EMPLOYMENT LAW SUMMARY

New York - Providing a Reasonably Safe Workplace

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New York Labor Law Section 200 (Section 200) requires employers, general contractors, property owners and their agents to provide a reasonably safe place to work for workers. Section 200 is very broad and is usually applied to construction, but its application and coverage extends to any work that is performed in a worksite, building, facility or property.

Duty To Provide a Reasonably Safe Workplace

Section 200 requires employers, general contractors, property owners and their agents (employers) to provide a reasonably safe workplace. To protect the safety of all workers, employers must properly maintain and operate any on-site machinery or equipment and provide reasonable maintenance, guarding and lighting at the worksite.

The New York State Department of Labor (NYDOL) may inspect a worksite to assess compliance with Section 200 and may accept an OSHA violation as evidence of non-compliance. In addition, the NYDOL may inspect an employer's machinery, equipment and devices and label them as "dangerous" or "unsafe" it they pose a hazard to the health and safety of the workers or the public.

Employers are prohibited from using any dangerous or unsafe equipment until the defect or problem identified by the NYDOL is corrected and the NYDOL removes the hazard notice. The NYDOL usually re-inspects a worksite and checks for corrections 10 days after a hazard notice is issued.

Exclusions

Section 200's duty of care does not extend to hazards that are part of the very work that must be performed. This means that employers are not liable to workers who are injured while working to rectify the hazard they were hired to correct. For example, a property owner is not liable to a contractor's employee who is hurt when he or she falls down the stairs that he or she was hired to fix.

Similarly, employers are not liable to workers who are injured by an "open and obvious" condition.

Affected Employers

Section 200 applies to employers, general contractors, property owners and their agents. A property owner includes any person with an interest in the property and any person who fulfills the role of owner by contracting to have work performed on the property for his or her benefit. This definition includes anyone who may have leased the property but retains the right to control how the work is to be performed on the property.

New York courts have consistently held that an entity is subject to Section 200's duty of care if it exercises supervisory control over the work performed on the property. The courts have also clarified that merely monitoring the timing and quality of the work is not sufficient to establish control.

Protected parties

Section 200 was created to protect workers who may not be directly employed by the employer, general contractor or property owner that is in control of the worksite. The law was enacted to prevent employers from shielding themselves from liability by using intermediaries to hire workers.

Specifically, Section 200 protects all persons who are "employed" at the worksite and all individuals who "lawfully frequent" the worksite. The definition of "employed" and "lawfully frequent" are broad and include subcontractors, inspectors and other individuals who are invited to the premises to inspect or perform work. However, this definition does not include volunteers.

To be protected by Section 200, an individual must show that he or she was:

- Permitted or suffered to work on the premises; and
- Hired by the employer, general contractor, property owner or its agent to work there.

Injured workers may sue employers that violate the Section 200 duty of care. Once a violation is established, an injured worker is not required to prove fault. Instead, he or she must only prove that his or her injury was the direct result of a breach of duty under Section 200. To recover damages under Section 200, an injured worker must show that:

1. A dangerous condition was present at the worksite;
2. The dangerous condition was the proximate cause of the injury;
3. The employer had notice of the condition (this can be actual notice or constructive notice); and
4. The owner, contractor or employer supervised or controlled the work or the condition.

Court orders may require employers to compensate injured workers for:

- Lost Wages;
- Medical Expenses;
- Pain and suffering; and
- Any other damage, as the court may see fit.

More Information

Contact Heffernan Insurance Brokers for more information on New York employment laws.