

§334. Classification of Violations and Definitions.

For purposes of penalty assessments, violations of occupational safety and health standards, violations of California Health and Safety Code Sections 2950 and 25910, orders, special orders and regulations are classified as follows:

(a) Regulatory Violation--is a violation, other than one defined as Serious or General that pertains to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute. For example, failure to obtain permit; failure to post citation, poster; failure to keep required records; failure to report industrial accidents, etc.

(b) General Violation--is a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees.

(c) Serious Violation.

(1) A "serious violation" shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a violation, including, but not limited to, circumstances where there is a substantial probability that either of the following could result in death or great bodily injury:

(A) A serious exposure exceeding an established permissible exposure limit or

(B) A condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in the place of employment.

(2) Notwithstanding subsection (c)(1), a serious violation shall not be deemed to exist if the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) As used in subsection (c)(1), "substantial probability" refers not to the probability that an accident or exposure will occur as a result of the violation, but rather to the probability that death or serious physical harm will result assuming an accident or exposure occurs as a result of the violation.

(4) For Carcinogens--is a violation of any standard, order, or special order respecting the use of a carcinogen, as defined in 8 California Code of Regulations 330(f). However, the violation shall not be considered serious if the employer can demonstrate that he did not, and could not with the exercise of reasonable diligence, know of the presence of the violation or he can demonstrate that the Division should have determined that the violation was minor and resulted in no substantial health hazard.

(d) Repeat Violation

~~(1) General--is a violation where the employer has corrected, or indicated correction of, an earlier violation, for which a citation was issued, and, upon a later inspection, is found to have committed the same violation the Division finds the same, or substantially-similar violation, hazard, or condition again within a period of ~~three~~ five years immediately following the latest of: (1) the date of the final order affirming the existence of the previous violation, hazard or condition; (2) the date on which the underlying citation becomes final by operation of law; or (3) the date of final abatement of the underlying citation. For the purpose of considering whether a violation is repeated, a repeat violation will be based on prior violations cited within the State, preceding the latter violation. For the purpose of considering whether a violation is repeated, a repeat citation issued to employers having fixed establishments (e.g., factories, terminals, stores . . .) will be limited to the cited establishment; for employers engaged in businesses having no fixed establishments (e.g., construction, painting, excavation . . .) a repeat violation will be based on prior violations cited within the same Region of the Division.~~

~~(2) Field Sanitation Violations--Is a violation of the State Field Sanitation Standard, currently set forth in 8 CCR 3457, or of the Federal Field Sanitation Standard, currently set forth in 29 CFR 1928.110, where the employer has corrected, or indicated correction of an earlier violation, for which a citation was issued, and upon a later inspection is found to have committed the same violation within a period of five years immediately preceding the latter violation. For the purpose of considering whether a violation is repeated, a repeat violation will be based on prior violations cited within the State.~~

(e) Willful Violation--is a violation where evidence shows that the employer committed an intentional and knowing, as contrasted with inadvertent, violation, and the employer is conscious of the fact that what he is doing constitutes a violation of a safety law; or, even though the employer was not consciously violating a safety law, he was aware that an unsafe or hazardous condition existed and made no reasonable effort to eliminate the condition.

(f) Abatement Date--is the date by which the employer is allowed and required to correct the condition constituting the violation.

NOTE

Authority cited: Sections 54, 55 and 6319, Labor Code. Reference: Sections 6302(i), 6319, 6432 and 6712, Labor Code; and Sections 2950 and 25910, Health and Safety Code.

HISTORY

1. Amendment of subsection (c)(2) filed 2-28-79; effective thirtieth day thereafter (Register 79, No. 9). For prior history, see Registers 75, No. 10, 77, No. 1 and 77, No. 18.

2. Amendment of introductory paragraph and subsection (a) filed 12-28-84; effective thirtieth day thereafter (Register 84, No. 52).

3. Amendment of subsection (c) filed 9-19-85; effective thirtieth day thereafter (Register 85, No. 38).
4. Amendment of subsection (c) filed 1-15-87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 3).
5. Amendment of newly designated subsection (d)(1), new subsection (d)(2) and amendment of Note filed 7-30-96; operative 8-29-96 (Register 96, No. 31).
6. Amendment filed 12-16-99 as an emergency; operative 1-1-2000 pursuant to Government Code section 11343.4(c) (Register 99, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 12-16-99 order transmitted to OAL 4-13-2000 and filed 5-11-2000 (Register 2000, No. 19).
8. Change without regulatory effect repealing subsection (d)(3) designator filed 7-10-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 28).