



OSHA makes major changes to enforcement

OSHA recently announced two major changes with regard to enforcement. First, OSHA will be **increasing civil penalty amounts** by changing the penalty calculation system. Second, OSHA is implementing a new Severe Violator Enforcement Program (SVEP).

The changes to the penalty system will be made over the next few months. The SVEP will become effective within the next 45 days.

Changes to penalty system

Based on an OSHA work group's findings and recommendations, the penalty calculation system is being changed, which will increase the overall dollar amount of all penalties while maintain OSHA's policy of reducing penalties for small employers and those acting in good faith.

OSHA is anticipating making the following changes to penalty calculations:

- **History reduction will expand from three to five years.** An employer who has been inspected by OSHA within the previous five years and has no serious, willful, repeat, or failure-to-abate violations will receive a 10 percent reduction for history. Previously this was based on a three year period.
- **A new history increase will be established.** Employers that have 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.
- **The time period for repeat violations will be increased** from three to five years.
- **Area Director/Informal Conference reductions will be changed.** Any changes over 30 percent penalty reduction will have to be approved by the Regional Administrator. In addition, OSHA will no longer allow penalty adjustments to an employer at an informal conference where the employer has an outstanding penalty balance owed to OSHA.
- **High gravity serious violations related to standards identified in SVEP** will be citable as separate violations.
- **A gravity-based penalty determination will be adopted**, providing for penalties between \$3,000 and \$7,000.
- **Size reductions will be lessened.** Employers with 1-25 employees will be eligible only for a 40 percent penalty reduction, down from 60 percent. Employers with 26-100 employees will be eligible for a 30 percent reduction, down from 40 percent. Employers with 101-250 employees will be eligible for a 10 percent reduction, down from 20 percent.
- **The current good faith procedures** will be retained.
- **Final penalties will be calculated serially**, unlike the present practice in which all of the penalty reductions are added and then the total percentage is multiplied by the gravity-based penalty to arrive at the proposed penalty. For comparison, this change would result in an increase of approximately 50 percent to a moderate gravity penalty.



SVEP

The new SVEP, which will replace the Enhanced Enforcement Program, is intended to focus OSHA enforcement resources on employers who endanger workers by demonstrating indifference to their responsibilities under the law. Under the program there will be:

- Increased OSHA inspections in these worksites,
- Mandatory OSHA follow-up inspections, and
- Inspections of other worksites of the same employer where similar hazards and deficiencies may be present.

Criteria for a Severe Violator Enforcement case

Any inspection that meets one or more of the following criteria at the time that the citations are issued, will be considered a severe violator enforcement case.

Fatality/catastrophe criterion

A fatality/catastrophe inspection in which OSHA finds one or more willful or repeated violations or failure-to-abate notices based on a serious violation related to a death of an employee or three or more hospitalizations.

Non-fatality/catastrophe criterion related to high-emphasis hazards

An inspection in which OSHA finds two or more willful or repeated violations or failure-to-abate notices (or any combination of these violations/notices), based on high gravity serious violations related to a high-emphasis hazard. (High-emphasis hazards are high gravity serious violations of specific standards related to falls, or to hazards addressed by the amputation, combustible dust, crystalline silica, lead, excavation, or shipbreaking National Emphasis Programs.)

Non-fatality/catastrophe criterion for hazards due to the potential release of a highly hazardous chemical (Process Safety Management)

An inspection in which OSHA finds three or more willful or repeated violations or failure-to-abate notices (or any combination of these violations/notices), based on high gravity serious violations related to hazards due to the potential release of a highly hazardous chemical, as defined in the PSM standard.

Egregious criterion

All egregious (e.g., per-instance citations) enforcement actions will be considered SVEP cases.