

**December, 1999**

## ***Cal/OSHA Fines*** **and Independent Employee Actions**

AB 1127 takes effect on January 1, 2000. For the first time, government agencies will be subject to fines for safety and health code violations. While CSRMA members have outstanding safety records and a visit from Cal/OSHA should be viewed only as an opportunity to make the work-site safer, a single citation from Cal/OSHA may be sufficient to find your safety program ineffective and to prevent you from raising the independent employee action defense to that citation.

### **What is the Independent Employee Action Defense?**

In 1980, Cal/OSHA created this defense to deal with cases where employer's asserted that alleged violations of Cal/OSHA standards had occurred because of independent acts by employees that were beyond the control of the employer.

### **How Do I Prove This Defense?**

To prove this defense, you must prove each of the following five elements:

1. The employee was experienced in the job being performed;
2. You have a well-devised safety program that includes employee safety training in the specific jobs to which they are assigned;
3. You effectively enforce your safety program;
4. You have a written policy of sanctioning employees who violate the safety program;
5. The employee caused the safety violation with knowledge that they were violating your safety requirements.

### **What Does This Mean For Me?**

Your employees' safety has always been the single most important reason for providing a comprehensive safety program that includes all of the elements listed above. However, now that you are subject to fines for violations of Cal/OSHA standards, you have yet another reason for ensuring the following:

- .\* All employees are properly trained for the jobs they perform, including all necessary safety procedures
- .\* Your safety program includes all those required by law, as well as any other policies and procedures unique to your workplace
- .\* Violations of safety policies and procedures are enforced in the same manner as would a violation of any other policy (i.e. theft).
- .\* You have a written policy warning employees of the sanctions that will result from violating your safety requirements and your employees have been made aware of this policy in the same manner you inform them of any other policy.

The elements listed above are the basic components of an effective safety program. All CSRMA members are strongly encouraged to strive to go above and beyond to find new and innovative ways of ensuring the health and safety of their employees.

***If you believe you have an idea, procedure, product or tool that will help other CSRMA members protect the health and safety of their employees, send a detailed description and, where appropriate, a picture to:***

David Patzer, CSRMA Risk Control  
500 Washington Street, Suite 300  
San Francisco, CA 94111

**And YOUR suggestion may be the topic of the next**

***CSRMA Above and Beyond Safety Bulletin!***

**Visit the CSRMA Web Site at:**

**[www.csrma.org](http://www.csrma.org)**

**for Risk Control Resources**