



Workers' Comp

Do You Need Coverage for Family Members?

ONE QUESTION we get often from small business owners is whether they have to secure workers' comp coverage for family members that work for them. The short answer is "yes," in most cases.

Under California law, every employer in the state that uses employee labor, including family members, must secure workers' comp coverage, as per California Labor Code Section 3700. When we talk about family members we usually mean children, spouses, nieces, nephews, uncles, aunts, grandparents and cousins.

If you fail to include a working family member on your workers' comp policy, you could risk a fine, so it's wise to understand the regulations.

Scenarios

Your nephew helps at your business for a few hours a day – Under labor law he is considered an employee.

An "employee" is defined as someone you engage or permit to work. Even though

your nephew is part of your family, he is considered an employee and hence must be covered by workers' comp insurance in case he is injured on the job.

If the state finds out that you don't have the necessary workers' comp insurance, you could face serious consequences including fines (\$1,500 per employee or twice the amount you would have paid in insurance premiums, whichever is more), and even misdemeanor charges.

Also, if your nephew got hurt at the store, he (or his parents) could file a personal injury lawsuit against you if you don't have him covered on your policy.

You run a diner and your daughter works 25 hours a week in the kitchen – Your daughter would be considered an employee subject to workers' comp laws.

Additionally, she would not be able to be excluded on your workers' comp (unless of course she was an owner/officer, member or partner who owns at least 15% of the firm).

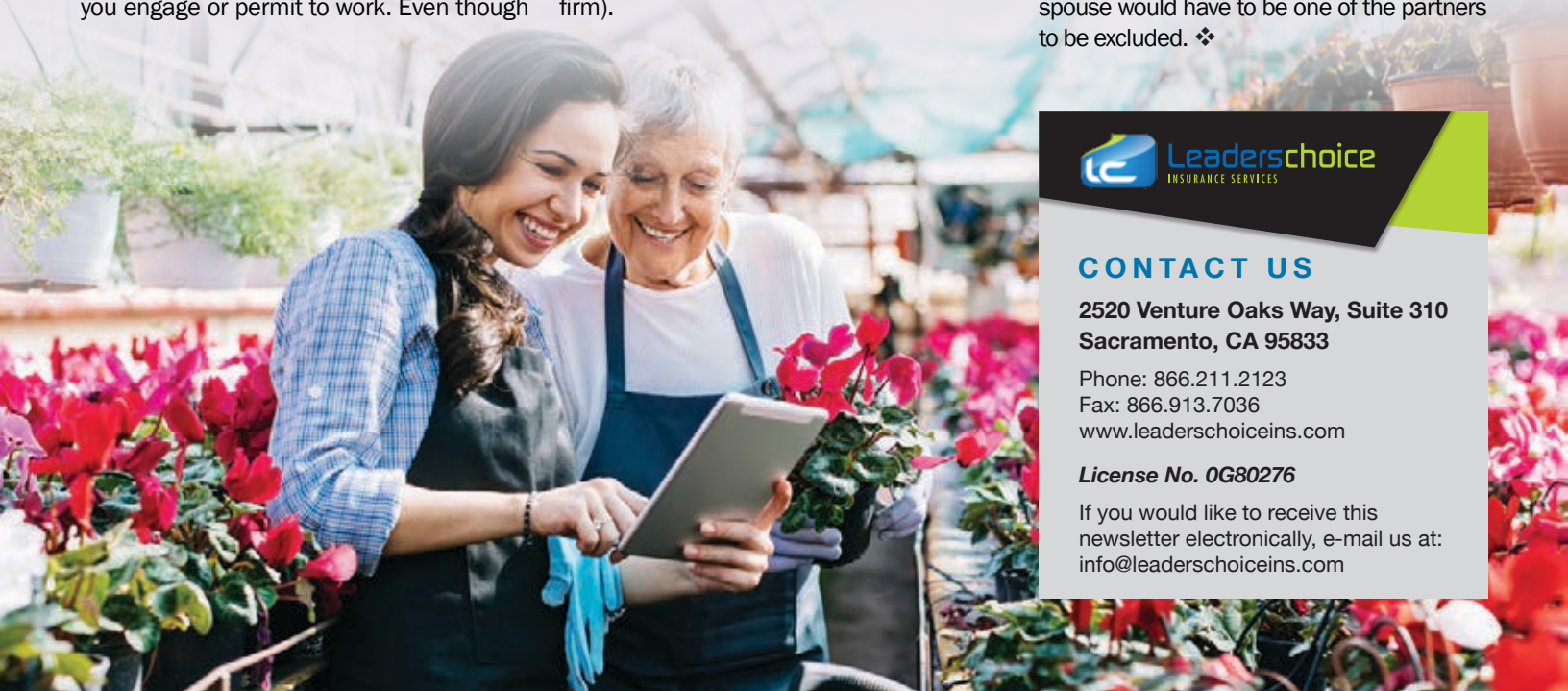
You have a small business and your husband helps out about 10 to 15 hours per week – Your workers' comp policy may not have to cover you and your husband.

But it could depend on whether your business is a sole proprietorship (which can be owned by a married couple in California), a partnership or a limited liability company.

If you are a married sole proprietor, in the state of California, typically your insurance company will consider your spouse a co-owner and exclude them without any question. But different insurance companies will handle this situation differently, so it's important to know how yours handles it.

If you're a corporation, LLC or partnership, your spouse cannot be excluded merely because he/she is your spouse. If you formed a corporation, your spouse would have to own shares and be a titled officer in the corporation in order to be excluded.

If you formed an LLC, your spouse would have to be a member of the LLC in order to be excluded. If you formed a partnership, your spouse would have to be one of the partners to be excluded. ❖



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Workplace Safety

Identify Risk-takers to Prevent Costly Injuries

SOME EMPLOYEES are happy to take chances when it comes to safety. They take needless risks in an effort to save time or cut their workload. In reality, all they're doing is subjecting themselves and others to hazards that could cause a serious injury.

Workers form bad habits when they repeatedly perform their jobs in an unsafe way and don't get injured. They become convinced that because of their skills they are incapable of being hurt. It's this attitude that usually ends up doing them in, because they take even more chances until eventually a serious accident does occur.

Unfortunately, that one accident can turn out to be fatal.

Typical risk-taking behavior

- Failing to follow proper job procedure
- Cleaning, oiling, adjusting or repairing equipment that is moving, electrically energized, or pressurized
- Using tools or equipment known to be unsafe
- Placing, mixing or combining tools and materials unsafely
- Failing to use available personal protective equipment such as gloves, goggles and hard hats
- Making safety devices inoperable
- Taking an unsafe position or posture
- Failing to wear safe personal attire
- Using equipment improperly
- Engaging in horseplay
- Operating or working at unsafe speeds
- Failing to secure or warn about hazards

Although OSHA does not cite employees for safety violations, each employee is obliged to comply with all applicable OSHA standards, rules, regulations and orders. Employee responsibilities and rights in states with their own occupational safety and health programs are generally the same as for workers in states covered by federal OSHA.

Nipping it in the bud

- Encourage open communication with staff about safety behavior.
- Emphasize the organization's values of workplace safety and prioritize safety over speed.
- Point out job hazards so that employees are aware of their present dangers.
- Enforce safety checklists so that employees do not skip steps during task completion.
- Discipline staff who purposefully break rules and take shortcuts.
- Remind experienced employees to maintain their diligence in following safety procedures and not become complacent.
- Empower employees to be accountable for their personal safety and that of their co-workers.
- Make sure all necessary PPE and other safety equipment is readily available.
- Encourage workers who see a colleague engaging in risk-taking to ask them to stop and tell the risk-taker that they are putting themselves and others in danger.



If a risk taker is identified, have a more seasoned and safe worker buddy up with them to find a safer way to perform the task. Remember, unsafe actions don't result in saving time if a worker gets injured in the process. ❖





Human Resources

Court Ruling Lowers the Bar for Harassment

JUST HOW far is too far in terms of employee harassment? Where does the line of indecency or rudeness end and liability for the employer start? Typically, teasing and occasional acts of verbal harassment have not been enough to move the needle.

But, a California Appeals Court has set a new standard by upholding a \$500,000 award against the California Department of Corrections and Rehabilitation for a correctional officer at a prison who had claimed disability harassment after being teased and mocked about his speech impediment at least a dozen times over a period of two years.

The trial court had deemed the jury award too large, so it had ordered a new trial based solely on that issue, but the plaintiff appealed and the appeals court reversed the lower court's order.

The significance of the case for employers is that even teasing and sporadic verbal harassment can be enough to create a hostile work environment and, hence, liability.

The plaintiff had evidence of harassment by one employee who mocked the plaintiff's stutter "five to 15 times" over more than two years. There was other, vague testimony that there was a "culture" at the prison of mocking the plaintiff's stutter.

Also, the prison management had failed to take adequate steps to deal with the problem, such as separating the employees.

The jury's verdict reflected a finding that the conduct was both severe and pervasive. While in the past it would not have been easy to establish legal liability based on the facts in this case, over the years, a cascade of legal precedents have made it easier to establish that there is a hostile work environment.

The takeaway

This ruling sets a new bar for what constitutes a hostile work environment. The best way for employers to not fall afoul of the law is to have a workplace anti-harassment policy in writing.

All of your staff should know and understand the policy and you should conduct training to ensure everyone understands what is considered harassment. But your training must be effective. To use the egregious action in this case, everyone knows that making fun of someone who stutters is wrong, especially in a workplace.

A strong training program should focus on the ramifications for perpetrators of harassing behavior, such as:

**Termination,
Salary cuts,
Unpaid leave, and
Bad references if they are seeking new employment later.**

Additionally, you should have a complaint mechanism that guarantees the complaining employee that they will not face disciplinary action for making a complaint against a co-worker or supervisors.

You need to ensure that you have buy-in from all of your management and that they and your human resources head take complaints seriously and investigate and enforce your in-house rules.

And if the harassment is serious enough and/or a harasser continues their behavior after being warned, management must be willing to take disciplinary action, including terminating the harasser's employment if need be. ❖



Property protection

Vacant Buildings Pose Risks, Insurance Challenges

THE AVERAGE vacancy rate for offices nationwide in the second quarter of 2018 was 12.2%, while 12.1% of retail spaces and 7.8% of industrial spaces were vacant, 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 more than 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. ❖

