

**RESOLUTION 12-01-2015**

**DIGEST**

Workers' Compensation: Increasing Claims Limit for Injuries Caused by Willful Misconduct.  
Amends Labor Code section 4553 to increase the limits on workers' compensation claims to \$3,500 for costs and expenses when injuries are caused by serious and willful misconduct.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Association s recommends that legislation be sponsored to amend California Labor Code section 4553 to read as follows:

§4553

- 1           The amount of compensation otherwise recoverable shall be increased one-half, together
- 2 with costs and expenses not to exceed ~~two hundred fifty dollars (\$250)~~three thousand five
- 3 hundred dollars (\$3,500), where the employee is injured by reason of the serious and willful
- 4 misconduct of any of the following:
- 5           (a) The employer, or his managing representative.
- 6           (b) If the employer is a partnership, on the part of one of the partners or a managing
- 7 representative or general superintendent thereof.
- 8           (c) If the employer is a corporation, on the part of an executive, managing officer, or
- 9 general superintendent thereof.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Los Angeles County Bar Association

**STATEMENT OF REASONS**

The Problem: The \$250.00 cap as the top limit of costs that may be awarded in prosecuting a claim for employer serious and willful misconduct was left unchanged in previous amendments to Labor Code Section 4553. The \$250.00 cap on costs and expenses in a claim for Serious and Willful Misconduct is inadequate and inhibits prosecution.

The Solution: This amendment would raise the maximum limit of costs and expenses incurred in litigating employer serious and willful misconduct claims to a maximum of \$3,500.00. Litigation costs in these cases far exceeds the statutory \$250.00 cap. Costs incurred most often include the testimony of safety experts to prove the violation of the General Safety Order and its causal relationship to the injury.

**IMPACT STATEMENT**

This proposed resolution does not affect any other law, statute or rule.

**CURRENT OR PRIOR RELATED LEGISLATION**

Labor Code Section 4553 was initially enacted in 1937 with a statutory benefit of \$2,500.00 and a maximum cost and expense limit of \$250.00. The statutory benefit limit was subsequently

raised to \$10,000.00 without raising the cost and expense cap of \$250.00. In 1982 the current statute was amended to delete the \$10,000.00 maximum and to provide that the amount of compensation be one-half of the total indemnity benefit awarded.

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**RESOLUTIONS COMMITTEE RECOMMENDATION**  
**APPROVE IN PRINCIPLE**

History:

No similar resolutions found.

Reasons:

This resolution amends Labor Code section 4553 to increase the limits on workers' compensation claims for costs and expenses when injuries are caused by a serious and willful misconduct. This resolution should be approved in principle because the costs and expenses of employee injuries have risen dramatically since this statute was last revised in 1982.

With this resolution, in addition to receiving compensation for their injuries, an employee can recover their up to \$3,500.00 if their injury was cause by serious and willful misconduct. The willful misconduct has to be serious and have been perpetrated by one of the following: (a) the employer or his representative, (b) a partner, managing representative or general superintendent of the partnership or (c) an executive, managing office or general superintendent of a corporation.

Labor Code section 4553 was originally enacted in 1937 and revised in 1982. In that period of time, the costs and expenses of employee injuries have risen dramatically. Injuries caused by willful misconduct are, by the nature of the misconduct, likely to be more serious than an industrial injury cause by negligence. The proposed limit increase will encourage owners and supervising employees to be more attentive to reducing industrial injuries caused by willful misconduct.

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**COUNTERARGUMENTS TO RESOLUTION 12-01-2015**

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**SACRAMENTO COUNTY BAR ASSOCIATION**

Although it may be appropriate to raise the statutory cap for costs recoverable under Labor Code section 4553, a 14-fold increase seems excessive and arbitrary.