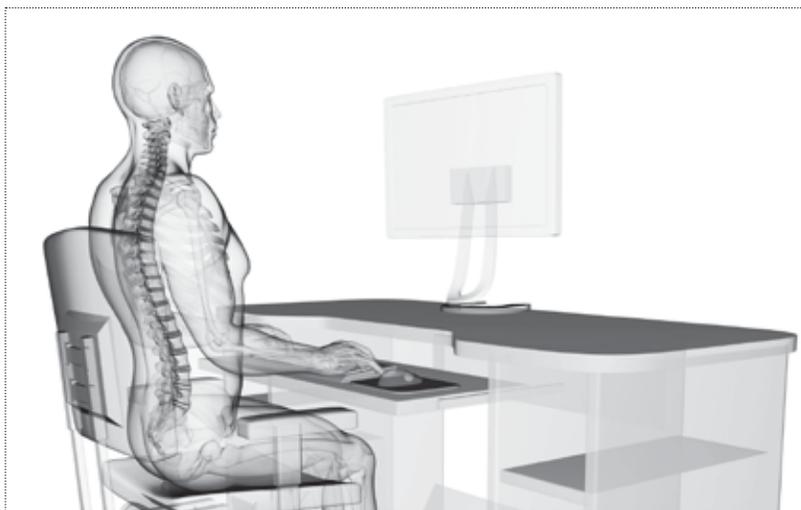


Ergonomics and A legal update



Ergonomics

The single largest risk exposure every employer faces is the safety of their employees. When conducting ergonomic assessments for our Members, a common issue for employees who sit for long periods of time is muscle fatigue. Complaints of shoulder, neck and arm discomfort at the end of the day are a symptom of improper utilization of the employee's workstation.

Proper ergonomics may prevent musculoskeletal injuries (such as back strain or carpal tunnel syndrome) by reducing physical and mental stress caused by the workstation setup. By focusing on the physical setup of your workstation and the tools you use, you can reduce your chances of injuries. It also is important to evaluate the work process, including job organization, worker

rotation, task variety, and demands for speed and quality. Many people use laptop computers as secondary workstations. You should not use a laptop as your primary computer. If you do, using a docking station that provides an adjustable keyboard can help keep your wrists in a neutral position to reduce stress and strain.

Working intensely over long periods of time without taking breaks can greatly increase your risk for musculoskeletal injuries. Taking regular breaks from your work and doing stretching exercises may reduce the risk of repetitive motion injuries. Try taking three to five minute breaks or changing tasks every 20 to 40 minutes. If you sit behind a desk for hours at a time, you're not doomed to a career of neck and back pain or sore wrists and fingers. Proper office ergonomics — including correct

chair height, adequate equipment spacing and good desk posture — can help you stay comfortable and injury free at work.

Follow these 10 office ergonomics tips to help you avoid fatigue:

- 1) Make sure that the weight of your arms is supported at all times. If your arms are not supported, the muscles of your neck and shoulders will be hurting by the end of the day.
- 2) Watch your head position, and try to keep the weight of your head directly above its base of support (neck). Don't "crane" your head and neck forward.
- 3) Don't be a slouch! Slouching puts more pressure on the discs and vertebrae of your back. Use the lumbar support of your chair and avoid sitting in a way that places body weight more on one than on the other. Move your chair as close to your work as possible to avoid leaning and reaching. Make sure to "scoot" your chair in every time you sit down.
- 4) The monitor should be placed directly in front of you, with the top no higher than eye level. The keyboard should be directly in front of the monitor so you don't have to frequently turn your head and neck.



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- 5) Talking on the phone with the phone receiver held between the neck and ear is really bad practice. You know that's true, so don't do it!
- 6) The keyboard and the mouse should be close enough to prevent excessive reaching which strains the shoulders and arms.
- 7) Avoid eye strain by making sure that your monitor is not too close - it should be at least an arm's length away.
- 8) Take steps to control screen glare, and make sure that the monitor is not placed in front of a window or a bright background.
- 9) You can rest your eyes periodically for several seconds by looking at objects at a distance to give your eyes a break.
- 10) The feet should not be dangling when you are seated. If your feet don't comfortably reach the floor or there is pressure on the backs of your legs, use a footrest or lower the keyboard and chair.

These are a few tips to help your employees work safely and more comfortably at their workstations.

Legal Update: Tort Actions Against Public Entities - CCP § 1038 Sanctions Cannot be Awarded Against Parties' Counsel

Kathryn Settle v. State of California California Court Of Appeal, Second Appellate District (July 23, 2014)

When a public entity is sued in tort, Code of Civil Procedure ("CCP") § 1038 requires a mandatory award of defense costs, including reasonable attorneys' fees, where the trial court grants summary judgment and finds that plaintiff lacked reasonable cause and good faith in filing or maintaining a tort action against the public entity. In this case, plaintiff Kathryn Settle sued the State of California ("State") and City of Morro Bay ("City") for dangerous condition of public property after a sand cliff on the beach collapsed, causing her to fall into the water and rocks. The State did not own, control, or maintain the beach. Counsel for the State warned plaintiff's attorney, James McKiernan, that it would seek sanctions pursuant to § 1038 if the complaint was not dismissed. The warning went unheeded.

The State and the City were granted summary judgment on the ground that the action was barred by a statutory immunity for injuries caused by a natural condition of unimproved public property such as a beach. (Gov. Code, §§ 831.2; 831.21.) The trial court found that "Plaintiff was notified of the applicability of the immunities afforded to the City and the State pursuant to Gov. Code sections 831.2 and 831.21 but proceeded with the action without any evidence to overcome the immunities. No reasonable plaintiff would have maintained this action against the City and the State." The trial court awarded sanctions against McKiernan pursuant to § 1038, ruling that his attempts to deflect liability for any fee award on the grounds that § 1038 only applies to a party and not his or her attorney was without merit.

McKiernan appealed the trial court's imposition of sanctions against him, arguing that § 1038 does not

authorize the imposition of defense costs against counsel. The State admitted that § 1038 is silent on whether defense costs may be imposed on counsel. Thus, the issue for the Second District Court of Appeal was one of statutory construction. The Court analyzed the language of § 1038 and acknowledged that the words "counsel," "counsel for plaintiff" or "plaintiff's attorney" are not in the statute. It also noted that the trial court relied on a previous appellate decision ordering plaintiffs and their attorney to pay § 1038 sanctions (*Carroll v. State of California* (1990) 217 Cal.App.3d 134 ("Carroll")),

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Save the Date

SDRMA Safety/Claims Education Day will be held on Tuesday, March 24 at the Hilton Sacramento Arden West.

We hope you plan on attending as we have a full day of informative workshops and presentations. Breakfast and lunch will be included.

Register at www.sdrma.org by clicking on:
Register for a training workshop.



Managing risk [continued from page 35]

even though the court in *Carroll* did not specifically consider whether § 1038 authorized the imposition of defense costs against counsel. The trial court also cited a treatise on Government Tort Liability Practice, which incorrectly interpreted the *Carroll* decision to hold that § 1038 “provides that defense costs are awardable against not only plaintiffs and cross-complainants, but also their attorneys.” (Van Alstyle, Cal. Government Tort Liability Practice (Cont.Ed.Bar 2013) § 8.87, p. 477.)

The State argued that if a plaintiff or his/her attorney can be sued for malicious prosecution for a bad faith filing or a frivolous action, why can't fees and costs be awarded pursuant to §1038? In response, the Court reasoned that this argument and analogy fail because public entities are precluded from bringing malicious prosecution actions. A public entity can use § 1038 as an alternative to an action for malicious prosecution. Further, California statutes authorizing the imposition of sanctions or fees against parties and their counsel are numerous and explicit. They include CCP §§ 128.7, 177.5, 473 (b), 2023.030, etc. The Court reversed the trial court's award against attorney McKiernan, holding that it would only consider adding language to a statute in extreme cases

where, as a matter of law, the Court was convinced that the Legislature, through inadvertence, failed to utilize the word or words which give purpose to its pronouncements. This case, according to the Court, is not such an extreme case. As stated in a footnote, “...[W]hile the trial court's order may have been just, fair and reasonable under the circumstances, it was not authorized by § 1038.”

This decision clarifies the scope of CCP § 1038, holding that unless and until the Legislature amends § 1038 to authorize an award of sanctions against counsel, defense costs and fees may not be imposed against counsel pursuant to this statute. There are numerous statutory remedies available; yet, in the *Settle* case, the attorney general elected not to seek relief under any other statutes, including CCP § 128.7. And a word to the wise: treatises sometimes get it wrong. ^

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For further information on this article or to answer questions, please contact SDRMA Chief Risk Officer Dennis Timoney at dtimoney@sdrma.org.

District Snapshots Nipomo Community Services District

PHOTO: 2015 marks a significant milestone for the Nipomo Community Services District – its 50th anniversary providing water and sewer services to parts of Nipomo. In commemoration of this milestone, Assembly Member Katcho Achadjian's office recognized the district with resolutions.

