

VOSHA Penalty Increase Explained



2017 VOSHA Penalty Increase

- The Vermont Department of Labor operates the Vermont Occupational Safety and Health Administration (VOSHA) State Plan and is required by federal OSHA laws and regulations to maintain maximum penalties that are “at least as effective” as those of federal OSHA.
- In August of 2015 the U.S. Congress passed the Federal Civil Penalties Inflation Act.
- This Act required Federal OSHA (among other federal agencies) to calculate and upgrade their penalties from the date of the last upgrade (For Federal OSHA that was 1991).

VOSHA 2017 Penalty Increase (continued)

- The calculation rate is based on the Consumer price Index (CPI). This is otherwise known as “Inflation”
- In the 25 years between 1991 and 2016 (when the law became effective Federally) the CPI had increased by 78.15%
- The Federal Register is available at:
<https://www.federalregister.gov/documents/2016/07/01/2016-15378/departments-of-labor-federal-civil-penalties-inflation-adjustment-act-catch-up-adjustments>

VOSHA 2017 Penalty Increase (continued)

- Under Vermont S.135, Vermont Department of Labor increased the maximum statutory penalties for violations of safety and health code.
- Increases are as follows:
- Serious, Other than serious, Posting Violations;
 - From \$7,000 to \$12,675
- Serious Willful or Repeat Violations;
 - From \$70,000 to \$126,749

In Addition

- The following language was enacted:

§ 210. PENALTIES

(9) (A) As provided under the federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and the Act, the penalties provided in subdivisions (1), (2), (3), (4), (5), and (8) of this subsection shall annually, on January 1, be adjusted to reflect the increase in the Consumer Price Index, CPI-U, U.S. City Average, not seasonally adjusted, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous December 1.

(B) The Commissioner shall calculate and publish the adjustment to the penalties on or before January 1 of each year, and the penalties shall apply to fines imposed on or after that date.

2017 VOSHA Gravity Based Penalty

- VOSHA generally follows OSHA's Gravity Based Penalty (GBP) methodology for calculating proposed penalties which includes an assessment of the **“Severity”** of the hazard cited and the **“Probability”** that an injury or illness would result from the cited hazard.
- VOSHA GBP penalty levels differ from OSHA in certain areas discussed later in this presentation.

2017 VOSHA Gravity Based Penalty

- **“Severity”** is classified as:
 - High, Medium or Low
- **“Probability”** is classified as:
 - Greater or Lesser

2017 VOSHA Gravity Based Penalty

- There are six main Gravity Based Penalty levels for proposed “serious” violations:
 - High Severity/Greater Probability
 - High Severity/Lesser Probability
 - Medium Severity/Greater Probability
 - Medium Severity/Lesser Probability
 - Low Severity/Greater Probability
 - Low Severity/Lesser Probability

VOSHA Gravity Based Penalty

- In Addition, certain reductions were allowed for the size of the employer (how many employees within the 12 previous months)
 - Employers of 1-25 employees received a 60% reduction
 - Employers of 26 - 100 employees received a 30% reduction
 - Employers of 101 - 250 employees received a 10% reduction
 - Employers of 251+ employees received no reduction for size

VOSHA Penalties as they exist in 2016

Severity/probability	Penalty	1-25; 60%	26-100; 30%	101-250; 10%	251 +; 0%
High/Greater	7,000	2,800	4,900	6,300	7,000
Medium Greater	6,000	2,400	4,200	5,400	6,000
Low/Greater	5,000	2,000	3,500	4,500	5,000
High/Lesser	5,000	2,000	3,500	4,500	5,000
Medium/Lesser	4000	1,600	2,800	3,600	4,000
Low/Lesser	3,000	1,200	2,100	2,700	3,000
Serious Willful	70,000	28,000	49,000	63,000	70,000

Note: Failure to Abate and Repeat citations up to \$70,000 per citation

2017 OSHA GBP Penalty Table

Sev./Prob.	Penalty	1-10; 70%	11-25; 60%	26-100; 30%	101-250; 10%	251+; 0%
High/Greater	12,675	3,802	5,070	8,872	11,408	12,675
Med./Greater	10,864	3,259	4,346	7,605	9,778	10,864
Low/Greater	9,054	2,716	3,622	6,338	8,149	9,054
High/lesser	9,054	2,716	3,622	6,338	8,149	9,054
Med./Lesser	7,243	2,173	2,897	5,070	6,519	7,243
Low/Lesser	5,432	1,630	2,173	3,802	4,889	5,432

Note: These amounts will be adjusted annually

2017 OSHA GBP Penalty Table - Serious Willful

Serious Willful Penalty	1-10;80%	11-20;60%	21-30;50%	31-40;40%	41-50;30%	51-100;20%	101-250;10%	251+;0%	
High Gravity	126,749	25,350	50,700	63,375	76,049	88,724	101,399	114,074	126,749
Moderate Gravity	108,636	21,727	43,454	54,318	65,182	76,045	86,909	97,772	108,636
Low gravity	90,537	18,107	36,215	45,269	54,322	63,376	72,430	81,483	90,537

Note: Failure to Abate and Repeat citations up to \$126,749 per citation

Note: These amounts will be adjusted annually

VOSHA Penalties As Of September 2017

Sev./Prob	Penalty	1-25; 70%	26-50; 40%	51-100 30%	101-250; 10%	251+; 0%
High/Greater	12,675	3,802	7,605	8,872	11,408	12,675
Med./Greater	10,864	3,259	6,518	7,605	9,778	10,864
Low/Greater	9,054	2,716	5,432	6,338	8,149	9,054
High/Lesser	9,054	2,716	5,432	6,338	8,149	9,054
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Low/Lesser	5,432	1,630	3,259	3,802	4,889	5,432

Note: These amounts will be adjusted annually

VOSHA Serious Willful Penalties As Of September 2017

Penalty	1-10;80%	11-25;70%	26-30;50%	31-40; 40%	41-50;30%	51-100;20%	101-250;10%	251+;0%	
High Gravity	126,749	25,350	50,700	63,375	76,049	88,724	101,399	114,074	126,749
Moderate Gravity	108,636	21,727	32,590	54,318	65,182	76,045	86,909	97,772	108,636
Low gravity	90,537	18,107	27,161	45,269	54,322	63,376	72,430	81,483	90537

Note: Failure to Abate and Repeat citations up to \$126,749 per citation

Note: These amounts will be adjusted annually

Comparisons of VOSHA and OSHA Citations

- In a comparison of the penalties and how they affect employers of varying sizes:
- An employer of 16 employees is cited for two citations (note penalties for employers of 1-10 employees would remain the same as current OSHA penalties)
- Citation 1 Serious, Low/Greater: Current VOSHA; \$2,000, Current OSHA; \$3,622, VOSHA Sept. 2017; \$2,716
- Citation 2 Serious repeat Low/Greater: Current VOSHA; \$4,000, Current OSHA; \$7,244, VOSHA Sept. 2017; \$5,432
- Total; _____
- **Current VOSHA: \$6,000, Current OSHA: \$10,866, VOSHA (Sept.-2017): \$9,960**

- An employer of 45 employees is cited for three citations:
- Citation 1 Serious, Medium/Lesser: Current VOSHA; \$2,800, Current OSHA \$5,070; VOSHA Sept. 2017; \$4,346
- Citation 2 Serious, Low/Lesser: Current VOSHA; \$2,100, Current OSHA; \$3,802, VOSHA Sept. 2017; \$3,259
- Citation 3 Serious, High/Greater: Current VOSHA; \$4,900, Current OSHA; \$8,872, VOSHA Sept. 2017; \$7,605
- Total _____
Current VOSHA; \$9,800 Current OSHA; \$17,744 VOSHA (Sept. 2017); \$15,210

- Under VOSHA's Penalty System:
- Employers of 11-25 employees would be included in the “small employer” category and would receive an additional reduction of 10% (from 60% to 70% total reduction).
- Employers of 26 to 50 employees would get an additional 10% from current OSHA penalty structure (from 30% to 40% total reduction).
- All other categories would remain the same as current OSHA policy.

Serious Willful Penalties

- Serious Willful penalties are subject to increases as well (as shown in previous slides)
- VOSHA's penalties have included an extra reduction for employers of 11-25 employees, thus reducing the impact of the penalty for employers of this size range

How To Avoid VOSHA Penalties

- The best way for employers to avoid exposure to increased VOSHA penalties is to proactively address workplace hazards before a VOSHA inspector shows up at the work site:
- **CONTACT THE CONSULTATION SERVICES DIVISION, Project WorkSAFE**

Project WorkSAFE

- The Vermont Department of Labor offers **free On-Site Consultation Services** to help employers better understand and voluntarily comply with VOSHA standards. Priority is given to high hazard workplaces with **250 or fewer employees** and all services are offered to employers at no cost.
- On-Site Consultation Services helps employers identify and correct potential safety and health hazards through walk-through surveys (**without citations or penalties**), provide abatement advice, provide on-site training, and provide **program assistance to develop safety and health programs.**
- Additional information about On-Site Consultation Services can be obtained by contacting the Vermont Department of Labor, Project WorkSAFE at <http://labor.vermont.gov/project-worksafe/> or by calling toll free 1 (888) 723-3937

For More Information on VOSHA Penalties Contact

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Your Decision to Work Safely Matters

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Thank You!