

Talent Management Industry News

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Construction Safety Act Could Cost Illinois Consumers, Employers and Job-Seekers, Without Improving Safety

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A construction worker fails to perform his work properly, falls during the course of his duties and sustains injuries. He receives restitution through workers' compensation, but that is not the end of it. He still sues numerous businesses involved in the construction project for millions in damages, even though the accident was caused by his own neglect.

That distressing scenario could become a possibility if a new amendment is passed in the Illinois Legislature. An amendment to House Bill 2094 was filed on April 8, 2007, to create the Construction Safety Act that essentially would reinstate the Structural Work Act (SWA) repealed in 1995.

According to the **Alliance to Help Employment and Development (AHEAD)**, the passage of the Construction Safety Act would only bring back the problems inherent in SWA. The Alliance is composed of more than 30 different organizations opposed to the new legislation.

"Reinstatement of SWA is neither a safety issue nor a worker's right to compensation after injury issue," said Evan Williams, vice president of external relations for the Mechanical Contractors Association of Chicago, a member of AHEAD. "The SWA will only serve to increase costs on owners, consumers and contractors on all types of construction throughout Illinois."

Four Types of Trouble

According to AHEAD, problems inherent in the Construction Safety Act fall into four categories:

Threatens Illinois jobs: Reinstating SWA will increase construction costs, including insurance rates, and stifle private investment and public works projects, costing the state tax revenue, jobs and economic growth.

Costs to consumers: According to a study prepared by the Watson-Wyatt Group in 1998, it was conservatively estimated that SWA cost Illinois employers approximately \$170 million a year in insurance costs and the legal fees alone related to defending third-party suits. These costs are passed on to Illinois consumers.

Workers' right to sue already exists: Injured workers under current law have adequate remedies to pursue through Illinois' workers' compensation system, a no-fault remedy for workplace injuries and through common law in which workers may sue contractors for

negligence.

No increase in worker safety: The passage of the Occupational Safety and Health Act by Congress in 1970 ushered in a new era of jobsite safety, with detailed standards and effective methods of enforcement. According to the Illinois Workers' Compensation Commission, Illinois' overall worker-injury rate decreased 53 percent between 1991 and 2003. The state maintains the 10th-lowest injury rate in the country.

Examining the Structural Work Act: A Historical Perspective

Enacted in 1907, SWA provided legal protection to employees injured in falls from scaffolding. The 1911 enactment of the Illinois Workers' Compensation Law established a comprehensive employee compensation system for workplace injuries. Thus, workers' compensation was considered to have superseded SWA, and the act was dormant until the 1950s, when an Illinois court decision struck down a provision prohibiting third-party lawsuits.

From that point until the repeal of SWA in 1995, a worker could collect benefits under workers' compensation and then file suit under SWA, regardless of fault, against each party involved in the project, including owners, suppliers, contractors, subcontractors and designers.

In that same time period, the courts expanded the legal meaning of scaffold to cover almost anything on a construction site, including scaffolds, trenches, ladders, the floors of a building and even the building itself. "The expansion of the meaning of 'scaffold' expanded the number of cases that could be covered by the Structural Work Act," Williams said.

The 1995 repeal of SWA made Illinois like 48 other states that rely on workers' compensation laws to provide a single, no-fault means of recovery for workplace injuries. The 1995 repeal kept in place the ability of injured workers — even while recovering under workers' compensation — to sue defendants for damages, based on fault. Under SWA, even the most nominal contractors on a jobsite could be held liable for an award because SWA is interpreted as a "should have known" standard nearly impossible for many contractors to overcome.

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