

Loss Control Bulletin

California Labor Laws require employers to provide safe working conditions for their employees. At the same time, employees are expected to comply with safety regulations in the performance of their work. Failure to comply with safety requirements or to provide safe working conditions may result in injury and a claim of Serious and Willful Misconduct against the person responsible for the injury.

If it can be shown that the injury was, in fact, caused by the Serious and Willful Misconduct of the employer or employee, severe penalties may be imposed. The monetary costs of penalties cannot be covered by insurance.

What is Serious and Willful Misconduct?

Serious and Willful Misconduct by the employer is conduct which causes injury to an employee and which the employer either knew, or should have known, would be likely to jeopardize the safety of an employee. Serious and Willful Misconduct by an employee consists of the deliberate and intentional violation of a known order, rule or law designed for the express purpose of preventing accidents in which violation results in injury.

In order to support a finding that an employer's violation of a safety order constitutes Serious and Willful Misconduct, the Workers' Compensation Appeals Board must find that a safety order and the conditions making it applicable were known to a particular person representing the employer, who violated the order in a specific manner that proximately caused the injury or death of an employee. [Cal. Lab. Code §4553.1]

Whose Conduct is Charged Against the Employer?

In the case of a partnership, the Serious and Willful Misconduct must be on the part of one of the partners, a managing representative, or a general superintendent.

If the employer is a corporation, the Serious and Willful Misconduct must be that of an executive, managing officer, or a general superintendent.

In the case of a proprietorship, the Serious and Willful Misconduct must be on the part of the employer or his managing representative.

Usually, the charge is directed against an authorized person in the above categories who is in immediate charge of the work being done at the time of the injury.

What are the Penalties?

If an **employer** is found guilty of Serious and Willful Misconduct, the amount of compensation otherwise recoverable for the injury shall be increased by one half. A California appellate court has ruled that the calculation is to be based on the entire award that includes non-indemnity benefits. The employee is also entitled to costs and expenses not exceeding two hundred fifty dollars (\$250).

Upon determination by the appeals board, an **employee** who is found guilty of a Serious and Willful Misconduct, shall have the compensation otherwise payable reduced by one-half except:

- a. Where the injury results in death.
- b. Where the injury results in a permanent disability of 70 percent or more.
- c. Where the injury is caused by the failure of the employer to comply with any provision of law, or any safety order relating to the safety of places of employment.
- d. Where the injured employee is under 16 years of age at the time of injury.

Who pays this extra compensation if the employer is guilty?

The employer is required to pay any additional compensation awarded by the Workers' Compensation Appeals Board as a result of Serious and Willful Misconduct.

By law, an insurer cannot provide insurance coverage for the extra liability nor is the insurer permitted to pay any resulting award on the issue of Serious and Willful Misconduct.

The penalties described in this bulletin are in addition to any penalties that may be assessed on the employer by CAL-OSHA for violations of safety regulations.

For additional information refer to "Workers' Compensation Laws of California" sections 4551-4558 or follow this webpage link:

<http://www.leginfo.ca.gov>

The guidelines provided in this bulletin are only intended to provide an overview of some of the more important steps that can be taken by management to establish a safe workplace. The guidelines are not considered exhaustive of all measures and controls that can be implemented by management to address all potential loss or injury producing causes. Ultimately it is the responsibility of management to take the necessary steps to provide for employee and customer safety. It is not intended as an offer to write insurance for such conditions or exposures. The liability of Republic Indemnity Company of America and its affiliated insurers is limited to the terms, limits and conditions of the insurance policies underwritten by any of them. © 2022 Republic Indemnity of America, 4500 Park Granada, Suite 300, Calabasas, CA 91302.