

## Manager/Supervisor Risk Management

#124– 1/31/13

A twice weekly e-mail training for YCPARMIA members

TOPIC: SAFETY – Cal/OSHA APPEALS PROCESS

The Cal/OSHA inspection is over, violations have been discovered, and the entity is anticipating citations – we are in damage control mode. A citation generally has two impacts: a penalty, and a reasonable time for abatement or correction. The penalty for general and serious violations is reduced by 50% on the presumption that the employer will correct the violations by the abatement date; failure to abate in a timely manner will result in a revocation of the credit, and return the penalty to the full amount. It is therefore imperative that the entity immediately address and remedy the basis for the alleged violation.

Adjustments to proposed penalties can be made by Cal/OSHA based on:

- the size (less than 100 employees),
- history (3 years), and
- good faith of the employer. Good faith can be demonstrated by:
  - cooperation during the inspection – this is a question of attitude and being perceived as not trying to hide or minimize problems;
  - genuine effort to comply with safety orders and IIPP requirements – having the IIPP and training records is essential;
  - effective communications with employees on workplace safety and health – generally an active safety committee with evidence of interaction with upper management;
  - Resolve to correct hazards identified during the walk around – fixing the simple things while the inspector is still there is a plus;
  - Use of personal protective equipment – evidencing an ongoing commitment to a safety culture.
  - A safety and health program evaluation – a service offered by Cal/OSHA.

The employer has 15 days from the receipt of the citation to file a notice of appeal with the Occupational Safety and Health Appeals Board on issues involving the violation, penalty and/or abatement contained in the citation. While there is an option to informally resolve the issues early, the appeal will be decided by an administrative law judge, again with an option for further appeal to Superior Court.

As published reports suggest that reductions are common, it is apparent that cooperation during the inspection and the ability to document a pre-existing commitment to safety will mitigate the entity's exposure to penalties. It is important to keep the inspection in context; most public entity inspections are triggered by employee complaints, so the safety culture has already been brought into issue.

A final note: Except for the size of the company, penalties for serious violations are not reduced when an employer's IIPP is not operative.

Next topic: Safety -- IIPP