f) Materials shall not be stored within six feet of the roof edge unless guardrails are erected at the roof edge.

[Statutory Authority: RCW 49.17.010, [49.17].040, and [49.17].050. 00-14-058, § 296-155-24515, filed 7/3/00, effective 10/1/00. Statutory Authority: RCW 49.17.040, [49.17].050 and [49.17].060. 96-24-051, § 296-155-24515, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-24515, filed 4/25/95, effective 10/1/95; 91-24-017 (Order 91-07), § 296-155-24515, filed 11/22/91, effective 12/24/91; 91-03-044 (Order 90-18), § 296-155-24515, filed 1/10/91, effective 2/12/91.]

29 USC § 651 - CONGRESSIONAL STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE AND POLICY

- [US Code](#)
- [Notes](#)
- [Updates](#)
- [Authorities \(CFR\)](#)

Current through Pub. L. 113-36. (See [Public Laws for the current Congress.](#))

(a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under this chapter;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

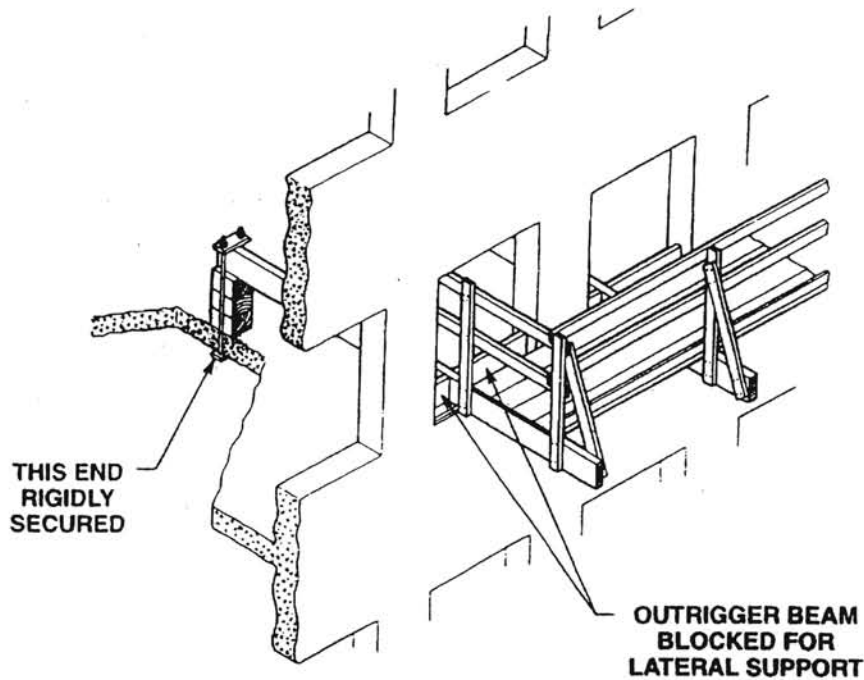
(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

5.

- (7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;
- (8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;
- (9) by providing for the development and promulgation of occupational safety and health standards;
- (10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;
- (11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this chapter, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;
- (12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this chapter and accurately describe the nature of the occupational safety and health problem;
- (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

OUTRIGGER SCAFFOLD



[61 FR 46122, Aug. 30, 1996; 61 FR 59832, Nov. 25, 1996]

Subpart M—Fall Protection

AUTHORITY: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sec. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders Nos. 1-90 (55 FR 9033), 6-96 (62 FR 111); and 3-2000 (65 FR 50017), as applicable, and 29 CFR Part 1911.

SOURCE: 59 FR 40730, Aug. 9, 1994, unless otherwise noted.

§ 1926.500 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* (1) This subpart sets forth requirements and criteria for fall protection in construction workplaces covered under 29 CFR part 1926. Exception: The provisions of this subpart do not apply when employees are making an inspection, investigation, or assessment of workplace conditions prior to the actual start of construction work or after all construction work has been completed.

(2) Section 1926.501 sets forth those workplaces, conditions, operations, and circumstances for which fall protection shall be provided except as follows:

(i) Requirements relating to fall protection for employees working on scaffolds are provided in subpart L of this part.

(ii) Requirements relating to fall protection for employees working on certain cranes and derricks are provided in subpart N of this part.

(iii) Fall protection requirements for employees performing steel erection work (except for towers and tanks) are provided in subpart R of this part.

(iv) Requirements relating to fall protection for employees working on certain types of equipment used in tunneling operations are provided in subpart S of this part.

(v) Requirements relating to fall protection for employees engaged in the erection of tanks and communication and broadcast towers are provided in § 1926.105.

(vi) Requirements relating to fall protection for employees engaged in the construction of electric transmission and distribution lines and equipment are provided in subpart V of this part.

(vii) Requirements relating to fall protection for employees working on stairways and ladders are provided in subpart X of this part.

(3) Section 1926.502 sets forth the requirements for the installation, construction, and proper use of fall protection required by part 1926, except as follows:

(i) Performance requirements for guardrail systems used on scaffolds and performance requirements for falling object protection used on scaffolds are provided in subpart L of this part.

(ii) Performance requirements for stairways, stairrail systems, and handrails are provided in subpart X of this part.

(iii) Additional performance requirements for personal climbing equipment, lineman's body belts, safety straps, and lanyards are provided in subpart V of this part.

(iv) Section 1926.502 does not apply to the erection of tanks and communication and broadcast towers. (Note: Section 1926.104 sets the criteria for body

belts, lanyards and lifelines used for fall protection during tank and communication and broadcast tower erection. Paragraphs (b),(c) and (f) of § 1926.107 provide definitions for the pertinent terms.)

(4) Section 1926.503 sets forth requirements for training in the installation and use of fall protection systems, except in relation to steel erection activities.

(b) *Definitions.*

Anchorage means a secure point of attachment for lifelines, lanyards or deceleration devices.

Body belt (safety belt) means a strap with means both for securing it about the waist and for attaching it to a lanyard, lifeline, or deceleration device.

Body harness means straps which may be secured about the employee in a manner that will distribute the fall arrest forces over at least the thighs, pelvis, waist, chest and shoulders with means for attaching it to other components of a personal fall arrest system.

Buckle means any device for holding the body belt or body harness closed around the employee's body.

Connector means a device which is used to couple (connect) parts of the personal fall arrest system and positioning device systems together. It may be an independent component of the system, such as a carabiner, or it may be an integral component of part of the system (such as a buckle or deering sewn into a body belt or body harness, or a snap-hook spliced or sewn to a lanyard or self-retracting lanyard).

Controlled access zone (CAZ) means an area in which certain work (e.g., overhand bricklaying) may take place without the use of guardrail systems, personal fall arrest systems, or safety net systems and access to the zone is controlled.

Dangerous equipment means equipment (such as pickling or galvanizing tanks, degreasing units, machinery, electrical equipment, and other units) which, as a result of form or function, may be hazardous to employees who fall onto or into such equipment.

Deceleration device means any mechanism, such as a rope grab, rip-stitch lanyard, specially-woven lanyard, tearing or deforming lanyards, automatic self-retracting lifelines/lanyards, etc.,

which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy imposed on an employee during fall arrest.

Deceleration distance means the additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured as the distance between the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, and the location of that attachment point after the employee comes to a full stop.

Equivalent means alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate will provide an equal or greater degree of safety for employees than the methods, materials or designs specified in the standard.

Failure means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

Free fall means the act of falling before a personal fall arrest system begins to apply force to arrest the fall.

Free fall distance means the vertical displacement of the fall arrest attachment point on the employee's body belt or body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

Guardrail system means a barrier erected to prevent employees from falling to lower levels.

Hole means a gap or void 2 inches (5.1 cm) or more in its least dimension, in a floor, roof, or other walking/working surface.

Infeasible means that it is impossible to perform the construction work using a conventional fall protection system (i.e., guardrail system, safety net system, or personal fall arrest system) or that it is technologically impossible to use any one of these systems to provide fall protection.

Lanyard means a flexible line of rope, wire rope, or strap which generally has a connector at each end for connecting the body belt or body harness to a deceleration device, lifeline, or anchorage.

Leading edge means the edge of a floor, roof, or formwork for a floor or other walking/working surface (such as the deck) which changes location as additional floor, roof, decking, or formwork sections are placed, formed, or constructed. A leading edge is considered to be an "unprotected side and edge" during periods when it is not actively and continuously under construction.

Lifeline means a component consisting of a flexible line for connection to an anchorage at one end to hang vertically (vertical lifeline), or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

Low-slope roof means a roof having a slope less than or equal to 4 in 12 (vertical to horizontal).

Lower levels means those areas or surfaces to which an employee can fall. Such areas or surfaces include, but are not limited to, ground levels, floors, platforms, ramps, runways, excavations, pits, tanks, material, water, equipment, structures, or portions thereof.

Mechanical equipment means all motor or human propelled wheeled equipment used for roofing work, except wheelbarrows and mopcars.

Opening means a gap or void 30 inches (76 cm) or more high and 18 inches (48 cm) or more wide, in a wall or partition, through which employees can fall to a lower level.

Overhand bricklaying and related work means the process of laying bricks and masonry units such that the surface of the wall to be jointed is on the opposite side of the wall from the mason, requiring the mason to lean over the wall to complete the work. Related work includes mason tending and electrical installation incorporated into the brick wall during the overhand bricklaying process.

Personal fall arrest system means a system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, a body belt or body harness and may include a lanyard, deceleration device, lifeline, or suitable combinations of these. As of January 1, 1998, the use of a body belt for fall arrest is prohibited.

Positioning device system means a body belt or body harness system rigged to allow an employee to be supported on an elevated vertical surface, such as a wall, and work with both hands free while leaning.

Rope grab means a deceleration device which travels on a lifeline and automatically, by friction, engages the lifeline and locks so as to arrest the fall of an employee. A rope grab usually employs the principle of inertial locking, cam/level locking, or both.

Roof means the exterior surface on the top of a building. This does not include floors or formwork which, because a building has not been completed, temporarily become the top surface of a building.

Roofing work means the hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.

Safety-monitoring system means a safety system in which a competent person is responsible for recognizing and warning employees of fall hazards.

Self-retracting lifeline/lanyard means a deceleration device containing a drum-wound line which can be slowly extracted from, or retracted onto, the drum under slight tension during normal employee movement, and which, after onset of a fall, automatically locks the drum and arrests the fall.

Snaphook means a connector comprised of a hook-shaped member with a normally closed keeper, or similar arrangement, which may be opened to permit the hook to receive an object and, when released, automatically closes to retain the object. Snaphooks are generally one of two types:

(1) The locking type with a self-closing, self-locking keeper which remains closed and locked until unlocked and pressed open for connection or disconnection; or

(2) The non-locking type with a self-closing keeper which remains closed until pressed open for connection or disconnection. As of January 1, 1998, the use of a non-locking snaphook as part of personal fall arrest systems and positioning device systems is prohibited.

Steep roof means a roof having a slope greater than 4 in 12 (vertical to horizontal).

Toeboard means a low protective barrier that will prevent the fall of materials and equipment to lower levels and provide protection from falls for personnel.

Unprotected sides and edges means any side or edge (except at entrances to points of access) of a walking/working surface, e.g., floor, roof, ramp, or runway where there is no wall or guardrail system at least 39 inches (1.0 m) high.

Walking/working surface means any surface, whether horizontal or vertical on which an employee walks or works, including, but not limited to, floors, roofs, ramps, bridges, runways, formwork and concrete reinforcing steel but not including ladders, vehicles, or trailers, on which employees must be located in order to perform their job duties.

Warning line system means a barrier erected on a roof to warn employees that they are approaching an unprotected roof side or edge, and which designates an area in which roofing work may take place without the use of guardrail, body belt, or safety net systems to protect employees in the area.

Work area means that portion of a walking/working surface where job duties are being performed.

[59 FR 40730, Aug. 9, 1994, as amended at 60 FR 39255, Aug. 2, 1995; 66 FR 5265, Jan. 18, 2001]