

Focus | Entertainment, Art & Sports Law

Understanding On-Set Safety Requirements in Texas

BY RYAN K. MCCOMBER

The tragic death on the “Rust” set highlights the many dangers involved with working on a film and TV production set. In addition to typical workplace safety concerns, film and TV productions often face additional safety challenges due to extreme stunts, pyrotechnics, and strict time constraints, which only amplify the potential risk of serious injury and death on-set.

If filming in Texas, those involved in the film or TV production should be aware of the legal requirements and industry standards for on-set safety to ensure that they follow the law and provide the safest possible work environment for their cast and crew.

Workers’ Compensation Insurance

As an initial matter, the law applicable to on-set safety in Texas can vary depending on whether the film or TV production company elects to provide workers’ compensation insurance to its employees. Workers’ compensation is a state-regulated insurance program that generally provides benefits to workers who become injured or ill on the job. Unlike other states, Texas does not require most private employers to have such insurance coverage, and those employers are referred to as non-subscribers.

Importantly, non-subscribers lose several legal protections, including certain immunity from lawsuits by employees injured on-set. Production companies may also be forced to pay damages if an injured employee proves negligence in a subsequent lawsuit. However, if a production

company has workers’ compensation coverage, Texas law generally limits its liability for on-set injuries. While injured employees may get medical and income benefits set by Texas law, they generally may not sue the production company for such injuries.

Non-subscriber production companies in Texas are also subject to additional safety reporting requirements. Non-subscribers with five or more employees must report to the Texas Division of Workers’ Compensation each work-related fatality, occupational disease, and injury that results in more than one day of lost time.

OSHA Standards

Second, the Federal Occupational Health and Safety Act (OSHA) also mandates specific federal safety standards and reporting requirements for sets in Texas. However, unlike other film and TV production hubs, like California, Texas does not have its own OSHA program with specific film and TV production requirements. Therefore, Texas is under general federal OSHA jurisdiction, which covers most private-sector workers in Texas.

OSHA requires that film and TV sets in Texas be free of known health and safety hazards. The OSHA Agency also has many specific standards that can impact on-set safety, including standards for fall, noise, respiratory, eye, and face protection. Employees on a film or TV production set in Texas also have the right to confidentially report unsafe or “unhealthful” working conditions and can ask the Occupational Safety and Health Administration to inspect the production set. Moreover, it is illegal for a production company to retaliate against an employee who exercises their legal rights

under OSHA, and an employee can file a whistleblower complaint for such retaliation.

OSHA has also enacted additional reporting requirements for injuries in film and TV productions. OSHA now requires all accidents resulting in a hospital trip to be reported. Under older OSHA requirements, only deaths and multiple injury accidents had to be reported. Additionally, OSHA now recommends, but does not mandate, that film and TV production sets have written safety plans setting forth applicable safety and reporting requirements on-set.

Additional Production Insurance Requirements

Third, industry standards require that film and TV production sets in Texas obtain general liability insurance coverage for property and casualty events that might occur on-set, including accidents resulting in personal injuries. Texas also recommends that production companies obtain such coverage, but whether

coverage is required depends on the set location. For example, insurance is always required in Texas to obtain a permit to film on any public property, but insurance is not needed for filming on private property. To the extent a production company wants to film on Texas public property, the state also requires minimum coverage amounts.

Lastly, in addition to the foregoing Texas regulations and industry standards, film and TV productions in Texas may also have additional on-set safety requirements if the production involves unionized casts and production crews—which is typical for all Texas productions. Therefore, those involved in film and TV productions in Texas should take steps to understand the legal requirements and industry standards in Texas, as well as union-specific requirements, to ensure that they follow the law and are providing the safest possible work environment on set. **HN**

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