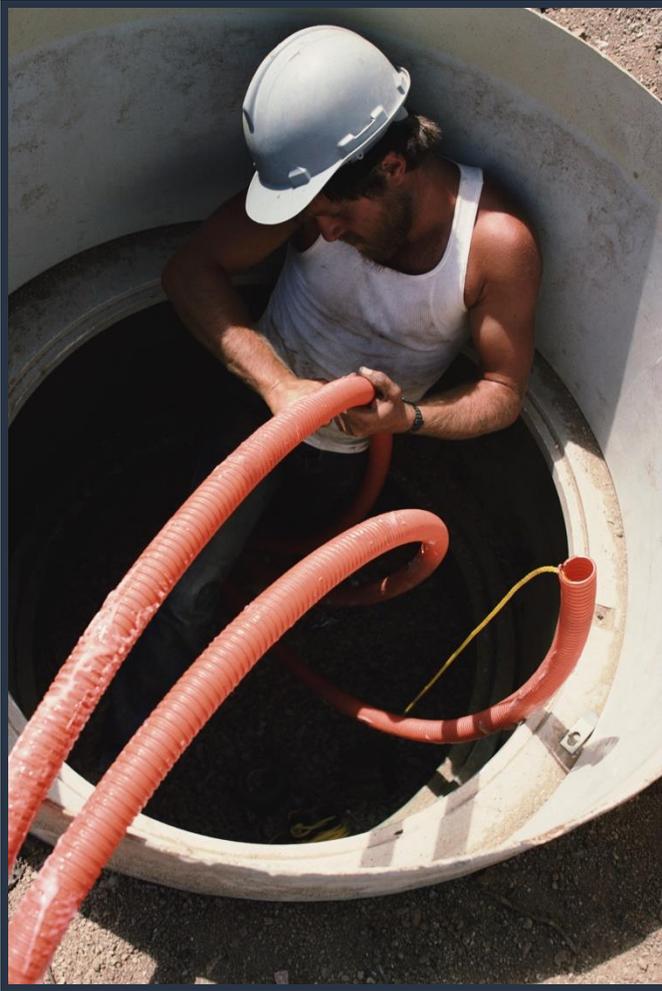


ARE PUNITIVE DAMAGES AWARDED FOR CONSTRUCTION ACCIDENTS?

“If a plaintiff can establish with clear and convincing proof that the defendant acted with oppression, fraud, or malice, and that the defendant's actions caused harm, then the plaintiff can get punitive damages after a construction site injury.”



MICHAEL D. WAKS
LONG BEACH PERSONAL INJURY ATTORNEY



Under the law in the state of California, workers are not generally permitted to sue their employers for injuries sustained on-the-job. This includes injuries occurring at construction sites. Employers can be sued for intentional wrongdoing that falls outside of the workers' compensation framework, but otherwise workers' compensation is the exclusive remedy. An employee injured on-the-job may obtain workers' compensation benefits without proving negligence--and may obtain benefits even in the absence of negligence or wrongdoing on the part

of an employer-- as long as the employee can prove the injury was job-related.

These benefits, however, cover only specific losses as defined by statute including paying for medical bills and providing wage loss and disability income.

Because of the limitations on suing employers imposed by workers' compensation rules, employees injured on construction sites cannot obtain punitive damages from an employer under most circumstances. Punitive damages are, however, available in civil lawsuits for personal injury or wrongful death accidents that are not under workers' comp laws.

For instance, there are some circumstances under which construction accident victims may file third-party personal injury claims after construction site accidents. This occurs when a third-party, non-employer, is responsible for injuries. A construction accident victim can sue a third-party for damages. If the construction accident was fatal, dependent survivors can also file a suit for the loss of their loved one against a negligent third party.

When a construction accident victim or loved ones of a construction worker can file a personal injury or wrongful death claim, it is possible to obtain punitive damages for construction accidents. However, punitive damages are not guaranteed in all civil cases, and a plaintiff must establish that punitive damages are appropriate under the circumstances in order to be awarded this type of injury compensation.

WHEN CAN A PLAINTIFF OBTAIN PUNITIVE DAMAGES IN A CONSTRUCTION CASE?

A plaintiff can obtain punitive damages only if the plaintiff proves in court that a third-party non-employer caused an injury on a construction site. The plaintiff must prove the defendant being sued in a personal injury or wrongful death claim had a legal duty to the plaintiff, which the defendant breached. The plaintiff must also demonstrate the breach of legal duty was the direct cause of an accident, and that the injuries were foreseeable based on the defendant's actions. If the plaintiff successfully proves all elements of an injury accident claim, this entitles the plaintiff to compensatory damages.

If a plaintiff wishes to pursue punitive damages, the plaintiff must prove additional elements to a jury. While compensatory damages are intended to make a plaintiff

whole and provide payment for economic loss and non-financial loss caused by pain and suffering, punitive damages are intended to punish defendants and act as a deterrent against future wrongdoing or bad behavior. Punitive damages thus must be justified by the nature of the defendant's conduct.

[California Code Section 3294](#) states: “In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.” This statute establishes both the plaintiff's burden of proof (clear and convincing evidence) *and* the elements of what a plaintiff must prove in order to be awarded punitive damages.



The *clear and convincing proof* standard requires the jury to believe there is a greater probability the evidence established by the plaintiff is true than is not true. The jury must have a firm belief or conviction that siding with the plaintiff is appropriate. This is a higher standard than the traditional *preponderance of the evidence* standard a plaintiff must use to prove to be awarded compensatory damages. A *preponderance of the evidence* standard requires a plaintiff to convince a jury that the plaintiff's case is *more likely than not* to be true.

The elements of oppression, fraud, and malice are also defined by California law, and a plaintiff must prove at least one of these elements existed. To prove malice, a plaintiff has to show a defendant's conduct was despicable enough to demonstrate a willful and conscious disregard for the safety or rights of others and/or the defendant intended to cause harm. To prove oppression, the plaintiff also must demonstrate despicable conduct resulting in the plaintiff suffering a cruel or unjust hardship in disregard of the plaintiff's rights. To prove fraud, the plaintiff must show the defendant was intentionally misleading, or intentionally concealed material facts the defendant should have been aware of, in order to deprive the plaintiff of rights or property.

If a plaintiff can establish with clear and convincing proof that the defendant acted with oppression, fraud, or malice, and that the defendant's actions caused harm, then the plaintiff can get punitive damages after a construction site injury.

A LONG BEACH CONSTRUCTION ACCIDENT ATTORNEY CAN HELP

Your Injuries are Personal to Me

An experienced attorney can provide guidance and advice on how to resolve construction site accident claims. Contact the Law Office of Michael D. Waks for assistance with your case if you believe a third-party is responsible for your construction site injury. A Long Beach injury lawyer will guide you through the process of making a claim.

Call the Law Office of Michael D. Waks at [888-394-1174](tel:888-394-1174) or use the convenient [online contact form](#) to schedule a free consultation. You are under no obligation and you will never pay any money unless you recover damages for your injuries. I offer bilingual services as part of my comprehensive approach to legal representation and I am available 24/7 to talk to you about your case.

About the Author



Michael D. Waks

Personal injury victims need someone who understands their pain, who is invested in them and will guide them through the complicated maze of their medical and legal worries. They need an attorney who cares about them and their families.

My name is Michael Waks and I am a personal injury attorney in the Los Angeles Area focused on the needs of people who have suffered because of someone else's actions.

While still attending Southwestern University School of Law, I clerked for a big defense law firm that represented manufacturers of asbestos. I read the files and met the people whose lives were ruined by asbestos and I knew, for the rest of my career, I wanted to help people like them: the victims, not the perpetrators.

I have been doing just that for over 30 years. As soon as I passed the Bar I opened the Law Office of Michael D. Waks in Long Beach and began exclusively representing seriously injured accident victims. I decided to be a sole practitioner so I could handle every case personally. I understand clients are different and that in the wake of an accident their suffering will be unique, ranging from physical and financial to emotional.

I tell my clients from the start, "I want you to only worry about one thing, and that is to do exactly what your doctor tells you in order to get better. Leave the rest to me."

MICHAEL D. WAKS

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