

Bedbugs in the Workplace

By Kai W. McGintee, Esq. | November 30, 2010

While some New Englanders retreat south for the winter, the colder temperatures are not keeping bedbugs away. In fact, there has been a resurgence of bedbug infestations in the United States, including in Maine and New Hampshire. These tiny insects are also making their way into offices, retail stores, theaters and hotels, causing many employers to lose sleep over how to handle this problem. Employers may rest easier, however, if they understand the extent of their exposure and what to do if bedbugs invade their workplace.

Do Employers Have a Duty to Prevent Bedbugs in the Workplace?

There is no law that specifically addresses the issue of bedbugs. However, the Occupational Safety and Health Administration (“OSHA”) states that employers have a “general duty” to provide a safe workplace free from recognized hazards causing or likely to cause serious physical harm to employees. This duty could include providing a bedbug-free environment, as bedbug bites can not only cause skin irritation, but may also lead to secondary skin infections and psychological ailments. Further, the chemicals or powdered sprays used to eradicate bedbugs may also implicate safety regulations under OSHA.

In addition, if an employer is aware of a potential bedbug issue in the workplace (either because they have been found on the premises or in an employee’s home) and fails to take any steps to prevent their introduction or stop an infestation, then the employer may be held liable for negligence. Moreover, if an employee suffers bedbug bites at work and requires medical attention, it could serve as the basis for a workers’ compensation claim.

What Should Employers do to Prevent Bedbugs from Entering the Workplace?

Employers should first educate themselves and their employees about bedbugs generally and the measures that can be taken to prevent an outbreak. The Centers for Disease Control and Prevention (<http://www.cdc.gov/nceh/ehs/Topics/bedbugs.htm>) and the U.S. Environmental Protection Agency (<http://www.epa.gov/bedbugs>) offer extensive information on their websites about bedbugs, including how to prevent and get rid of them.

Employers should also require their employees to inform them if bedbugs are found in their places of residence. To prevent the introduction of bedbugs into the workplace, employers should also consider reviewing their cleaning procedures and asking employees who have experienced a bedbug infestation to stay home.

What Should Employers do if Bedbugs are Found in the Workplace?

If an employer becomes aware that bedbugs may have entered the workplace, the employer should take immediate measures to cleanse the workplace and prevent further infestation.

Employers may prevent the spread of bedbugs by hiring a pest control agency or outside cleaning company. Certain industries, such as hotel and health care industry employers, have a higher duty of care in investigating and responding to bedbugs. Accordingly, employers in those industries should consider implementing protective measures for employees with cleaning duties and ensure that laundering processes prevent the existence and spread of bedbugs.

If employees report a bedbug infestation in their place of residence, employers may ask them to stay home. Employees that are exempt under the Fair Labor Standards Act (FLSA), however, must be paid for any absence of less than a full week of work. Further, employees who miss work due to a bedbug infestation at work or suffer a bedbug bite at work may be eligible for workers' compensation benefits. Such employees may also be entitled to a leave of absence from work under the Family and Medical Leave Act, applicable state leave laws or company leave policies.

Most importantly, if bedbugs are found in the workplace, employers should be forthright and transparent with their employees about the risks of exposure. Employers are also strongly encouraged to contact legal counsel should they wake up to a bedbug problem in their workplace.

For more information or assistance, please feel free to contact Kai W. McGintee (kmcgintee@bernsteinshur.com, 207-774-1200) or Matthew Tarasevich (mtarasevich@bernsteinshur.com, 207 774-1200) in our Portland, Maine office; Karen Aframe (kaframe@bernsteinshur.com, 603-623-8700) in our Manchester, NH office; or any member of Bernstein Shur's Labor and Employment Group.