

OSHA increases penalties sevenfold

By MARK WALLACE

The cost of ignoring jobsite safety just got higher—much higher. With its enactment of the Budget Reconciliation Act on November 5, 1990, Congress has increased maximum Occupational Safety and Health Administration (OSHA) penalties a whopping sevenfold. The maximum penalty for a willful or repeated violation is now \$70,000, up from \$10,000, and the maximum penalty for a serious or other-than-serious violation is \$7,000, up from \$1,000. If employers fail to correct a violation, they also now can be fined \$7,000 for each day beyond the stated abatement date. These amounts are ceilings, not floors. But to ensure that flagrant violators are fined sufficiently, the minimum penalty for a willful violation is now \$5,000.

The new penalties apply to all citations from inspections begun after March 1, 1991, for violations occurring after November 5, 1990. They also apply to states with OSHA-approved state plans, as soon as state legislators adopt the changes.

The increases do not change the penalty process. The gravity of the violation still determines the base fine, which is reduced based on the size, good faith, and safety history of the employer. Small companies may have penalties reduced by up to 60%

(Table 1). If the employer has implemented a written safety and health program that meets OSHA requirements, he or she also may qualify for a 25% "good faith" reduction. And if OSHA hasn't cited the employer for any serious, willful, or repeat violations in the past 3 years, the employer may receive an additional 10% reduction.

Typical penalties for serious violations, before reductions, are now \$1,500 to \$5,000, though a regional OSHA administrator may sometimes propose up to a \$7,000 fine. A

Table 2. Penalties for Serious Violations

Severity of Injury	Probability of Injury	
	Greater	Lesser
High	\$5,000	\$2,500
Medium	\$3,500	\$2,000
Low	\$2,500	\$1,500

Note: A violation is serious if it could lead to death or serious physical harm and the employer knew or should have known of the hazard.

Table 3. Penalties for Repeat Violations

Violation	# of Employees in Company		For Other-than-serious Violations
	1-250	> 250	
1st repeat	2x	5x	\$200
2nd repeat	5x	10x	\$500
3rd repeat	—	—	\$1,000

Note: Repeat violations are penalized 2, 5, or 10 times the amount cited for the original violation. If the original violation was not fined, the repeat violation is fined \$200, \$500, or \$1,000.

Table 4. Penalties for Posting, Reporting, and Record-keeping Violations

Violation	Penalty
Failure to post OSHA notice	\$1,000
Failure to post annual summary	\$1,000
Failure to post citations	\$3,000
Failure to maintain OSHA 200 and OSHA 101 forms	\$1,000
Failure to report fatality or catastrophe within 48 hours	\$5,000
Denying OSHA access to records	\$1,000
Failure to tell employees about advance notice of inspection	\$2,000

Table 1. Penalty Reductions Due to Company Size

# of Employees in Company	% Reduction
1-25	60
26-100	40
101-250	20
> 250	0

violation is defined as serious if it could lead to death or serious physical harm and the employer knew or should have known of the hazard. The exact penalty for a serious violation is based on the severity and probability of an injury or illness occurring (Table 2). If the violation is judged highly severe and the chance of injury is great, good faith reductions are not considered.

For other-than-serious violations that are not likely to cause injury or illness, OSHA proposes no penalties but requires the employer to correct the violation. For other-than-serious violations that are likely to cause injury or illness, the penalty is \$1,000, before reductions. However, if circumstances warrant, an OSHA regional administrator may set a base fine of up to \$7,000.

An employer who intentionally disregards OSHA requirements may be cited for willful violations. To determine the fine, OSHA calculates the penalty for the underlying serious violation, adjusts it for the company's size and safety history, and multiplies it by 7.


When an OSHA inspector finds the same violation on a subsequent inspection, the penalty for the repeat violation is multiplied by 2, 5, or 10, depending on the size of the company and the number of repeats (Table 3). Other-than-serious violations that were not assessed fines initially are successively fined \$200, \$500, and \$1,000 each time

they're repeated.

If the employer fails to correct the violation by a specified deadline, OSHA may fine him or her the amount of the initial penalty (up to \$7,000) for each day past the deadline the violation goes uncorrected. This penalty may be assessed for up to 30 days by the regional OSHA office, after which it's referred to the national OSHA office. If the violation is partially corrected, OSHA may reduce the daily penalty by 25% to 75%.

OSHA also assesses penalties for posting, reporting, and record-keeping violations (Table 4).

In all cases, employers may still contest the citation and the penalty amount within 15 days. After 15 days, the penalty may be adjudicated by an independent OSHA review commission, or OSHA may settle with the employer to get the hazard corrected swiftly.

With the sevenfold increase in fines, employers should find it pays to improve jobsite safety—and perhaps to go through the trouble of contesting OSHA citations. 

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