

FACTS ABOUT THE STRUCTURAL WORK ACT

Q. What is the Structural Work Act?

A. The Structural Work Act (also known as the “Scaffold Act”) became law on June 3, 1907. Construction sites were far less safe then than they are now, and injured workers had very little recourse if injured. This act was a first attempt to provide *some* legal protection. As its name implies, it was primarily meant to apply to workers injured in falls from scaffolding.

Q. Don’t we want to protect workers on scaffolds!?

A. Of course! But on June 28, 1913, the Workers’ Compensation Acts came into effect. This legislation was intended to supercede the Scaffold Act by covering all types of injuries incurred on the job. Workers’ Compensation was designed as “no fault.” As long as the employer was paying into the system, the employee would receive benefits (without the need to go to court) and the employer had no additional liability.

Q. So what’s the problem?

A. Although the General Assembly clearly meant for Workers’ Compensation to replace the Structural Work Act, the Act was never actually repealed. In 1952, an Illinois court struck down that section of the Acts that prohibited third party lawsuits. From that point forward, until its repeal in 1995, a worker could collect under his employer’s Worker Compensation coverage, *then* sue the general contractor, every other sub-contractor on the job site, as well as the property owner and the architect!

Q. If the Structural Work Act only covered falling off a scaffold, how many cases could their be?!?

A. Unfortunately, between 1952 and 1995, the courts expanded the legal meaning of “scaffold” to cover almost anything on a construction site, including scaffolds, trenches, the building itself, the floors of buildings and ladders.

Q. Just how large was the impact of the Structural Work Act on Illinois businesses prior to its repeal?

A. In a study done by the Watson-Wyatt group in the 1998, it was *conservatively* estimated that SWA cost Illinois employers some \$170,000,000 a year *in insurance costs alone*. This does not count the cost of legal fees related to defending third – party suits (it can often cost an uninvolved party more than \$10,000 in legal fees just to be removed from the case). Moreover, it was widely known that many companies chose to locate in neighboring states rather than Illinois due to the additional insurance costs related to SWA – costing the State of Illinois tax revenue, jobs, and economic growth.

Q. Are there other states with a “Structural Work Act?”

A. One. New York. An article on the topic in Engineering News Record states, “Insurers have been cutting back or abandoning New York State contractors more rapidly than in other states because of state law dating back to the early 1900s that shifts all liability in “gravity – related” construction accidents to contractors, industry sources say.... As a result insurers continue to raise prices and sharply curtail coverage, say contractors.”

Q. Supporters of the Structural Work Act say that having it makes the job site safer. Is this true?

A. No! The number of construction-related fall deaths has fallen as a percentage of construction workers – see the chart above. Even though we had nearly 75,000 more construction workers in 2006 than in 1992, the number of fall-related deaths in 2006 was 14 compared to 20 in 1992 (U.S. Department of Labor, Bureau of Statistics). Moreover, Illinois’ overall worker injury rate decreased 53 percent between 1991 and 2003. In fact, Illinois has the 10th lowest injury rate in the country (Illinois Workers Compensation Commission, 2006 Annual Report).

Q. So what *does* make contractors concern themselves with safety?

A. Besides the fact that many employers came through the trades themselves, and are personal friends with their employees, there are two main “drivers” of concern for safety: government regulation; and the cost of insurance. Under OSHA, the Federal program to protect workers, contractors can not only be fined but actually go to prison for having unsafe working conditions. Under Workers’ Compensation, every employer has an Experience Modification Ratio (EMR) which is determined by the number of accidents reported by the employer’s employees in the previous three years. The EMR is considered a fairly accurate reflector of a company’s safety record, and is a major component of premium cost. 1.00 is considered “average.” Throughout the 1990’s, the average EMR of most companies has steadily dropped. In fact, in the Chicago area many large owners will not even allow a contractor to bid work if the contractor’s EMR is not *below* 1.00. Thus, there are very strong legal and economic incentives for a contractor to provide a safe working environment.

Q. But shouldn’t everyone have the right to go to court?

A. Repealing the Structural Work Act has *not* prevented the worker from going to court against other employers on the job site. It has simply made it necessary for the worker to establish liability, thus reducing the number of “fishing trips” wherein trial lawyers, because of the way SWA was written, would encourage the worker to sue everyone in sight.

Q. If the Structural Work Act was re-instated, what would be the probable effect on the construction industry?

A. It would be substantial—a contractor might well expect his or her general liability/umbrella insurance to go up by 20–30%, *if* carriers are willing to cover it! Not to mention increased insurance costs to general contractors and architects. But the point is that this cost has to be passed along to the owner! One 1998 estimate was that this could cost an individual building a new home in the Chicagoland area \$300 - \$400. And for a large company such as General Motors the cost could be in the hundreds of thousands of dollars. Indeed, prior to the repeal of the SWA, General Motors chose *not* to build their Saturn plant in Illinois, and one of the major factors was insurance costs. How many *more* potential jobs will be lost due to companies locating right across the border in Wisconsin or Indiana?

In summary, the Structural Work Act is a costly, unnecessary relic. If it is re-instated, Illinois would be one of two states in the union to have this anti-business, anti-jobs legislation with which to deal. Especially in this economic climate, Illinois cannot afford anything that would drive away potential jobs and tax revenue.