

NASA's Wardrobe Malfunction Provides Valuable Reminder to Employers Back on Earth

Labor & Employment Law Update

By Suzannah Wilson Overholt on April 12, 2019

The first all-female spacewalk was planned for Friday, March 29, 2019. News outlets included the event in their coverage of women's history month and the strides women had made in male dominated industries. However, the Monday before the spacewalk NASA announced that only one female would be able to participate because NASA did not have enough properly configured spacesuits for two women. Attempting to modify an existing uniform in the time before the spacewalk would have involved some risk to the astronaut who wore it. While a spacewalk was completed, the team consisted of a male and female astronaut, not two females.

Events in space do not ordinarily trigger reminders of one of the most basic responsibilities and liability risks for employers – providing appropriate safety gear for their employees. However, the issue confronted by NASA was a very well publicized reminder to make sure to evaluate your workforce and ensure that you are providing appropriate safety gear.

Employers are obligated to protect their employees from workplace hazards that can cause injury. That obligation includes providing and maintaining appropriate personal protective equipment (PPE) under certain circumstances as well as providing appropriate training to employees regarding when PPE is necessary, how to don, doff, adjust and wear the PPE, the limitations of PPE, and the proper care and maintenance of the PPE.

According to the U.S. Bureau of Statistics, in 2016 women made up 51.7% of the U.S. workforce, and there is a growing number of women are in the construction and manufacturing sectors. However, concerns have been raised that required PPE is not always available for female workers in those fields. Common examples are ill-fitting work clothes, including flame resistant clothing, harnesses, eye protection, hard hats, and gloves. The Occupational Safety and Health Administration (OSHA) and National Association of Women in Construction have renewed their alliance, which includes educating construction companies on hazards of particular concern to women in the construction industry, including PPE selection, sanitation, and workplace intimidation and violence. That being said, this issue impacts all industries and sometimes in different ways. For example, the health care sector has traditionally had a higher number of women

workers. However, there are more men joining the health care sector workforce and so employers must take into consideration the different PPE considerations to ensure that there are appropriate sizes available for all employees, including the men.

The risks of not providing properly fitting PPE are twofold – the risk to the employee's safety and the risk of liability to the employer. The risks to the employee are fairly obvious – an employee may be injured to an ill-fitting safety harness, get debris in their eye due to poorly fitted eye protection, be injured if too loose of work clothing gets caught in equipment, or as occurred to NASA, the PPE could not be safely used. While for most employers these issues will not become front page news, there are still significant risks including OSHA complaints, citations and penalties, increased injuries and worker's compensation premiums, and liability under state and federal employment discrimination laws. Employers may also risk criminal charges – the Attorney General for Maine recently filed manslaughter charges against a contractor for the death of a roofer who allegedly fell because he was not wearing fall protection gear. Notably this was not the contractor's first violation.

Employers should minimize their risk by assessing the PPE that is offered to their employees, ensuring that the range of sizes that is available meets the needs of the workforce. They should also regularly assess their workplaces to ensure that the appropriate PPE is required and being provided.

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