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A Win For Hirers Of Contractors Whose Workers Become Injured:
Court Of Appeal Affirms Cal-OSHA Regulations Do Not Impose
Non-Delegable Duty To Provide Safe Work Place And Rules That Injured Worker
Has To Prove That The Hirer Directed The Activity That Caused The Accident

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As many are aware, under the "Privette Doctrine," found in Privette v. Superior Court (1993) 5 Cal.4th 689 ("Privette"), California law creates a presumption that a hirer of an independent contractor delegates to the contractor all responsibility for workplace safety for the contractor's workers and a hirer is not typically liable for injuries sustained by an independent contractor or their workers while on the Project. *See, Privette; see also, Gonzalez v. Mathis (2021) 12 Cal.4th 29, 37-38.*

The parameters of the Privette Doctrine were challenged in a recent case, Cordero v. Ghilotti Construction Company, Inc. (2026) 119 Cal.App.5th 1105 ("Cordero case")¹, this time on the basis that, as a matter of law, whether Cal-OSHA regulations impose a "non-delegable" duty on a prime contractor to address site conditions that assertedly caused an independent contractor's employee to become injured. That case also dealt with whether, as a matter of law, the hirer "retained control" under the Privette exception set forth in Hooker v. Department of Transportation (2002) 27 Cal.4th 198 ("Hooker") - when the hirer retained some control over the work in question.

In the Cordero case, Ghilotti Construction Company ("Ghilotti"), an alleged turnkey contractor, subcontracted various portions of its work involving a pedestrian bridge project in Menlo Park, California. Under its contract with Ghilotti, subcontractor Camblin Steel Service, Inc. ("Camblin") agreed it would be responsible to provide a safe workplace for its employees and comply with all Cal-OSHA regulations. Ghilotti's superintendent on the subject project was responsible for scheduling Ghilotti's own work and that of its subcontractors. In late January 2021, Ghilotti's superintendent advised Camblin it (Camblin) could start rebar work on one of the columns. The morning Camblin was scheduled to commence work, Ghilotti's superintendent also directed Ghilotti personnel to "dewater" an area. Cordero, an employee of Camblin, was part of a crew that came onsite and stepped in muddy areas which the Ghilotti superintendent had directed work to be performed. The Camblin workers constructed the initial rebar "cage," and Cordero climbed it. When Cordero reached the top of the column, and before he secured his position belt, one of his boots slipped and he fell.

¹ The Cordero case was issued as unpublished on March 26, 2026 but its status was changed to published on April 10, 2026.

Cordero sued Ghilotti on the basis that, notwithstanding Cal-OSHA, *see*, Labor Code section 6300 et seq., Ghilotti had delegated control of the worksite and, factually, as a matter of law, Ghilotti had delegated control.

On appeal, the Court of Appeal affirmed and embraced the "presumptive delegation" of the duty to provide a safe workplace. The Court identified only two "limited" circumstances in which the Privette presumption would not apply, including if control were retained under the Hooker case. The Court of Appeal in affirming the ruling of the Trial Court expressed that "retained control" over conditions at the worksite, in and of itself, is not sufficient to preclude the application of Privette. The Court of Appeal ruled that for the "Hooker" exception to the "Privette" doctrine to apply, evidence that there is an unsafe condition on the worksite or that the hirer knew that the contractor was engaging in an unsafe work practice is not enough, and expressed that something more is required, such as "inducing injurious action or inaction through actual direction." The Court ruled that a worker must prove the hirer both retained control and actually exercised that retained control, which did not happen here. The Court also ruled that, for purposes of Privette, Cal-OSHA regulations do not impose non-delegable workplace safety obligations on the subcontractors.

The Cordero case is important for hirers of injured contractors in that it reaffirms the of the worker to not only show that the hirer retained control, but that the hirer which retained control actually directed the activity that resulted in the worksite accident, and also reaffirmed that regulations under Cal-OSHA will not impose a non-delegable duty on the hirer.

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