

RISK MANAGEMENT

Sprinkler Damage from a Quake Can Be Costly

WHILE YOU might expect cracks to the foundation of your business building during an earthquake, there is another threat from these events.

Earthquakes can shake a building enough to activate or damage indoor sprinklers, which in turn spray water, wreaking havoc on office fixtures, machinery and inventory.

This water sprinkler damage can often far exceed the damage to the structure itself.

Napa quake case study

A number of buildings suffered water damage from broken sprinklers in the Napa earthquake in 2014, according to the Federal Emergency Management Agency.

The systems that were damaged resulted in significant water damage because the quake happened early in the morning in a business district, meaning no employees were on site to shut off water valves.

When an earthquake occurs, the majority of sprinkler system damage is from the build-

ing shaking and swaying. This movement can cause a sprinkler system that has not been properly braced to come into contact with other building systems or structural members, damaging the sprinklers and fittings.

This damage can lead to leaking throughout the piping network.

If you have sprinklers, they should comply with the National Fire Protection Association Standard, Section 9.3 of which is designed to limit the impact of this differential movement so that the sprinkler system can function as intended after, and during, the seismic event.

To help maintain alignment of system components and prevent damage, the standard requires sway bracing and restraints for system piping.

It is critical to have fire protection systems in place before an earthquake, because:

- Gas pipes can rupture.
- Wires and cables can become exposed, creating an electrical hazard.
- Fuel may spill from ruptured tanks or broken pipes. ❖

Have the right insurance

You may not have coverage if there is damage to your building, fixtures and inventory from water damage caused by earthquake damage to sprinkler pipes.

Earthquake sprinkler leakage can be added to your existing policy by endorsement, usually for an additional premium.

This provides coverage for the building and/or contents inside the building should the sprinkler system leak due to an earthquake or accident. It would also provide coverage should the sprinklers become damaged.

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HUMAN RESOURCES

New Workplace Notice Requirements Take Effect

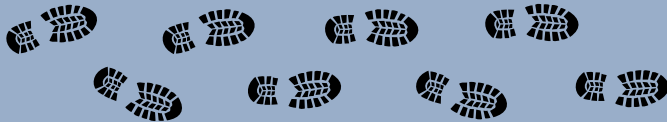
IF YOU have more than five employees you are required to have in place as of April 1 anti-discrimination, anti-harassment and complaint investigation policies.

You are also required to post starting April 1 a notification to your employees about California's pregnancy disability leave law.

The regulations, updated by the California Fair Employment and Housing Council, were spurred by recent court decisions. If you have not done so, now is the time to review your anti-harassment, discrimination and retaliation policies. ❖

Steps you need to take now

- Include a mechanism that permits employees to complain to someone other than his or her immediate supervisor, such as a human resources manager or other supervisor, a complaint hotline, or an ombudsperson. It should also include contact information for the California Department of Fair Employment and Housing and the U.S. Equal Employment Opportunity Commission as additional avenues for employees to lodge complaints.
- State that you will conduct a fair, timely and thorough investigation and that all parties will be given due process.
- State that you will ensure that you will keep the matter confidential to the best extent possible, but not that it's completely confidential.
- Require supervisors to report complaints of misconduct to a designated person, such as a human resources manager.
- Have a mechanism for remedial measures if you find misconduct.
- Assure your workers that you will not retaliate against them for filing a complaint.



Anti-harassment policy requirements

- Set the policy in writing.
- List all current protected categories covered under the Fair Employment and Housing Act.
- Indicate that the FEHA prohibits not only supervisors and managers from engaging in prohibited conduct, but also co-workers and third parties with whom employees come into contact.
- Create a complaint process to ensure that complaints receive the following:
 - Designation of confidentiality, to the extent possible.
 - Timely responses.
 - Impartial and timely investigation by qualified personnel.
 - Documentation and tracking for reasonable progress.
 - Options for remedial actions and resolutions.
 - Timely closure.

Pregnancy disability notification

Starting April 1, if you have five or more employees you are also required to post the "Your Rights and Obligations as a Pregnant Employee" notice alongside all of your other mandatory employment-related postings at your workplace.

You can find a copy of the new poster from the state at this website: [www.dfeh.ca.gov/res/docs/Publications/Brochures/2016/DFEH-100-20%20\(04-16\).pdf](http://www.dfeh.ca.gov/res/docs/Publications/Brochures/2016/DFEH-100-20%20(04-16).pdf)

Employers with 50 or more workers will continue to be required to post the "Family Care and Medical Leave and Pregnancy Disability Leave" notification that has been required since July 2015.



NEW LAW

Wage/Hour Violations Create Personal Liability

A NEW LAW gives the state labor commissioner new powers to go after employers that have judgments against them for non-payment of wages, including issuing stop-work orders and holding officers personally liable.

The Fair Day's Pay Act, which took effect Jan. 1, adds a new section to the state Labor Code aimed at reducing wage theft and making employers pay for skirting wage and hour laws. Specifically, those violations relate to:

- Final payment of wages at termination.
- Issuing wage statements.
- Meal and rest break laws.
- Overtime.
- Expense reimbursement.
- Payment of minimum wage.
- Attorney's fees for complainants.
- Waiting time.

The new law is likely to increase litigation against employers and it comes at a time when overall wage and hour cases have ballooned 58% between 2013 and 2015.

The average value for these types of claims in California is \$6 million.

The new law gives the labor commissioner tools to enforce collection of judgments in wage and hour law cases. It adds a new level of liability to companies, as well as the individuals who run these enterprises as they can be held personally liable for judgments.

Officers in the crosshairs

The law imposes criminal and personal liability against individuals who act for the employer, such as owners, officers, directors and managing agents. Because of this new law, those individuals have potential personal liability for a liability that didn't exist before.

With this new area of liability opening up, and in light of the boom in wage and hour litigation anyway, it's important for all employers to consider director's and officer's liability insurance and employment practices liability insurance.

Typically, EPLI policies have excluded coverage for unpaid wages and associated fines and penalties. Some insurance companies, though, will carve back a sublimit of coverage for wage and hour claims, but that is usually only for related defense costs.

There are also some novel options available from Bermuda and London insurers that blend a wage and hour policy with an existing EPLI policy. These policies vary in price and are still evolving.

Unfortunately, your typical D&O policy includes an exclusion for wage and hour claims.

But there is an option in specialty products called Side A "Differences in Condition" policies that can be attached to a D&O policy. Differences in condition policies generally don't include an exclusion for wage and hour claims.

Depending on how the terms of these policies are written, they could include coverage for defense costs and possibly for settlements and judgments in suits that name directors and officers.

As the highly litigious area of wage and hour law evolves, please talk to us to evaluate your coverage and minimize your exposure.

Also, now is the time to revisit all of your wage and hour policies, including breaks and waiting time, to make sure they comply with state law.

Don't get left blindsided by a lawsuit that can bankrupt your company. ❖

LABOR COMMISSIONER'S STICKS FOR OFFENDERS

- Issuing stop orders against employers.
- Issuing levies against employers' bank accounts and accounts receivables.
- Placing liens against an employer's real and personal property.

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WORKPLACE SAFETY

Hearing Damage Is Rife; Protect Your Workers

ALMOST 25% of workers who are exposed to noise in the workplace later have hearing problems, according to a new study by the National Institute for Occupational Safety and Health.

Hazardous noise levels in the workplace affect approximately 22 million workers in the United States – or 23% of the workforce. Many cases of hearing loss among these employed adults are attributable to occupational noise exposures, and can have substantial adverse impacts for work, interpersonal relationships and general quality of life.

Besides often causing permanent damage to workers, the scourge of workplace hearing damage is costly. An estimated \$242 million is spent annually on workers' comp for hearing loss disability, according to NIOSH.

The study also looked at tinnitus, which is the perception of sound in one or both ears – or in the head – when there is no other source of sound in the environment, and often occurs together with hearing loss. It's often referred to as "ringing in the ears."

Meanwhile, 7% of U.S. workers who were never exposed to occupational noise experienced hearing difficulty, 5% had tinnitus and 2% had both.

The study found that:

- Workers in life, physical and social science occupations and personal care and service occupations had significantly higher risks for hearing difficulty.
- The problem persists especially in the manufacturing, construction, agriculture, auto repair and forestry industries.
- Workers in architecture and engineering occupations had significantly higher risks for tinnitus.

Prevention programs

Fortunately, noise-induced hearing loss can be reduced, or often eliminated, through the successful application of occupational hearing loss prevention programs.

Engineering controls are the best defense. The use of these controls should aim to reduce the hazardous exposure to the point where the risk to hearing is eliminated, or at least minimized.

Engineering controls that reduce sound exposure levels are available and technologically feasible for most noise sources. Engineering controls involve modifying or replacing equipment, or making physical changes at the noise source or along the transmission path to reduce the noise level at the worker's ear.

Earmuffs and plugs are considered an acceptable but less desirable option to control exposures to noise. ❖

Dangers from hearing loss

- Workers with hearing loss often have trouble localizing sounds or hearing warning signals, which puts them at risk of accidents.
- Hearing loss impedes communication and often leads to isolation in social situations, impediments in career progression, reduced autonomy, poor self-image, fatigue, frustration and depression.
- Tinnitus can disrupt sleep and concentration. That in turn increases fatigue, reduces alertness, degrades performance, and potentially increases risks for accidents on and off the job.

Engineering controls

- Choose low-noise tools and machinery.
- Maintain and lubricate machinery and equipment.
- Place a barrier, like a sound wall or curtain, between the noise source and employee.
- Enclose or isolate the noise source.

