

Court Says Cal/OSHA Standards Are Now Admissible in Third-Party Lawsuits

Fallout from the controversial AB1127 (passed into law in 2000), the Assembly bill that revamped upwards fines and penalties for Title 8 Safety Code violations, codified the Multi-Employer rule which exposes contractors to subcontractor violation fines and penalties, and with somewhat vague language permitted the use of Title 8 regulations in employee-employer lawsuits.

A California Court of Appeal in Sacramento has set up a showdown in the state Supreme Court by ruling that changes to the Labor Code from AB 1127 make Cal/OSHA standards admissible in lawsuits between workers and third parties.

Last year, another appellate district made the exact opposite ruling.

In the latest verdict, the Third Appellate District ruled in *Gradle (an employee) v. Doppelmayr USA* (a manufacturer of equipment that was being used at the time of an accident, not the employees employer) that under amendments to Labor Code §6304.5, mandated by AB 1127, "evidence of Cal/OSHA standards are now admissible to establish negligence" by third parties, except the State.

Labor Code §6304.5 as amended by AB 1127, states: "It is the intent of the Legislature that the provisions of this division, and the occupational safety and health standards and orders promulgated under this code, *are applicable to proceedings against employers* for the exclusive purpose of maintaining and enforcing employee safety.

"Neither the issuance of, or failure to issue, a citation by the division shall have any application to, nor be considered in, nor be admissible to, evidence in any personal injury or wrongful death action, except as between an employee and his or her own employer.

"Sections 452 and 669 of the Evidence Code shall apply to this division and to occupational safety and health standards adopted under this division in the same manner as any other statute, ordinance, or regulation."

The appellate court noted that the first paragraph was changed by 1127 from "shall only be applicable" to the less restrictive "*are applicable.*" The court agreed that "the first sentence does not require the exclusion of Cal/OSHA standards in third party cases. Interpreting §6304.5, the court said, "By limiting the admissibility only of the issuance of or failure to issue citations to employee/employer actions, this provision suggests that other evidence of Cal/ OSHA standards are admissible in a broader array of cases."

The wording of the third paragraph suggests "there is no express limitation on the type of cases or parties to which these Evidence Code provisions may apply," the court ruled.

"Read alone, this provision strongly supports admission of Cal/OSHA standards in any case, provided the requirements of Evidence Code sections 459 or 669 are met." Those sections apply only in cases when the defendant is not the employer, because of the exclusive remedy provisions of the workers' compensation laws. "Cal/OSHA regulations are now admissible in third-party lawsuits," except against the state. Accepting the defendants' interpretation of the Labor Code would be ironic, it added: It would result in a rule that permits admission of the standards against injured employees, but not in their favor.

This new ruling, if it makes it through California's liberal Supreme Court and its my bet that it will, may expose manufacturers of tools, equipment, material and just about anything else to negligence lawsuits based on non-compliance with California's safety

regulations. How about General Contractors and project owners? Time to call your attorney and the politicians again.

For a copy of the original AB1127 as passed into law contact Ron Strathman at Quantum Risk Management – 619 523-4859 or by email at info@qrmonline.com.