

Sexual Harassment

#MeToo Movement To Spawn Wave of Lawsuits

AFTER REVELATIONS of sexual misconduct by high-profile executives, media personalities and politicians last year spawned the #MeToo movement, defense lawyers are predicting a record number of sexual harassment lawsuits will be filed against employers in the coming year.

The #MeToo movement has emboldened women who have been sexually harassed, abused or worse by a work superior or co-worker to come out and tell their stories. Any employer whose workers were subjected to this kind of behavior is at risk of being sued, regardless of whether or not the employer knew about the incident.

The costs of sexual harassment lawsuits can debilitate, if not sink a business.

Employers should have anti-harassment policies in place, including a safe way for an employee to report harassment without fear of losing their job. In the #MeToo era, you should revisit your policy and consider new training for all employees, supervisors and management. Companies must be ready to quickly address sexual harassment, assault and discrimination in the workplace as it is uncovered.

What's happening

The #MeToo movement has exposed unacceptable predatory behavior in the workplace. It has also shown that there is no room for tolerance of sexual harassment.

There are different types of sexual harassment and as an employer you should be aware of the differences.

Title VII of the Civil Rights Act of 1964 bars employers from discriminating against employees on the basis of sex, race, color, national origin, or religion. Sexual harassment is a form of sex discrimination under Title VII.

Sexual harassment can include:

- Unwelcome sexual advances
- Requests for sexual favors
- Visual, verbal or physical conduct that is sexual in nature.

There are two main types of harassment:

- Quid pro quo, when a superior will make sexual advances or requests as a condition of employment or promotion. This could include threatening termination unless the employee performs sexual favors, or promising a promotion in exchange for sex.

- A fellow employee or superior that may engage in unwanted physical contact, making vulgar or obscene comments, making sexual requests, or in the worst case, rape.

Companies must address sexual harassment through anti-harassment policies and sexual harassment prevention training with the goal of ending harassment rather than just attempting to avoid litigation. The training should be continuous and engaging.

Employers must create and communicate sexual harassment policies and promptly investigate all sexual harassment claims thoroughly.

Businesses should also have a fair and confidential system in place for reporting sexual harassment without risk of retaliation. All complaints should be taken seriously and investigated thoroughly.

Punishments must only be meted out after the investigation, and the punishment should fit the infraction, including firing if need be.

See 'Employment' on page 2

Contact Us



If you have any questions regarding your coverage or our products, please call us at one of our offices:

Walnut Creek	Petaluma
San Francisco	Los Angeles
Menlo Park	Orange County
Portland	New York
St. Louis	

Sales: 877-731-7905
Service: 800-234-6787

Workplace Safety

Technology Comes to the Rescue in Construction

WHILE SAFETY improvements slowly take hold in the construction industry, some firms are turning to technology to reduce workplace injuries.

Owners and management have been scrambling to find new and better ways to monitor employee safety and prevent accidents as the industry grapples with growing workforces that often include new workers with little experience.

Construction is one of the least-digitized sectors in the world, according to research from The McKinsey Global Institute. But that's changing as technologies like helmet cams and smart glasses, smart safety vests, drones, and even smart boots are being employed.

The technologies are aimed at both training new workers in the safety aspects of the job and warning them if it appears that danger is imminent. This type of real-time communication has been proven to reduce risk and improve quality.

And there is an added benefit in that most of the new technologies also collect data that can be used if a contractor is sued for construction defects.

Here are some of the new technologies that contractors are using on their worksites, according to The Hartford, which recently published a paper on trends in construction safety.

Smart glasses and helmets



Smart glasses essentially capture video from the view of the worker. Smart helmets do the same through a camera mounted on the unit.

This wearable technology can help train less-experienced workers by allowing management to monitor their work from a different location.

By monitoring the action in smart headgear, management can:

- Flag mistakes that workers make so that they can be fixed to avoid a construction defect. That's because new instructions can immediately be sent to a worker who has made a mistake.
- Improve safety in real time, including alerting workers of dangers.
- Be used to train workers and enhance communication among

employees and supervisors.

- Improve decision time and work quality by allowing management to review video.

Some helmets are also equipped with display visors that can project relevant information onto objects in the wearer's field of vision.

Smart safety vests



Some new safety vests alert workers when they're entering a dangerous work area. Others monitor a workers' heart rate and stress levels and alert them and supervisors if they are at unsafe levels.

Some vests even will send a signal to slow or stop heavy equipment when the vest is detected nearby.

There are also GPS-enabled safety vests that track worker locations across crowded job sites.

Smart boots



Some boots now have sensors that can detect temperature changes, and track location and motion through GPS and Wi-Fi.

From a safety perspective, the ability to track a worker's location could be extremely helpful during a time of crisis.

Drones



Contractors are using drones to monitor unsafe practices on job sites. A drone with a bird's eye view can provide real-time monitoring of many workers at the same time.

Contractors are also using drones to monitor and document the quality of a project. They can also be used to keep clients up to date on the progress of a project, while documenting the project for possible future questions about building to specifications or code. ❖

See 'Liability' on page 2

Employment Practices Liability Coverage Offers Protection

The final backstop: Insurance

Employers need to protect themselves financially from liability, but also create a safe work environment.

Employment practices liability insurance (EPLI) will cover many of the costs associated with a sexual harassment action by an employee, including:

- Legal costs
- Settlements
- Jury awards

In addition, in order to provide a legal defense and pay damages, some EPLI policies may include resources to help business owners create policies and procedures, training and awareness campaigns that may reduce the potential for future claims.

As the coverage name suggests, EPLI policies also cover other forms of employee lawsuits or actions on behalf of employees, charging discrimination, wage and hour lawsuits, discrimination of all types, hostile workplace allegations, and similar complaints. ❖

Insurance Issue

Half of Business Floors Too Slick, Pose Slip Risk: Study

DESPITE MANY businesses taking measures to reduce the chances of one of the most common workplace injuries – slip and fall incidents – nearly half of workplace floors fail to meet safety criteria, according to a new study.

While well-intentioned employers may take steps to reduce slip and fall injuries by ensuring that walking surfaces don't have standing water on them or are free of clutter, many overlook flooring selections and ongoing maintenance on slip resistance, the study by CNA Financial Corp. suggests.

When testing workplace floors in a number of industries, the insurance company found that 50% failed to produce "a dynamic coefficient of friction level above the minimum threshold of 0.42" set by the American National Standards Institute, according to a press release.

What you can do

You should start by evaluating the flooring you have in your various work areas and ensure that the flooring material and design suit the tasks in each workspace. You should also consider what (if any) contaminants, chemicals or other substances workers are using in the area that may increase the risks of slips and falls.

When choosing flooring products...

- Consider expected use conditions and expected users.
- Consider using materials that grip when both wet and dry.
- Select materials for the tasks and typical wear.
- Check the cleaning requirements of the flooring.
- Ensure floor heights and surfaces are consistent. ❖

Industries with most incidents

- Retail
- Restaurants
- Real estate

Where most slip and falls occur

- Walking and working surfaces (mainly entryway flooring): 40%
- Parking lot surfaces: 33%
- Sidewalks leading to business entrances: 27%
- Interior office floors: less than 1%

What to look for

- Flooring that is uneven or in poor condition, including:
 - Loose or curling matting
 - Torn carpet
 - Uneven or broken concrete
 - Chipped or cracked tiles.
- Anti-slip paint or tape that is worn, smooth or damaged.
- Areas of slipperiness under normal conditions. Look out for:
 - Spots of flooring that are more worn or contaminated than other areas of the same flooring, such as high-traffic areas, or in front of a deep fryer.
 - Surfaces that may look non-slip but become slippery when wet or otherwise contaminated. Conversely, some surfaces may look slippery or shiny, but are not slippery when contaminated.
- Flooring that may have been originally chosen for a different purpose to how it is being used now and may no longer be suitable.



Produced by Risk Media Solutions on behalf of Heffernan Insurance Brokers. This newsletter is not intended to provide legal advice, but rather perspective on recent regulatory issues, trends and standards affecting insurance, workplace safety, risk management and employee benefits. Please consult your broker or legal counsel for further information on the topics covered herein. Copyright 2018 all rights reserved.

Firms Pay Record Amounts for Employee Lawsuits

EMPLOYERS ARE paying out more for legal settlements and judgments for cases brought by employees over how they are being treated.

According to the employment law firm of Seyfarth Shaw LLP, settlements for the 10 biggest class-action suits brought by employees grew an astounding 55% to \$2.72 billion in 2017 from \$1.75 billion the year prior.

The trend in employee class actions reflects a similar trend of individual actions, which should be a wake-up call for employers to review their human resources policies and practices.

It's unlikely that the aggregate record settlement amount in 2017 – the highest Seyfarth Shaw has recorded since it started keeping track in 2003 – may constitute a trend as many of the actions were government enforcement lawsuits against employers brought by the Obama administration.

The business-friendly Trump administration delivers on promises of less government intervention and reduced federal enforcement efforts.

But the law firm predicted that 2018 could be still be significant in light of the #MeToo movement after numerous allegations of sexual harassment have sunk the careers of high-profile businessmen, actors and politicians. Lawyers expect more rank-and-file workers, emboldened by the news reports, to file lawsuits against their employers alleging sexual harassment by superiors.

Also, a number of state attorneys general have been taking a more aggressive stance on workplace issues and they could pick up part of the slack.

The fallout

The stakes are high for employers. Employee-initiated lawsuits can drag on for years and can be expensive even if the employer wins the case.

Legal fees can easily reach into the hundreds of thousands of dollars

and sympathetic juries can punish a company with large awards. Combined, legal fees and awards or settlements can sink a small business by crimping its cash flow and causing irreparable damage.

As an employer, you should review your policies on harassment and discrimination, your pay practices and how you are classifying employees and independent contractors. ❖

Top Causes of Action

- Wage-and-hour violations (insufficient pay, failure to pay overtime, etc.)
- Employee bias (such as discrimination against protected classes)
- Underfunded pension plans
- Harassment
- Independent contractor vs. employee disagreements

Tips for Avoiding the Courts

- Have a strong anti-harassment and discrimination policy in place, and also have a solid reporting mechanism for workers who feel they have been harassed or discriminated against. The process should be confidential and you should take all complaints seriously and investigate them. Whatever you do, don't retaliate against an employee who has filed a complaint, as that could lead to a retaliation lawsuit being filed against your business.
- Review your pay policies to make sure that you are accurately accounting for overtime pay, holiday pay and that you are not paying one class of worker more than another for the same work if they have similar experience and position.
- Review how you are classifying independent contractors to make sure you are not running afoul of the law. The IRS is still taking a serious view of misclassification, and you also run the risk of being sued by someone who feels they should be classified and paid as an employee if you are classifying them as an independent contractor.
- Take out an employment practices liability insurance policy. These policies cover legal fees associated with the above actions, investigation costs, and judgments and settlements. An EPLI policy could be your company's lifeline for protecting your assets should your firm be sued.

