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# NEWSALERT

Cal/OSHA Penalties

## Proposed Rules Take Aim at ‘Egregious’ Violators

**C**AL/OSHA is working on new rules that would crack down on and step up enforcement and penalties against California employers that commit “egregious” and “enterprise-wide” workplace safety violations.

To enforce the impending rules, the agency is ramping up hiring of investigators to identify egregious violators and to refer more employers for criminal prosecution. The forthcoming rules would impose substantial penalties on companies that have shown a disregard towards California workplace safety regulations and the wellbeing of their employees.

Employers that are cited for egregious violations could be fined up to \$158,000 “per instance,” meaning it can be applied for each employee exposed to the violation.

Here’s what’s on tap:

### Enterprise-wide violation

Under the proposed rules, a violation is enterprise-wide if an employer has multiple worksites and either of the following is true:

- The employer has a written policy or procedure that violates occupational safety and health regulations; or
- The Division of Occupational Safety and Health has evidence of a pattern or practice of the same violation or violations involving more than one of the employer’s worksites.

## TWO NEW PENALTY STRUCTURES

### Enterprise-wide Violation

The proposed penalty is multiplied by the number of worksites covered at inspection, up to a maximum of \$158,727 per exposed worker, and will be adjusted each year for inflation.

### Egregious Violation

The proposed maximum penalty for egregious violations will be \$158,727. Importantly, each employee that is exposed to a violation would be considered a separate violation. The penalty can be assessed on a per-instance basis.



### Egregious violation

The proposed rules define an egregious violation as a willful violation where the employer has had a previous egregious violation in the past five years. One or more of the following must apply:

- The employer intentionally made no reasonable effort to eliminate a known violation.
- The employer has a history of one or more serious, repeat or willful violations or more than 20 general or regulatory violations per 100 employees.
- The employer intentionally disregarded its health and safety responsibilities, such as by failing to maintain an Injury and Illness Program, ignoring safety hazards, or refusing to comply with regulations.
- The employer’s conduct amounts to clear bad faith in the performance of their duties to comply with occupational safety and health standards.
- Within the five years preceding a citation for an egregious violation, the employer has committed more than five violations of any Title 8 standard that has become finalized.

See ‘Employers’ on page 2



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# How to Streamline Your Insurance Policy Audit

**A**RE YOU due for a workers' compensation premium audit? Audits are how insurance rates are determined, and it's possible that an audit will uncover information that can actually save you money – or not if you've hired additional staff and haven't notified your insurer.

In any case, it pays to be prepared and you can do so with the following tips:

**Note staffing changes** – Let us know when there are changes in your staffing, payroll or areas of operation. This is important not just at audit time, but all the time. Your rates are based on variable rating information, including the number of employees, job classifications and the states in which you operate. Updated information results in more accurate premium assessments.

**Get your records ready** – Your auditor will need to see records such as federal and state tax returns, ledgers, checkbooks, contracts and employee or contractor tax documents. If you prepare your records in advance, you'll speed up the audit process.

**Gather all payroll information** – Make sure you break out various types of compensation in your records.

For example, to set your premium, we consider pay but not

contributions to employee benefits packages and other perks, so it's important to make sure your records are clear on the various types of compensation.

Also make sure overtime pay is clearly defined since it's classified as regular pay for workers' compensation insurance purposes.

**Ensure that contractors have their own insurance** – This is important not only from an audit standpoint, but from a liability perspective as well. If an uninsured contractor has an accident while performing work on your behalf, you can be held liable. If an audit identifies contractors for whom you don't have certificates of coverage, you can be charged for their premiums.

**Remain on hand to answer questions** – As your auditor reviews your material, he or she may have questions or need additional data. If you are available to provide answers, your audit will be completed more quickly.

## The takeaway

By following these tips, you'll be more prepared for your workers' compensation premium audit. A fast, efficient audit process can save time for both you and your auditor, so it pays to be prepared. ❖



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## Employers Should Double Down on Workplace Safety

- The violations resulted in worker fatalities, a worksite catastrophe, or five or more injuries or illnesses. Catastrophe is defined as inpatient hospitalization of three or more workers from a workplace hazard.
- Within the 12 months immediately preceding the underlying violation, 10% of all employees at the cited worksite sustained workplace injuries or illnesses.

## The takeaway

The proposed regulations pose the largest risk for companies with multiple locations.

Fines will be adjusted each year to account for inflation.

Employers should double down on their workplace safety efforts and ensure that there is buy-in to the program from top management down to supervisors and line workers at all locations. ❖

# Proposed Workplace Violence Rules Sow Confusion

**C**AL/OSHA has proposed new regulations that would incorporate California's new workplace violence prevention law — which took effect July 1 — into Title 8, the set of regulations that covers workplace safety in the Golden State.

However, the proposed rules add a number of new requirements that some safety observers say would be unworkable in many workplaces and may create burdensome new standards for employers to follow. Here's how the new rules add to those requirements.

## Workplace controls

The proposed regulations list acceptable procedures and rules that can be used to effectively reduce workplace violence hazards:

- Appropriate staffing levels,
- Hiring dedicated security personnel,
- Effective means to alert employees of the presence, location and nature of a security threat, and
- Control of visitor entry.

## Engineering controls

Suggestions for engineering controls that can help prevent violence:

- Electronic or mechanical access controls to employee areas,
- Weapon detectors (installed or handheld),
- Enclosed workstations with shatter-resistant glass,
- Deep service counters,
- Spaces configured to optimize employee access to exits, escape routes and alarms,
- Separate rooms or areas for high-risk persons,
- Locks on doors,
- Affixing furniture to the floor,
- Opaque glass windows (which can protect privacy, but allow employees to see where potential risks are),
- Improving lighting in dark areas, sight-aids, enhancing visibility and removing sight barriers,
- Video monitoring and recording, and
- Personal and workplace alarms.

## Workers most at risk

The proposed rules list situations or locations that have a higher risk of workplace violence. These include:

- Employees working alone or in locations isolated from other staff,
- Areas with poor illumination or blocked visibility,
- Work locations that lack effective escape routes,
- The presence of money or valuable items,
- Frequent or regular contact with the public,
- Working late at night or early morning, and
- Selling alcohol, marijuana or pharmaceutical drugs.

## Response procedures

The draft rules outline steps employers can take when responding to and then investigating a case of workplace violence, post-incident:

- Provide immediate medical care or first aid to workers who have been injured in the incident,
- Identify employees involved in the incident,
- For employers with more than 25 employees, make available individual trauma counseling to those staff affected by the incident,
- Conduct a post-incident debriefing as soon as possible after the incident with employees and supervisors involved in the incident,
- Identify hazards that may have contributed to the incident,
- Identify and evaluate whether appropriate corrective measures developed under the firm's workplace violence prevention plan were effectively implemented, and
- Solicit opinions from employees involved in the incident about the cause of the incident, and what could have prevented it.

## The takeaway

The proposed rules are just the first step. They still have to go through a public comment period and the Division of Occupational Safety and Health, which writes new regulations.

However, the rules have already received plenty of pushback from employers. ❖

**HI-TECH SOLUTION:** *Electronic entry systems can reduce the chances of workplace violence.*

# More Businesses Sued Over Disabled Website Access

**B**USINESSES WITH a web presence, particularly those that are consumer-facing, are increasingly being sued over website accessibility issues that prevent visually impaired individuals from using a website.

While the number of such cases has been growing, 2,281 website accessibility lawsuits were filed nationwide in 2023, down from 2,387 the prior year and 2,352 in 2021, according to a report by *Accessibility.com*, a firm that helps businesses make their websites usable for certain disabled individuals.

The drop in cases actually filed is due to more organizations settling with law firms without going to court, in light of the fact that there was an 18% year-on-year increase in demand notices in 2023, the report concludes.

## What is website accessibility?

Website accessibility refers to the extent to which a site can be used by individuals with disabilities. This can include people who are blind or have low vision, those who are deaf or hard of hearing, and people with mobility impairments, cognitive disabilities or other disabilities.

The Americans with Disabilities Act allows individuals with disabilities to bring lawsuits against businesses directly. A plaintiff can seek injunctive relief, such as asking for a court order requiring the website to be changed as well as attorneys' fees or costs. However, the ADA does not permit the recovery of monetary damages in these cases.

That said, many states, including California and New York, have enacted laws allowing individuals to recover monetary damages for disability discrimination. Courts in both states have ruled that websites are places of public accommodation akin to establishments with physical locations, and, thus, are subject to the ADA.

As a result, more than 85% of website accessibility lawsuits are filed in those two states, according to the *Accessibility.com* report.

There are indications that filing these types of lawsuits has become a moneymaker for a few law firms and individuals.

## Follow the Money to CA, NY

- New York had nearly 73% of all the cases filed nationwide, followed by California and Illinois.
- Over 69% of all website accessibility lawsuits were filed by five law firms out of New York and California.
- Almost 16% of website accessibility lawsuits in 2023 were filed by five plaintiffs. One of them filed more than 105 lawsuits that year after filing 108 in 2022. The report found that four other individuals filed between 52 and 78 cases apiece in 2023.

## What should businesses do?

Most of these lawsuits cite the "Web Content Accessibility Guidelines," published by the World Wide Web Consortium. While these guidelines are advisory only, they have become the standard to follow when making websites accessible to individuals with disabilities.

There are widgets that can be installed on websites to ensure they comply with the WCAG, but even so, 933 lawsuits filed in 2023 were against businesses that had installed such widgets on their websites.

Experts recommend:

- Regularly checking your website and digital content to ensure it is accessible to individuals with disabilities.
- Ensuring that your website complies with the latest WCAG guidelines and includes a general statement regarding accessibility and a clear indication of how to contact your company if an issue with accessibility arises.
- If necessary, hiring an outside vendor that can bring your website into compliance with the WCAG guidelines.
- If you receive an ADA demand letter or complaint, you should consult with attorneys who are experienced in these types of cases. ❖

