



Weekly Roundup - February 10.

Insights

2.12.18

Legal Observations Based on This Week's News.

If you are involved in safety or risk management, especially in construction, you recognize that struck-by accidents are almost always among the top three causes of employee deaths. What you may not appreciate is that most struck-by deaths do not occur on road projects where a motorist hits a worker. Employees routinely lose their lives when a front end loader, Bobcat, dump truck, tractor-trailer backing to a dock, or forklift in a warehouse hits an employee. Employers should analyze their workplace for potential hazards such as:

- Areas near docks where employees may be walking or working near trailers;
- Dock areas and aisles and racks where forklifts and other PITs are operating;
- Construction worksites with constant dump truck traffic, many of which are independent contractors or owner operators of varying quality;
- Construction sites, especially where there are limited lay out yards, such as in major cities, where employees are exposed to operating equipment.
- Areas on manufacturing lines or around monorails, conveyors and robots.

This concern was borne out this week by the following article about [Struck-by Incidents Leading work-related deaths in North Carolina.](#)

OSHA may cite employers in and outside buildings under a number of Standards, such as 1910.176(a) where employees are allegedly exposed to hazards of forklift operation in warehouse or manufacturing areas. We often challenge these citations because there is no proof of actual hazards. Employer precautions include marked pedestrian walkways, signage, barriers and training. Robot-related citations often focus on Lock Out or are cited under 5(a)(1) if there is a genuinely recognized hazard and approach in the specific injury.

It's more challenging to develop protective methods for employees on foot in Ready Mix or construction sites or walking or working near docks or where tractor trailers are operating in a yard. Marked walkways may not be possible. Reflective vests are often at least one step, but probably not the only one. Struck bys can also arise in the manufacturing sector such as wear monorail ls and conveyors move components through an assembly plant.

Here is a Link to a 65 page [Focus 4 Instructors Manual on Construction Struck by Hazards](#). [Link to OSHA Poultry Plant wide Struck by Page](#). [OSHA Construction E Tool](#). [OSHA page on Unloading and Loading](#). [2015 FP Post on Struck bys](#).

Falls Remain a Problem. [A recent headline that NIOSH found that nearly half of all construction deaths were Fall-related](#) did not surprise anyone, but does again reinforce the need to continue emphasizing fall protection, and not just tying off, but also scaffolds, tethering tools, and other related issues.

Surprising Crane-related Death. No one knows many details but the industry-leading Manitowoc Cranes lost employees at an incident at a Pennsylvania site's test deck for a crane. My point is that if a solid, safety-conscious industry leader such as Manitowoc has such a tragic accident, NO employer using cranes should become complacent. This sad accident is a reason to have a Stand-down on Cranes.

Cal/OSHA Approves Hotel Housekeeper Safety Rules. Cal-OSHA voted 6-0 on Thursday, Jan. 18 to enact Section 3345, Hotel Housekeeping Musculoskeletal Injury Prevention. UNITE-HERE has pushed this measure as part of its ongoing efforts to unionize hospitality workers by emphasizing alleged safety hazards. Their intent is demonstrated by Pamela Vossen, Director of Worker Safety and Health for Unite Here: *"Overwhelmingly women, immigrants, and people of color, housekeepers face high rates of workplace injury. The state of California has recognized the seriousness of the dangers housekeepers face and took an important step to protect these workers."*

Under the new standard, hotels will be required to identify and reduce injury risks for workers, including providing proper tools such as long-handled mops or devices to help make beds. Hotel housekeepers will receive training on injury risks and have the right to suggest solutions to those risks, according to the new rules. While parts of the Rule may be appropriate and hazards are presented, employers would be wise to remember the underlying goals. Safety conscious employers should address hazards before the Rule takes effect.

Comments by [Benjamin Ebbink](#), who runs FP's Sacramento office, writes for our [California Employer's Blog](#), and [tweets excellent California legal and legislative news](#)

Sexual Harassment and Workplace Safety and Health. Both nationally and at the state level, there is a lot of legislative action around sexual harassment and employment. Historically, little focus has been placed on viewing this issue **as a workplace safety issue**. Fed-OSHA has traditionally been reluctant to address workplace violence via a 5(a)(1) approach without a more specific standard. 5(a)(1) citations require OSHA to prove that sexual harassment is a "recognized hazard" under the Fed-OSHA 5(a)(1) General Duty Clause. However, the debate may change based on the recent revelations of conduct constituting assault and battery and sexual assault.

Cal-OSHA is working on a [General Industry Workplace Violence Standard](#) to expand from its Healthcare workplace standard. The Cal-OSHA proposal would require all employers to develop a workplace violence prevention plan that identifies and mitigates hazards. Would an employee's

workplace violence prevention plan that identifies and mitigates hazards. Would an employee's sexual harassment claims (particularly claims that would rise to the level of sexual assault) be deemed a "recognized hazard" that would warrant employer activity and trigger citation exposure?

There has also been a flurry of activity around local ordinances and (at least in California) proposed statewide laws to require hotels to supply hotel workers with "panic buttons" to raise the alarm in situations involving sexual harassment or violence. That approach smacks of "personal protective equipment, PPE."

Automation/Robots. The increasing discussion of automation, robots, and the "future of work" warrants attention. The epicenter of the discussion seems to be out here in San Francisco and the Silicon Valley. A recent Bloomberg-BNA article addressed efforts by labor groups (in particular the Teamsters) to use local regulation and permitting to address the potential jobs and unionization. The article noted: *"Unions typically criticize automation as detrimental to fair wages and stable jobs, but the Teamsters' initiative in California reveals a nuanced attitude in favor toward the future of organized labor."*

It is also interesting to consider the potential impact of automation on the construction industry, which may not seem like a candidate for automation at first blush due to the labor-intensive nature of the industry. [A recent article in the Economist](#) laments low productivity in the construction industry, and mentions how new technology (such as digital "building information modeling") may improve efficiency. [An article from the AGC magazine *Constructor*](#) is a great read. It primarily discusses the use of drones, which are useful in aerial photography, surveying, data collection, and more. But the article also discusses robotics: *"New developments allow for robotic brick laying, painting and pipe crawling. Morris foresees the day when robotics will paint buildings or lay flooring when other trades leave for the day."* The article points out that robots do not necessarily replace people, but working with robots requires different skills, which may necessitate retraining current employees. The article even discusses 3D concrete printing!

One issue that may drive innovation in construction is the increasing and already serious worker shortage. We may see a push toward innovation and technology as a means to fill this gap, much as we have seen in fast food in response to Fair Wage efforts.