



NCDOL

N.C. Department of Labor

Cherie Berry, Commissioner

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LEDGER

From Linthead to Queen

By Dolores Quesenberry, Communications Director

It was November of 2000 that Cherie Berry won her first election as North Carolina's labor commissioner. While that election was not her first political rodeo, it was her first statewide run in North Carolina and the victory began a journey that lasted nearly two decades and took her to at least 87 of North Carolina's 100 counties, shaking hands and sharing hugs with countless thousands of North Carolinians along the way.

The win in 2000 also made Berry the first female elected as North Carolina's state labor commissioner and the first female Republican elected to the Council of State. The council is the collective name for the senior executive offices in state government that are elected statewide on which Berry resides as the longest serving Republican.

This pioneer—born and raised in the Old North State—was clearly a rising star, long before her photo ever graced the inside of an elevator. To fully appreciate how this little gal from Catawba County became one of the most endeared and recognizable faces in state history, we need to take a look back at where and how her story began.

Nora Cherie Killian was born on Dec. 21, 1946, to Lena and Earl Killian of Maiden in Catawba County. Lena was from Granite Falls and Earl was from Maiden. They met at a dance on Lake Hickory, fell in love and got married. Lena had one son from a previous marriage, Billy, whose father died in a motorcycle accident. The Killians would have two more children together after Cherie, a girl, Patricia, nicknamed "Sissy," and a boy, Earl Jr., nicknamed "Rooster."

The name "Nora" came from her paternal grandmother and "Cherie" was chosen by her father Earl, who spent 13 months as a prisoner-of-war in a German war camp during WWII.

"My father first heard the expression 'mon cheri' while heading home through France after being liberated by the Brits," Berry recalls in an interview. "He loved the name so much that he vowed that if he made it home alive and if he ever had a daughter, he would call her Cherie. The name in French means my darling or my dearest."

Killian was a superintendent at Carolina Mills, a large textile factory headquartered in Maiden, and Lena was a homemaker. The factory still exists in Maiden today.

"Our father was well respected at Carolina Mills," Berry's younger sister, Sissy Deaton, recalls in a recent interview. "I believe that is where Cherie learned her work ethic and tenacity. He was known for his cigar back in the day when you could smoke anywhere ... folks at the plant had a special spot made for our father to place his cigar before he entered the plant floor."



A portrait of Commissioner Berry with her two daughters, Kim and Stephanie Taylor.

Earl would often take his little girl Cherie, whom he nicknamed Flossy, to the factory on weekends and share stories with her about working there.

"My father would take me to the factory when I was a little girl," Cherie Berry recalls. "He would tell me that no matter what I do in life, to do my very best. I remember him saying to me many times, 'and whatever you do, Flossy, don't mess it up.'"

Growing up in North Carolina's then-thriving textile belt, Cherie and many like her were known as "lintheads" for the lint that was produced by the textile weaving machines. Depending on who called you linthead, it could be derogatory or complimentary.

Learning this work ethic at a young age served Berry well throughout her life. After her first marriage ended, Berry made money working for the local newspaper, the Maiden Times, and would sometimes peddle pottery she made on the side of a mountain road for extra money.

"She always managed to make money and put food on the table for her two daughters, Kim and Steph," Sissy said. "She never had a defeatist attitude. She always had a job and never worried about money. She always viewed money as a 'renewable resource' ... she knew she could always make more of it."

A second marriage would later take Berry to Michigan where she spent time blending a family with her two girls and her second husbands' four children. Berry got involved with their school activities while managing a busy household of eight.



Labor Commissioner Cherie Berry raises her glass after a long day while visiting the Sierra Nevada Brewery in Fletcher.

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From Labor Commissioner Cherie Berry

In this, the last edition of the Labor Ledger for 2020, I have some good news and some bad news to share with each of you. First, if you have enjoyed reading these columns over the years, the bad news is that you are reading my final column as your official state labor commissioner. If you are someone who reads the newsletter, I would like to thank you from the bottom of my heart.

The newsletter was created to inform and educate citizens on important matters concerning new legislation passed, new initiatives launched and other important news concerning wages and hours worked, retaliatory employment issues, youth employment, boilers and pressure vessels, mines and quarries, elevators, amusement rides, inflatable devices, and workplace safety and health. We hope you have found the information contained in the newsletter both useful and helpful and that you will continue to make reading it a priority.

I had the opportunity to meet so many of our subscribers while at various meetings and events scheduled around the state and I will treasure those memories made while on the road for the rest of my life.

Making the decision to retire was not an easy one, but in the end, I made the decision so that I can spend more time with my family. As we transition to a new administration, you will begin to see a new face on the NCDOL website, the labor law posters and of course on your elevators and escalators rides, which brings me to the good news I have to share.

Our Commissioner-elect Josh Dobson, who shares my views and philosophies on regulations and fines, education and training and consultation, plans to pick up where we left off. Our newly elected commissioner plans to build upon the programs and initiatives and the safety culture that we have developed over nearly two decades. Yes, the photos will change, but the mission will remain the same.

Commissioner-elect Dobson brings a wealth of experience and knowledge to the department with his eight years of service in the state House of Representatives.

And now that the time has come for me to relinquish my official title of commissioner of labor, I look forward to receiving my first edition of the Labor Ledger as a retired commissioner of labor with my grandson by my side.

You will be in good hands with Josh and I think North Carolina is ready for an "Elevator Man."

Cherie Berry

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Recognition Roundup

"Recognition Roundup" identifies businesses that qualify for one of the N.C. Department of Labor's recognition programs. Congratulations to all of the recent award recipients. For a complete list of **Star** and **SHARP** sites, visit the **NCDOL website**.

Building Star *Recertification

BE&K Building Group, *Durham**

Carolina Star *Recertification

Louisiana-Pacific Corporation, *Roaring River, North Wilkesboro**

Veolia ES Technical Solutions LLC, *Creedmoor Facility, Creedmoor**

SHARP *Recertification

Town of Mooresville, *Street Maintenance**

Town of Mooresville, *Fleet Maintenance**

Town of Mooresville, *Sanitation**

Berkshire Corp., *Whitsett**

A&M Auto Services LLC, *Pineville**

OFS Brands Holdings, *Archdale**

Arbor Acres United Methodist Retirement Community, *Winston Salem**

Oldcastle Precast Inc., *Raleigh**

Wilmington Box Co., *Burgaw**

Packaging 151, *Burgaw**



Cherie Berry
Commissioner of Labor

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Merry Christmas



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From Linthead to Queen

A little-known fact about Berry is that she was crowned Mrs. Michigan in 1979. As a contestant, her trailblazing personality and leadership acumen revealed itself when she had one of the mandatory requirements for participants to wear two-piece bathing suits changed to allow one-piece suits as many of the contestants were young mothers.

Berry's second marriage ended after 10 years, but her relationship with her stepchildren remains strong to this day, so much so that Cheryl, one of her stepdaughters, held the bible on the day of Berry's fifth swearing-in ceremony as labor commissioner in 2017.

After the second marriage ended, Berry stayed in Michigan and started a new chapter, but her life as she knew it was about to change and her name as we now know it began to take shape. Cherie would meet and marry the man whom she refers to as the "love of her life," Norman Berry, and thus the name Cherie Berry came to be.

After meeting Norman, Cherie returned home to North Carolina, and they started a small business together in Maiden. Berry blended two more children to her family tree, Trish and Norman Berry III. Trish held the bible for Commissioner Berry's fourth swearing-in ceremony in 2013.

"They didn't have two nickels to rub together when they started that business," Sissy recalls. "It is amazing what they were able to accomplish."

The business was named LGM Mfg., which stood for Little Gold Mine, and it manufactured wire-wound spark plug wires for the automotive industry. After three years of struggling as new business owners, the business finally began to turn a profit and eventually provided many jobs in their community, something Berry is still proud of. The business was eventually sold in 1995 and the company is still in existence today, providing spark plugs to car dealerships and NASCAR, and still turning a profit.

It was during her years working as a small business owner and a run-in with OSHA that inspired Berry to run for office and to someday make a difference.

"We were bogged down with regulations as small business owners and I used to complain to my husband all the time," Commissioner Berry said. "Norman told me to quit my bitchin' and run for office."

She first ran to represent Catawba County in the state House of Representatives and won in 1992. She spent eight years in the N.C. General Assembly, before deciding to run for the statewide post of labor commissioner. Berry's name would replace Harry Payne's name on the inspection certificate inside all elevators inspected by the state. There was no photo, just the name initially. Although, her name does not actually rhyme, the rhyming name "Cherry Berry" began to take off long before a photo was added to the inspection certificate.



The first photo appears in black and white on elevator certificates across the state in 2005. The photos were added as annual inspections were conducted.

the Elevator Queen has attracted thousands of followers.

Commissioner Berry gives credit for her success to the people she has surrounded herself with over the years. Her executive assistant, Joyce Bulluck, has been a part of her senior staff since the beginning of her first term and Art Britt, who started in the role of general administration, followed by governmental affairs and later elevated to the role of chief of staff at the N.C. Department of Labor, has always been by her side, holding down the fort, so to speak, so Commissioner Berry could travel the state.

"Commissioner learned early on that her role was not to sit in Raleigh, not to sit behind a desk. That was contrary to her personality," Art Britt said. "It was also contrary to her style. She just felt that she had to go out and talk to anybody; any civic group, any rotary club, any organization of two or more people; that wanted to sit down and talk with her about the mission of the Department of Labor."



A newspaper clipping from the Detroit Free Press announces the winner of Mrs. Michigan as a 31-year-old mother of six from Southfield.

The photo was added in 2005 after Berry won a second term. The idea to add a photo to the certificate came from Juan Santos, Berry's communications director at the time. Berry first opposed adding her photo, but eventually relented and agreed with her senior leadership that adding her photo was a good way to put a face on government. Berry agreed, but deliberately asked to wait until after the 2004 election.

"I wanted to wait until I won a second term before we added the photo to the certificate, so folks couldn't say it was a fluke or that I won just because of the photo," Commissioner Berry said.

After her 2004 victory, Berry went on to win re-election in 2008, 2012 and 2016. On Nov. 8, 2016, she set a record of being elected to five four-year terms as commissioner of labor. On Aug. 9, 2019, Berry surpassed Frank Crane to become the longest serving labor commissioner in North Carolina history.

Norman Berry did not live to see the notoriety his wife achieved as he died Feb. 1, 2006. After Norman's death, Sissy said it was the first time she had ever seen her sister doubt how she was going to go on without Norman. It was a low point in her life, but in true Cherie Berry fashion, she eventually pulled herself together and threw herself into her work.

Though she was very comfortable with the title of commissioner during her 20-year tenure, the public chose to dub her as the "Elevator Lady." In that time, there have been songs written about her, beers named after her and "Cherie Berry Lifts Me Up" t-shirts designed with her image on them. A popular parody account on Twitter called



Commissioner Berry poses with a fan wearing a "Cherie Berry Lifts Me Up" t-shirt in 2019.

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From Linthead to Queen

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Within the first month or so of taking office, Commissioner Berry chose to forgo the state vehicle assigned to her office and instead started a journey that as of press day took her more than 275,000 miles on North Carolina highways and bi-ways in her never-ending fulfillment of that next invitation to visit with North Carolina employers and employees and share the good news about the Department of Labor. Though she occasionally caught a ride with a staff member, over 224,000 of those miles were in her own personal vehicle and she never asked for nor received a penny of reimbursement for those personal miles.

In fulfilling her duties as Commissioner of Labor, she has travelled the circumference of the earth 11 times. Nine of those at her own expense. And if North Carolina is 499 miles in breadth, then Commissioner Berry has traversed the width of North Carolina over 552 times.

“Commissioner Berry certainly earned the citizens respect and her crown, one mile at a time,” Britt said. “And showed us all that in North Carolina, anything is possible ... and that an elevator queen’s crown can fit so nicely on a ‘linthead’.”



Commissioner Berry and a UNC-Charlotte band member stand in front of the faux glass elevators doors on the “Elevator Queen” float at the Novant Health Thanksgiving Day Parade in 2019.

When asked why she thinks she has made such an impression on North Carolinians, especially with the millennial age group, Berry explains that she is the only labor commissioner they have ever known.

“They grew up seeing my face on elevator certificates in their communities, whether it was at their church, their college dorm or their local mall,” Berry said. “My face is familiar to them and I am flattered that they have grown to love and admire me.”

The city of Charlotte has shown its love for Commissioner Berry over the years. In 2019, Berry was invited to be the grand marshal at the Novant Health Thanksgiving Day parade. The float was designed with faux glass elevator doors and red carpet and the crowds cheered on the “Elevator Queen” as the float travelled down Tryon St. in Uptown Charlotte. In 2021, the Charlotte Hornets Organization and one of its partners, Schindler Elevators, are planning a farewell tribute to thank the “Queen” for her dedicated service to the great state of North Carolina.



Parade participants with Commissioner Berry wave to fans while waiting for the parade to start. The participants wore “Cherie Berry Lifts Me Up” t-shirts and walked beside the float throughout the parade.

The Unknown Brewing Company in Charlotte launched the “Elevator Lady” can in 2019. At the launch, the lines for autographs wrapped around the room and Berry signed beer cans for three hours because she did not want to send anybody away who wanted her autograph.

While Berry served and sat at the table with four governors and other elected officials over the past 20 years, it is being with the people on the factory floors that she loves most. Maybe it brings back memories of visiting the factory floor with her father. Whatever the reason, Berry never tires of going behind the factory walls and visiting with the workers who actually build the tires or process the food we eat. She respects those who work hard and feels it is an honor to shake their hands and thank them for the work that they do.

Her name and face will soon be replaced, but her memory is forever etched in the minds of many North Carolinians. And somewhere out there, I have a hunch, Earl Killian is looking down on his precious daughter’s accomplishments and saying, “Great job, Flossy, you didn’t mess it up.”

Other Little-Known Facts

- ▲▼ Berry was lampooned in more than two dozen political satire cartoons.
- ▲▼ Her administration presented more than 50,000 safety awards to employers and employees throughout North Carolina, most of which Berry personally presented.
- ▲▼ During the Berry administration, the injury and illness rate for private industry hit a record low 2.3 cases per 100 full-time workers.



A wall in Commissioner Berry's office chronicles two decades of political cartoons.



Nova Development

Season's Greetings

NC's Workplace Injury and Illness Rate Remains at a Historic Low

By Dolores Quesenberry, Communications Director

New figures show the nonfatal workplace injury and illness rate for the Tar Heel state's private industry remains at a historic low for 2019 with a rate of 2.3 cases per 100 full-time workers, well below the national rate of 2.8.

These data are estimates from the Survey of Occupational Injuries and Illnesses compiled by the U.S. Bureau of Labor Statistics. The rate accounts for growth and contraction in total hours worked in industry, which is an important factor in a state like North Carolina that has experienced significant growth.

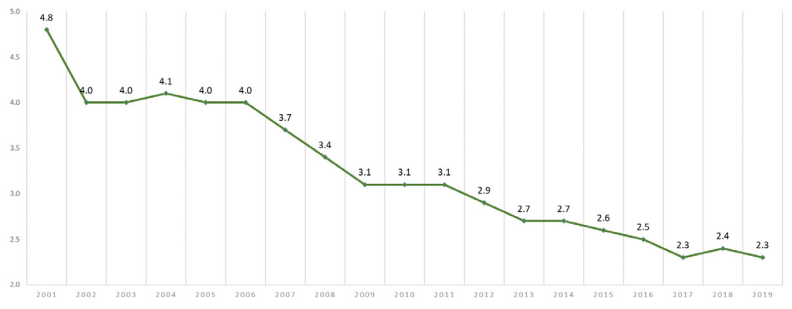
"This downward trend has developed over nearly two decades and shows a safety culture has taken root in workplaces throughout our great state," Labor Commissioner Cherie Berry said. "We are especially pleased that private industry construction saw a significant decrease in its total recordable rate from 2.5 to 1.6 and is significantly below the national case rate of 2.8 per 100 full-time workers."

As a State-Plan state, North Carolina's Occupational Safety and Health Division will continue its focus on hazardous industries, such as construction and manufacturing, through its special emphasis programs, by providing free safety training and education, conducting free safety and health consultative visits, and establishing partnerships and alliances with industries.

In North Carolina, only private industry construction saw a statistically significant decrease in its total recordable rate. The 2019 private industry rate for manufacturing of 2.7 cases per 100 full-time workers does not significantly differ from 2.8 cases per 100 full-time workers in 2018 and remains below the national rate of 3.3.

"With this being my last year as labor commissioner, I am so proud of the employers and employees across the state who have made workplace safety a priority and the NCDOL employees who have helped facilitate the decrease in injuries and illnesses statewide," Commissioner Berry said. "I'm sure that this trend will continue when Commissioner-elect Josh Dobson takes my place and I officially change my title from 'Elevator Queen' to 'mamaw.' Thank you, North Carolina!"

OCCUPATIONAL INJURY AND ILLNESS RATE PER 100 FULL-TIME WORKERS
NORTH CAROLINA, PRIVATE SECTOR, CALENDAR YEARS 2001 THROUGH 2019



Source: Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, in cooperation with North Carolina and other participating states.

REDB Launches New Mediation Program

By Natalie Bouchard, Public Information Officer

The Retaliatory Employment Discrimination Bureau (REDB) is now offering mediation at no cost to the parties as an opportunity to settle their Retaliatory Employment Discrimination Act (REDA) disputes.

The bureau investigates complaints filed under REDA by employees against their employers who allege that they were retaliated against because they pursued rights under one or more of the REDA protected statutes. Examples include filing an occupational safety and health complaint or initiating a claim for workers' compensation benefits. While the bureau conducts thorough investigations and makes determinations as to the merit of each complaint, REDA does not provide REDB with enforcement powers. A complainant must go to court to seek remedies such as back pay, reinstatement or other damages.

Because the bureau lacks the jurisdiction to enforce remedies, and in consideration of the time and money expended in litigation, the bureau has always had a commitment, but no specific program, to encourage settlement of a REDA dispute by engaging the parties in informal settlement discussions.

It is widely accepted that the fair resolution of complaints in lieu of litigation is almost always a good thing for everyone involved.

To address this commitment, REDB recently launched a Mediated Settlement Conference Program which offers the parties involved in a REDA dispute the opportunity to try to reach a resolution through a mediated settlement conference conducted by an experienced, certified and neutral mediator. This program significantly expands the bureau's commitment to assist in the resolution of cases and may well increase the number of complaints successfully resolved by the parties themselves.

Mediation is well-recognized as a highly effective process for resolving disputes. North Carolina has several court-ordered mandatory mediation programs, one in civil superior court cases and another in family financial disputes in district court. There are dozens of community mediation centers across the state. The Office of State Human Resources has integrated mediation into its state employee grievance procedure. Mediation is an informal dispute resolution process conducted by a trained and impartial third party, the mediator. The mediator does not offer legal advice, represent either party, or make a determination or decision in the matter. Rather, the mediator guides the discussion to explore the needs, concerns, and positions of the parties and to help them generate settlement options and outcomes.

REDA complaints are particularly well-suited for mediated settlement conferences. Emotions can run high and workers' livelihoods are often at stake. Many employees do not have the resources to pursue their remedies in court and employers do not want to expend resources

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REDB Launches New Mediation Program

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defending a complaint. This program gives the parties the chance to settle the matter, achieve closure and move forward.

"I have always been a huge supporter of mediation and alternative dispute resolution in general," said Harriet Hopkins, REDB administrator. "One of the bedrock tenets of mediation is that the parties themselves are actually in the best position to find solutions to their dispute and a skilled mediator can help them make that happen."

When Hopkins brought the idea to Labor Commissioner Cherie Berry and other NCDOL staff, they were excited about the possibility of offering a new settlement tool to employers and employees and increasing the efficiency of the bureau.

"I fully supported the program from the beginning," Berry said. "I didn't and don't see any downside to it whatsoever. Giving the parties the tools and support to reach their own resolution is empowering. That is the way government should run."

Most of REDB's staff have completed a 24-hour introductory mediation training course. However, with the current workload, the bureau does not have the resources to serve as mediators in the program. Hopkins reached out to mediators certified by the N.C. Dispute Resolution Commission who serve in the court programs mentioned above, and to N.C. Department of Labor employees serving as OSHR mediators. More than 20 mediators have enthusiastically agreed to volunteer their time.

"I asked some of the most respected mediators in the state and was astounded and moved by their enthusiastic support," Hopkins said. "These are folks who believe in mediation and want to help make our program a success for the people of North Carolina."

The N.C. Department of Labor is always looking for strategies to improve the service that it provides to the employees and employers in North Carolina.

"It is possible that many legitimate complaints do not make it to court," Hopkins said. "This program adds another tool to the toolbox along with more informal means to meet NCDOL's charge under REDA to eliminate an alleged violation. This initiative advances the department's commitment to promoting healthy and safe workplaces, free from retaliation."

The program is voluntary, so the bureau refers parties to mediation and assigns the mediators and facilitates the process from start to finish.

"I am so proud of Harriet and her efforts and the bureau's efforts," Berry said. "The program is a wonderful idea and will save people time, money and emotional resources for everybody involved and that's a wonderful way to provide a service. It will serve the citizens of North Carolina very well and I highly encourage people to take advantage of this program if they can."

For more information about REDB or the new Mediated Settlement Conference Program visit **our website** or email Harriet Hopkins, REDB administrator, at harriet.hopkins@labor.nc.gov.

NCDOL also recently produced a podcast episode of *Inside NC Labor* that discusses the program at length with Harriet and Commissioner Berry. You can find more information below.



By Harriet Hopkins, Administrator
Retaliatory Employment
Discrimination Bureau

Q: I work on a construction crew outside and do not want to wear a mask. Last week I complained to my employer that I was not going to wear one and I was terminated. I feel that my employer terminated me because I complained about having to wear a mask. Can I be terminated for refusing to wear a mask?

A: Gov. Cooper issued EO No. 147 on June 24, 2020, requiring all persons to wear a face covering in public, including while at work outside, for protection against COVID-19. Not only can your employer require you to wear a face covering to control the spread of COVID-19 while working outside even under conditions of high temperatures and humidity, EO No. 147 requires workers to wear a mask while working outside. However, EO No. 147 sets out some exceptions as to when a mask can be removed or when an employer is generally required to accommodate those exceptions for an individual employee.

You have not said why you do not want to wear a mask. If you have any concerns about your safety or health regarding situations either created by or not addressed by your employer, you have a right to file a complaint with the Occupational Safety and Health (OSH) Division of the N.C. Department of Labor. For instance, if you have health reasons for not wearing a mask or concerns about heat stress while working outdoors in high temperatures and the face covering creates an inability to breathe, you could bring this to the attention of your employer and you would have a valid OSH complaint.

With respect to your termination, North Carolina is an "at will" state, which means an employer can terminate an employee for any reason and/or no reason at all without consequence, unless it is in violation of an employee's rights under existing state or federal anti-discrimination laws. One of those laws is the N.C. Retaliatory Employment Discrimination Act (REDA), which protects an employee from retaliation when they complain about safety or health violations in the workplace, file, or threaten to file a safety or health complaint with the OSH Division. If your employer terminates you because you complained or filed a complaint with the OSH Division, you may have a valid REDA complaint. Call our office at 919-707-7941 and a member of our staff will be happy to assist you.

Be sure to check out NCDOL's podcast, *Inside NC Labor*.

Episode 38 features Labor Commissioner Cherie Berry and Harriet Hopkins, Retaliatory Employment Discrimination Bureau (REDB) administrator, as they discuss the new REDB Mediated Settlement Conference Program.

In addition to NCDOL's **website**, *Inside NC Labor* is available on YouTube, Spotify, Apple Podcasts, Anchor and Google Podcasts.

Inside NC Labor is designed to inform and educate North Carolina citizens on the role that the Department of Labor plays in state government.

Due to social distancing protocol and EO No. 121, recent podcasts have been recorded over the phone.



NCDOL Photo Library

DEADLY Mistakes



By Judyth Forte, State Plan Coordinator

Fatal Event: On March 8, 2018, a 40-year-old man died when the side walls of a trench he was working in, to construct a French drain, caved in.

Investigative Findings: A contractor had been hired to dig foundation footings at an undeveloped residential lot. When arriving to the site, the morning after the footings had been dug, it was observed that water had accumulated in the bottom of the footings. A decision was made to remove the standing water by digging a French drain. The French drain would be about 200 linear feet and would consist of digging 4 feet into the earth, laying down 6 inches of gravel, installing a perforated pipe, covering the pipe with another 6 inches of gravel, laying a filter fabric over the gravel (to prevent soil from clogging the perforated pipe) and then back filling the rest of the opening with soil.

After the trench had been dug out, the foreman and another employee were left to install the French drain. Four to 5 inches of water accumulated at the bottom of the excavation as they worked. The foreman was inside the 24-inch-wide by 42-inch-deep excavation and was using a shovel to level out the layer of gravel above the perforated pipe. When he attempted to step out of the trench, the side wall of the trench collapsed and struck him on his lower body pinning him against an opposite wall. He was removed from the excavation by his coworker, who then dialed 911. Construction workers that were at an adjacent site heard yelling and ran over to assist. They laid the foreman on the ground beside the excavation and began CPR. He was transported to the hospital with life-threatening injuries and later died.

Discussion: The employer revealed that the two employees working on the site had worked for them for just over a year and had not been given any training during the first year of employment. However, the employer stated that the employees had recently been to a competent person trenching and excavation class.

When the training center was contacted to verify the employee's attendance it was discovered that the class and educational literature were presented in English and that the employees had very limited written and spoken English comprehension. Therefore, the employees did not receive sufficient training and knowledge in a language they could understand to be able to fully assess the hazards associated with working in a trench.

The employer did not effectively instruct employees in the recognition and avoidance of unsafe conditions and the regulations applicable to their work environment to control or eliminate any hazards or other exposure to illness or injury. The employer also did not ensure that their employees had received sufficient training and knowledge from having attended the competent person trenching and excavation class to identify hazards to meet the requirements of a competent person.

A competent person is one who can identify existing and predictable hazards in their surroundings or working conditions and who has authorization to take prompt corrective measures to eliminate them.

Competence can be described as the combination of training, skills, experience and knowledge that a person has and their ability to apply them to perform a task safely. Tasks performed by the competent person under the OSHA excavation standards include classifying soil, determining cave-in potential, inspecting protective systems, designing structural ramps, monitoring water removal equipment and conducting site inspections.

If a competent person had inspected the excavation, they would have identified that there were multiple indications of potential cave-ins. They included visible fissures in the trench wall, water infiltration and accumulation in the bottom of the trench, and unstable sandy, loose soil. It would have been clear that a protective system needed to be put in place prior to an employee entering the trench to conduct work and do so safely.

Recommendations:

- ✖ Employers and employees need to be familiar with the applicable OSHA regulations before they start work on a project. The employer must ensure all safety measures have been put in place to safeguard employees.
- ✖ Employers must ensure employees are adequately trained for particular tasks and are able to identify potential dangers.
- ✖ Employers must ensure that inspections of excavations are conducted by a competent person, capable of identifying hazards and making necessary corrections of those hazards. Work must not proceed if employees will be exposed to hazards.
- ✖ The designated competent person must conduct an inspection of excavations and the surrounding areas prior to the start of work and as needed throughout the work shift to ensure employees are not exposed to hazards.
- ✖ Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with 29 CFR 1926.652(b) or (c).
- ✖ Employers must ensure that inspections are made after every rainstorm or other hazard increasing occurrence.
- ✖ All employees working in excavations should be trained in hazard recognition. Employees should also be trained to avoid any identified hazards and immediately notify the designated competent person.

WORKPLACE WORRIES



By Kisha Holmes, Bureau Chief, Wage and Hour Bureau

Q: Does my employer have to pay me for holidays?

A: No, an employer is not required to provide holiday pay for employees. However, if an employer provides these promised benefits for employees, the employer shall provide the benefit in writing and provide and/or pay the benefit in accordance with the written policy or practice.





Bulletin Board

Mine and Quarry Training

Check the website for updates.

Part 46 Annual Refresher Training

Dec. 1, *Virtual*

Part 48 New Miner Training

Dec. 3, *Virtual*

New Miner Training

Dec. 7–9, *Bakersville*

Dec. 15, *Greensboro*

Dec. 17, *Greensboro*

Annual Refresher Training

Dec. 10, *Bakersville*

Dec. 14, *Greensboro*

Dec. 18, *Greensboro*

First Aid/CPR/AED Training

Dec. 16, *Greensboro*

To register for any of these classes,
call the Mine and Quarry Bureau at 919-707-7932.

Wage and Hour Presentations

Investigators from the Wage and Hour Bureau offer presentations to employers, employees, high schools and career development organizations. The presentation covers the provisions of the Wage and Hour Act, minimum wage, overtime, record keeping, wage payment and youth employment. The presentation is designed to enhance North Carolina citizens' knowledge of labor laws and to inform employers and employees of their rights and responsibilities in wage and hour matters. Investigators conduct the presentations onsite at schools or local businesses if there is a minimum of 10 attendees.

To schedule a presentation, please email whbinfo@labor.nc.gov with the following information: requesting individual or business, location, desired topics, and preferred dates for presentation.

COVID-19 Guidelines

Please check the NCDOL website for guidance regarding COVID-19.
The information is updated based on CDC guidelines.

www.labor.nc.gov

OSH Webinar Courses

Visit the **OSH Training Schedule Calendar** to view upcoming internet training and other safety courses. Among the courses being offered include:

- ♦ *Cranes and Derricks*
- ♦ *Excavations and Trenching*
- ♦ *Fall Protection*
- ♦ *Inspection Process*
- ♦ *Lockout/Tagout*
- ♦ *Machine Guarding*
- ♦ *Basic COVID-19 Employee Training (Poultry/Meat Processing)*
- ♦ *Electrical Safety (Construction and General Industry)*
- ♦ *Personal Protective Equipment (Construction Industry)*
- ♦ *Powered Industrial Trucks*
- ♦ *Recordkeeping*
- ♦ *Respiratory Protection*
- ♦ *Steel Erection*
- ♦ *Toxic-Hazardous Substances*
- ♦ *Welding and Cutting*

Pre-Recorded Webinars

Visit the **OSH Training Schedule Calendar** to view upcoming internet training and other safety courses.

- ♦ *Bloodborne Pathogens*
- ♦ *Ergonomic Awareness*
- ♦ *Fall Protection*
- ♦ *Hazard Communication*
- ♦ *Health Hazards SEP*
- ♦ *Heat Stress*
- ♦ *Inspection Process*
- ♦ *Lockout/Tagout*
- ♦ *Machine Guarding*
- ♦ *Confined Space (Construction and General Industry)*
- ♦ *Occupational Noise Exposure*
- ♦ *Powered Industrial Trucks*
- ♦ *Recordkeeping*
- ♦ *Respirable Crystalline Silica*
- ♦ *Respiratory Protection*
- ♦ *Scaffolds*
- ♦ *Stairways and Ladders*
- ♦ *Toxic Hazardous Substances*
- ♦ *Walking Working Surfaces*

COVID-19 Related Pre-Recorded Webinars

- *N95 Filtering Facepiece Respirator COVID-19*
- *Personal Protective Equipment in Construction Industry COVID-19*
- *Personal Protective Equipment in General Industry COVID-19*
- *Respiratory Protection COVID-19*



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