



## Risk Management

# Preventing Warehouse and Factory Fires

**O**NE OF the biggest risks to warehouses and factories is fires, which can spread rapidly in these environments.

Facilities that are most at risk are those that have high ceilings, large footprints and hold large quantities of inventory that is stored close together.

If you don't have a fire prevention system in place, your inventory is at risk, as well as machinery and the building itself.

If you operate such a facility, you need to make sure that you reduce the risk of fires, and that you keep your inventory clear of any potential ignition sources.

To start, you need to understand what kind of ignition sources you have in your facility and how to identify hazards. Next, put together a fire protection plan.

Your plan will depend on the materials and inventory that you are storing and using.

For example, materials in corrugated cartons are much less combustible than plastic packaging. And inventory such as paint, oil and sawdust is extremely flammable.

### Shelving

One of the first orders of business is to evaluate your current shelving design.

One factor is the height of your storage. The higher you stack inventory, the greater the fire suppression challenge. Sprinkler sys-

tems that run along the ceiling have to reach not only the top layers of your inventory, but also the bottom layers.

One solution is to install in-rack sprinklers.

Another issue to consider is solid versus open shelving.

Solid shelving increases the fire risk because it creates an enclosed area where the fire can burn more easily.

Fires to products on open shelving are easier to douse and they don't spread as easily.

Also, the warehouse should be neat and items properly stored. Failing to arrange storage can increase your risk because:

- Crowded aisles may block fire exits and make it harder for people to escape, and
- Fires spread more easily in cramped warehouses.

### Dust danger

When accumulated dust particles are suspended in the air and contained in a confined space, all it takes is one small ignition source – like static electricity or metal-on-metal friction – to set off a chain reaction and a burst of fire.

When that happens it creates a rise in temperature and a rise in pressure.

That pressure will push outwards and if your building is not designed to contain that explosion and vent it safely, the result can be

widespread damage.

On top of that, the initial explosion may dislodge additional dust on horizontal surfaces, which will add to the fire, putting at risk your entire facility. ❖

### DUST FIRE PREVENTION

Fires can be prevented via proper housekeeping and regular maintenance and upkeep of equipment, and the installation of vacuum-powered dust collectors on the outside of the warehouse.



### STORAGE TIPS

- Keep electrical switchgear and heating equipment clear of storage.
- Never let goods sit within 18 inches of lighting.
- Allow enough clearance between sprinkler heads and stored goods to make sure that your sprinkler system can effectively douse the area.
- Segregate hazardous and non-hazardous materials.



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# Are Injuries on Commute or in Parking Lot Covered?

**W**HEN EMPLOYEES are injured on the job they are eligible for workers' comp benefits, but not if the accident occurs on their commute to or from work – in most cases, at least.

But how about if an employee is injured in your parking lot, or while running an errand for you after work? There are two rules that govern at which point a worker is eligible for benefits if they sustain an injury:

## The 'coming and going' rule

Typically, workers' comp benefits won't be paid for injuries sustained on a commute. This is known as the "coming and going" rule.

There are exceptions like whether the worker's travel was a benefit to the employer or related to their job duties. There are four exceptions:

1. **No fixed work site** – The employee travels to multiple job sites. If a worker travels to multiple sites in one day and gets injured en route even to the first one, injuries would typically be compensable.
1. **Off-site work** – This could include if the employee is injured while on a business trip. The worker is deemed to be acting in the scope of his employment the whole time while away on business, even at the hotel.
1. **Special assignment** – If during his regular commute the employee also is performing a special errand or "mission" for his employer.
1. **Traveling worker** – When an employee must travel in order to accomplish job duties, the coming and going rule does not apply.

## The 'premises' rule

If an employee is injured on the premises of your place of employment, they are more or less "at work" and should qualify for benefits.

Premises are not limited to areas owned or leased by the employer, but also to areas under their control. Various courts have held that employment starts when an employee arrives at a parking lot owned, maintained or used by the employer.

## The takeaway

One recent case dealt with both of these issues when an employee for a private military contractor was injured while driving to work. He crashed his car after entering an Air Force base where his employer had multiple worksites. He was injured one mile from the base entrance inside the base, but still three to five miles away from his worksite.

A California appellate court ruled that he was eligible for benefits under the workers' comp premises rule.

The bottom line is that there are some instances where even the best workplace safety regimen can't prevent a workplace injury. If a worker has an accident in the company parking lot, there is a good chance they could file a workers' comp claim and receive benefits.

On the other hand, other dangers on your premises – think icy walkways – can be minimized with proper risk management, by alerting your landlord (if you rent), or fixing it yourself if you own the property. ❖



# Employment-Related Lawsuits Explode



**A**S THE COVID-19 pandemic continues, so does the number of workplace-related lawsuits filed by workers across the country against their employers.

The pandemic laid the groundwork for new local, state and federal laws and regulations governing a number of workplace issues, like safety, family and medical leave and remote work. And it created new challenges for employers who were forced to close operations, lay off and furlough workers and organize new work arrangements.

Two law firms that track workplace litigation report that there were more than 1,000 COVID-19-related lawsuits filed by workers against their employers in 2020.

Employees filed 1,452 lawsuits in state and federal court in 2020 according to Littler Mendelson in San Francisco. Meanwhile, Seyfarth Shaw put the number at 1,005 for all of last year.

According to Seyfarth, of those cases:

- 690 were complaints concerning layoffs and firings that were spurred by the pandemic.
- 339 cases were related to workplace safety and retaliation for complaining about safety shortfalls. Many of these cases allege that employers had failed to protect their workers from contracting COVID-19 through safety measures such as partitions between workstations, face covering, social distancing, and more. Also, 190 of these cases were workers alleging employers retaliated by firing them for complaining about unsafe working conditions, or the failure to comply with COVID-19 protocols.
- 240 cases were for discrimination typically for terminations or furloughs. Discrimination complaints cut across a number of protected categories, including, age, racial and gender discrimination. Typically, complaints concern being discriminated against during the layoff process and employees alleging they were targeted for dismissal based on their protected category.
- 113 were wage and hour claims, mostly concerning employees

alleging they were forced to work off the clock. This was especially prominent in cases of people working from home, where the lines between home life and work can get blurred.

- 93 were for FMLA infractions. Many suits say employees grappling with COVID-19 themselves or caring for a relative have been illegally denied sick leave or family and medical leave.

“We anticipate that the tide of workplace class action litigation will continue to rise in several key areas such as discrimination and workplace bias, wage & hour, as well as on the health & safety front,” Seyfarth wrote in its report. “Employers are apt to see these workplace class actions expand and morph as businesses restart operations in 2021 in the wake of COVID-19, particularly as courts roll out a patchwork quilt of rulings.”

The worst part: Both firms predict even more pandemic-related lawsuits to be filed in 2021, asserting that the coronavirus is now the main force pushing a new surge in workplace litigation.

## What you can do

Employers should familiarize themselves with the workplace laws that were put in place by the CARES Act and other federal legislation, as well as any laws or regulations that were enacted in their states in response to the COVID-19 pandemic.

Compliance is key to many of these measures, particularly if you may be putting employees or the general public at risk.

Comply with workplace safety regulations concerning your workers and do not retaliate against anyone who comes to you with concerns about your COVID-19 safety protocols.

Also, if you are terminating or firing people because you cannot keep them on due to the pandemic, make sure you do so fairly and do not single out any number of people in a protected class. The decisions should be made based on their work duties, their value to the organization – and even seniority. ❖

# At What Point Do You Need Workers' Comp?



**M**ANY SMALL business owners make the mistake of not securing a policy after they hire their first employee. Some mistakenly believe they need at least five employees before they must secure coverage.

But in California there is no minimum and if you go without coverage and an employee is injured on the job, your firm could be held liable for all of the medical costs and any lost pay from missing work.

Also, if you are taking on independent contractors and they are primarily working for you, it could be a sign that maybe you should be classifying them as employees.

We hope in this article to clear up any confusion you may have about workers' compensation if you are a small employer.

## The hypothetical

If you are running a business, you are not required to purchase workers' compensation coverage for yourself. The same holds true if you are a sole proprietor and you work with your spouse in running the business.

You can cover yourself, though. In California, workers' comp is optional where the partners of a partnership (or sole shareholders of a corporation) are the only ones performing work.

There are benefits to being covered under workers' comp. If either of you were to get injured while working at the store, you could receive benefits to pay for your medical bills and for time off work.

But what if your nephew comes to work for you over the summer? Are you required to cover him for workplace injuries?

Yes! Even though your nephew is family, he is considered your employee. In California, an employee is anyone that you “engage or permit to work.”

As a result, you should treat him in the same way that you would treat someone that you hired through a formal job application process.

In short, California law requires any business with one or more employees to carry workers' comp insurance. ❖

## THE PENALTIES

There are serious consequences for failing to carry workers' comp insurance. Here is the list of woes that you could face:

**Misdemeanor** – Operating without workers' comp insurance is a misdemeanor in California, punishable by fines of up to \$10,000, or by imprisonment in a county jail for up to one year, or both.

**Stop orders** – If the Division of Labor Standards Enforcement determines your business is operating illegally without workers' comp insurance, it can issue a stop order against your business and prohibit you from using employee labor until insurance is secured. Failure to act on the stop order is punishable by imprisonment in a county jail up to 60 days, or by a fine up to \$10,000, or both.

**Additional fines** – The Division of Labor Standards Enforcement can impose a penalty of \$1,000 per employee on payroll at the time a stop order is issued and served, up to a maximum of \$100,000.

**Litigated claims** – If a claim goes before the Workers' Compensation Appeals Board and your business is found to be illegally uninsured, you may be assessed further fines up to \$10,000 per employee on payroll at the time of injury, with a maximum penalty of \$100,000.

**Employer liability** – In addition to all the fines and penalties, your business is fully liable for all medical costs and bills relating to your employee's illness or injury if you operate without workers' compensation insurance.

