

Workers Compensation Webinar: The Ins and Outs of CalOSHA

Key Takeaways:

- Cal-OSHA is NOT your friend; they are in the business of issuing citations and collecting revenue
- Therefore, do NOT take them up on any offers to mitigate, downgrade, etc.; do not admit anything to them; and absolutely do NOT sign anything
- If issued a citation, thank the Investigator politely and advise them that you will refer the matter to your counsel, who will respond timely and appropriately on your behalf – END OF STORY
- Do NOT preclude your attorney's opportunity to invoke tenable affirmative defenses that might otherwise apply (e.g., not my employee) by making admissions that could destroy the affirmative defenses
- Your counsel cannot “un-ring” a bell; therefore, it is important that you NOT answer questions and that you do NOT admit anything to Cal-OSHA; your attorneys will do so for you
- Your Broker is your BEST FRIEND; involve him or her early and often; he or she can then get counsel involved, as necessary

Q&A Response:

1. How do the Cal-OSHA regulations apply to temporary employees on an employer's premises?

This constitutes a “dual-employer” situation wherein BOTH the Primary Employer (i.e., Temp Agency) and the Host Employer (i.e., employer utilizing temps) must take steps to protect the temporary employees from safety and health hazards and BOTH must comply with Cal-OSHA regulations (https://www.dir.ca.gov/dosh/dosh_publications/Protecting-Temp-Agency-Employees-fs.pdf). An Employer of a temporary employee is still responsible for the worksite. Temporary employees all must be brought up to date with Safety Standards on Day One once they start working. Incidentally, temporary employees also tend to be a large source of Cal-OSHA incidents. However, if they come with some certifications such as “Forklift Certification,” or “Heavy Machinery Certification,” this may provide a Safe Harbor affirmative defense.

2. Does an employer have to report someone who dies on the job site from a non-industrial condition like a stroke or heart attack?

Yes. If someone at the workplace from other causes such as heart attack, suicide, or homicide, it must be reported. Rarely is the determination of the cause of death instant to that moment. Therefore, the Best Practices would be to report to Cal-OSHA where there is even the slightest possibility the injury might and/or could be work-related (e.g., could a slick Applicant's Attorney make a colorable argument that the stroke and/or heart attack occurred in the act of employment and/or in the course and scope of employment ("AOE / COE") (e.g., as a result of alleged overexertion in performing regular duties)?).

3. Are you saying whenever an ambulance is called to the work site, the employee should notify CalOSHA? What if the incident is not work-related, i.e., appendicitis?

Not always. If a person has a clear issue, e.g., pregnancy, stress reaction, or an obvious non-industrial condition, then no. However, if it's a Judgement call, the first responders will inform Cal-OSHA and then Cal-OSHA may issue a Citation. So, if there is even the slightest possibility the injury might and/or could be work-related, the Best Practices would be to self-report to Cal-OSHA.

4. Do you need to notify CalOSHA if an employee was not seriously injured but was transported to the hospital via paramedic? The employee was not hospitalized but received stitches.

This is a "wobbler" because "not seriously injured" is relative and again, this is a judgment call. What part of the employee's body was injured? How MANY stitches were required? With obviously small lacerations and/or light, minor orthopedic issues, the answer would be no. However, again, when in doubt, the Best Practices would be to self-report in order to avoid allegations of a Failure to Report and potential Serious & Willful ("S & W") allegations should the employee opt to file a Claim for Workers' Compensation benefits. Note that the General Rule RE: no duty to report is changed if the injured employee is admitted to, and spends more than one (1) night in, the hospital.