

Wisconsin Supreme Court Upholds Jury Verdict Against Company for Violating “Safe Place” Statute

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The Wisconsin Supreme Court recently upheld a \$6.9 million jury verdict against Pabst Brewing Company (“Pabst”) for compensatory and punitive damages stemming from on-the-job asbestos exposure. The case stemmed from a pipe steamfitter who developed mesothelioma from asbestos exposure over a period of many years. The plaintiff, Gerald Lorbiecki, was a steamfitter who replaced pipes at a variety of businesses in Wisconsin. In the late 1970’s, Lorbiecki worked for an outside contractor hired by Pabst to replace pipes in its brewing facilities which were covered with asbestos insulation. Pabst knew that the insulation contained asbestos and that exposure was dangerous. Pabst was found liable for failing to take the proper precautions to keep Lorbiecki safe.

WISCONSIN’S SAFE PLACE STATUTE

Even though Lorbiecki was not one of Pabst’s employees, Pabst was still found liable under Wisconsin’s Safe Place Statute. The Safe Place Statute contains broad protections for individuals who are present at a “place of employment” including employees of other contractors or independent contractors. Under the statute, all businesses owe an “ongoing duty to keep premises safe,” and even though Lorbiecki was not one of Pabst’s employees, under this law, Pabst still owed him this duty of care to keep him safe while he was replacing the pipes. The jury found that Pabst violated this duty by not sufficiently protecting Lorbiecki as he replaced the dangerous pipes despite Pabst’s knowledge of the danger.

KEY TAKEAWAYS

The heightened duty that an employer owes to individuals under the Safe Place Statute is significant, and an employer cannot waive or delegate its Safe Place obligations in a contract. However, employers might consider inserting clauses in their subcontracts or independent contractor contracts which confirm that the contractor has the requisite knowledge and equipment to safeguard against the risks associated with the scope of the work. This language won't remove all risk, but would give employers an additional potential defense. There may be other ways to avoid Safe Place liability as well when using outside contractors, but those issues are beyond the scope of this article.

If Lorbiecki were an employee of Pabst, worker's compensation would have been the exclusive remedy here, although violations of the Safe Place Statute might result in an additional 15% penalty under the worker's compensation system. However, because Lorbiecki was not a Pabst employee, he was not eligible for worker's compensation payments from Pabst and was able to sue Pabst in court directly. An employee of Pabst would not have been able to bring the same lawsuit and could only file a claim for worker's compensation.

CONCLUSION

This case serves as a good reminder that while using outside contractor relieves employers of certain responsibilities, not all legal risk is eliminated by virtue of that relationship alone. We encourage employers with questions to reach out to a member of Boardman Clark's [Labor & Employment Law Practice Group](#) with questions.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

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