

Malter Up-to-the-Minute Update

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OSHA's Administrative Enhancements

Assistant Secretary of Labor for OSHA, David Michaels in late April issued a memo recently regarding Administrative Enhancements to OSHA's Penalty Policies. This memo calls attention to the administrative changes to the penalty calculation system outlined in the Field Operations Manual (FOM) for OSHA Investigators. Also mentioned in the memo is the new [Severe Violator Enforcement Program \(SVEP\) Violations](#).

In the past OSHA has considered several factors that can help an employer discount the penalties if it is cited:

- history of violations;
- good-faith efforts to implement an effective safety program;
- quick-fix response to abate hazards found during an inspection, and
- size.



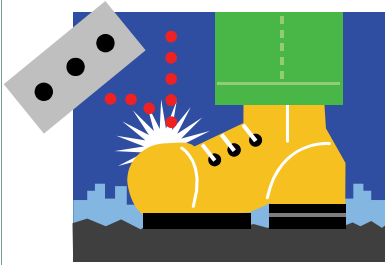
These changes will serve to generally increase the overall dollar amount of all penalties. The average penalty for a serious violation will increase to an average of \$3,000—\$4,000.

These factors are given a different discount value, such as 10% for history and 15% for good-faith efforts. The discount for size varies according to how many employees a firm has, allowing for penalty reduction between 10 and 40% for employers with less than 250 employees. No size reduction will be applied for employers with 251 or more employees.

The new Administrative Enhancements change the way these discounts and other policies are to be implemented:

- The time frame for considering an employer's history of violations will expand from three years to five.
- An employer that has any high-gravity serious, willful, repeat or failure-to-abate violations within the previous five years will receive a 10% **increase** in their penalty, up to the statutory maximum.
- The time period for repeated violations also increases from three to five years.
- Area Directors will retain the authority to determine if a size or history reduction should be granted. If an Area Director believes that imposing the full gravity based penalty is necessary to achieve the appropriate deterrent effect, he or she may do so after fully documenting the rationale in the case file. Furthermore, the Agency will no longer allow penalty adjustments to an employer at an infor-

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mal conference where the employer has an outstanding penalty balance owed to OSHA for the establishment in question or any other location.

- High gravity serious violations related to standards identified in the SVEP will no longer need to be grouped or combined, but can be cited as separate violations, each with its own proposed penalty.
- OSHA will be adopting a gravity-based penalty determination that provides for a gravity based penalty between \$3,000 and \$7,000.
- The 15% Quick-Fix reduction, which is currently allowed as an abatement incentive program meant to encourage employers to immediately abate hazards found during an inspection, will also be retained. However, the 10% reduction for employers with a strategic partnership agreement will be eliminated.
- 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.
- If an employer agrees to hire an outside safety consultant, they may be eligible for a 20% penalty reduction.
- 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, resulting in a higher net penalty. The penalty adjustment factors will be applied serially as follows: History, Good Faith, Quick-Fix and Size.

These changes will serve to generally increase the overall dollar amount of all penalties. Furthermore, the average penalty for a serious violation will increase from approximately \$1,000 to an average of \$3,000 - \$4,000. The Agency hopes that higher penalty amounts will provide a greater deterrent and further encourage employers to furnish safe and health workplaces for their employees. In the immediate future, OSHA will focus on outreach in preparation of implementing this new penalty policy. The enhancements outlined above will become effective over the next several months and the FOM will be revised to reflect the new policy.



For additional information please click on the following links or go to:

http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=17544 or
SVEP <http://www.osha.gov/dep/svep-directive.pdf>

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