

OSHA Defense Veteran Calling it a Career

In the late 1970s, Fred Walter, fresh out of law school, was working in personal injury defense in Southern California's maritime industry. He moved to Northern California, where he found himself doing workers' compensation subrogation work. "It was a step up from collections," he remembers. "I hated it."



Fred Walter

Hated it so much that he was considering becoming a bartender when he met Robert "Bob" Peterson, considered the "godfather" of the Cal/OSHA defense bar. That meeting changed his career. Forty-five years and many cases later, Walter is retiring. Over the past several years, he has been of counsel at the Conn Maciel Carey law firm.

"I was working for a workers' comp law firm, and I started calling around other attorneys, asking if they did OSHA defense," he tells *Cal-OSHA Reporter*. "None of them did. I called Bob and said, 'I don't know about this. I mean, nobody does this.' His answer was, 'Yeah, isn't it great?'"

"Rules accrete like a delta"
— Fred Walter

Peterson, the first chief counsel for the Cal/OSHA Appeals Board, pioneered the defense bar. "After a few years of turning around the battleship, I was the second one doing it full time," Walter says.

Going Legalistic

The Healdsburg-based attorney says the early days of Cal/OSHA were a less formal process and has, over the years, become more legalistic. "When I started out in the '80s, it was you against a district manager. They would call the legal department for advice on how to handle the hearing, but it was rare that you'd see a [Division of Occupational Safety and Health] attorney show up. Now they've got a lot of them."

He likens what's happened with the Cal/OSHA system to how deltas form. "I knew this was going to happen from the beginning. Rules accrete like a delta," Walter observes. The original intent of the appeals system was that employers could represent themselves. "Now it's lawyer against lawyer and it's so much more adversarial."

Walter also laments that it's become harder and harder to communicate with Cal/OSHA inspectors, and, more importantly, that they lack the real-world experience that previous inspectors possessed. To become a compliance, safety, and health officer (CSHO) these days, candidates must hold an engineering degree. "They're hiring people straight out of college, and they really don't get it."

DOSH and the Department of Industrial Relations are considering changes to the system that would consider work experience in hiring CSHOs, but when such reforms could take effect is unknown at this point.

Fewer Defenses

Walter also laments the fact that DOSH now has a policy of not reducing serious, accident-related classifications without approval by the Legal Unit, although he notes, "The closer you get to hearing, the more reasonable they become." But many employers, particularly construction companies, will fight tooth and nail to avoid a serious violation because it could hurt their chances of bidding for work in the prequalification stage. "They don't want that serious on their record."

Hearings have gotten supersized, as well. "When I started out, it would be me and the [administrative law] judge, who would travel to the district office for the hearing, routinely in the district office's conference room. You'd start at nine and be done by 11:30 or 12, then go out to lunch." These days, hearings are often set for two days, with the first morning devoted to pre-hearing motions and stipulations.

One could argue that the process has become more legalistic, driven by attorneys, starting with Peterson, who have formulated more strategies to defend against citations. Walter says it's just the opposite: "We have fewer defenses to citations than we did before. We only have a couple for serious classifications."

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Walter says the most satisfying part of his job has been working with his clients, both at the Walter & Prince Firm (which dissolved several years ago when Lisa Prince left to start her own firm) and at Conn Maciel. "Especially in

the early days, they just had something horrific happen, they were being asked questions, fingers were pointing and they needed somebody to guide them through the process.” Walter says he has learned over the years that he has a calming effect on often-chaotic situations.

He adds, “The class of clients I like the best were loggers. They’re all small and family owned and most of them are second or third generation. I’d call a client and say, ‘We’ve got an offer to settle, and I think you might want to consider it.’ The answer would be, ‘Well, that’s great, because mom and dad are coming over tonight and we’ll talk about it over dinner.’”

The longtime defense attorney says, “Most employers I’ve come across are trying to do the right thing by their employees. I’ve run across very few who could be described as ‘Mr. Burns.’”

As for his most memorable cases? He remembers an incident he handled in Wilmington where workers had been tasked with cleaning a storage tank with a collapsible roof. The roof was being held up by “little legs,” Walter says, but the crew saw that they were unstable and called out the safety manager, who agreed. He was in the process of placing danger tape when the roof collapsed -- killing the safety professional. “That was a hard case,” he comments.

Walter says he will not miss deadlines, but will miss his Conn Maciel colleagues. “They are all top notch,” he comments.

He says he looks forward to, tackling his list of “honeymo’s” and to do some traveling.

“I have great plans for what I’d like to do, starting with sleeping in.”

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