

Workers' comp ruling may reduce Fresno County liability in gas pipeline blast

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Fresno County is trying to shield itself from high-cost lawsuits from inmates who worked at the Fresno Sheriff's Foundation shooting range the day a Pacific Gas & Electric pipeline exploded by saying the inmates fall under the state Workers' Compensation program.

If the county succeeds, the medical bills of 10 injured inmates will be paid through the state program, greatly reducing the county's financial burden. In addition, the inmates wouldn't be able to sue the county for general damages. It would not preclude the inmates from suing PG&E, which owns and maintains the pipeline.

The cause of the April 17 pipeline explosion at the northwest Fresno shooting range is under investigation by the state Public Utilities Commission. It occurred while a county front loader was driving on a road atop a berm that was being maintained. The loader driver was not digging, according to Sheriff Margaret Mims, but flattening dirt on the berm. The inmates were on the shooting ranges doing property maintenance. One inmate died in the hospital, while the loader driver, two deputies and nine inmates were injured.

Fresno County Counsel Dan Cederborg said that "jail inmates who are performing work on sheriff's work crews are subject to workers' compensation coverage in most circumstances" under state law. The inmates don't have to be declared employees, he said.

But Butch Wagner, a lawyer who represents five of the injured inmates, said the county is attempting a legal maneuver to save money if it's found at fault.

"They are not employees," Wagner said. "It doesn't surprise me, but what they have is an incredibly weak defense that isn't going to stick."

Workers' compensation claims have been paid to inmates in California state prisons, but the distinction is that those inmates report to the same jobs every day, Wagner said.

Warren Paboojian, who represents a sixth inmate, said the county's effort is a way to pay lower damages and the arrangement wasn't for pay.

"There needs to be some form of (pay to inmates) for them to be employees," Paboojian said.

The jail inmates only occasionally work, making their status as employees much more subject to question, he said.

Even a county filing adds uncertainty to the issue.

In a workers' compensation claim filed by the county on behalf of one of the inmates, claims examiner Kay Gonzalez said, "We are unable to determine if you are eligible for workers' compensation benefits from the information we have."

Lawyer Tom Tusan, a Fresno workers' compensation specialist, said the county wants the inmates to be employees to limit its financial exposure.

Workers' compensation prohibits a suit for general damages, he said.

But workers' compensation is only suitable under certain conditions and it's not entirely clear whether those conditions exist for the county inmates at the range. It may exist for one inmate, he said, and not for another.

In state prisons, Tusan said, there are automatic work details, which will qualify an inmate for workers' compensation in case of an injury.

Fresno County's rules depend on its ordinances. If an inmate volunteered to work, he isn't covered.

The employee is covered "if he's part of a designated work crew where he is offered the job and accepts it," Tusan said. "It becomes an employment contract between himself and the county."

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