

News You Can Use

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BUSINESS ENVIRONMENT

Top 10 Laws, Regulations Affecting Your Business

AS WITH every New Year, businesses are faced with a slew of new laws and regulations. We've condensed them into a list of the top 10 most likely to affect your operations.

1. New Gender equal pay laws

A new state law adds teeth to the laws on gender pay equality.

Before SB 358, employees seeking to prove pay discrimination had to demonstrate that they are not paid at the same rate as someone of the opposite sex at the same establishment for "equal work."

Under the new law, the requirement of "same establishment" has been deleted, and the employee need only show he or she is not being paid at the same rate for "substantially similar work."

Substantially similar work, according to the law, means a composite of skill, effort and responsibility, performed under similar working conditions.

Employment law attorneys say the employer

has the burden to affirmatively demonstrate the pay difference being complained about is based on any or all of these specific factors:

- A seniority system,
- A merit system,
- A system that measures earnings by quality or quantity of production, or
- Another factor, such as education, training or experience.

2. Minimum wage increase

On Jan. 1, the state minimum wage increased to \$10 an hour.

This is the last of two incremental increases. The first came on July 1, 2014, which moved the rate up to \$9 an hour.

3. Employer mandate part II

At the end of 2015, the Affordable Care Act reprieve for businesses with 50 to 99 full-time or full-time equivalent employees ended.

Employers of this size will be required to provide health insurance to at least 95% of their full-time employees and dependents up to age 26.

For employers who don't provide cover-

age, the fee is \$2,000 per full-time employee (minus the first 30 full-time employees).

Companies with 100 or more full-time employees were required to cover their workers, starting in 2015.

4. Leeway to avoid frivolous lawsuits

Now employers 33 days to fix technical violations on an itemized wage statement before an employee can pursue civil litigation under the Private Attorneys General Act.

The California Chamber of Commerce championed the bill, which took effect on Oct. 2, 2015, saying it will reduce frivolous litigation.

5. Health coverage reporting

Starting in 2016, employers with 50 or more full-time or full-time equivalent employees are required to make additional filings with the IRS, as well as supply their staff with forms.

Applicable large employers (with 50 or more full-time and full-time equivalent employees in the preceding calendar year) will use Form 1094-C and Form 1095-C to satisfy reporting requirements.

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Affordable Care Act Reporting Mandate Starts This Year

6. Family leave expanded a little

A school activities law give employees the right to take protected time off from work when searching for a school or childcare provider.

The law, which applies to employers with 25 or more employees, requires employers to allow an employee to use eight hours in a calendar month, with a total of 40 hours in a calendar year, to find a school or a licensed childcare provider and to enroll or re-enroll a child, as well as time off to address childcare provider or school emergencies.

7. Inappropriate use of E-Verify

Effective Jan. 1, employers are barred from using the E-Verify system to check the work eligibility status of an existing employee or an applicant who has not received an offer of employment, as required by federal law, or as a condition of receiving federal funds.

8. Stiffer workplace safety penalties

Federal OSHA fines will increase for the first time in 25 years, with fines almost doubling from current levels.

The Federal Civil Penalties Inflation Adjustment Act of 1990 exempted OSHA from increasing its penalties to account for inflation. The new budget, signed into law on Nov. 2 by President Barack Obama, contains an amendment that strikes the exemption.

Now, OSHA is required to issue an interim final rule increasing

its penalties to account for current inflation levels, which would raise proposed fines by about 80%.

This would mean the maximum penalty for a willful violation would rise to about \$127,000 from the current \$70,000. The adjustment must occur before Aug. 1, 2016. In subsequent years, OSHA also will be allowed to adjust its penalty levels based on inflation.

9. OSHA's new filing requirements

OSHA is expected to roll out a new rule that requires employers with 250 or more employees to electronically submit injury and illness records to OSHA on a quarterly basis.

Also, some smaller employers will be required to electronically submit their OSHA Form 300A, which summarizes their annual injury and illness data, on an annual basis.

10. Paid sick leave

This law actually took effect on July 1, 2015 and new amendments took effect on July 13. Under the law, California employees are entitled to one hour of sick leave for every 30 hours worked.

The changes included clarifying who is a covered worker; alternative methods of accruing paid sick leave, other than one hour for every 30 hours worked; clarifying protections for employers that already provided paid sick leave or paid time off before Jan. 1, 2015; and providing alternative methods for paying employees who use paid sick leave. ❖

Run FMLA Concurrently with Workers' Comp

EMPLOYERS THAT run federal Family and Medical Leave Act benefits concurrently with workers' comp benefits have more leeway when employees are off work for an extended period of time, a court has ruled.

In the case of *Kings Aire Inc. vs. Jorge Melendez*, the Texas Supreme Court ruled that an employer who laid an employee off who had been out on workers' comp concurrently with FMLA, but had exceeded the 12 weeks away that is allowed by the law, was entitled to do so.

The case is a lesson on how to apply FMLA and workers' comp leave and protect your organization's interests..

The case

Jorge Melendez filed a workers' comp claim after he injured his wrist in July 2009, cutting two tendons and the median nerve.

His employer informed him that while he was out on workers' comp, it would concurrently place him on FMLA leave, which allows eligible employees who cannot perform their jobs due to a serious health condition, to take up to 12 weeks of job-protected leave per year.

After 12 weeks, Melendez was unable to return to work and his employer sent him a termination letter. He sued, accusing the heating and air company of retaliating against him for filing the workers' comp claim.

A local court and appeals court sided with Melendez, but the Texas Supreme Court reversed those decisions, saying that the evidence did not support the allegation that he had been fired for the workers' comp claim. Instead, the employer had rightfully signed him up for FMLA leave and he was terminated under the firm's policy, which the employer had enforced equally in other circumstances.

The lesson

If you foresee an employee missing a long period from work, you may put them on FMLA leave, employment law attorneys say. If you do not, your employee will still have those 12 weeks to use for other potential FMLA-approved leaves.

Also, when provisions of both laws run concurrently, an employee may turn down workers' comp light duty.

If that happens, the employee may lose workers' comp benefits, but would retain FMLA rights to a continuation of job-protected leave.

If an employee returns to light duty under workers' comp, employers typically may pay a lower wage than that of the worker's normal position.

Under the FMLA, such a position must have equivalent pay and benefits. ❖



RISK MANAGEMENT

Preventing Warehouse and Factory Fires

ONE OF the biggest risks to warehouses and factories is fires, which can spread rapidly in these environments.

Facilities that are most at risk are those that have high ceilings, large footprints and hold large quantities of inventory that is stored close together.

If you don't have a fire prevention system in place, your inventory is at risk, as well as machinery and the building itself.

If you operate such a facility, you need to make sure that you reduce the risk of fires, and that you keep your inventory clear of any potential ignition sources.

To start, you need to understand what kind of ignition sources you have in your facility and how to identify hazards. Next, put together a fire protection plan.

Your plan will depend on the materials and inventory that you are storing and using.

For example, materials in corrugated cartons are much less combustible than plastic packaging. And inventory such as paint, oil and sawdust is extremely flammable.

Shelving

One of the first orders of business is to evaluate your current shelving design.

One factor is the height of your storage. The higher you stack inventory, the greater the fire suppression challenge. Sprinkler systems that run along the ceiling have to reach not only the top layers of your inventory, but also the bottom layers.

One solution is to install in-rack sprinklers.

Another issue to consider is solid versus open shelving. Solid shelving increases the fire risk because it creates an enclosed area where the fire can burn more easily.

Fires to products on open shelving are easier to douse and they don't spread as easily.

Also, the warehouse should be neat and items properly stored. Failing to arrange storage can increase your risk because:

- Crowded aisles may block fire exits and make it harder for people to escape, and
- Fires spread more easily in cramped warehouses.

Dust danger

When accumulated dust particles are suspended in the air and contained in a confined space, all it takes is one small ignition source – like static electricity or metal-on-metal friction – to set off a chain reaction and a burst of fire.

When that happens it creates a rise in temperature and a rise in pressure.

That pressure will push outwards and if your building is not designed to contain that explosion and vent it safely, the result can be widespread damage.

On top of that, the initial explosion may dislodge additional dust on horizontal surfaces, which will add to the fire, putting at risk your entire facility. ❖

Dust fire prevention

Fires can be prevented via proper housekeeping and regular maintenance and upkeep of equipment, and the installation of vacuum-powered dust collectors on the outside of the warehouse.

**Storage tips**

- Keep electrical switchgear and heating equipment clear of storage.
- Never let goods sit within 18 inches of lighting.
- Allow enough clearance between sprinkler heads and stored goods to make sure that your sprinkler system can effectively douse the area.
- Segregate hazardous and non-hazardous materials.

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Change Mindsets to Avoid Slips, Trips and Falls

SLIPS, TRIPS and falls constitute the majority of general industry accidents, cause 15% of all workplace deaths, and are second only to motor vehicles as a cause of fatalities.

Despite American employers' best efforts, slips, trips and falls result in more than 95 million lost work days per year and account for nearly 25% of all reported injury claims every year. Obviously, there is a disconnect between employer safety measures and the outcome.

A December 2014 survey of almost 1,300 safety professionals, carried out by Safety Daily Advisors, found the "big three" causes of slip, trip and fall incidents are:

- Human factors – 54%
- Wet or slippery surfaces – 25%
- Poor housekeeping – 16%

With human error causing more than half of all accidents, you have to take a multi-pronged approach to instilling in workers the importance of:

- Immediately cleaning up spills,
- Closing file drawers when done,
- Picking up loose items from the floor,
- Keeping aisles and walkways free from clutter, and
- Keeping their personal workspace clean and orderly.

But training your employees to be more mindful in areas with slip, trip and fall hazards is not as simple as telling them to "pay attention" or "don't get distracted." Changing behavior takes time and commitment, but the best solution is a behavior-based safety approach.

It will take time and effort to change employees' perception of risk and personal responsibility. But with a proactive approach that builds a culture and fosters an attitude and behavior that put safety first, workplace injuries will be reduced. ❖

ZEN OF SAFETY

The first step you need to take is to help your employees become aware of unsafe habits and analyze their mistakes. Good habits include:

- Walking with caution and making wide turns at corners.
- Testing footing before committing weight.
- Opening doors with caution.
- Using railings on stairs.
- Ensuring three points of contact on ladders and equipment.
- Looking before moving.
- Wearing appropriate footwear.
- Being aware of weather forecasts.
- Pushing (not pulling) carts to allow a better line of sight.
- Keeping eyes and mind on task; no multitasking.
- No texting or talking on phone while walking.
- Being alert for trip hazards.
- Recognizing dangers of walking on ice.
- Taking designated walkways, rather than shortcuts.
- Not wearing sunglasses in low-light areas.
- Reporting all potential hazards.

REPEAT THE MESSAGE

It doesn't pay to tell your employees once. Regular reminders help instill safety mindedness. Instead of long, all-encompassing meetings, it's best to hold short, but frequent safety meetings instead.

