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NEWSALERT



Seasonal Risk

The Holidays Have Their Own Workplace Perils

ON-THE-JOB accidents may increase during the holidays as distractions in the workplace rise and decorations can pose safety issues.

Normal routines and schedules are disrupted, and your staff — like everyone else — are also rushing around to crowded and chaotic stores and malls after work and on weekends.

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 if you hold a holiday party, it opens up a new set of potential liabilities.

In-office safety

When planning decorations for the office, it is important to keep holiday safety in mind.

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

Reducing the chances of workplace accidents

- Be mindful of potential fire hazards when selecting holiday decorations and where you place them.
- Be careful of stapling holiday lights, do not add too many strings of lights and make sure illuminated items are turned off.
- 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.
- Without proper planning, holiday decorations can create tripping hazards. Extension cords should not be run through traffic areas where they pose trip hazards and, if you have to use an extension cord, use the proper one.
- 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. Hire a professional bartender who can cut people off if they have too much.

Enforce the same workplace rules of etiquette at the party as you do in the workplace.

If you serve alcohol, also serve food.

Stop serving alcohol a few hours before the party ends. Offer to cover the cost of an Uber or Lyft ride home for anyone who needs it.

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 holiday and the events at work without dealing with injuries or damage to property.

When planning for the holidays, incorporate safety precautions into the planning process. ❖



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Wishes You a Happy Holiday!



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Pregnant Workers Fairness Act Lawsuits Spike

SINCE THE Pregnant Workers Fairness Act took effect in June 2023, there's been a huge spike in lawsuits against employers alleging failure to reasonably accommodate workers covered by the landmark legislation.

In the first 11 months following enactment of the law, the Equal Employment Opportunity Commission received 1,869 complaints from workers who allege their employer failed to provide them with reasonable accommodation under the PWFA, according to an article in *Business Insurance*, a trade publication.

As a result, the EEOC has taken action and between Sept. 10 and Oct. 11, 2024 it initiated four federal lawsuits against companies over alleged violations of the law.

The recent activity should be a wake-up call to employers to put as much effort into complying with this new law as they do the Americans with Disabilities Act, which is similar to the PWFA in that it requires employers to initiate an interactive process with a worker who seeks reasonable accommodations under the act.

The law

Essentially, the PWFA requires employers to make reasonable accommodation for workers covered by the act if they request it, particularly if they are temporarily unable to perform one or more essential functions of their job due to issues related to their pregnancy or recent childbirth.

"Reasonable" is defined as not creating an "undue hardship" on the employer. "Temporary" is defined as lasting for a limited time, and a condition that may extend beyond "the near future." With most pregnancies lasting 40 weeks, that time frame would be considered the near future.

What's required

The law requires employers, absent undue hardship, to accommodate job applicants' and employees' "physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions."

The condition does not need to meet the ADA's definition of disability and the condition can be temporary, "modest, minor and/or episodic."

The PWFA covers a wide range of issues beyond just a current pregnancy, including:

- Past and potential pregnancies
- Lactation
- Contraception use
- Menstruation
- Infertility and fertility treatment
- Miscarriage
- Stillbirth
- Abortion.

Reasonable accommodation

The law's definition of reasonable accommodation is similar to that of the ADA.

Easy solutions to accommodation

The regulation lays out four predictable accommodations, which would not be deemed an undue hardship in virtually all instances:

- Carrying or keeping water nearby and drinking, as needed;
- Taking additional restroom breaks, as needed;
- Sitting if the work requires standing, or standing if it requires sitting, as needed; and
- Taking breaks to eat and drink, as needed.

The takeaway

The PWFA poses an employment liability risk and employers will need to ensure that they properly handle and respond to accommodation requests under the PWFA.

Employers should ensure that personnel who are responsible for handling accommodation requests under the ADA are also trained in how to respond to requests under the PWFA. ❖

An Employment Practices Liability Policy may cover the cost of lawsuits filed under the PWFA. Talk to us about your options.



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](#).

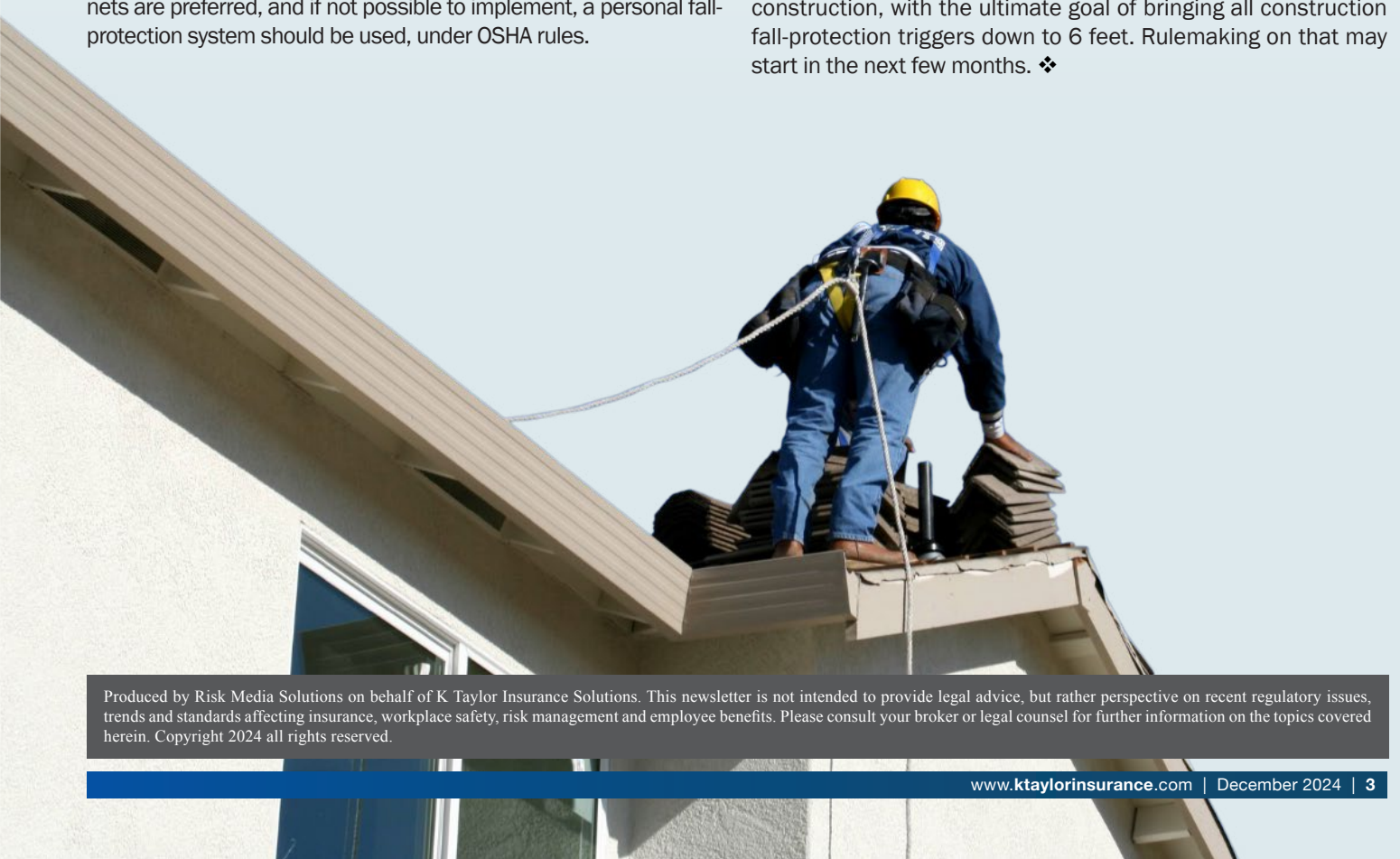
The takeaway

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. ❖



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. ❖

