

**BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION  
RALEIGH, NORTH CAROLINA**

FILED

AUG 10 2022

COMMISSIONER OF LABOR OF THE )  
STATE OF NORTH CAROLINA )  
  
COMPLAINANT, )  
  
v. )  
  
INDUSTRIAL FABRICATORS, INC., )  
and its successors )  
  
RESPONDENT. )

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NC Occupational & Safety  
Health Commission  
**ORDER**

OSHANC NO. 2022-6436  
INSPECTION NO. 318222544  
CSHO ID: D1115

THIS MATTER was before the undersigned for hearing via the Lifesize video conference platform on May 12-13, 2022.

The Complainant was represented by Stacey A. Phipps, Assistant Attorney General; the Respondent was represented by Gerald L. Liska of Mullen Holland & Cooper, PA.

Based on the evidence, consisting of testimony and admitted documents, and the post-hearing briefs of counsel, the undersigned makes the following

**FINDINGS OF FACTS**

1. The complainant as the Commissioner of Labor is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina ("the Act").

2. The respondent is a North Carolina corporation which is authorized to do business in North Carolina. The respondent is a manufacturer of metal parts and provides assembly and coating services.

3. The respondent operates nine different plant locations in North Carolina and has approximately 500 employees.

4. This matter involved an inspection at the respondent's Main plant as a result of a partial amputation of several fingers of an employee, which occurred on June 18, 2021. The accident was reported on June 21, 2021. This plant is located at 4328 South York Highway, Gastonia, North Carolina. The inspection by the complainant's safety and health compliance officer, Carl Burgette, occurred from June 22, 2021 to September 27, 2021.

5. The site of the accident was an area of the plant referred to as the press brake department, which contains twenty-four press brakes, of which two are CNC controlled. The accident occurred on a Cincinnati 90-350 Ton Maxform Series hydraulic press brake.

6. The injured employee was Talan Haigler, who was working as a press brake operator for the respondent.

7. The process involved in the accident was to take a finished flat metal piece/blank and bend it 90 degrees in the press brake to form a channel. All of the bends for this material were 90-degree bends. The operator stands in front of the press brake, picks up a blank part, places it on the die and holds it in the die with both hands. While holding the part against the backgauge, the operator steps on the foot pedal control and the press brake cycles down and puts a 90-degree bend into the part. The finished formed part is then stacked on a pallet or placed into a wire basket for further processing or shipment.

8. This inspection was a partial scope inspection. Of the twenty-four press brakes in the department, twenty-three were being used according to the respondent's production manager. Of these, Mr. Burgette observed a total of eight press brakes that did not have safeguards protecting the employees from point of operation hazards. Mr. Burgette observed three press brakes in use during the inspection: press brake numbers 19, 20 and 22. Press brake number 22 was being operated by a new employee on his first day at this facility and was also the same machine on which Mr. Haigler was injured.

9. The respondent was previously cited for a willful serious violation of the same standard in the same area of the facility during inspection # 318171709 (OSHANC 2019-6207). At the time of this inspection, the respondent was contesting the citations in that case.

10. Mr. Haigler was employed by respondent as second shift press brake operator. He was holding the steel blank against the backgauge of the die, using both hands, when the blank slipped. This caused an amputation of his left pointer finger to the first knuckle, his left middle finger to the second knuckle, his left thumb to the second knuckle and the right-hand tips of his index and middle fingers. Unfortunately, when he went to the hospital, both of his hands were amputated.

11. The bottom die was 1.75 inches wide, and the part he was holding was only 4.043 inches wide. This caused Mr. Haigler's hands to be inside the safe stopping distance of the machine. Mr. Haigler was having trouble on the date of the accident with the foot pedal on press brake number 22, which would cause the machine to get stuck during the cycle and not retract. He reported this to his supervisor, who advised him that the machine could not be fixed at that point and to return to work. At the time of the accident, Mr. Haigler had made 200 parts. As Mr. Haigler was loading a part on the bottom die of the press brake, he looked to his right at the computer screen for the machine, and then as he started to look back at the part, the machine was engaged using the foot pedal and the part slipped off the backgauge, causing Mr. Haigler's hands to be in the point of operation.

12. Mr. Burgette confirmed that there was no point of operation guarding on press brake numbers 19, 20 and 22. During the inspection, Mr. Burgette observed employees using press brake numbers 19, 20 and 22.

13. In the manual for the Cincinnati press brake it states, "Never place hands in the die area" and ensure that "adequate safeguarding available and used." It further states, "It is the employer's responsibility to safeguard the point of operation of press brakes" and "Users are responsible for proper installation and continued use of point of operation safeguarding and other machine guards. This helps assure operator safety and compliance with OSHA requirements." From interviews with management, Mr. Burgette learned that management was aware that the press brakes require safeguarding such as light curtains. He was advised that two of the press brakes do have light curtains. Management had inquired into purchasing more light curtains, but that they would cost \$350,000.00. The respondent felt that it had no choice but to operate the machines without safeguards in place, or it would have to close and people would lose jobs.

14. Per Field Operation Manual Chapter IV, paragraph F.3., a willful violation exists under the Act where the evidence shows either an intentional violation of the Act or plain indifference to its requirements. It further explains that an employer has committed an intentional and knowing violation if an employer representative was aware of the requirements of the Act, or the existence of the applicable standard or regulation, and was also aware of a condition or practice in violation of those requirements. In this case, the employer committed an intentional and knowing violation of the standard allowing employees to operate press brakes without safeguarding the point of operation, and not implementing an alternative method to protect operators from contact with the point of operation of the press brakes. It also shows a plain indifference to the requirements of the Act when the requirements of safeguarding the point of operation of the press brakes has been pointed out to the respondent many times over the years in past inspections by the complainant and through the disfigurement of employees who have operated these machines.

15. Mr. Burgette observed an employee performing a servicing/maintenance activity when he was changing and setting-up a die on Accurpress press brake number 16 and the employee did not utilize hazardous energy control procedures. Mr. Burgette interviewed other press brake operators and learned that they did not utilize hazardous energy control procedures when changing and setting-up dies.

16. Authorized employees, such as operators performing servicing/maintenance activities such as changing and setting-up dies, were not trained in energy control procedures, exposing such employees to the hydraulic and electrical energy of the machine.

17. The respondent did not raise the affirmative defenses of isolated instance of employee misconduct and economic infeasibility in its responses in this case.

18. All penalties were computed in accordance with the North Carolina Field Operations Manual.

Based on the foregoing Findings of Fact, the undersigned makes the following

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are incorporated as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
2. The respondent is subject to the provisions of the Act.
3. The respondent violated the provisions of 29 CFR 1910.212(a)(3)(ii), as alleged in Citation No. 1, Item 1, and such violations were willful serious violations of the standard.
4. The respondent violated the provisions of 29 CFR 1910.147(c)(4)(i), as alleged in Citation No. 2, Item 1, and such violation was a serious violation of the standard.
5. The respondent violated the provisions of 29 CFR 1910.147(c)(7)(i)(A), as alleged in Citation No. 2, Item 2, and such violation was a serious violation of the standard.

Based on the foregoing Findings of Fact and Conclusion of Law, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The respondent has violated the provisions of 29 CFR 1910.212(a)(3)(ii), which violation is affirmed as a willful serious violation of the standard, with a penalty of \$70,000.00.
2. The respondent has violated the provisions of 29 CFR 1910.147(c)(4)(i), which violation is affirmed as a serious violation of the standard, with a penalty of \$7,000.00.
3. The respondent has violated the provisions of 29 CFR 1910.147(c)(7)(i)(A), which violation is affirmed as a serious violation of the standard, with a penalty of \$7,000.00.
4. The respondent shall pay the total penalties of \$84,000.00 within ten (10) days of the filing date of this Order.
9. All violations not previously abated shall be immediately abated.

This 25<sup>th</sup> day of August, 2022.



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RICHARD M. KOCH  
HEARING EXAMINER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER upon:

GERALD L. LISKA  
MULLEN HOLLAND & COOPER  
PO BOX 488  
GASTONIA, NC 28053

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

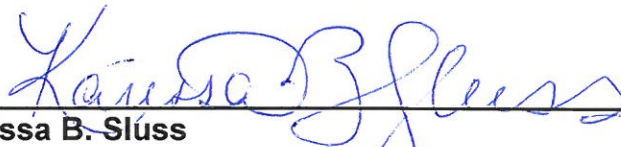
STACEY A. PHIPPS  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH, NC 27602-0629

By depositing a copy of the same in the United States Mail, first class, postage prepaid at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR  
LEGAL AFFAIRS DIVISION  
1101 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1101

via email to [carla.rose@labor.nc.gov](mailto:carla.rose@labor.nc.gov).

THIS THE 26 DAY OF August 2022.



Karissa B. Sluss  
Docket and Office Administrator  
NC Occupational Safety & Health Review Commission  
1101 Mail Service Center  
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