

News You Can Use



Because You're Different

Safety at Work

The Holidays Have Their Own Workplace Perils

ALL YEAR long you have been reminding your employees to “work safely ... don’t take short cuts ... prevent accidents.”

To do this they have to keep their minds on their work, but this time of the year as the holidays near, their thoughts might be everywhere but on work.

They may be thinking “what to buy for everyone for Christmas – I hate shopping!” or “how will I pay for Christmas?” Meanwhile, relatives coming to stay add yet more distracting thoughts.

For some employees the holiday period is a wonderful time, and for others it is dreadful, but it is stressful for most anyone. Normal routines and schedules are disrupted, and there is a lot of rushing around the town to crowded and chaotic stores and malls.

Be aware that accidents may be more likely to happen at this time of the year at the workplace, on the road or at home. Employees tend to take extra physical risks – such as when hanging lights and lugging trees around.

And when roads and freeways are jammed, auto accidents increase.

In-office safety

Decorating the office helps workers enjoy the spirit of the season together, but remember that proper safety precautions should be observed at all times.:

SMART DECORATING

- Be mindful of fire hazards when choosing decorations and where you place them.
- Be careful of stapling holiday lights, do not add too many strings of lights and turn off all lights at the end of the day.
- Verify that all fire extinguishers are in place and fully charged and accessible.
- Do not block exits, hang decorations on fire extinguishers, fire alarms or fire hose boxes, or obstruct the view of exit signs.
- Do not hang decorations from sprinkler heads or electrical panels.
- Don’t run extension cords through traffic areas where they pose trip hazards.
- Avoid placing trees, freestanding decorations and presents in traffic areas.

Holiday party

The holidays bring office parties and, if alcohol is being served, keep in mind the liability involved.

Provide plenty of alternatives to alcohol, such as soft drinks, coffee, tea, water and cocoa. Consider non-alcoholic beers and virgin drinks at the bar.

Also, so your staff is safe on the way home, stop serving alcohol a few hours before the party ends.

It’s essential to make transportation arrangements for employees who should not drive – whether the party is held at the office, restaurant, your home or any other location.

The takeaway

If you keep in mind that the holidays put extra pressure on everyone, it may help you to keep your workplace free of accidents.

By following a few simple safety tips, it will be easy to enjoy the holidays and the events at work without dealing with injuries or damage to property.

When planning for the holidays, take safety precautions into account to keep everyone safe and reduce your liability. ❖

Happy Holidays
from all of us at
Heffernan Insurance Brokers

CONTACT US

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

Walnut Creek
San Francisco
Menlo Park
Portland
St. Louis

Petaluma
Los Angeles
Irvine
Seattle
Phoenix

Sales: 877-731-7905
Service: 800-234-6787
CA License No.: 0564249



Workers' Comp Premiums

More Firms Get Bills for 'Misclassified' Workers

ONE OUTGROWTH of a new state law that applies more stringent criteria for what constitutes an independent contractor is that many employers are likely to see more audits and calls for additional premium from their workers' comp insurers.

In fact, it's already happening in some sectors, according to the insurance trade press. More employers are being hit with surprise bills for additional premium by their insurers for allegedly misclassifying independent contractors as employees, according to the *Workers' Comp Executive* trade publication.

And this problem is only likely to grow as the full effects of this year's landmark independent contractor law, AB 5, take hold.

What's happening now

The *Workers' Comp Executive* reported that the California Department of Insurance's Administrative Hearings Bureau is receiving an increasing amount of complaints from employers that are disputing their workers' comp insurers' request for additional premium for employees that had originally been classified as independent contractors.

The publication cited the case of a construction firm that State Compensation Insurance Fund says misclassified 42 individuals who worked for the company as independent contractors in 2017 and hence should pay an additional \$114,000 in premium for that year. The dispute is currently in front of the Administrative Hearing Bureau.

In 2018, the California Supreme Court handed down a game-changing decision in the case of *Dynamex Operations West, Inc. vs. Superior Court*, in which it set forth a new test for who qualifies as an

employee or independent contractor. Under this test, an employer must answer 'yes' to the following three questions if they want to classify a worker as an independent contractor:

- The worker is free from the control and direction of the hirer in relation to the performance of the work;
- The worker does work that is outside the usual course of the hirer's business; and
- The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hirer.

The impact of AB 5

A new law, Assembly Bill 5, which essentially codifies the Dynamex decision into state law, takes effect Jan. 1, 2020. While the Dynamex decision specifically excluded the independent contractor test from use in applying workers' comp premiums, AB 5 does not.

The new law will apply to workers' comp on or after July 1, 2020.

Industry observers say they expect more employers to receive additional premium calls from their workers' comp carriers after the law takes effect.

Your workers' comp insurer will not send you a demand for additional premium without conducting an audit of your payroll.

If the insurance company deems any independent contractors that you use as employees, then it will calculate the amount of back premium it thinks you owe for them.

For employers who think the insurance company erred, they can usually challenge the decision with the insurer. However, if that fails, businesses have a second opportunity to file a complaint with the Department of Insurance. ❖

Human Resources

Manager-Employee Relationships in Crosshairs

THE RECENT news of McDonald's Corp. dismissing its chief executive for having a consensual sexual relationship with an employee reflects the hardening stance in corporate America towards inter-office romances.

Many large employers have instituted zero-tolerance policies for romantic relationships between managers and staff. They are mainly cracking down to reduce their chances of being sued for the actions of any managers, particularly "skirt-chasers."

That liability issue is just as potent for mid-sized and small businesses who have managers or supervisors on staff. With lawsuits for sexual harassment and discrimination rising, and employers paying out millions in settlements or judgments, businesses need to carefully consider how they want to handle these new risks.

And they are risks, especially now in the #MeToo era and the ramifications of a disgruntled party in the relationship taking the ship down with them if things turn sour with their paramour.

What was once an overlooked part of a company's risk management policies, damages payouts for a manager who has gone too far can be devastating and easily run into the millions of dollars. The action by McDonald's is not the only instance of a company's board taking action:

- In 2018, the chief executive of technology for Intel Corp. resigned after an internal investigation had found he had a consensual relationship with an employee, which was against company rules.
- Best Buy Co. Inc.'s CEO resigned in 2012 after it was found that he had been in a relationship with an employee.
- A CEO for HP Inc. quit his job amid sexual harassment allegations, though an internal probe later cleared him of the charges.

While many companies do allow relationships among staff who are in different departments or equals, the risks of allowing the same for managers who are seeing subordinates are too great.

One main reason is that some workers may be too afraid to refuse a sexual advance by a supervisor or boss because they are scared of losing their job, or of suffering some other career-related fallout.

Unfortunately, power can go to people's heads. The number of CEOs who are forced to leave their jobs due to ethical issues continues climbing.

In 2018, 39% of chief executives who left their jobs did so for ethical reasons, far exceeding other factors such as poor company financial performance, according to a study by PricewaterhouseCoopers. In 2017, 26% of CEOs left for ethical lapses, and in 2007 only 8% did so.

What you can do

Put a fraternization policy in place.

FRATERNIZATION POLICY ELEMENTS

- Prohibit romantic relationships between managers and direct reports.
- Bar dating between employees who are at least two levels apart in your company hierarchy. This will restrict fraternization between managers and subordinates across your company.
- State what behavior is unacceptable in the workplace, such as public displays of affection and discussing relationship issues at work.
- Spell out consequences for violating your company rules.
- Establish an anonymous reporting process to make it easier for employees to report having witnessed distracting misconduct in the workplace, or to lodge complaints about perceived sexual harassment.

Also, if you have not already done so, consider purchasing an employment practices liability policy, which will step in to provide coverage if an employee is sued for sexual harassment, discrimination or other action. An EPLI policy covers:

- Discrimination (based on sex, race, age or disability, for example)
- Wrongful termination
- Harassment
- Other employment-related issues, such as failure to promote.

Depending on the size of your company, EPLI can be offered as an endorsement to a business owner's policy or a general liability policy. Also, a specific stand-alone policy can be written in conjunction with a BOP. ❖



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 2019 all rights reserved.



SAFE SLEIGHING – Even the most careful driver can have an accident. Train all your workers in safe driving.

Worker Safety

OSHA Helps Employers Set Up Safe Driving Programs

FED OSHA has published a set of guidelines to help employers reduce accidents among their driving employees.

The document is not a set of new regulations or a new standard. It is only advisory – the federal agency describes it as “informational in content” – and is intended to assist employers in providing “a safe and healthful workplace.”

Nonetheless, the guidelines are an excellent way to establish a system that can reduce the likelihood of crashes involving your driving workers.

OSHA recommends implementing a safe driving program that includes the following:

Management buy-in and employee involvement

Senior management can provide leadership, set policies and allocate resources (staff and budget) to create a safety culture.

Encourage employee participation at all levels of the organization to help the effort succeed.

Written policies

Create clear, comprehensive and enforceable safety policies and communicate them to employees. They can cover such things as:

- A zero-tolerance policy for using smartphones while driving and only using hands-free technology.
- No driving under the influence of alcohol or illegal drugs.
- Requiring all driving staff to wear seat belts at all times.

Post the policy throughout the workplace, distribute it to staff and discuss it at company meetings. Everyone who receives the rules should sign off as having read them.

Driver agreements

Establish a contract with employees who drive for work, even if they are using their personal vehicles.

Employees should be aware of and understand your traffic safety policies, procedures and expectations regarding driver performance and reporting of moving violations.

Check driving records

Check the driving records of staff who drive for work, and review moving violation records periodically. Spell out how many violations an employee can have before losing work driving privileges.

Crash reporting

Require employees to report all accidents to their supervisor as soon as feasible after the incident. Set policies for what driving employees should do after an accident.

Vehicle maintenance and inspection

Prevent crashes and related losses by selecting, properly maintaining and routinely inspecting company vehicles.

Review the safety features of vehicles to be used. Perform routine maintenance as per manufacturers’ recommendations. Check safety equipment and brakes regularly.

Disciplinary action system

Set rules for employees who are cited for moving violations or are involved in preventable crashes. Options include:

- Assigning points for moving violations.
- Progressive discipline if a driver begins to develop a pattern of repeated traffic violations and/or preventable crashes.
- Describe what actions will be taken if a driver exceeds the amount of violations and preventable crashes.

Incentive program

Develop a driver reward/incentive program that includes recognition, monetary rewards, special privileges or the use of incentives to motivate the achievement of a predetermined goal or to increase participation in a program or event.

Driver training and communication

Provide continuous driver safety training and communication. Even experienced drivers benefit from periodic training and reminders of safe driving practices and skills. ❖