

**DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

**MODIFICATION TO TEXT OF PROPOSED REGULATIONS
SPECIFIC LANGUAGE – 15 DAY CHANGES**

**TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS
Chapter 3.2. California Occupational Safety and Health Regulations
Subchapter 1. Regulations of the Director of Industrial Relations
Article 4. Proposed Penalty Procedure
§333. Notice of Proposed Assessment of Civil Penalties; Final Order
§336. Assessment of Civil Penalties**

§ 333. Notice of Proposed Assessment of Civil Penalties; Final Order.

(a) Where a civil penalty is indicated, the Division shall after, or concurrent with the issuance of a citation, and within a reasonable time after the date the violation occurred, notify the employer by certified mail of the civil penalty proposed by the Division respecting the item(s) set forth as violation(s) in the citation. Any citation and/or Notice of Proposed Civil Penalty shall be deemed to be the final order of the Appeals Board, not subject to review by or appeal to any court or agency, unless within 15 working days from the date of the receipt of such citation or such notice of proposed civil penalty, the employer notifies the Appeals Board in writing of his intention to contest the citation and/or the civil penalty, with respect to violations alleged by the division, abatement periods, amount of proposed penalties, and the reasonableness of the changes required by the division to abate the condition.

(b) Notwithstanding subsection (a), if an employer timely submits to the Division proof of satisfactory abatement of a Serious violation, the Division may shall modify the civil penalty of a the corresponding citation pursuant to Section 336(e)(2), even if the citation has become a final order of the Appeals Board. If the Division rejects an employer's timely-submitted proof of abatement as unsatisfactory, or if the Division fails to modify the penalty as required following the timely submission of proof of satisfactory abatement, then an employer may appeal such actions pursuant to Section 359 of Title 8 of the California Code of Regulations.

Note: Authority cited: Sections 54, 55 and 6319, Labor Code. Reference: Section 6319, Labor Code.

§ 336. Assessment of Civil Penalties.

Civil penalties for Regulatory, General, Serious, Repeat, Willful, and Failure to Abate violations shall be assessed in the following manner:

(a) Regulatory Violation -

(1) In General - Any employer who commits any Regulatory violation (as provided in Section 334(a) of this article) shall be assessed a civil penalty of up to \$7000 for each such violation. Except as set forth in parts (2) through (6) of this subsection, a minimum proposed penalty of \$500, representing the gravity of the violation, shall be assessed against employers who commit Regulatory violations. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(2) For Carcinogens - A minimum proposed penalty of \$1,000 for all carcinogen standard regulatory violations, other than reporting use violations, representing the gravity of the violation, shall be assessed against the employers who commit such violations. The proposed penalty shall be adjusted for Size, Good Faith and History; however, an abatement credit shall not be granted.

(3) For Carcinogens Failure to Report Use. Any employer who violates a reporting requirement respecting the use of a carcinogen as defined in Title 8 of the California Code of Regulations section 330(f), shall be assessed a minimum proposed civil penalty of \$2,500. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(4) For Violation of Permit or Registration Requirements. Any employer who violates the permit requirements of article 2, Permits - Excavations, Trenches, Construction and Demolition, and The Underground Use of Diesel Engines in Work in Mines and Tunnels, commencing with section 341 of Title 8 of the California Code of Regulations, or the Registration requirements of article 2.5, Registration - Asbestos-Related Work commencing with section 341.6 of Title 8 of the California Code of Regulations, shall be assessed a minimum proposed civil penalty of \$1,250. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(5) For Violation of Elevator Permit and Posting Requirements. Any person owning or having custody, management, or operation of an elevator who operates any such elevator without a valid permit, or who fails to post the permit as required, may be assessed a civil penalty pursuant to the provisions of this article of up to \$1000.

(6) For Failure to Report Serious Injury or Illness, or Death of an Employee - Any employer who fails to timely report an employee's injury or illness, or death, in ~~violation~~ violation of section 342(a) of Title 8 of the California Code of Regulations, shall be assessed a minimum penalty of \$5,000.

(b) General Violation - Any employer who violates any occupational safety and health standard, order or special order and such violation is determined to be a General violation (as provided in section 334(b) of this article) may be assessed a civil penalty of up to \$7000 for each such violation.

Gravity of a General Violation - The Base Penalty of a General violation is determined by evaluating Severity (as provided in section 335(a)(1)(A) of this article). If the Severity is:

LOW -	The Base Penalty shall be \$1,000.
MEDIUM -	The Base Penalty shall be \$1,500.
HIGH -	The Base Penalty shall be \$2,000.

The Base Penalty for the General violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW -	25% of the Base Penalty shall be subtracted.
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MEDIUM -	No adjustment shall be made.
HIGH -	25% of the Base Penalty shall be added.

The Base Penalty for the General violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW -	25% of the Base Penalty shall be subtracted.
MEDIUM -	No adjustment shall be made.
HIGH -	25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

(c) Serious Violation

(1) In General - Any employer who violates any occupational safety and health standard, order, or special order, and such violation is determined to be a Serious violation (as provided in section 334(c)(1) of this article) shall be assessed a civil penalty of up to \$25,000 for each such violation. Because of the extreme gravity of a Serious violation an initial base penalty of \$18,000 shall be assessed.

The Base Penalty for the Serious violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW -	25% of the Base Penalty shall be subtracted.
MEDIUM -	No adjustment shall be made.
HIGH -	25% of the Base Penalty shall be added.

The Base Penalty for the Serious violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW -	25% of the Base Penalty shall be subtracted.
MEDIUM -	No adjustment shall be made.
HIGH -	25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

(2) For Carcinogens - Any employer who violates any occupational safety and health standard, order, or special order respecting the use of a carcinogen, and such violation is determined to be a Serious violation (as provided in section 334(c)(4) of this article) shall be assessed a total civil penalty of \$2000 for each such violation. This penalty is not subject to adjustment.

(3) Serious Violation Causing Death or Serious Injury, Illness or Exposure - If the employer commits a Serious violation and the Division has determined that the violation caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, the penalty shall not be reduced pursuant to this subsection, except the penalty may be reduced for Size as set forth in subsection (d)(1) of this section. The penalty shall not exceed \$25,000.

(4) Operation of an Elevator in an Unsafe Condition or in Violation of an Order Prohibiting Use.

Any person owning or having custody, management or operation of an elevator who operates or permits the operation of the elevator in a condition which is dangerous to life or the safety of any person, or who operates or permits the operation of the elevator in violation of any Order Prohibiting Use issued by the Division, may be assessed a civil penalty pursuant to the provisions of this article of up to \$2000.

(5) For Tower Cranes - Any employer who violates any tower crane standard, order or special order and such violation is determined to be a serious violation (as provided in section 334(c)(1) of this article) shall be assessed a penalty of \$2,000. The penalty shall not be subject to adjustment as set forth in subsections (d) and (e) of this section.

(d) Further Adjustment of Regulatory, General, and Serious Violations - Subject to the provisions of parts (5) through (9) of this subsection, the Gravity-based Penalty established under either subsection (a), (b) or (c) of this section, shall be appropriately adjusted by giving due consideration to the following factors:

(1) The Size of the Business If the Size of the Business (as provided under section 335(b) of this article) is:

10 or fewer employees	-	40% of the Gravity-based Penalty shall be subtracted.
11-25 employees	-	30% of the Gravity-based Penalty shall be subtracted.
26-60 employees	-	20% of the Gravity-based Penalty shall be subtracted.
61-100 employees	-	10% of the Gravity-based Penalty shall be subtracted.
More than 100 employees	-	No adjustment shall be made.

(2) The Good Faith of the Employer - If the Good Faith of the Employer (as provided under section 335(c) of this article) is:

GOOD -	30% of the Gravity-based Penalty shall be subtracted.
FAIR -	15% of the Gravity-based Penalty shall be subtracted.
POOR -	No adjustment shall be made.

(3) The History of Previous Violations - If the employer's History of Compliance (as provided under section 335(d) of this article) is:

GOOD -	10% of the Gravity-based Penalty shall be subtracted.
FAIR -	5% of the Gravity-based Penalty shall be subtracted.

POOR -	No adjustment shall be made.
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Following the preceding adjustments of the Gravity-based Penalty, the resultant penalty is termed Adjusted Penalty.

(4) If an employer cited for a violation of a safety and health provision within title 8 of the California Code of Regulations was, at the time of citation, making a good faith effort to abate the alleged violation, pursuant to written recommendations of a Consultant of the CAL/OSHA Consultation Service, the following penalty adjustments may apply:

(A) General Violation. All penalties assessed for such General violations may be waived by the Division.

(B) Serious Violation. All penalties for such Serious violations may be subject to an additional adjustment reducing the proposed penalty 50%.

(5) Serious Violations Respecting the Use of a Carcinogen - The penalty for any Serious violation respecting the use of a carcinogen as set forth in subsection (c)(2) of this section is not subject to adjustment pursuant to this subsection and shall not be otherwise reduced.

(6) Regulatory Violations of the Permit and Registration Requirements - The minimum penalty for any Regulatory violation of the permit or registration requirements as set forth in subsection (a)(4) of this section is \$250.

(7) Serious Violations Causing Death or Serious Injury, Illness or Exposure - Subject to the provisions of subsection (c)(3) of this section, the penalty for any Serious violation determined by the Division to have caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, shall not be adjusted pursuant to this subsection, except for Size set forth in part (1) of this subsection.

(8) Injury Prevention Program - The penalty for any Serious violation shall not be subject to adjustment pursuant to this subsection other than for Size as set forth in part (1) of this subsection where the employer does not have an operative injury prevention program as set forth in Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(9) False Declarations of Abatement - Subject to the provisions of subsection (e) of this section, where it is determined after reinspection that the employer has not complied with the abatement requirements of the Division and employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size as set forth in part (1) of this subsection.

(10) No civil penalty shall be assessed against any new employer for a period of one year after the date the new employer establishes a business in the state for a regulatory or general violation of the Injury and Illness Prevention Program Standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board, if the employer has made a good faith effort to comply with the requirement set forth therein.

(11) No civil penalty shall be assessed against an employer who adopts, posts, and implements in good faith the Model Injury and Illness Prevention Program for Non-High-Hazard Employment

prepared by the Division for a first violation of the Injury and Illness Prevention Program standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(12) For an employer who commits a repeat violation (as provided under section 334(d) of this article), the penalty shall not be subject to adjustment pursuant to this subsection, other than for Size as set forth in part (1) of this subsection.

(e) Abatement Credit for General and Serious Violations -

(1) The Adjusted Penalty for General violations is reduced by 50% on the presumption that the employer will correct the violations by the abatement date. The resultant penalty is termed Proposed Penalty. Violations classified as “Repeat General” or “Willful General” are not subject to an abatement credit.

(2) For Serious violations not listed in paragraph (3), the Division shall not grant an abatement credit for a Serious citation unless the employer has done ~~any~~ either one of the following:

(A) Abated the Serious violation at the time of the initial or a subsequent visit during an inspection and prior to the issuance of a citation.

(B) Submitted a ~~signed~~ signed statement signed under penalty of perjury, together with ~~and~~ supporting evidence, when necessary to prove abatement, that the employer has abated the Serious violation within the period fixed for abatement in the citation. ~~The if the~~ signed statement and supporting evidence ~~are~~ must be received within 10 working days after the end of the period fixed in the citation for abatement.

(3) The following types of Serious violations are not subject to an abatement credit:

(A) Serious violations for which extent and likelihood are rated high;

(B) Serious violations designated as “Repeat Serious” or “Willful Serious;”

(C) Serious violations respecting the use of a carcinogen; and

(D) Serious violations causing death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302.

(f) Penalty for Failure to Abate Regulatory, General or Serious Violations - If the employer fails to abate the violation by the date permitted for its correction or fails to submit to the Division a signed statement of abatement of a violation within ten working days of the date set by the Division for correction of the violative condition, any abatement credit extended pursuant to subsection (e) of this Section shall be rescinded and this amount assessed as part of the failure to abate penalty. In addition, a penalty shall be assessed that is based upon the initial Gravity-based penalty for each calendar day that the previously cited violation continues unabated after expiration of the abatement period. Subject to the provisions of part (1) hereof, the Gravity-based penalty is reduced by the reevaluated adjustment factors. The adjustment factors of Size, Good Faith, and History shall be determined by evaluation of the circumstances at the time of the subsequent inspection when the failure to abate is discovered. The daily additional penalty for failure to abate a violation shall not exceed \$15,000.

Limitations:

(1) Except (A) where the gravity of the violation is high and exposure to employees is continuous, or (B) the employer has exhibited a high degree of negligence in failing to correct the violation, the daily penalty for failure to abate a Regulatory or General violation may be further reduced up to 90% for the first 120 days the violation continues to exist and up to 50% thereafter where the violation does not bear a direct relationship on employee health and safety. The daily penalty for a Serious violation may be reduced up to 50% where the adjustment factors calculated pursuant to subsection (c) of this section are Low and the History and Good Faith calculated pursuant to subsection (d) of this section are Good.

(2) When a violation consisted of a number of instances and upon subsequent inspection some instances are found to have been abated and others have not, the daily penalty shall be calculated in proportion to the extent that the violation has been abated.

(3) Failure to Abate a Serious Violation Causing Death or Serious Injury, Illness or Exposure - If the employer fails to abate a Serious violation and the Division has determined that the failure to abate caused death or serious injury, illness, or exposure as defined pursuant to Labor Code section 6302, the penalty shall not be adjusted pursuant to this subsection, except for Size as set forth in subsection (d)(1) of this section.

(4) Failure to Abate a Serious Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury - If the employer fails to abate a serious violation of a crane standard, order, or special order and the Division has determined that the failure to abate caused death or serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$14,000 for each calendar day. The penalty is not subject to adjustment.

(5) False Declaration of Abatement - If it is determined after reinspection that the employer has not complied with the abatement requirements of the Division, and the employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size pursuant to part (1) of subsection (d) of this section.

(g) Repeat Violation -

(1) In General - If a Regulatory, General, or Serious violation is repeated (as provided under section 334(d) of this article) the Proposed Penalty is adjusted upward as follows:

1st repeat - the Proposed Penalty is multiplied by two.

2nd repeat - the Proposed Penalty is multiplied by four.

3rd repeat - the Proposed Penalty is multiplied by ten.

The resultant penalty shall not exceed \$70,000.

(2) For Carcinogens - If a Serious violation respecting the use of a carcinogen or a Regulatory violation concerning a reporting requirement respecting the use of a carcinogen is repeated (as provided in section 334(d) of this article), the total civil penalty shall be as follows:

(A) For repeated Regulatory violations concerning a reporting requirement.

1st repeat - \$5,000

2nd repeat - \$10,000

3rd repeat - \$20,000

(B) For repeated Serious violations respecting the use of a carcinogen.

1st repeat - \$10,000

2nd repeat - \$20,000

3rd repeat - \$40,000

These penalties are not subject to adjustment.

(3) Repeated Violation Causing Death or Serious Injury, Illness or Exposure - The computation of the Proposed Penalty for a repeated violation shall not be subject to reduction, other than the Size pursuant to part (1) of subsection (d) of this section, where the violation is determined by the Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(h) Willful Violation - If a Regulatory, General, or Serious violation is determined to be willful (as provided under section 334(e) of this article) the Proposed Penalty is adjusted upward as follows:

Regulatory, General and Serious - the Proposed Penalty is multiplied by five. However, the penalty for any willful violation shall not be less than \$5,000 and shall not exceed \$70,000.

(1) Willful Violation Causing Death or Serious Injury, Illness or Exposure - The computation of the Proposed Penalty for a willful violation shall not be subject to reduction, other than the Size pursuant to part (1) of subsection (d) of this section, where the violation is determined by the Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(i) Serious Repeated or Willful Repeated Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury - If the employer commits a serious repeated or willful repeated violation of a crane standard, order, or special order, and the Division has determined that the violation caused death or serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$140,000. This penalty is not subject to adjustment.

(j) Rounding of the Fractions Amounts of the civil penalties are rounded down to the next whole dollar during the calculation stages, and final figures are adjusted downward to the next lower five dollar (\$5) value.

(k) Multiple Violations Pertaining To A Single Hazard. When a single hazard is the subject matter of multiple violations resulting in civil penalties, the Division may, in its discretion, depart from the preceding criteria to mitigate the cumulative effect of such penalties.

(1) This subsection does not apply to any penalty assessed for a Serious, Willful or Repeated violation or a failure to abate a Serious violation where such violation or violations have been determined by the Division to have caused death or serious injury, illness or exposure pursuant to Labor Code section 6302. This subsection does not apply to any Regulatory, General or Serious violation where the employer does not have an operative injury prevention program as set forth in subsection (d) of this section.

Note: Authority cited: Sections 54, 55, 6319, 6319.3, 6401.7 and 9060, Labor Code. Reference: Sections 6314.5, 6318, 6319, 6320, 6401.7, 6409.1, 6427-6432, 6434, 7320, 7321, 7321.5, 7381 and 9060, Labor Code.