

Regulatory Action

DOL Issues New Definition of Independent Contractor

IN THE last month of the Trump administration, the U.S. Department of Labor finalized a regulation to clarify for employers which workers are employees and which are independent contractors.

Because independent contractors are typically ineligible for employee benefits, businesses have an incentive to classify workers that way. The new regulation's purpose is to make answering the question easier.

The regulation employs an "economic reality test" that courts have developed over the years. It asks "whether, as a matter of economic reality, the workers depend upon someone else's business for the opportunity to render service or are in business for themselves." The test considers two "core factors" and three additional "guideposts" to answer this question. The core factors are:

The nature and degree of control over the work – Who sets the work schedule, the worker or the employer? Can the individual work for the employer's competitors? Who selects the projects on which the individual works?

How much opportunity the worker has for profit or loss based on initiative and/or investment – Can the worker make more money only by working more hours? Can they vary their profit or loss by hiring workers or buying equipment or materials?

If the worker's status is still unclear after answering those questions, the employer must consider additional guideposts:

The amount of skill required to do the work – Does the job require "specialized training or skill that the potential employer does not provide?" If so, the worker may be an independent contractor.

How permanent the relationship between the worker and employer is – The worker may be an employee if "the extent (of) the work relationship is ... by design indefinite in duration or continuous."

Whether the work is part of an "integrated unit of production" – Is the individual's work separate from the employer's production process? According to one analysis, "this factor will turn on whether the individual works under circumstances analogous to a production line."

Lastly, the rule states, regardless of what a contract between the two parties or a particular theory may hold, "the actual practice of the parties involved is more relevant ..." If there is a conflict between a contract and reality, the DOL will emphasize what actually happens.

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Workplace Dangers

Keeping Your Employees Safe around Electricity

WHILE ALL businesses need electricity to get the job done, it can also pose a significant workplace safety issue if your workers are careless.

To reduce the chances of an injury or death, it's imperative that you train your workers in electrical safety.

While too many of us have gotten an electrical shock at some point, it should not be taken lightly as even a small amount of electrical current can be fatal.

Here are some of the main areas you should focus training on:

Metal and water

Risk is greatest around metal objects and in damp conditions.

- Train workers to ensure that electric equipment, switch enclosures and conduit systems are properly grounded and that all external or damp operations are wired for wet conditions prior to operations.
- They should wear the correct gear, such as rubber gloves and boots, while working in damp environments.
- You should provide rubber mats, insulated tools and rubber sheets to protect them from exposed metal.

Defective equipment

Defective equipment can result in shock or electrocution.

- Workers and supervisors should inspect electrical equipment, outlets, plugs and cords before each use.
- If a worker finds faulty or damaged equipment, they should alert a supervisor who should remove, tag and have the item repaired.

Cord management

- Make sure outlets and cords are of adequate size and length to prevent an electrical overload.
- Keep cords out of the way if possible to avoid tripping hazards.

Lockout/blockout

- Follow lockout/blockout procedures.
- Workers should stop using a tool if they feel even a small shock.
- Workers should turn off the power if they smell a hot or burning substance, or if they notice smoke, sparks or flickering lights.

Watch for power supply lines

Contact with overhead power supply lines is one of the most common causes of electrocution for construction workers. This usually happens when workers are using portable elevators, cranes, pipes or hoisting machinery that puts them in close proximity to power lines.

- Workers using high-clearance devices should continually scan for danger and take precautions to avoid contact with overhead lines.
- If an overhead line breaks, keep away from the wire and everything it touches. Call the power company to shut off the electricity.
- Only qualified electricians should repair electrical equipment or work on energized lines.

One last thing...

Besides training your workers in all facets of electrical safety, don't forget to train them in emergency response procedures and CPR, too. ❖



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Biden Administration My Delay the New Regulations

The takeaway

The new regulation is due to take effect on March 8. However, some believe that the new Biden administration will delay or even rescind it. One observer predicted that the administration would “look for ways to scrap it.”

Even if the regulation takes effect unchanged, its reach will be limited. Relevant state and local laws still apply. California, for

example, enacted a law in 2019 that applies a different test to the question of independent contractor status, one that many observers believe will result in more workers being classified as employees.

Whatever happens, employers should classify workers based on how much control they have over them. That, and not whether the employer gives the worker a 1099 tax form, will determine whether they are an independent contractor. ❖



Property Protection

Vacant Buildings Pose Risks, Insurance Challenges

THE AVERAGE vacancy rate for offices nationwide skyrocketed in 2020 due to the pandemic to 15% at the end of second quarter, up from 9% in the first quarter, according to the website *Statista.com*.

Unfortunately, when buildings stand vacant they become susceptible to a variety of problems.

There are roughly 31,000 fires in vacant buildings annually, resulting in dozens of deaths, hundreds of firefighter injuries, and an average \$642 million in property damage.

PROBLEMS CAN QUICKLY MOUNT



- With no security on the premises, the building becomes a target for vandals. Vacant buildings frequently wind up with broken windows and graffiti-covered walls.
- Fixtures and materials inside the building, such as copper piping, may attract thieves.

- Vacant buildings can become convenient hang-outs for young people or shelters for the homeless; they also can become centers of criminal activity, such as drug-dealing.



- Trespassers smoking on the premises, decayed wiring, arson, and production of illegal drugs like methamphetamines may cause fires in vacant buildings. In addition, automatic sprinkler systems may be shut off, allowing fires to spread, and lack of

security prevents early detection.

- Toxic substances remaining on the premises may leak and contaminate soil and groundwater.

SAFEGUARD YOUR BUILDING

- Visit the property at least weekly, or hire a property management company to do so.
- Clear the exterior of scrap wood, paper, cardboard and brush.
- Remove any toxic substances that could contaminate the area or harm police or firefighters.
- Maintain sidewalks and parking areas in good condition, and clear them of snow and ice.
- Erect obstacles to keep vehicles and pedestrians out of parking areas.
- Hire security to watch the building at night. Turn on exterior lighting.
- Maintain heat or drain the plumbing system to keep pipes from bursting, but keep at least a minimum temperature in areas protected by automatic sprinkler systems.
- Maintain electricity supply to emergency lighting and exit signs.
- Shut off utilities, except where necessary to power desired lighting and alarm systems.
- Maintain fire detection systems and link them to a central station monitoring service.

Insurance implications

Buildings that are more than 70% vacant for over 60 days also lose some important insurance coverage.

If the building is largely vacant, the standard commercial property insurance policy reduces loss payments by 15% for most causes of loss and does not cover others at all, including vandalism, water damage, glass breakage, and theft.

For an additional premium, the building owner may be able to purchase vacancy permit coverage, which reinstates some or all of this coverage for a specific period of time. An alternative – vacancy changes coverage – can reduce the minimum occupancy that the building must have before the insurance company will consider it vacant from the standard 31%.

We can work with you to get the coverage you need.

A vacant building is never a good situation, but with the proper precautions, the owner can maintain its value and keep it secure until new tenants move in. ❖

Workplace Safety

Why Slips, Trips and Falls Are So Hard to Avoid

SLIPS, TRIPS and falls constitute the majority of general industry accidents, cause 15% of all accidental deaths, and are second only to motor vehicles as a cause of fatalities.

With those stark realities, any employer that fails to guard against these preventable accidents is asking for an injury to occur.

THE FALLOUT

Slips, trips and falls:

- Result in more than 95 million lost work days per year (or about 65% of all work days lost).
- Account for nearly 25% of all reported injury claims.
- Accounted for a 17% increase in the number of deaths from such accidents in 2020, compared to the prior year.

While you can put in place stringent safety procedures, require fall-protection equipment and install non-skid surfaces, there is one thing that is hard to control: the human factor.

Slippery surfaces a major challenge

Slippery surfaces are one of the biggest challenges a business faces in protecting its employees. High-risk areas include:

- Parking lots, especially in areas where water is pooling,
- Sidewalks,
- Food preparation areas, where grease and water can cause hazards, and
- Non-carpeted entryways or lobbies.

Tip: Conduct walkway audits to identify safety issues, so that you can develop plans to eliminate them. The plans need to account for varying weather conditions.

Training

You should put together a training regimen that includes instilling in workers the importance of:

- Immediately cleaning up spills,
- Closing file drawers when done,
- Picking up loose or dropped items from the floor,
- Keeping aisles and walkways free from clutter, and
- Keeping their personal workspace clean and orderly.

But it doesn't pay to tell them once. Regular reminders can help instill safety mindedness like the above.

Changing behavior is not easy and it takes time and commitment, but the best solution is a behavior-based safety approach. That includes being mindful of what they are doing.

Train workers so they will:

- Walk with caution and make wide turns at corners.
- Test footing before committing weight.
- Open doors with caution.
- Use railings on stairs.
- Ensure there are three points of contact when using ladders.
- Look before moving and be alert for trip hazards.
- Wear appropriate footwear.
- Push (rather than pull) carts to allow a better line of sight.
- Keep eyes and mind on the task in hand; no multitasking.
- Not text or talk on phone while walking.
- Take designated walkways, rather than shortcuts. ❖

WHAT EMPLOYERS CAN DO

- Implement good housekeeping practices.
- Provide proper lighting, traction aids and require safe footwear.
- Keep walking surfaces clean and in good repair.
- Install railings and guards.
- Display warning signs in high-risk areas (like 'slippery when wet').

