

Managing Risk



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OSHA Publishes Updated Slip, Trips and Falls Rule

In mid-November, OSHA published its long-awaited final rule on slips, trips and falls. The rule becomes effective on Jan. 17, 2017, and will affect approximately 112 million workers at seven million worksites.

In 2014, falls, slips and trips accounted for 17 percent of all fatal work injuries, second only to transportation accidents. OSHA estimates that, on average, approximately 202,066 serious (lost-workday) injuries and 345 fatalities occur annually among workers directly affected by the final standard. It estimates the new rule will prevent 29 fatalities and more than 5,842 injuries annually.

The final rule updates OSHA's general industry Walking Working Surfaces standards specific to slip, trip and fall hazards. Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels said, "OSHA believes advances in technology and greater flexibility will reduce worker deaths and injuries from falls." The final rule on Walking-Working Surfaces and Personal Fall Protection Systems protects workers in general industry by updating and clarifying standards and adding training and inspection requirements.



Risk Tip

Good news for workers' compensation buyers! Many workers' compensation policyholders will see lower premiums for 2017. The NCCI (National Council on Compensation Insurance) had recommended rate reductions in 21 states of the 22 it had filed advisory rates for by late October. NCCI recommends rates to the states that use its data, then insurance regulators either approve or disapprove them. This year, NCCI has advised double-digit rate decreases in seven states and single-digit decreases in 14 states.

Rating organizations such as NCCI develop these "pure premium rates" using loss and payroll data submitted by all member insurance companies. Advisory pure premium rates include claims and

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Many industry experts believe the Trump administration will let the new rule stand, since it is fairly employer-friendly. The rule gives general industry employers greater flexibility in choosing a fall protection system. As much as possible, OSHA aligned fall protection requirements for general industry with those for construction, easing compliance for employers who perform both types of activities.

For example, it eliminates the existing mandate to use guardrails as a primary fall protection method and allows employers to choose from accepted fall protection systems they believe will work best in a particular situation — an approach that has been successful in the construction industry since 1994. In addition, employers will be able to use non-conventional fall protection in certain situations, such as designated areas on low-slope roofs.

Specifics of the Rule

The final rule replaces the outdated general industry scaffold standards with a requirement that employers comply with OSHA's construction scaffold standards. The rule requires employers to protect workers from fall hazards along unprotected sides or edges that are at least four feet above a lower level. It also sets requirements for fall protection in specific situations, such as hoist areas, runways, areas above dangerous equipment, wall openings, repair pits, stairways, scaffolds, and slaughtering platforms.

Employers can select from a variety of fall protection systems, including:

- ✱ **Guardrail systems**
- ✱ **Safety net systems**
- ✱ **Personal fall arrest systems** – Systems that stop a fall before the worker contacts a lower level. These consist of a body harness, anchorage and connector, and may include a lanyard, deceleration device, lifeline or a suitable combination. Like OSHA's construction standards, the final rule prohibits the use of body belts as part of a personal fall arrest system.
- ✱ **Positioning systems** – Equipment and connectors that, when used with a body harness or body belt, allow a worker to be supported on an elevated vertical surface, such as a wall or window sill, and work with both hands free.
- ✱ **Travel restraint systems** – An anchorage, anchorage connector, lanyard (or other means of connection) combined with body support to eliminate the possibility of a worker going over the unprotected edge or side of a walking-working surface.
- ✱ **Ladder safety systems** – A ladder safety system usually consists of a carrier, safety sleeve, lanyard, connectors and body harness designed to prevent a worker from falling off. Cages and wells are not considered ladder safety systems.

General Safety

The key takeaway: Employers must provide additional protection to workers any time they are at a height of six feet or more (construction industry) or four feet or more (general industry) off the ground.

In addition to implementing OSHA's new

losses and loss adjustment expenses. They do not include commissions, acquisition expenses, general expenses, taxes, dividends or profit. Insurers will include these expenses in their final premium rates.

Pure premium rates are dropping due to improvements in loss experience, higher premium volume due to the improving economy and increased competition from insurers entering the market or adding new workers' compensation products.

If your workers' compensation rates are higher than you think they should be, please contact us for a review of your claims experience and coverage.

rule, employers can take additional common sense steps to reduce slip, trip and fall hazards. Regularly check your premises for the following:

- ✱ Are aisles and corridors clear and wide enough for easy passage? If not, remove clutter or obstructions.
- ✱ Can you clearly see any level changes, steps or obstructions? If not, upgrade lighting and/or install reflective safety striping.
- ✱ Are there electric cords snaking across areas where people walk? If so, additional outlets (including floor outlets) can reduce this hazard.

For more information on the new slip, trip and fall rule or other suggestions for improving worker safety, please contact us. ■

Website Accessibility Lawsuits Increasing

A whole subspecialty of law practice is emerging, focusing on website accessibility. That's bad news for businesses that haven't ensured their websites are accessible to people with disabilities.

Title III of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in the activities of places of public accommodations, or businesses that are generally open to the public. Some attorneys and advocates for the disabled have argued — successfully — that websites are “public accommodations” that should be made accessible to individuals with disabilities.

Violations of Title III can bring a maximum civil penalty of \$75,000 for a first violation. For a subsequent violation, the maximum increases to \$150,000.

Seyfarth Shaw, LLP, a law firm with offices throughout the U.S., reported that 106 federal website accessibility lawsuits have been filed between the beginning of 2015 and September 21, 2016. Just four industries — retail, restaurants, hospitality and entertainment — have accounted for 95 percent of the cases filed. Retailers have been named in 63 percent of all cases, restaurants in 16 percent, hospitality businesses in 9 percent and entertainment businesses in 7 percent. All other private industries, from academia to dating services to medicine, each account for 2 percent or fewer of all cases.

Back in 2014, the U.S. Department of Justice, which enforces the ADA, announced that it was developing regulations that would include online and website activity under Title II, which applies to local and state government agencies. Risk managers and other experts in the private sector have been keeping an eye on their development. They know those regulations could provide a model for regulations affecting private entities.

Although the DOJ's original deadline was March of 2015, it has pushed back implementation. Due to comments received, it pushed back implementation and again extended the public comment period. The latest public comment ended on October 2016, signaling that regulations could be coming soon. ■

The message is clear: businesses in high-risk industries should make creating accessible websites a priority. Other industries should also look at their websites, because they are not immune to lawsuit.

Worth noting: For its research, Seyfarth Shaw looked at Title III cases only. Employment discrimination falls under Title I of the ADA; lawsuits against employers using online



applications that are inaccessible would not count in this tally. Organizations should also look at any online job applications or screenings to ensure that they are accessible to people with disabilities.

What Makes a Website Accessible?

An accessible website should offer alternatives to images and audio that allow people with vision and hearing impairments to have access to any information or services you offer on your website. That includes having the ability to “read” text or make orders.

When evaluating your organization's websites, look for the following problem areas:

- 1 Problem:** Images without text equivalents. Blind people, those with low vision,

and people with other disabilities that affect reading abilities often use screen readers and refreshable Braille displays, which cannot interpret images.

Solution: Add a text equivalent to every image

- 2 Problem:** Documents not posted in an accessible format. Some formats, such as PDFs, do not have text equivalents.

Solution: Post a text equivalent.

- 3 Problem:** Specifying colors and font sizes. Web designers often specify certain colors or fonts for aesthetic reasons. However, some people might not be able to see certain colors, and others with low vision might need to change a font to make it more readable.

Solution: Users need to be able to manipulate color and font settings in their web browsers and operating systems in order to make pages readable.

- 4 Problem:** Websites increasingly make use of video. However, video might not be accessible to those with vision problems or hearing problems.

Solution: Provide an audio transcript for video for the vision-impaired, and subtitles for hearing-impaired. Or provide a text transcript that's translatable by accessibility programs.

For a quick and easy way to evaluate whether your website might pose problems, you can run it through the WAVE Web Accessibility Evaluation Tool, located at <http://wave.webaim.org>. Simply type in your website's URL and the tool will point out potential problems.

If your website needs changes, an accessibility expert can help. And if you want to ensure your organization has the right insurance coverage to protect itself from discrimination claims, please contact us. ■

Specialty Liability Coverages

In our last issue, we discussed the liability insurance coverages that every business should have. In this issue, we'll discuss some specialized coverages that are "nice to have" for some businesses, and "must haves" for others.

Professional Liability and Errors and Omissions (E&O) Coverage: People in certain professions can cause harm to others — whether physical, emotional or financial — through negligent practice of their profession. These people need either professional liability or errors and omissions coverage to protect themselves from the financial risk of lawsuits.

Historically, insurance for professionals such as lawyers was called professional liability; policies for quasi-professionals were labeled E&O. However, insurance companies now tend to use the terms interchangeably.

Both PL and E&O policies cover individuals against liability incurred as a result of errors and omissions in performing professional services for clients or customers. Both cover economic losses suffered by third parties but not property damage — which is typically covered under your general liability policy. Most PL and E&O policies also exclude coverage for bodily injury — with a key exception being professional liability/medical malpractice for doctors.

You don't have to consider yourself a "professional" to need coverage for negligent acts. If you give advice and recommendations, if you create programs or products for your customers or if you provide a service, you need liability protection. In addition to lawyers, doctors and accountants, other professionals who need protection include:

- ✦ Real estate agents
- ✦ Data processors
- ✦ Pest control services
- ✦ Appraisers
- ✦ Architects and engineers
- ✦ And more!

Pollution Liability Insurance: Also known as environmental liability, pollution liability claims can occur when an organization's activities involve a release of pollutants that negatively affects the property of another party or causes bodily injury. Pollution liability can arise from many different sources and are not limited to particular industries. It can stem from on- and off-site conditions, waste disposal and transportation exposures, merger and acquisition activities,

historical and current operations and storage tank releases, to name but a few.

Insurers have developed pollution liability policies to cover a wide variety of circumstances. Two that you're most likely to come across are **pollution legal liability insurance** and **asbestos containment coverage**.

Pollution legal liability insurance covers claims from unknown pollution conditions at specific locations. Generally, these policies include claims for bodily injury, property damage and cleanup costs. They'll often cover business interruption and transportation claims, but not the costs of ongoing cleanup or existing, known contamination. Asbestos containment coverage covers building owners if a release of asbestos occurs. Policies cover sudden/accidental release of asbestos, which results in bodily injury or property damage. Landlords of older buildings might consider this coverage.

Data Coverages: Companies that store or use financial, personal identifying or medical information of individuals can be liable if that information is stolen, lost or hacked. **Data breach liability insurance** (or **cyber liability insurance**) offers protection when a data breach occurs. Policies vary, but most will help cover the cost of identifying and correcting the source of the breach, the cost of notifying affected customers and the cost of offering credit monitoring and identity theft services.



Companies that store or process information for other organizations can also buy **data processing insurance** to cover themselves from the liability costs associated with the loss or damage to another organization's data.

When a data breach occurs, companies have to spend time and money to notify affected customers and offer them credit monitoring and identity theft services. Insurance companies now offer insurance to cover those costs. Some insurers also provide ser-

vices that work directly with customers to help restore their good credit.

Property Liability: When you rent another party's property or when you have another party's property in your custody, care or control, you can become liable if that property is lost, damaged or stolen. **Rental insurance** often includes both property coverage to protect the equipment from damage and liability insurance to protect the renter from legal claims based on the use of the equipment. Specialized rental insurance often costs less than similar coverage offered under your

business owners policy or other standard commercial property policies.

When you take care, custody or control of another person or business's property, you become a "bailee." Most property policies specifically exclude coverage for others' property if it becomes lost, damaged or stolen while in your care. Businesses that take control of other people's property, such as during repairs, servicing or transport, need **bailee insurance** to protect themselves from this financial risk.

Although bailee coverage was originally used to cover the bailee's liability exposure, it is often expanded to provide a no-fault coverage to protect the customer's property against any damage, whether or not there is negligence and subsequent liability. Your coverage should have high enough limits to cover the total value of other people's property that may be in your control at any one time.

Many liability insurance policies will cover the cost of defending a lawsuit, in addition to covering the costs of any claims or settlements. We recommend that all businesses review their operations and insurance program annually to ensure they have the coverages they need. To set an appointment, please contact us. ■

Winter's Temperatures Bring Risk of Hypothermia and Frostbite.



Whenever temperatures drop and wind speed increases, heat leaves the body more rapidly. This can lead to hypothermia and/or frostbite.

Hypothermia: Prolonged exposure to cold can deplete the body's stored energy, resulting in hypothermia, or abnormally low body temperature. A too-low body temperature affects the brain, making the victim unable to think clearly or move well.

Symptoms of hypothermia include shivering, fatigue, loss of coordination, confusion and disorientation. If the condition progresses, victims can have no shivering, blue skin, dilated pupils, slowed pulse and breathing and loss of consciousness.

Hypothermia is serious and requires immediate medical help. Un-

til victims can receive medical help, warm them by moving them to a warm location, removing wet clothing and warming the body's core first with an electric blanket if available, or warm blankets or skin-to-skin contact if not available. Warm beverages (non-alcoholic) can help if the victim is conscious.

Frostbite: Frostbite results from freezing of the skin and underlying tissues. Symptoms include numbness, tingling or stinging, aching, bluish or pale, waxy skin. Affected areas lose color and feeling. Frostbite can permanently damage body tissues, and severe cases can lead to amputation. Workers with reduced blood circulation or who are not dressed properly have an increased risk of frostbite, which occurs most often in the extremities and ears and nose.

To treat frostbite:

- ✱ Move the victim to a warm room.
- ✱ Avoid rubbing the affected area or walking on frostbitten feet or toes—this increases damage.
- ✱ Immerse the affected area in warm—not hot—water. If not available, warm the affected area using body heat; for example, the heat of an armpit can warm frostbitten fingers.
- ✱ Avoid using high-heat sources such as heating pads, heat lamps, stoves or radiators for warming. Affected areas are numb and can easily burn.

The best medicine for cold stress is prevention. For suggestions on protecting your workers from cold-related injuries, please contact us. ■



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