

For injuries occurring after January 1, 2000, courts may allow Cal-OSHA standards to establish duties of care in negligence lawsuits against non-employer third parties.

The California Supreme Court has recently decided that courts may consider Cal/OSHA safety standards as evidence of acceptable safety practices in lawsuits brought by workers against companies other than their own employer. The ruling reverses a law that had been in place since 1971, which specified use of industry custom as the safe workplace guideline in third-party lawsuits. The reversal upholds a key provision of Assembly Bill 1127, a controversial law aimed at increasing penalties against employers for serious safety violations.

In the case, Rowdy Elsner, an employee of Hoffman Roofing, injured his ankle when a scaffold collapsed beneath him at a construction site. Carl Uveges, the general contractor, was directly responsible for supervising work and for enforcing safety compliance. When Elsner sued Uveges for negligence, Uveges asked the court to exclude any references to alleged violation of Cal-OSHA safety standards.

The trial judge disagreed, and ruled Cal-OSHA provisions admissible, a change permitted by the 2000 amendment. The judge also refused to admit evidence that the scaffold was built according to accepted industry standards. As a result, the jury found the company 100 percent at fault and awarded Elsner substantial damages.

The California Supreme Court agreed with the trial judge's conclusion, but reversed the decision in this case because the injury occurred prior to the effective date of the amended law. The court said that prior to January 1, 2000 industry could rely on a custom or practice as a reasonable standard of care, even though it did not meet Cal-OSHA safety orders.

### **What Should You Do?**

- Comply with all Cal-OSHA safety standards that apply to your company's activities.
- Post the required employee posters in compliance with Cal-OSHA, workers' compensation and all other federal and state laws and regulations.
- Record all workplace injuries on the Cal-OSHA Log 300 form, and post the Summary of Occupational Injuries and Illness (Form 300A) each year from February 1 through April 30.
- Provide prompt medical care for all workplace injuries and comply with workers' compensation record keeping requirements.