

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

Text of Modified Regulations

Language originally proposed is underlined;
Language originally proposed to be deleted is in ~~striketrough~~;
Language added by the first modification is double-underlined;
Language deleted by the first modification is in ~~double-striketrough~~;
Language added by this revision is in **bold and underlined**;
Language deleted by this revision is in ~~**bold and striketrough**~~.

California Code of Regulations, title 8, section 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) There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious.

(2) For purposes of a serious violation, the "actual hazard" may consist of, among other things:

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

(B) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.

(3) If the Division establishes a presumption pursuant to subdivision (c)(1) that a violation is serious, the employer may rebut the presumption and establish that a violation is not serious by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. The employer may accomplish this by demonstrating both of the following:

(A) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to the employer's:

1. Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards;
2. Procedures for discovering, controlling access to, and correcting the hazard or similar hazards;
3. Supervision of employees exposed or potentially exposed to the cited hazard;
4. Procedures for communicating to employees about the employer's health and safety rules and programs; and
5. Information that the employer wishes to provide, at any time before citations are issued, including, any of the following:
 - a. The employer's explanation of the circumstances surrounding the alleged violative events.
 - b. Why the employer believes a serious violation does not exist.
 - c. Why the employer believes its actions related to the alleged violative events were reasonable and responsible so as to rebut, pursuant to subdivision (c)(3), any presumption established pursuant to subdivision (c)(1).
 - d. Any other information that the employer wishes to provide.

(B) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

(4) For Carcinogens - a 'serious violation 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~~ abated, or indicated ~~correction~~ abatement of an earlier violation occurring within the State, 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 a substantially similar, violation, hazard, or condition again a violation of a substantially similar regulatory requirement and issues a citation 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 cited in the underlying citation; or (2) the date on which the underlying citation became becomes final by operation of law; or (3) the date of final abatement of the violation cited in the underlying citation. **For violations other than those classified as repeat regulatory, the subsequent violation must involve essentially similar conditions or hazards. 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.