

## **Don't Be Late or Pay \$5000: New Cal/OSHA Case Law Says \$5000 is the Mandatory Penalty for Failure to Report Serious Injuries**

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California employers must report all fatalities and serious injuries to the closest office of Cal/OSHA within 8 hours. The deadline can be extended to 24 hours if the employer can show “exigent circumstances” or a good reason for the delay. This reporting requirement is in Section 342 of Title 8, California Code of Regulations.

What is a serious injury? A serious injury in California is defined as loss of a body part, serious permanent disfigurement, or hospitalization for more than 24 hours for other than medical observation.

Who must report? All employers with an employee who has a serious injury must report the injury as soon as possible, but no later than 8 hours. Public agency emergency responders, such as ambulance or fire departments, must also report. If an emergency responder reports the injury, the employer must also report the injury.

What is the penalty? \$5,000

Why is there this requirement? The original intent of the regulation is to allow Cal/OSHA to make a prompt investigation of a serious injury or fatality.

### **2013 Changes**

The big change in 2013 is a series of recent rulings by the Cal/OSHA Appeals Board on Section 342 violations. There will now be no exceptions to the \$5,000 penalty for employers who fail to report serious incidents at all. The only exception is where the penalty would be a “miscarriage of justice,” although this is not defined.

Penalty reductions may be granted where the employer reported the incident, but missed the 8-hour deadline. Cal/OSHA Appeals Board administrative law judges will modify penalties based only on the size of the employer, Cal/OSHA citation history and good faith.

How does Cal/OSHA evaluate good faith? An employer's good faith is evaluated by assessing:

- 1 Overall evaluation of safety and health program;
- 2 Degree of cooperation with compliance personnel;
- 3 Genuine effort to comply with Title 8 safety orders, including Injury and Illness Prevention Program (IIPP) program requirements;
- 4 Effectiveness of communication with employees about workplace safety and health matters; and
- 5 Resolve to correct any hazards which were identified during an inspection.

Ask yourself: How do I think a Cal/OSHA inspector would answer these questions about my workplace?

Cal/OSHA judges will determine whether or not the employer exercised due diligence in the investigation of a serious injury. Due diligence includes going to the hospital with the injured employee, calling the emergency medical provider/ambulance to determine the hospital to which they were transported, contacting the injured employees family or calling emergency medical facilities in the area.

What happens if you later find out that an injury was serious, but you missed the 8-hour reporting deadline? Report it immediately upon finding out about the injury. There is a possibility for a reduction of the potential \$5,000 penalty.

If you have a fatality or serious injury, consider these points:

- Report fatalities and serious injuries within the 8-hour timeline.
- If you are not certain whether the injury could become serious, report it within 8 hours.
- If the employee is in the hospital, report it.
- If it looks like the injury might get worse and become serious, report it.
- Report a serious injury even if it may be a Penal Code violation or occurs on a public street or highway. If a report is refused for these reasons, note in your file the time, date and who made this determination.
- Report the injury to the CLOSEST Cal/OSHA office. Find the closest office on the Cal/OSHA poster or online at <http://www.dir.ca.gov/dosh/DistrictOffices.htm>.
- Note the date, time and who you talked to in your file.
- If you have not completed your injury investigation, do not speculate or guess.
- Do not lie, hide or withhold details.
- If you do not know the answers to the questions, state that your investigation is continuing and you don't know the answer at the time.
- The 8 hour timeframe includes nights and weekends. There is an answering service for non-business hours. Do not wait until Monday to report an injury that occurred Friday.
- Expect that the injury report will generate an inspection (although not always).

Maintain an effective injury and illness prevention program including injury reporting systems and incident investigations. If you have a serious injury, take care of your employee. Then take immediate action to investigate the incident as well as address potential regulatory and legal involvement.

### **References:**

8CCR342 Reporting Work-Connected Fatalities and Serious Injuries <http://www.dir.ca.gov/title8/342.html>

8CCR330(h) "Serious injury or illness" means any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by the commission of a Penal Code violation, except the violation of Section 385 of the Penal Code, or an accident on a public street or highway.

<http://www.dir.ca.gov/title8/330.html>

Cal-OSHA Reporter, Appeals Board Says \$5,000 Penalty Is Mandatory for Failure to Report Violations, January 11, 2013