

### Course Learning Outcomes for Unit III

Upon completion of this unit, students should be able to:

3. Express employee rights related to workplace safety.
  - 3.1 Discuss employees' rights and responsibilities following an OSHA inspection.
4. Describe legal disincentives for noncompliance with workplace safety standards.
  - 4.1 Discuss what steps employers should take once receiving OSHA citations and proposed penalties.
5. Summarize employer responsibilities related to worker safety and health.
  - 5.1 Discuss the employer's abilities to reduce the level of citations and/or penalties.
  - 5.2 Discuss the documentation required to respond to citations and penalties.

| Course/Unit Learning Outcomes | Learning Activity  |
|-------------------------------|--|
| 3.1                           | Unit Lesson<br>Chapter 4<br>Chapter 5<br>Chapter 6<br>Unit III Essay |
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| 5.1                           | Unit Lesson<br>Chapter 4<br>Chapter 5<br>Chapter 6<br>Unit III Essay |
| 5.2                           | Unit Lesson<br>Chapter 4<br>Chapter 5<br>Chapter 6<br>Unit III Essay |

### Required Unit Resources

This unit will use chapters from the following resource:

Occupational Safety and Health Administration. (2020). [Field operations manual](https://www.osha.gov/enforcement/directives/cpl-02-00-164). U.S. Department of Labor.  
<https://www.osha.gov/enforcement/directives/cpl-02-00-164>

*In order to access the following chapter resources, click the chapter links below.*

[Chapter 4: Violations](#)

[Chapter 5: Case File Preparation and Documentation](#)

## Chapter 6: Penalties and Debt Collection

### Unit Lesson

#### Introduction

In Unit II, we learned about the Occupational Safety and Health Administration (OSHA) inspection process. In this unit, we are going to discuss what happens after an OSHA inspection occurs and how penalties for each of the violations are determined.

#### Steps After OSHA Inspection

After the inspection is completed, the OSHA compliance officer will review all the findings from the walk-around, employee interviews, and any sampling that was performed. Based on the review, the compliance officer will determine if any violations occurred, and the severity associated with each violation.

Violations must be associated with established regulations and any standards that have been incorporated by reference. OSHA regulations can be found in Title 29 of the Code of Federal Regulations (CFR). For example, regulations for general industry can be found in 29 CFR §1910, and regulations for the construction industry can be found in 29 CFR §1926.

What exactly does the term *incorporated by reference* mean? A standard that has been written by government or nongovernmental agencies can be incorporated by reference, which gives them the same force and effect as OSHA regulations. This means OSHA can issue citations and levy fines against employers for violating mandatory sections of the standards (where the term *shall* is used).

One decision the compliance officer must make is whether a horizontal or vertical standard applies to violations that have been identified.

- Horizontal Standard: OSHA regulations that apply to a broad range of employers. An example would be the respiratory protection standard, 29 CFR §1910.134, which applies to the use of respirators in a broad range of industries, including manufacturing and construction.
- Vertical Standard: OSHA regulations that only apply to one industry. For example, OSHA's nonionizing radiation regulation, 29 CFR §1926.54, only applies to nonionizing radiation sources in construction activities.

When a hazard in a particular industry is covered by both a vertical and horizontal standard, the vertical standard will take precedence even if the horizontal standard is more stringent.

When violations are discovered, the compliance officer must also decide if penalties are appropriate and, if applicable, the amount of penalties to apply.

#### Penalty Factors

The penalty structure is designed to provide an incentive for preventing or correcting violations voluntarily. OSHA penalties are not intended to serve as punishment for the violations but should be significant enough to deter employers from violations. Penalties should be assessed using four factors: gravity of the violation, size of the employer's business, good faith efforts of the employer, and employer's history of previous violations.



### **Gravity of the Violation**

This is the primary consideration for determining penalties. To determine the gravity, two assessments need to be made, severity and probability.

- **Severity Assessment:** The severity of the injury or illness.
- **Probability Assessment:** The probability an injury or illness will result from a hazard has no role in determining the classification of the violation, but affects the amount of the proposed penalty.

This means the penalties are assessed by looking at both the severity of the violation and a probability assessment. In other words, how likely is it to happen, and how severe would any injury/illness be if it did happen? This is commonly referred to as a risk assessment in the safety field. The different levels of severity for violations are summarized in Table 6-1 of the Field Operations Manual (OSHA, 2020).

### **Size of the Employer's Business**

A maximum of 70% reduction is permitted for size. The size of an employer is calculated based on the maximum number of employees for an employer at all workplaces nationwide, to include State Plan states, at any one time during the previous 12 months. A size reduction table is provided in Table 6-2 of the Field Operations Manual (OSHA, 2020).

## Good Faith Efforts of the Employer

A maximum of 25% reduction is permitted for good faith efforts. A penalty reduction is permitted in recognition of an employer's effort to implement an effective safety and health management system in the workplace. Chapter 6 of the Field Operations Manual provides very specific guidance to compliance officers when good faith efforts are not permitted to be applied. Some examples include high gravity serious violations, willful violations, repeat violations, and failure to abate violations.

## Employer's History of Previous Violations

An employer who has been inspected by OSHA within the previous 5 years and has no serious, willful, repeat, or failure-to-abate violations will receive a 10 percent reduction for history.

## Reductions

Good faith reductions are commonly applied for OSHA penalties as long as the violation is not a high-gravity serious violation, a repeat violation, a failure to abate violation, or if the employer has no safety and health program (or a very weak program). This reduction is given in recognition of an employer's efforts to implement an effective safety and health program. Basically, if employers can show that they have taken steps to implement the basic safety and health programs required by OSHA, they can receive a good faith reduction, except for the instances mentioned above.

Employers may also receive an additional reduction if the site has not had serious, willful, or repeated violations in the last three years. Many employers are not aware of these penalty reduction options. The OSHA compliance officer should incorporate the reductions automatically, but that does not always occur. An employer may ask OSHA for one of the reductions or ask for a larger reduction if they believe it is applicable.

Another option for reducing penalties is not well known by most employers. The reduction is called a *quick-fix penalty reduction*. The primary reason the quick-fix reduction exists is to encourage employers to immediately correct issues that are identified during an inspection, thus immediately reducing the risk to employees. If employers immediately abate a hazard that is identified by a compliance officer during an inspection, the compliance officer can decide to provide a quick-fix reduction. This reduction is very limited and is at the discretion of the compliance officer. The quick-fix reduction is 15% and can only be applied to individual citations that have been corrected. However, there are some limitations to when the quick-fix reduction can be applied. Quick-fix reductions cannot be applied to violations that are more serious (OSHA, 2020).

## Types of Violations

There are different types of violations, that include repeated violations, willful violations, failure to abate, serious, and other than serious.

## Repeated violations

Repeated violations are violations that were identified in an earlier inspection and are still present in the workplace. In some cases, the violation may still be present, but the level of the citation can change from inspection to inspection. For example, a facility may be cited for failure to have an adequate respiratory protection program, and this issue may be rated as serious one year. The respiratory program may still be cited as deficient the following year, but improvements now put the citation in the other-than-serious category. The penalty in the second year would be based on the other-than-serious category instead of the serious category.

The primary concern is that a repeat violation represents an increased risk of injury or illness to employees. Abating the violation results in a safer, healthier workplace. Additionally, violations that are not abated will be repeat violations on subsequent inspections, resulting in much higher penalties. Historically, many employers have contested citations to have serious violations reclassified as other-than-serious in order to reduce the risk of repeating a serious violation in the future. We will discuss the employer's options for contesting violations and penalties in the next two units.

## Willful Violations

Written for employers who commit intentional violations. The term *intentional* may be interpreted differently by different OSHA compliance officers, and employers sometimes may not understand why they have received a willful violation. Willful violations will be classified as willful serious or other-than-serious. The classification as serious or other-than-serious is important in determining the amount of the penalty, and the amount of reductions that are available.

OSHA will also not apply any good faith reduction for a willful violation. The main difference between willful serious and other-than-serious violations is in the application of reductions for size.

## Failure to Abate

This violation occurs when a citation has become a final order, and the same violation is present during a subsequent inspection (OSHA, 2020). There are several factors that are considered when determining a penalty for failure to abate. The factors are summarized in Section VII of the Field Operations Manual. An important consideration for penalties for failure to abate violations is that the penalty may be applied for every day that the violation was not abated.

## Serious

When a workplace hazard could cause an accident or illness that would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation.

## Other-Than-Serious

A violation that has a direct relationship to job safety and health, but is not serious in nature, is classified as other-than-serious.

### Current Penalty Schedule

| Type of Violation   | Penalty                                    |
|---------------------|--|
| Willful or Repeated | \$136,532 per violation                    |
| Failure to Abate    | \$13,653 per day beyond the abatement date |
| Serious             | \$13,653 per violation                     |
| Other than Serious  |  |

(OSHA, n.d.)

## Summary

As you can see from the discussion above and reading through the required chapters in the Field Operations Manual for this unit, there are a lot of factors that go into determining the penalty amount an employer may be cited. OSHA starts out with a base penalty amount; however, there are numerous factors in place that can help reduce the penalty amount.

## References

Occupational Safety and Health Administration. (n.d.). *OSHA penalties*. U.S. Department of Labor. <https://www.osha.gov/penalties>

Occupational Safety and Health Administration. (2020). *Field operations manual*. U.S. Department of Labor. <https://www.osha.gov/enforcement/directives/cpl-02-00-164>

## Suggested Unit Resources

*In order to access the following resources, click the links below.*

If you are interested in exploring the topic of OSHA inspections, citations, and penalties further, review the resources below.

Occupational Safety and Health Administration. (1994). [Inspections, citations, and proposed penalties: Citations, notices of de minimis violations; policy regarding employee rescue activities](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9618). U.S. Department of Labor.  
[https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=STANDARDS&p\\_id=9618](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9618)

Occupational Safety and Health Administration. (2016). [Inspections, citations, and proposed penalties: Posting of citations](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9621). U.S. Department of Labor.  
[https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=STANDARDS&p\\_id=9621](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9621)