

# Indiana: Notre Dame university appeals state fine in death of student worker

Our correspondent  
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The administration at the University of Notre Dame, unable to reach an agreed settlement with the Indiana State Occupational and Health Administration (IOSHA), has formally appealed the fine charged to the university in the job-related death of student football videographer Declan Sullivan last October after the scissor lift from which he was filming football practice fell.

In mid-March, Indiana State labor health and safety regulators gave a slap on the wrist in the form of a derisory \$77,500 fine for the school's culpability in the death of the 20-year-old junior. Sullivan worked for little more than the state's minimum wage of \$7.35 an hour, videotaping team practices for the school's football program. Notre Dame, a Catholic university, is located near South Bend, Indiana, about 90 miles from Chicago.

IOSHA issued only one "knowing violation" attached with a \$55,000 fine for not training student videographers to operate the scissor lifts and directing videographers to use the lifts on October 27, 2010, the day of Declan Sullivan's death, despite a wind advisory. The maximum fine for a "knowing violation" is \$70,000 in Indiana.

The agency also cited Notre Dame with five "serious violations" that carry a total of \$22,500 in fines for the lack of lift training and for issues specific to the lift Sullivan was using. These violations included not properly training the student employees in the operation and use of scissor lifts; not doing annual, monthly or weekly inspections on the scissor lift for more than a year; not having a scissor lift service as required by the maintenance schedule in the operator's manual; not having an operator's manual kept in a weather-proof box; missing some warning labels and having some labels that were weathered and faded.

Most significant to the actual four-month IOSHA investigation were the evasions and contradictions among football program staff interviewed by state regulators. Head Coach Brian Kelly told IOSHA investigators, "It was a beautiful day. We were conducting a normal practice structure when a big gust hit me." His characterization of weather conditions that day contradicts actual weather service data for that time of day. In addition, staff had earlier decided to lower two other videographers' lifts and release one new employee altogether from taking pictures due to high winds.

The day before, with a tornado warning issued for the area at one point, coaches held practice indoors. But the university's report indicates that decision was made because the quarterbacks would have too much trouble throwing in the high wind conditions. No mention was made of safety concerns for players or videographers related to the indoor practice the day before the fatal accident.

Notre Dame Athletic Director Jack Swarbrick was asked who approved using the scissors lift carrying Sullivan 39 feet above ground when it blew over. "I don't (know) a specific person," Swarbrick said. "It is done on the administration side of the football program."

At one point a university official told IOSHA investigators that they could only view actual video of the day's practice on site as it contained "proprietary information."

Notre Dame's appeal of the IOSHA fines came shortly after the university issued its own report, in response to the 500-page IOSHA findings. Notwithstanding the mea culpa by the president of the University, John Jenkins, a Catholic priest who said he was taking on most of the responsibility for the death,

no one is held responsible for the death in the 145-page report.

“After a thorough and painstaking study in which numerous university personnel were interviewed and external experts consulted, we have reached the conclusion that no one acted in disregard for safety...the university, then, is collectively responsible,” Jenkins wrote.

Notre Dame, in fact, did not announce the dismissal of any individual when it issued its own report. Instead, as the *Indianapolis Star* reported, “Peter Likins, an engineer and former University of Arizona president who provided an independent review of the investigation, wrote that no one person was to blame for the accident. ‘Though a needless loss of life cries out for one to shoulder blame, the facts here do not support any single individual finding of fault,’ he wrote.”

The main gist of the university’s report was that the football staff that had responsibility for determining if it was safe to practice outdoors had used weather information from earlier in the day instead of the most recent report, which had given a wind advisory, warning of high winds and gusts. The hydraulic lift fell over in a 51-mile-per-hour gust, sending Declan Sullivan to his death.

While no one on the team staff would admit to conditions that precluded letting the lift go up carrying the young videographer, the words of Declan Sullivan himself were the most perceptive material included in the report. As he mounted a 40-foot hydraulic lift on that fateful October day to get a good view of the field, he was not comfortable about doing so, realizing that it was far windier than usual. Friends reported that he posted on Facebook and Twitter: “Holy [expletive], holy [expletive]. This is terrifying,” and “Gusts of wind up to 60 mph today will be fun at work.... I guess I’ve lived long enough.”

It is well-known that young workers are particularly at risk on the job, suffering twice the non-fatal work injuries and twice the job-related deaths of older workers, according to the National Institute for Occupational Health. According to a 2010 report, young workers, defined as 15- to 24-year-olds, face multiple risk factors on the job.

Nearly 8 million young workers were treated for injuries on the job, and 5,719 young workers were

killed in job-related incidents during the 1998-2007 period examined in the “Mortality and Morbidity Report.”

“Lack of job knowledge, training, and skills might contribute to increased risk among younger workers, who might be less likely to recognize hazards, less likely to speak up regarding safety, and less aware of their legal rights as workers,” the report stated. “This might be exacerbated for some groups of workers, such as Hispanics and workers in their first jobs.”

Half of injuries among younger workers are the result of contact with objects or equipment, compared with 40 percent of those suffered by older workers. The contact injuries largely involved the worker being struck by or against, rubbed or abraded, or caught in or crushed by various tools, equipment, machinery, parts or materials.

While Declan Sullivan earned only \$7.80 per hour on the job that took his life, Notre Dame pays their top administrators and coaches very well, even when one is fired. Charlie Weis, the previous football coach, was given \$18 million when he was let go at the end of 2009.



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