

**Loss Control Bulletin**

Legislation was passed to remedy the difficulty that Cal-OSHA inspectors experienced in defending serious safety and health citations against state employers at Appeals Board hearings. Citations classified as serious were frequently invalidated whenever an Appeals Board rejected the testimony of a Cal-OSHA inspector on the grounds that the inspector lacked sufficient expertise or competent training on the hazards addressed in the citation or when OSHA failed to prove that there was substantial probability of death or serious injury occurring due to the hazard created by the violation. The overall low rate of Cal-OSHA's serious citations and the frequency of Appeals Board rejections of such citations raised concern at Fed-OSHA about the overall effectiveness of California's OSHA program.

**What did the legislation do?**

Made significant revisions to the legal standard in the California Labor Code Section 6432 defining a serious violation by:

- Reducing the burden of proof required from one that required establishment that the hazard of the violation created "a substantial probability" of death or serious injury to one that requires establishment that the actual hazard created a "realistic possibility" of a death or serious physical harm.
- Expands the definition of a serious injury to include:
  - any injury that results in hospitalization for other than observation for any duration of time, eliminating the previous 24-hour duration requirement,
  - a second category of injury resulting in "impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job".

For purposes of testifying at Appeals Board hearings, Cal-OSHA's inspectors and industrial hygienists who can demonstrate their training is up-to-date with respect to the subject matter of the citation.

- Establishes requirements that must be considered before an OSHA inspector issues a serious citation against an employer.
- Encourages discussion between the employer and OSHA inspector as to whether the employer took the necessary precautions to identify workplace hazards and provided needed training to its employees.
- Provides employers with an opportunity to avoid a serious citation by demonstrating that their IIPP is effective in identifying hazards, providing appropriate training, and management enforcement of safety rules and procedures.

**The effects on employers could be significant and include:**

- Increased likelihood of receiving a serious citation where an employer's IIPP is found to be inadequate to address workplace hazards or ineffectively implemented by management.
- Makes it easier and more likely that a serious citation and major fines associated with the citation will be upheld without reductions.
- Higher cost penalty citations being sustained in the appeals process
- Increased focus by Cal-OSHA on the adequacy and implementation of Injury and Illness Prevention Programs to include efforts made to:
  - identify and establish control of workplace hazards
  - provide appropriate training to employees and supervisors
  - enforce compliance to safety rules and procedures
  - investigate accidents and implement corrective measures



## Serious Violations - California Labor Code 6432

(Note: Employers need to be aware that fines up to \$25,000 can be assessed per serious violations. General and regulatory violation fines can be assessed at up to \$7,000 per violation. In addition, penalties of not less than \$5,000 nor more than \$70,000 can be assessed against an employer who willfully violates any occupational safety and health standard. )

**What employers should do....** Employers are advised to review their IIPP and make sure their program...

- is continually kept updated and addresses new and existing hazards inherent in operations, and any hazard their employees could be reasonably expected to be exposed to during the workday,
- protocols have been communicated to all employees and are consistently followed by all and enforced by supervisory staff,
- is implemented as written or as revised,
- includes effective and consistent enforcement of disciplinary procedures,
- includes documented safety training for supervisors and employees that address both general and specific hazards that could be reasonably expected in the workplace,
- assures that accidents are promptly investigated, and appropriate prevention measures are implemented,
- includes an effective means for employees to report safety hazards or unsafe practices or procedures.

If you need assistance in implementing an effective Injury and Illness Prevention Program, please contact your nearest Republic Indemnity office and ask to be connected to our Loss Prevention Department.

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.