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Making Insurance Work for You

Construction Hazards

Safety Strategies for Heavy Equipment

THE SAFE use of heavy equipment is critical when machinery such as bulldozers, graders or ground-moving equipment is used in the construction of new homes, bridges, shopping malls or industrial structures.

The size and weight of these heavy machines make them extremely hazardous, and proper operation is required to avoid serious injury or death. Heavy-equipment injuries are a frequent occurrence during the construction of roads and commercial properties.

Even the most experienced of operators may find operating heavy equipment a challenge at times.

The basics

Prior to the start of a project, inspect all heavy machinery. Heavy-equipment inspection is crucial in ensuring that everything is in working condition and ready for safe operation.

Physically check the equipment for issues such as torn belts, worn brakes and hoses, and leaking hydraulics.

When storing machinery, ensure that the component parts are properly secured or disabled.

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SOME BEST PRACTICES

Here are a few common safety rules for operators and ground-based workers to consider:

- **Good communication is essential** – A standardized set of hand signals should be used by the operator and signal person. Operators should know exactly where all ground-based workers are located. The equipment should have a back-up warning alarm that can be heard by all nearby workers. Two-way radios are also valuable communication tools.
- **Rollover protective structures (ROPS)** – Heavy equipment must have a ROPS that meets OSHA requirements. The ROPS is designed to protect the operator if the machine tips over. A seat belt must be worn so that the operator will not be thrown out of the seat during a rollover or upset situation.
If working on slopes, try to avoid moving across the face of the slope. Operate up and down the slope face if possible. Use extreme caution when operating near open excavations.
- **Wear hearing protection when required** – If it has been determined that noise levels around the equipment could potentially cause hearing loss, always use protective plugs or muffs when working on or close to the equipment.
- **Never jump onto or off the equipment** – Operators should use the three-point contact rule when climbing onto or off heavy equipment. That means having both feet and one hand, or one foot and both hands, in contact with the ladder at all times.
- **Inspect and service the equipment regularly** – Complete equipment service in accordance with the manufacturer's recommendations.
Periodic safety inspections on all components of the equipment should be done regularly by qualified personnel.

Injury accidents involving heavy equipment have a higher probability of resulting in a fatality than many other types of accidents. It is critical that your workers follow all of your company's safety rules and procedures when operating or working around heavy equipment.

If you have any questions regarding any of these articles or have a coverage question, please call us at:

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Human Resources

EEOC Steps Up Discrimination Enforcement

THE EQUAL Employment Opportunity Commission has signaled that it plans to step up enforcement of workplace discrimination for all protected classes, particularly at firms that engage in “systemic” discrimination.

Employee and job applicant discrimination complaints filed with the EEOC grew about 15% in 2022 from the year prior. The total for all class-based employment discrimination cases settled grew to nearly \$600 million last year, nearly double from 2021.

While disability discrimination and sexual harassment cases account for a majority of EEOC actions, other types of discrimination complaints have been growing, in particular sex and religious discrimination.

In fact, nine out of the 10 highest settlements involving class-based employment claims in 2022 involved sex-bias claims, and the tenth case involved a religious-discrimination claim related to a company’s COVID-19 vaccination requirements.

Recent EEOC Actions

- After the EEOC investigated allegations that the Joe & the Juice restaurant chain failed to recruit, hire and promote females at its restaurants, the employer agreed to pay \$715,000 and hire an employment monitor.
- The EEOC in December 2022 sued the Hometown IGA grocer for religious discrimination after it allegedly refused to hire a job applicant because of his Spiritualist Rastafarian dreadlocks hairstyle.
- After the EEOC investigated an allegation against Qualtool, Inc., a Florida tool manufacturing company, over allegations that it had refused to accept applications from or hire women who sought positions on the evening shift because of their gender, the employer agreed to pay a \$50,000 settlement.

What you can do

To ensure your business doesn’t get caught up in a discrimination complaint, make sure that you have appropriate personnel policies in place and that your managers and supervisors are trained to avoid taking actions that could appear discriminatory.

Familiarize yourself with Title VII of the Civil Rights Act of 1964, which makes it illegal for an employer to discriminate against a person based on race, color, religion, sex — including pregnancy, sexual orientation and gender identity — or national origin.

In an article by the Society of Human Resources Management, Peter Spanos, an attorney with Taylor English Duma LLP in Atlanta, recommended that employers:

- Adopt clear anti-harassment and anti-discrimination policies.
- Conduct periodic training for the workforce, management and HR personnel.
- Update mission statements that emphasize the company’s commitment to a workplace free from harassment and discrimination.
- Host employee forums to explore whether workers feel that any discrimination or harassment is occurring.

Other steps you may want to consider include:

- Conducting pay-equity audits at regular intervals to assess whether your systemic compensation and benefits practices are susceptible to a disparate-treatment or disparate-impact claim.
- Consulting your counsel before making decisions that affect all or most of your staff in a given position, department or division, and if any of those groups pose any issues with employees’ protected status.
- Analyzing your current employee benefits offerings and rules for them (employee benefits issues are a common theme in discrimination lawsuits). If you are considering changes that reduce or change benefits, discuss your plans first with your counsel. ❖



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OSHA Requirements Depend on Activities Performed

Moving parts such as blades and saws have the potential to cause injury and, when storing away mobile equipment, make sure that brakes are in the locked position.

The owners’ manuals for the equipment should provide you with detailed information on how to properly secure equipment not in use.

Construction vehicles

Safety requirements vary depending upon the type of heavy

machinery, and your operators should be well-schooled in them.

Anybody operating a piece of heavy equipment needs to be fully trained in operations and safety for that specific machine.

Operating some machinery also may require a commercial driver’s license and completion of an approved training course.

OSHA regulations are in place to ensure safe operation. The types of requirements depend on the type of construction activities performed. ❖

Employer Liability

Lawsuit Threat Grows; What to Watch Out For

ONE OF THE biggest lawsuit threats businesses face is from their own employees. Any company with staff – be that one or 500 – can be sued, and even if the case never goes to court, it can create a significant burden for a business.

While most cases are settled out of court, they can drag on for as long as two years. Even if they are dismissed as meritless, the employer is often out thousands of dollars as a result.

To best protect your business from these types of claims, and more, you need to learn how to identify potential claims, avoid practices that can expose you to litigation, and create formal policies for your personnel and management. To do that, you can tailor your focus on the current employee-initiated litigation trends:

Discrimination

There are a number of protected classes in the U.S. workforce and, as we march forward, more are being added.

The key for employers is to have policies in place that treat everyone equally in the organization, ensure that certain groups of people are not kept from advancing in their jobs, and ensure a harassment-free workplace.

Unequal pay

Most of these actions are filed under the Federal Equal Pay Act.

The law bars employers from paying workers of one gender less than those of another for “substantially similar” work.

The law prohibits employers from retaliating against an employee who files a claim under the EPA or cooperates with an investigation of such claim.

To avoid liability, conduct a self-audit that looks at the following:

- Have you updated job descriptions, including established criteria for assigning values such as skill, education, seniority and responsibility?
- Are you consistent in your pay for similar jobs performed by individuals with similar skills, education, seniority and responsibility?
- Are your male and female employees given projects or clients with commission or bonus potential on a consistent basis?

Worker classification

The federal government, individual state governments and the IRS have all been cracking down on employers who misclassify workers as independent contractors.

Worker classification lawsuits continue unabated, with the likes of UPS and Federal Express facing class-action suits from drivers they classified as independent contractors. Here's what you can do:

- If you are considering classifying anybody as an independent contractor, be sure of their status and ensure the arrangement complies with the law.
- Classify workers who perform similar tasks consistently.
- Conduct classification audits on a regular basis if you use many independent contractors.

Wage theft

These kinds of lawsuits typically involve accusations that the employee was not paid what they were due.

To avoid being sued, you should write clear and consistent policies and train managers and supervisors on them.

Common wage-theft allegations

- Requiring staff to work off the clock.
- Not providing meal and rest breaks as required by law.
- Failure to pay overtime.

EPLI coverage: A solid backstop

To protect yourself against the high costs of defending these lawsuits, you should have in place employment practices liability insurance. You might think you have ironclad personnel policies, but experts say that between 30% and 40% of employee-generated lawsuits against their employers are frivolous. Those lawsuits still cost money to defend, and your EPLI policy may pick up the tab.

An EPLI policy will cover you for:

- Legal costs, including costs of defending a lawsuit in court, whether your company wins or not.
- Judgments and settlements. ❖



Contractor Risks

Labor Crunch Adds to Construction Risks, Liabilities

THE ASSOCIATED Builders and Contractors estimates that the construction industry needs 650,000 additional workers on top of normal hiring in order to meet demand.

That's forcing many construction firms and contractors to work short-staffed or take on and train employees new to the trade, a combination that can lead to a host of problems, from more workplace injuries to shoddy workmanship.

Those effects often translate into higher insurance and out-of-pocket costs for construction firms, which are already dealing with rising material costs and unpredictable supply chains.

The following are the risks of working short-staffed or with newly minted workers.

Workplace safety

When fully staffed, workers and supervisors are better able to identify safety issues.

Studies have found that experienced workers are less likely to suffer workplace accidents than those who are new to the job. Inexperienced workers are:

- Not as familiar with safety protocols, increasing the risk of accidents.
- Less likely to notice dangerous practices or safety issues.
- Often loath to speak up if they see a problem.
- A potential danger to the public if they are on worksites that are near sidewalks or heavily trafficked areas.

Finally, contractors that are not operating at full capacity may pressure employees to get more done in less time and/or work overtime. That can lead to workers cutting corners and working faster than is safe to get the job done.

Quality and defects

Construction quality can suffer when a contractor is short-staffed.

If an inexperienced, undertrained worker misunderstands what needs to be done, they can repeat a mistake over and over again. Also, overworked employees may cut corners, leading to defective work.

When workers make mistakes, particularly if they repeat the error again and again, it can lead to:

- Tearing out their work and redoing it. This can be costly depending on how many times the same mistake was made. These costs are borne by the construction firm and their insurer.
- Construction defects. Some mistakes may not be readily apparent and may manifest themselves months or years after a project is completed. Once discovered, the client may file a construction defect claim against the contractor.

What you should do

While getting staffing levels up to meet your demand may be difficult, you should strive to ensure that all new workers are properly trained in how to do their jobs, and in particular how to perform their job safely.

Besides being able to safely do their jobs, they should be trained about other hazards on the job site, including watching out for moving equipment or material and knowing when to ask for assistance of someone to observe their work in hazardous situations. ❖

