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BoldsRisk

BOLDS RISK & INSURANCE SERVICES

HUMAN RESOURCES

Court Makes New Pay Rules for On-Call Workers

EMPLOYERS WITH on-call workers who have to phone in to check on a scheduled shift are now required to pay them reporting pay, a California appellate court has ruled.

The court held in the precedent-setting case of *Ward vs. Tilly's, Inc.* that an employee scheduled for an on-call shift may be entitled to partial wages for that shift despite never physically reporting to work. The case hinged on what's known as "reporting pay."

Definition of 'reporting pay'

California's Industrial Welfare Commission (IWC) has wage orders that require employers to pay workers who show up for a shift and then are told they won't be working the scheduled shift.

Under the wage orders, an employer has to pay an employee who is required to report for work and does report, but is not put to work or works less than half their usual or scheduled day's work.

Reporting pay is a minimum of two hours' pay and a maximum of four hours.

The case

In the *Ward vs. Tilly's, Inc.* case, employees were required to phone in to see if they would be working that day. The plaintiff in the case said that he was owed reporting pay because calling in to see if he was scheduled was essentially the same as showing up at work and being told he didn't have to work that day, as per the IWC's wage orders.

The appellate court on Feb. 4, 2019 upheld a lower court's ruling that had sided with the plaintiff. It's unclear whether the defendant will appeal the case to the California Supreme Court, but until that time and up to any potential decision, the ruling stands.

What it means for employers

Previously, reporting pay was limited to those employees who physically reported to work. Now, any employee that has to call in to check on a scheduled shift will be due half of the wages they would have earned by working the shift they were on call for.

The amount of reporting pay is based on the number of hours the employee normally works.

EXAMPLE: Justin, an on-call worker, is usually scheduled for six-hour shifts. When he called in on Wednesday, he was told he did not need to come into work that day. Based on the appellate court ruling, Justin must receive up to one-half of his scheduled shift, or three hours' pay. ❖

WHAT YOU CAN DO

- Conduct a cost-benefit analysis of retaining or keeping on-call status for employees.
- If you have on-call workers, update your employee handbook to reflect the new policy.
- If any of your workers were on call and were told not to work a shift after the Feb. 4 court ruling, you should pay them for the reporting pay they are owed.

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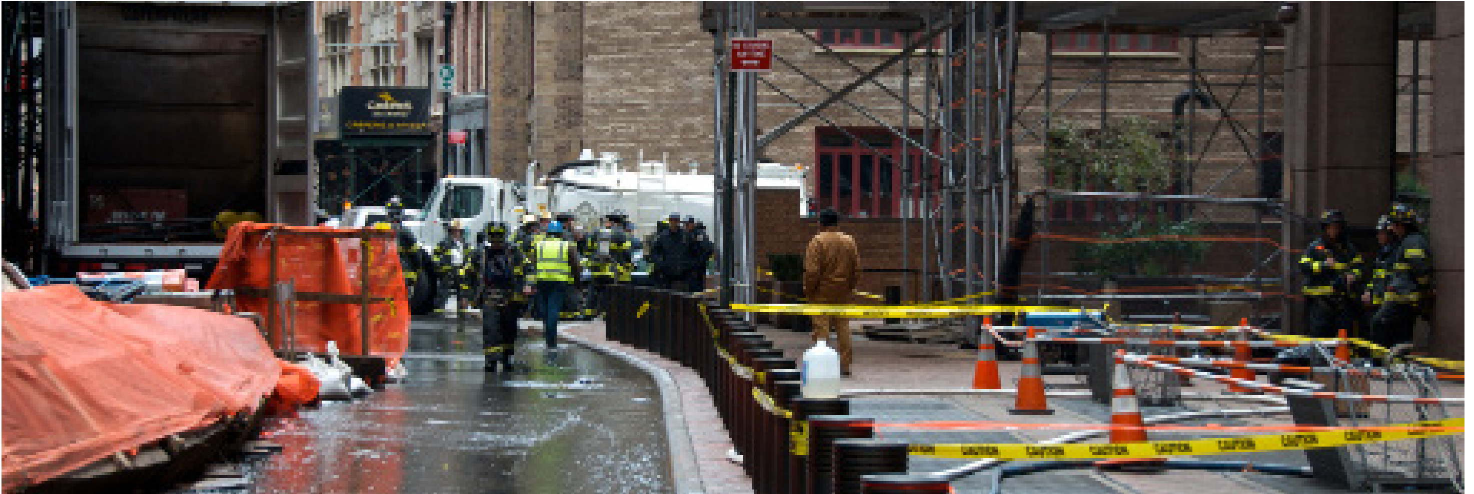
WEATHER-RELATED RISK

Commercial Properties Increasingly Vulnerable



A NEW report highlights the risks to commercial real estate owners from natural catastrophes and climate-related disasters, which are happening with increasing frequency.

The report by Heitman LLC, a global real estate company, in conjunction with the Urban Land Institute, found that the increasing risks from catastrophes are bringing new challenges to commercial property owners in terms of risk mitigation and securing appropriate property coverage, which may become more difficult in the future.

There are two main risks facing commercial property owners: physical and transitional risks associated with increasingly volatile weather.

Physical risks – This includes catastrophes, which can lead to:

- Increased insurance premiums
- Higher capital outlays
- Increased operational costs
- Decreased liquidity
- Falling value of buildings

Transitional risks – This includes economic, political and societal responses to climate change and more volatile weather that can make entire regions or metropolitan areas less appealing due to increasing weather events.

Fallout from extreme events

- Costs to repair or replace damaged or destroyed property.
- Property downtime and business disruption.
- Potential for increased insurance costs or reduced/no insurance availability.

The report notes that commercial property owners in areas that have seen regular catastrophes have started seeing either higher premiums for their property policies or decreased coverage.

Main impacts facing property owners

First, there are catastrophic events, like extreme weather such as hurricanes and wildfires.

Gradual changes in temperature and precipitation – such as higher temperatures, rising sea levels, increasing frequency of heavy rain and wind, and decreased rainfall – are likely to exaggerate the impact of catastrophic events.

This can affect commercial properties in the form of:

- Increased wear and tear on or damage to buildings, leading to higher maintenance costs.
- Increased operating costs due to the need for more, or alternative, resources (energy and/or water) to operate a building.
- Cost of investment in adaptation measures, such as elevating buildings or incorporating additional cooling methods.
- Potential for more damages from weather events.
- Higher insurance costs or lack of availability.

What owners are doing

Survey respondents said that they currently use insurance as their primary means of protection against extreme weather and climate events.

But 70% of real estate and hospitality industry managers said they had seen an increase in rates in the year to the end of the third quarter of 2018, with an average rise of 9.1%.

While insurance will cover damages from catastrophic events, it will not cover loss in value if investors start shying away from an area due to vulnerability to natural catastrophes.

Although insurance might provide short-term protection, more property owners and investors are looking for better tools and common standards to help the industry get better at pricing in climate risk in the future. These include:

- Mapping risk for the properties they currently own.
- Reviewing climate risk and catastrophe susceptibility before purchasing new properties.
- Using mitigation measures around their properties.
- Working with local policymakers to support investment by cities in mitigating risk. ❖

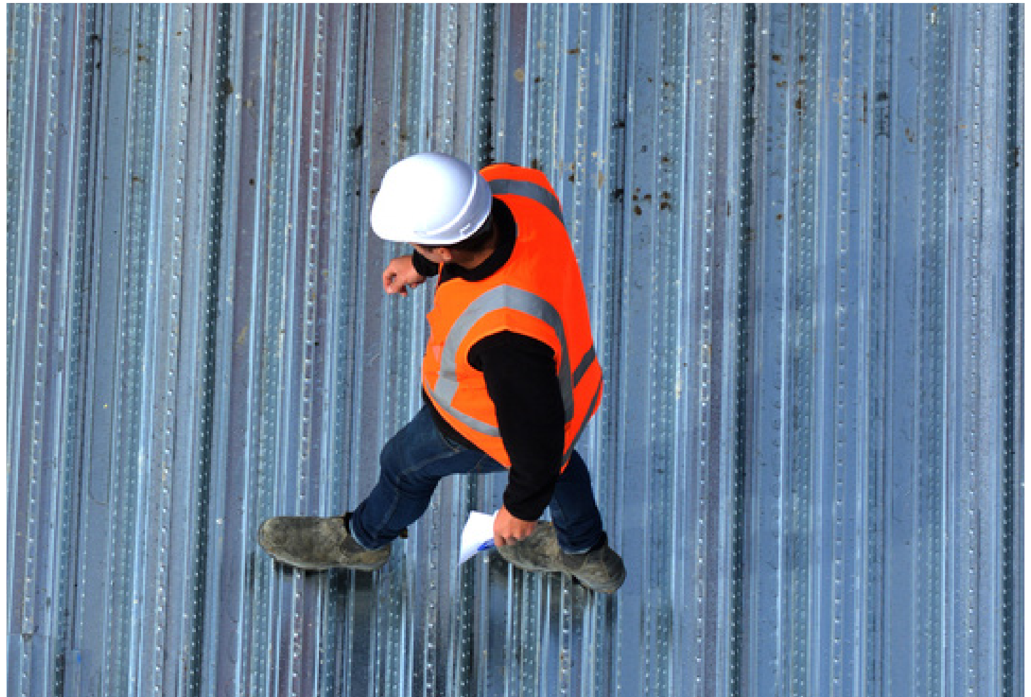
WORKPLACE SAFETY

OSHA Not Letting Up on Inspections, Penalties

DESPITE WIDESPREAD expectations, Fed-OSHA under the Trump administration has not backed off on enforcing workplace safety regulations.

In fact, the agency is as aggressive as ever and citations issued have also risen, after fines increased substantially three years ago. Based on OSHA statistics, a company that's inspected has only a 25% chance of not receiving a single citation.

In other words, employers should keep up their safety regimens to not only avoid being cited but also to avoid workplace injuries.



What's going on with OSHA

Enforcement emphasis still going strong – There are more than 150 local and regional enforcement emphasis programs as well as nine national programs in effect that were implemented at the end of the Obama administration. OSHA is dutifully enforcing them all.

Budget bucks the trend – Despite the budget-cutting at many federal agencies, OSHA saw a $5 million increase in its fiscal year 2019 budget from the year prior.

Most notably, that was the first budget increase since 2014. In addition, state-run OSHA programs also received a small budget enhancement of $2 million.

Fines increasing – OSHA has not moved to reverse the maximum fines for safety violations after they were increased substantially in 2016. They increased 2.5% for 2019 from 2018 as the law requires that they keep pace with inflation.

Inspections stable – The number of inspections remains unchanged.

2019 MAXIMUM FINES

- Serious or other-than-serious posting requirements: Up to $13,260
- Failure to abate beyond initial violation date: Up to $13,260 per day
- Willful or repeat violations: Minimum of $9,472, up to $132,598

Focus on repeat violators – A focus on repeat violations has continued, with 5.1% of all violations in this category. The percentage has been over 5% since FY2016.

General duty clause – There has been expansion of the general duty clause to cite employers for heat stress, ergonomics, workplace violence, and chemical exposures below the permissible limit.

New emphasis

And 2018 also saw a new effort by OSHA to fine-tune its work. It issued a memo in May that formalized the use of drones (with the employer's consent) to collect evidence.

This has been somewhat controversial because it could enhance its ability to find other violations it might not normally find.

According to the Fiscal Year 2019 Congressional Budget Justification for the Occupational Safety and Health Administration, increased enforcement seems to be more likely than a decrease.

Also, although there have been no officially released statements, the new electronic injury and illness reporting information will be used by OSHA and state plans to increase enforcement.

The increased budget, according to the Congressional Budget Justification, will support additional compliance safety and health officers to provide a greater enforcement presence and provide enhanced technical assistance to employers who need help in understanding how to achieve compliance with OSHA standards. ❖

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WORKER'S COMP

Most Common Audit Mistakes: What to Look For

NO COMPANY owner wants to undergo a workers' compensation audit, but they are a fact of life if you run a business and have employees.

Unfortunately, many audits don't go smoothly and sometimes your insurer may make mistakes. Missouri-based Workers' Compensation Consultants, which helps employers through the audit process, recently listed the 10 most common audit mistakes insurers make.

The list highlights a common problem and how you can detect the mistakes. Insurance companies allow you to review the audit with your broker. If you have received an audit bill that is obviously overstated, you should contact us.

Here are the things to look for when reviewing an audit by your insurance company:

Wrong class code – Misapplication of job classifications occurs in many audits. With hundreds of job classes to choose from, mistakes can happen. Talk to us and review your old policies to see if any of your class codes have changed.

X-Mod is changed – After your insurer finishes the audit, it will use the information to calculate your premium. When that happens, it has to include your X-Mod to get the right rate. But sometimes the insurer may use an incorrect X-Mod.

Subcontractors are counted – Sometimes insurers will include subcontractors as employees, which results in a new audit bill to account for the additional "employees." But if they are genuine subcontractors, they should not be counted.

Often, uninsured contractors will be included as employees. Make sure to use insured contractors only.

Disappearing credits – Most policies will have some sort of premium credits or other modifiers. Sometimes during audits, the insurer will remove them when recalculating the premium they think you owe. Watch out for missing credits and other modifiers if you get an audit bill, like:

- Premium discount
- Schedule credits
- Deductible credits
- State-specific credits

Audit worksheets missing – If the auditor fails to provide you with audit worksheets, which are used do compile your payroll and other audit information, you should ask to check their work.

They will provide you with the information you need to carry out such a check.

Your rates changed – The rates you are charged at the beginning of your policy period must remain the same for the entire period. If your base rates have changed, the insurer may have made a mistake.

Separation of payroll – Depending on your industry, you may or may not be able to split your employees' payroll between job classifications (like cabinet installers and sheetrock hangers). This is a pinch point when errors can occur. If the auditor says you are not allowed to split job classifications even though you have in the past, your audit may be in error.

Unexpected large premium due – If you get a significant bill for your insurance company after your audit, the auditor may have made mistakes, particularly if you know that your employment has remained relatively stable and you've had no significant claims, if any. If it seems out of whack, call us.

Payroll data doesn't match – If there is a discrepancy between your payroll data and what you see on the audit, a mistake may have been made. Try to match the payroll on the audit with that generated from your accountant. If the insurer made a mistake, you could end up paying for phantom payroll numbers.

No physical audit – There are three types of audits:

- Mail audit
- Phone audit, and
- Physical audit

The mail and phone audits are prone to errors, since neither you nor your staff likely have any experience in premium auditing. If you have a big bill after a mail or phone audit, mistakes could have been made. ❖