

# CSI NEWS

Celly Services, Inc.

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## ***Civil & Criminal Penalties Increased for OSHA Violations***

On October 5, 1999, Governor Davis signed into law a bill which increases the civil and criminal penalties for willful, serious and repeat violations of occupational safety and health (Cal-OSHA) standards. The law goes into effect on January 1, 2000, which gives the district attorneys more flexibility to prosecute as either a misdemeanor or a felony, willful violations of safety standards which result in a death or permanent/prolonged impairment.

Under AB1127, the amended labor code holds the employer and any employee having the authority to give directions, management, control, or custody of any employment, place of employment, or of any other employee, who willfully violates any occupational safety or health standard and that violation causes death or permanent/prolonged impairment of any employee is guilty of a public offense punishable by imprisonment in state prison up to three years or by a fine of \$250,000 (or both). If the defendant is a LLC or a corporation, then a fine of up to 1.5 million dollars may be imposed on the company.

For repeat convictions, violators may get sentenced up to 4 years in prison with a fine of up to \$250,000. Similarly, the corporations may get fined up to 3.5 million dollars for repeat convictions.

Penalties for *serious* violations of the OSHA standards have now gone up to a maximum of \$25,000 for each violation. For definition of *serious injury*, see the article on "Call OSHA . . ." below. Repeat and willful violation of OSHA standards is now punishable by a

civil penalty of up to \$70,000 for each violation and no less than \$5,000 for each willful violation. Under the new law, employers who do not have an operative injury and illness prevention program shall receive no adjustment in penalty for good faith of the employer.

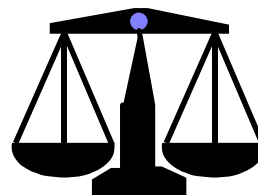
Failure to correct violations cited by OSHA is punishable by a fine of \$15,000 for each day during which the violation continues.

AB1127 also codifies the present regulation concerning multi-employer worksites. Citations can be issued when OSHA has evidence that an employee was exposed to a hazard in violation of a standard applicable to an employer as follows:

- Employer whose employees were exposed to the hazard (exposing employer).
- Employer who actually created the hazard (creating employer).
- Employer who was responsible, by contract or through actual practice, for safety/health conditions at the worksite (controlling employer).
- Employer who had the responsibility for actually correcting the hazards (correcting employer).

The dealership may find itself liable for citations issued for safety violations created by subcontractors working on the premises. The dealership should undertake prudent steps to ensure that all subcontractors on its premises have provided safety training to their employees and are compliant with OSHA standards. (Reference AB1127 signed 10-5-99).

## ***Call OSHA in the Event of a Serious Accident***



This goes against conventional wisdom but is true. California requires employers to report EVERY case involving a serious injury or illness, or death, immediately by telephone to the nearest California Division of Occupational Safety and Health (DOSH) district office. Telephone numbers of all district offices are listed on the Cal/OSHA poster.

A “serious injury or illness” is one in which

- an employee is hospitalized for more than 24 hours for other than medical observation, or
- an employee suffers loss of any member of the body or any serious degree of permanent disfigurement.

“Immediately” means as soon as practically possible but not longer than EIGHT hours from employer’s receipt of knowledge of the death or serious injury or illness.

Although the Labor Code definition of “serious injury or illness” excludes those caused by the commission of Penal Code violation, Cal/OSHA actively encourages employers to report all deaths, serious injuries and illnesses resulting from a workplace assault or other type of violent act to the nearest Cal/OSHA District Office so that a fuller understanding of the scope and nature of workplace violence can be acquired by conducting an investigation of the circumstances surrounding the event.

### **First Aid Definition and OSHA Log 200**

Each employer is required to maintain a record of all occupational injuries and illnesses on an OSHA Log. The OSHA Log 200 should be completed promptly and no later than (6) working days after receiving information that a recordable case has occurred. Many employers, in their zeal to be compliant, report first aid injuries on their Log 200. Such over recording inflates and exaggerates the injury statistics. The recording may be cited as a “general” violation by OSHA that carries a non-adjustable \$700.00 civil penalty. Improper entry on the injury log can increase their Workers’ Compensation insurance premiums as well. The definition of “first aid” is given in the Workers’ Compensation laws of the State of California as follows:

“First Aid” is any one time treatment, and any follow up visit for the purpose of observation of minor scratches, cuts, burns, splinters, etc., which does not ordinarily require medical care. Such one time treatment, and follow up visit for the purpose of observation, is considered first aid, even though provided by a physician or registered professional personal.

Dealerships should evaluate the injuries at the workplace and record only the ones that do not meet the “first aid” definition above. (Reference T8CCR14301 (a)(1)(2) & O.M.B. No. 1200-0029 and T8CCR9780(f)).

### **First Aid Kits**

California regulations mandate that employers ensure ready availability of medical personnel for advice

on matters of industrial health or injury. In response, most dealerships have contracted with a clinic for treatment of injuries at the workplace, and as such, are in compliance with the code. **The code also mandates that a first aid kit be available on the premises that has been approved by the consulting physician for every work person on the job.** A consulting physician is a medical doctor who is well versed with dealership operations and has knowledge of typical hazards and accidents on the job. The number and location of the first aid kits is typically left to the judgment of the dealership staff. It is essential that all areas of employment be serviced. For example, if on a Saturday only the sales department is open, then a kit must be made available to employees in that area. The code also specifies that a frequent inspection should be made of all first aid materials, which should be replaced as necessary. (Reference T8CCR3400 (a) and (b)).

### **Recent Penalties on Posting Omissions**

Recently OSHA cited an employer for failure to post a permit on the air tank and Forklift Operating Rules on the forklift. The Administrative Law Judge affirmed both penalties. The citations are as follows:

- *Permits, Air Compressor, Posting* (§461(c)). Regulatory violation and \$300 penalty affirmed.

Section 461(c) provides: “The permit shall be posted under glass in a conspicuous place on or near the air tank or in a weatherproof container secured to the unit, and shall be available at all times to any qualified inspector.”

The Division’s IH did not find a permit for Employer’s air tank posted, nor was it available.

- *Forklift Operating Rules, Posting* (§3664(a)). General violation and \$150 penalty affirmed.

Section 4664(a) requires an employer to post and enforce appropriate operating rules for industrial trucks used in the workplace.

Employer alleged that the rules had been torn down by an employee, but there was no evidence to establish when this occurred. The rules were not posted as required at the time of the inspection. *Docket No. 97-R3D1-1693 (Brea, CA)*

### **Space Heaters and Safety**

As winter sets in, the heating systems for our building crank on. Some employees, feeling

a little colder than others, bring in local space heaters to provide that extra warmth. The space heaters can cause fires by contact with or in close proximity to combustibles at the workplace.

Typically, these heaters are used in the office area where paper may be stored close by. The best solution to the problem is to eliminate all heaters, adjust the thermostat to a comfortable level, and request that warm clothing be worn by those who are "cold." This strategy may not be fruitful, and employees may attempt to install heaters in their workplace. The United States Consumer Products Safety Commission has published a brochure on space heaters, and some advice from the brochure is as follows:

- Buy a space heater with a fire guard around the heating coil. This will prevent contact with combustible objects should they accidentally come in contact with the heater.
- Look for a heater tested and labeled by a nationally recognized testing laboratory (example, UL).
- Read and follow the manufacturer's operating instructions. A good practice is to make sure everyone in the working area review the safety issues associated with the heater even if they don't use it.
- Most heater manufacturers recommend a 36" clearance from combustibles around the heater. Follow the clearance rule religiously. Violators should have their heaters forfeited.
- Never leave heaters on overnight or when employees are away for an extended period of time (e.g. lunch). Turn the heater off when the employees leave.
- Never store combustible/flammable liquids, such as gasoline in the same room. Gas vapors can creep into the heater and ignite.
- Do not use flammable type heaters in indoor settings without proper ventilation.
- Certain specific suggestions for electrical heaters are as follows:
  - Keep the heater on a level surface. Never on furniture as it may fall and break the heater leading to a fire.
  - Never operate an electric heater without guards or controls. Have the heaters inspected annually by an authorized technician.
  - Only qualified technicians should do repairs.
  - The electrical cord should be plugged to an outlet with proper load capacity. The cord should not pose a trip hazard.
  - Do not cover the cord by rugs or other flooring surfaces as this could cause the cord to overheat and start a fire.
  - Plug the heater directly into an electrical outlet. Temporary wiring should only be used on a temporary basis. Temporary cords should be marked #14 or #12 AWG and UL certified.
  - Ensure plugs fit in the outlet. Loose plugs can overheat and start a fire. Replace the plug/outlet as required.

Plugs may be warm due to electricity flow, but if they are hot, have an electrician check it out.

- If a GFCI is installed in-line and the GFCI trips, it may be that your heater is overloading the system. Have an electrician inspect the system. If you are overloading the system, a fire may result.
- Keep a fire extinguisher type 25ABC ready, and know how to use it!

*(Reference: Space Heaters, Published By US Consumer Products Safety Commission, Washington DC 20207).*

### **MTBE & R134(a)**

What is the similarity between MTBE & R134(a)? They both were claimed to be the answer to our environmental problems, they turned out to be quite a problem themselves, and both are on their way out.

First the case of R134(a). The Montreal Protocol; a treaty on environmental emissions, banned the production of R-12 on a global basis in 1995 (except in Russia, India and China). The solution was another refrigerant R-134(a), which was inert to the ozone layer verses R-12 which depletes the ozone layer thereby increasing the amount of UV rays that reach earth. Now scientists believe that R-134(a) has the potential to cause global warming. The Kyoto Protocol has targeted the phase-out of R-134(a). Industry and government are now researching replacements for R-134(a). So the search is on. . . .

MTBE or methyl tertiary butyl ether is added to gasoline to provide an oxygen rich molecule to gasoline. The oxygenated gasoline burns more efficiently inside an engine and does not have to rely on atmospheric air completely to burn. The result is a cleaner burning fuel with fewer emissions of unburned hydrocarbons. Incidentally, unburned hydrocarbons contribute to the creation of smog. Initially, MTBE was added only in winter months in California to alleviate the excessive smog problem, but it was later added to the gasoline year round.

The problem with gasoline-containing MTBE, is that it may leak from the underground storage tanks and reach ground water. It is difficult to remove MTBE from water as compared to other fractions of gasoline. Furthermore, MTBE is a highly toxic chemical to humans and hence poses a significant health risk. An interesting twist to the problem is that the cleanup costs for contaminated ground water may have to come out of the state cleanup fund. Without much fuss, the state quickly withdrew the regulation requiring the addition of MTBE. In summary, MTBE will be out of our gasoline soon, the

demise of yet another so called environmental friendly chemical.

***Something Different***

Lorax, the beloved character of Dr. Seuss, may finally have his revenge. The Federal Government is attempting to encourage tree planting in America's cities. Agriculture Secretary Glickman has sent a letter to Congress and State governors enlisting their support for a campaign of planting trees in cities. Glickman, in his letter said "Urban trees provide important environmental and economic benefits. They help clean our water and our air. They help draw tourists and boost real estate value in America's cities." We all know trees cut pollution and should reduce the

increased summer temperatures. So here we go – green green & green, more trees I mean!

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