

NEW OSHA PENALTY OVERVIEW

**by
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OSHA Act & Wyoming Safety Act

- Willful or Repeat Violation shall be assessed a civil penalty up to \$70,000.
- Serious Violation shall be assessed a civil penalty up to \$7,000.
- Non-Serious Violation may be assessed a civil penalty up to \$7,000.

Why the Change?

- Last year, Federal OSHA assembled a work group to evaluate the Agency's current penalty policies.
- The general consensus of the group was that the Agency's penalties are too low for a deterrent effect.
- Based on the groups findings, several administrative changes to the penalty calculation system are being made.

OSHA Citation Classifications

- Citations Without a Penalty
 - Non-Serious
- Citations With a Penalty
 - Regulatory
 - Serious
 - Repeat
 - 1st Repeat
 - 2nd Repeat
 - Willful



Determining Penalty Amounts

- The gravity of a violation is the primary consideration in determining penalty amounts.
- Gravity based penalty then is determined by two factors:
 - Severity
 - Probability

Current Penalty Amounts

- Penalty range between \$1,500 to \$5,000 depending on the Severity & Probability

Severity	Probability	GBP	Gravity
High	Greater	\$5,000 (or \$7,000)	High
Medium	Greater	\$3,500	Moderate
Low	Greater	\$2,500	Moderate
High	Lesser	\$2,500	Moderate
Medium	Lesser	\$2,000	Moderate
Low	Lesser	\$1,500	Low



Current Penalty Reductions

- **Reduction for Size**
 - 1-25 employees **60%**
 - 26-100 employees **40%**
 - 101-250 employees **20%**
 - 251 or more employees **None**
- **Reduction for Good Faith**
 - Appropriate management commitment & employee involvement; Worksite analysis; Hazard prevention; S & H Training **25%**
 - Document & Effective S & H Management System (i.e. safety minutes, documented training, etc) **15%**
- **Reduction for History**
 - Employer has not been cited (serious, repeat, willful) by Wyoming OSHA within the last three years. **10%**



Federal OSHA Administrative Enhancements to OSHA Penalty Policies

- Administrative Changes
 - Penalty range between \$3,000 to \$7,000 depending on the Severity & Probability

Severity	Probability	GBP	Gravity
High	Greater	\$7,000	High
Medium	Greater	\$6,000	Moderate
Low	Greater	\$5,000	Moderate
High	Lesser	\$5,000	Moderate
Medium	Lesser	\$4,000	Moderate
Low	Lesser	\$3,000	Low



Federal OSHA Administrative Enhancements to OSHA Penalty Policies

- New Penalty Reduction

- Reduction for Size

- 1-25 employees **40%**
 - 26-100 employees **30%**
 - 101-250 employees **10%**
 - 251 or more employees **None**

- Reduction for Good Faith **(SAME)**

- Appropriate management commitment & employee involvement; Worksite analysis; Hazard prevention; S & H Training **25%**
 - Document & Effective S & H Management System (i.e. safety minutes, documented training, etc) **15%**



Federal OSHA Administrative Enhancements to OSHA Penalty Policies

- Reduction for History
 - Employer has not been cited (serious, repeat, willful) by Wyoming OSHA within the last **five** years. **10%**
 - History Increase – If employer had been cited for a high gravity serious, willful, repeat, or failure-to-abate violation with in the previous **five** years – **10% increase to penalty**



Federal OSHA Administrative Enhancements to OSHA Penalty Policies

- Penalty Calculation
 - Penalties will be calculated **serially** instead of total summed percentage reduction.

Sample Moderate Gravity Penalty Comparison: Summed versus Serially Calculation

Sample Data	Summed	Serially*
High/Lesser	\$5,000	\$5,000
History (10%)		\$4,500 - 10%
Good Faith (15%)		\$3,825 - 15%
Quick Fix (15%)		\$3,251 - 15%
Size (30%)	10% + 15% + 15% + 30% = 70%	\$2,275 - 30%
Result	\$1,500	\$2,275 [†]

† - Results in an increase of approximately 50%

* - No proposed penalty shall exceed the statutory limit for a serious violation or \$7,000.

Repeat Violations

- Calculated as “serious” violations.
 - Less than 250 employees:
 - 1st repeat - gravity based penalty is multiplied by 2
 - 2nd repeat - gravity based penalty is multiplied by 5
 - 251 employees or more:
 - 1st repeat - gravity based penalty is multiplied by 5
 - 2nd repeat - gravity based penalty is multiplied by 10

Federal OSHA Administrative Enhancements to OSHA Penalty Policies



- Reduction at Informal Conferences
 - There will be limitations on how much can be given at the Informal Conferences.



Federal OSHA Administrative Enhancements to OSHA Penalty Policies

- Average penalty for a serious will increase from approximately \$1,000 to an average of \$3,000 to \$4,000.



Old Penalty vs. New Penalty

- Small employer calculation (0-25 employees):
 - Old Penalty Calculation
 - Penalty amount can range between \$375 to \$1,000
 - New Penalty Calculation
 - Penalty amount can range between \$1,950 to \$3,000
 - An increase between 3 to 5.5 times.



Old Penalty vs. New Penalty

- Medium employer calculation (26-100 employees):
 - Old Penalty Calculation
 - Penalty amount can range between \$875 to \$1,500
 - New Penalty Calculation
 - Penalty amount can range between \$2,275 to \$3,500
 - An increase between 2.3 to 2.6 times.



Old Penalty vs. New Penalty

Semi-large employer calculation (101- 250 employees):

- Old Penalty Calculation
 - Penalty amount can range between \$1,345 to \$2,000
- New Penalty Calculation
 - Penalty amount can range between \$2,925 to \$4,500
- An increase about 2.25 times.



Old Penalty vs. New Penalty

Large employer calculation (251+ employees):

- Old Penalty Calculation
 - Penalty amount can range between \$1,875 to \$2,500
- New Penalty Calculation
 - Penalty amount can range between \$3,250 to \$5,000
- An increase of about 2 times.

Time Frame?

- Federal OSHA started 10/01/10.
- Federal OSHA is saying State Plan Programs have 6 months to adopt an identical or at least as effective penalty policy.
- Wyoming OSHA will adopt identical.
 - Start beginning of the year (estimate)
 - Give time to inform employers of the changes.

What to do?

- Consultation OSHA
- Implement a effective Safety & Health Program
- Do self-inspection and audits (Find & Fix)
- WOGISA
- Train employees and supervisors
- Safety is everybody's responsibility





Thank You

Any Questions?

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