

OSHA Administrative Penalty Information Bulletin

OSHA is implementing several changes to its administrative penalty calculation system. Many of the agency's current penalty adjustment factors have been in place since the early 1970's, resulting in penalties which are often too low to have an adequate deterrent effect. Administrative penalty adjustments will therefore be made to several factors which impact the final penalty issued to employers. These factors include:

1. History Reduction
2. History Increase
3. Repeat Violations
4. Severe Violator Enforcement Program
5. Gravity-Based Penalty
6. Size Reduction
7. Good Faith
8. Minimum Penalties
9. Additional Administrative Modifications to the Penalty Calculation Policy

A brief description of each penalty adjustment factor and planned changes are provided below:

1. History Reduction

The time frame for considering an employer's history of violations will expand from three years to five. An employer who has been inspected by OSHA within the previous five years and has not been issued any serious, willful, repeat, or failure-to-abate citations will receive a 10 percent reduction for history.

2. History Increase

An employer that has been cited by OSHA for any high gravity serious, willful, repeat, or failure-to-abate violation within the previous five years will receive a 10 percent increase in their penalty, up to the statutory maximum. Employers who have not been inspected and those who have received citations for serious violations that were not high gravity will receive neither a reduction nor an increase for history.

3. Repeat Violations

The time period for considering the classification of repeated violations will be increased from three to five years.

4. Severe Violator Enforcement Program

Where circumstances warrant, at the discretion of the Area Director, high gravity serious violations related to standards and hazards identified in the SVEP will not normally be grouped or combined, and may be cited as separate violations, with individual proposed penalties.

5. Gravity-Based Penalty (GBP)

The gravity of a violation is the primary consideration in calculating penalties and is established by assessing the severity of the injury/illness which could result from a hazard and the probability that an injury or illness could occur. OSHA is adopting a

gravity-based penalty structure for serious citations which will range from \$3,000 to \$7,000.

6. Size Reduction

OSHA will be amending its penalty reduction structure based on the size of employers, allowing for a penalty reduction between 10 and 40 percent for those with less than 250 employees. No size reduction will be applied for employers with 251 or more employees.

7. Good Faith

The current good faith procedures in the Field Operations Manual will be retained. A penalty reduction is permitted in recognition of an employer's effort to implement an effective workplace safety and health program. Employers must have a safety and health program in place to get any good faith reduction. Good faith reductions are not allowed in the cases of high gravity serious, willful, repeat, or failure-to-abate violations.

The 15% Quick-Fix reduction, which is currently allowed as an abatement incentive program to encourage employers to immediately abate hazards identified during inspections, remains unchanged. However, the 10% reduction for employers with a strategic partnership agreement will be eliminated.

8. Minimum Penalties

The minimum proposed penalty for a serious violation will be increased to \$500. When the proposed penalty for a serious violation would amount to less than \$500, a \$500 penalty will be proposed for that violation. The proposed minimum penalty for a posting violation will increase to \$250 if the company was previously provided a poster by OSHA.

9. Additional Administrative Modifications to the Penalty Calculation Policy

Final penalties will be calculated serially, unlike the current practice where all penalty reductions are added and the total percentage of reductions is then multiplied by the gravity-based penalty to arrive at the proposed penalty. All penalty adjustment factors will be applied serially.

These changes will establish general agency policy and do not preclude the agency from assessing a different penalty, where appropriate under the Act, in light of all circumstances in a particular case.