

News You Can Use



Because You're Different

Residential Construction Safety

Fall-Protection Trigger to Be Reduced to 6 Feet

THE CAL/OSHA Standards Board has relented to threats from Federal OSHA and voted to align its residential construction and roofing fall-protection trigger with its federal counterpart at 6 feet.

California has been the only state that runs its own OSHA and not comply with the federal mandate that requires laborers working at heights of more than 6 feet to use fall protection like safety harnesses and clips, among other methods. Cal/OSHA's current rules call for a 7.5-foot or 15-foot trigger, depending on the work being performed.

The final rules have been sent to the state's Office of Administrative law for approval. It's not clear when they will take effect, but Fed-OSHA has asked that the new rules be implemented by July 1, 2025.

If your firm is in the construction trades, it's important that you understand the new rules before they take effect. They will require many employers, in particular roofers, to make substantial changes to their safety regimens to ensure compliance.

The new rules

Under the new regulations, fall protection at most heights 6 feet or above may include:

- Personal fall-protection systems (like harnesses or safety belts),
- Scaffolding,
- Guardrails, and
- Safety nets.

Typically, passive systems like scaffolding, guardrails and safety nets are preferred, and if not possible to implement, a personal fall-protection system should be used, under OSHA rules.

Under current Cal/OSHA rules, construction trigger heights include 2 stories or 30 feet for connecting structural steel, 20 feet for most roofing work and 15 feet for panelized roof systems, residential framing and roofing activities, and work on wider structural members.

In addition, the agency requires fall protection at a height of 7½ feet for unprotected platforms, scaffolds or edges of structures, and 6 feet for working with rebar or similar projections.

Examples of triggers that will be brought down to 6 feet under Cal/OSHA's revised rule on residential construction are:

- Roofing.
- Working on floors and other walking/working services (from 15 feet currently).
- Walking/working on top plates, joists, rafters, trusses, beams or other similar structural members (from 15 feet).
- Installing starter board, roof sheathing and fascia board.

You can find the full regulations [here](#).

See 'Comply' on page 2

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Drivers, Fleet Managers Must Report All Claims

A COMMON PROBLEM in the transportation industry is fleet managers failing to report accidents that their drivers are involved in, or the drivers themselves failing to report them in the first place.

The risk is that if you ignore this problem, it's not going away and will instead likely come back to haunt you, particularly when a third party was involved as that can turn a small claim into a large one. The same goes for filing a claim late.

Both can result in one or more of the following:

- The claim being denied,
- Settlement costs exploding,
- Your premium increasing substantially, or
- Your insurer non-renewing your coverage.

If you fail to file a claim after an accident, or file it late, you leave your insurer at a disadvantage as it's more difficult to establish evidence over time, especially for bodily injury claims. Filing an accident claim late can make it harder to reach a resolution, and it could lead to the insurer denying the claim.

Also, if a claim isn't reported, the insurer will eventually find out about it when reported by a plaintiff's attorney or when it receives a notice of a lawsuit.

What to do after an accident

You are required to report all incidents or accidents, even if your driver feels they weren't at fault and/or if damage is minor, or even if there was no damage at all.

Report all claims immediately to us, your broker. If we are not available and it's an emergency, contact your insurance carrier directly.

You should keep claim information forms in all of your trucks and in a convenient location, like a glove box. The driver should follow the instructions on the form and fill it out thoroughly, including getting insurance information from a third party, if involved.

The driver should also gather as much information as possible at the scene, using their smartphone camera to take pictures of the scene and other vehicles or property involved. If you have equipped your vehicles with dash cameras, you should preserve the footage as well. ❖

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Take Steps Now to Comply with the New Standard

The takeaway

With these rules impending, it's imperative that construction firms and contractors take steps now to comply with the new standard. For many, it will require investing in fall-protection systems, which can be costly — particularly for stationary ones.

Expect Cal/OSHA to enforce the new trigger vigorously.

One final word of warning: According to the *Cal/OSHA Reporter* newsletter, Cal/OSHA is just getting started.

It has a "Phase II" planned that will go beyond residential construction, with the ultimate goal of bringing all construction fall-protection triggers down to 6 feet. Rulemaking on that may start in the next few months. ❖

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 2024 all rights reserved.

New Law Provides Leave for Violence Victims

GOV. NEWSOM has signed into law a bill that provides a right to paid time off and other protections for employees who are victims of violence, including threats, assaults, stalking and domestic abuse.

AB 2499 expands the instances when a victim of a “qualifying act of violence” can take time off and provides protections against retaliation for doing so. The new law also requires employers to provide reasonable accommodation to employees who are victims of violence, in a process that’s akin to the Americans with Disabilities Act’s interactive process.

Under current law, employers are barred from discriminating or retaliating against a worker based on their status as a victim of crime or abuse, for taking time off for jury duty or to comply with a subpoena or other court order. As well, firms with 25 or more workers may not discriminate or retaliate against an employee who is a victim of crime or abuse for taking time off:

- To seek medical attention for injuries related to violence,
- To obtain services as a result of the crime or abuse, or
- To participate in actions to increase their safety from possible future crimes or abuse.

New definition of ‘victim’

AB 2499 replaces the term “victim of crime or abuse” in current law with an individual against whom a “qualifying act of violence” (QAV) is committed, which includes:

- Domestic violence,
- Sexual assault,
- Stalking, or
- An act or conduct in which an individual:
 - causes bodily injury or death to another,
 - exhibits or uses a weapon against another, or
 - makes a perceived or actual threat against another.

The law also extends protections to employees who need to take time off if they have a family member who is the victim of a QAV.

It also bars employers with 25 or more employees from discriminating or retaliating against a victim of a QAV or whose family member is a victim, for taking time off to:

- Obtain relief, including restraining orders.
- Obtain medical attention after a QAV.
- Seek assistance from a victim services organization.
- Seek mental health services related to a QAV.
- Recover from QAV-related injuries.

Reasonable accommodation

Under an ADA-like component to the new law, employers are required to engage in an interactive process to determine effective accommodations if an employee:

- Discloses the fact they or a family member are a victim of a QAV, and
- Requests accommodation for safety reasons.

Reasonable accommodations

- Work transfers or reassignments
- Implement safety procedures
- Changed workstation or telephone
- Lock installation
- Temporary time off
- Modified schedule

However, organizations won’t be required to provide accommodation if it would pose an undue hardship to them, including if it would violate their duty to maintain a safe workplace.

Notification and paid time off

The new law allows victims to use paid vacation or sick time during any QAV-related leave they take.

If the leave is granted as an accommodation under the Family and Medical Leave Act, the paid leave must run concurrently. Employers may restrict leave to the following:

- Twelve weeks for an employee who is a victim.
- Ten days if a worker’s family member is a victim.
- Five days if a worker’s family member is a victim and needs help relocating.

The takeaway

The law takes effect Jan. 1, 2025. California employers will be required to provide notice to their employees that informs them of their rights under the law when they are hired and if an employee informs the employer they are a QAV victim.

This is one of those laws that should spur you to seek legal counsel if confronted with a request for time off, and especially if the affected worker requests reasonable accommodation. ❖



Lawsuit Risk

Legal Traps to Avoid When Dealing with FMLA Requests

WHEN AN employee files a federal Family and Medical Leave Act request to either deal with a health issue or care for a loved one, their employer is often put in a tight spot, particularly if the person serves a vital role in their organization.

There are also a number of rules that employers need to follow to avoid running afoul of the law and there are plenty who have been sued for it, a prospect that can be costly.

If you are confused about navigating the FMLA, here's a handy list of mistakes to avoid.

Firing

It would be a bad idea to fire an employee if they're unable to return to work following the end of FMLA leave that is due to a serious health condition. Better to find out if the employee is entitled to any additional time off under employment laws or through company policies.

The Americans with Disabilities Act may consider granting of additional leave "reasonable accommodation," in legal terms.

That definition comes from determining whether the employee's condition is a disability. Under the ADA, most serious health conditions as defined by the FMLA are considered disabilities. If you're in doubt, ask your legal counsel for advice.

Then you have to figure out whether the requested time off is legally considered "reasonable." Under the ADA, you as an employer don't have to grant leave as an accommodation if it poses "hardship" or "undue hardship" to your organization.

Miscalculation

You are able to calculate FMLA leave by either calendar year, any fixed 12-month period, or the 12 months measured forward from when an employee's FMLA leave begins. It can also be calculated backward from a 12-month period from the date a worker uses the leave.

Deadlines

Meeting FMLA deadlines for processing requests for leave under its guidelines is critical. Within five business

days of learning a worker has requested FMLA leave, you must provide them with the "Notice of Eligibility Rights and Responsibilities Form," or something similar that your company has prepared.

Next, if you require the employee to file a certification form, you must allow them 15 calendar days to do so. Then, within five business days of receiving the certification form, you must provide them with an FMLA designation form that tells them whether the request has been approved.

But if the certification form is incomplete or insufficient, you then must allow the worker seven calendar days to make necessary corrections. You must give written notice to employees of all deadlines, and the consequences of failing to meet them.

Reassignment

If you want to reassign an employee on FMLA leave for better efficiency, you can only do so for those who need intermittent or reduced schedule leave.

Reassignments can be done for the employee, family or covered service member if such leaves are a planned medical treatment, a period of recovery from a serious health condition, or due to the birth of a child or placement of a child into adoption or foster care.

Beyond that, the reassignment is to be only as long as is required by the leave period.

You are also prohibited from transferring employees to a position to discourage them from taking FMLA leave. That means you can't demote them from marketing supervisor to customer service rep, even if their pay and benefits remain the same at the reassigned position.

Meanwhile, you may not require a transfer to another job when the employee's need for an intermittent or reduced schedule is unforeseeable.

The takeaway

As you can see, the FMLA is a veritable minefield for employers and, if an employee requests leave under the law, you must make sure you don't do anything to infringe on their rights, lest you open your organization to being sued. ❖

