



## **Division of Occupational Safety and Health POLICY AND PROCEDURES MANUAL**

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**P & P C- 1B3**

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### **DOCUMENTING THE PENALTY ADJUSTMENT FACTORS OF A VIOLATION**

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**AUTHORITY:** California Labor Code Section 6319 and Title 8 of the California Code of Regulations Sections 335 and 336.

**POLICY:** It is the policy of the Division of Occupational Safety and Health to determine and document the factors that must be considered in the assessment of civil penalties for violations identified during inspections.

These factors are the gravity of the violation, the size of the business of the employer, the good faith of the employer, and the history of previous violations. In most cases, the size, good faith and history penalty adjustment factors are the same for all violations issued as result of an inspection of the employer.

#### **PROCEDURES:**

##### **A. DOCUMENTING THE GRAVITY OF A VIOLATION**

Compliance personnel must establish the degree of gravity of violations from findings and evidence obtained during the inspection, from Division's files and records, and other records of governmental agencies pertaining to occupational injury, illness or disease. The degree of gravity of violations is determined by assessing and evaluating the Severity, the Extent and the Likelihood of the violations.

###### **1. Determine the Severity of the Violation**

###### **a. Regulatory Violation**

No adjustment is made for a regulatory violation based on gravity, therefore none of the criteria on which gravity is based need to be determined and documented.

###### **b. General Violation**

###### **(1) Health**

When the safety order violated pertains to employee illness or disease, Severity is based upon the degree of discomfort, temporary disability, and time lost from normal activity (including work) that an employee is likely to suffer as a result of occupational illness or disease that could result from the violation. Severity is rated as follows:

(a) **LOW** – No time lost from work or normal activity, or minimum discomfort.

(b) **MEDIUM** – Loss of a part or all of a day from work or normal activity including time or medical attention; or moderate temporary discomfort.

- (c) HIGH – Loss of more than one day from regular work or normal activity including time for medical attention, or considerable temporary discomfort.

(2) Safety

When the safety order violated does not pertain to employee illness or disease, Severity is based on the type and amount of medical treatment likely to be required or which would be appropriate for the type of injury that would most likely result from the violation. Depending on such treatment, Severity is rated as follows:

- (a) LOW – Requiring first aid only.
- (b) MEDIUM – Requiring medical attention but not more than 24-hour hospitalization.
- (c) HIGH – Requiring more than 24-hour hospitalization.

Compliance personnel must determine and document the potential consequences of the illness, disease or injury that an employee would most likely suffer as result of the violation, and rate the Severity of the violation accordingly. If necessary, compliance personnel should consult with the District Manager (or, if directed by the District Manager, with the Regional or District Senior Safety Engineer, or obtain advice from the Research and Standards or Medical Unit staff) on how to rate the Severity of a violation.

c. Serious Violation

The Severity of a serious violation is considered to be HIGH.

2. Determine the Extent of the Violation

a. Health

When the safety order violated pertains to employee illness or disease, Extent is based on the number of employees exposed as follows:

- (1) LOW – 1 to 5 employees
- (2) MEDIUM – 6 to 25 employees
- (3) HIGH – 26 or more employees

Compliance personnel must determine and document the number of employees exposed to the hazard created by the violation during the previous six months, through direct evidence of exposure as well as through analysis and documentation of employees working under similar or identical hazardous working conditions as other employees.

b. Safety

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When the safety order violated does not pertain to employee illness or disease, Extent is based on the degree to which the safety order was violated. Compliance personnel must determine and document the degree to which the safety order was violated by determining how widespread the violation is at the inspected workplace, by determining the ratio of the number of violations of the particular safety order to the number of possibilities for a violation of that safety order at the inspected workplace. Based on this determination, Extent is rated as follows:

- (1) LOW – When an isolated violation of the safety order occurs, or less than 15% of the units are in violation;
- (2) MODERATE – When occasional violation of the safety order occurs, or 15 – 50% of the units are in violation;
- (3) HIGH – When numerous violations of the safety order occur, or more than 50% of the units are in violation.

NOTE: For safety violations of programmatic requirements (i.e., failure to have a required program), or for situations where the safety violation pertains to the only unit that existed in the workplace, the extent must be rated HIGH.

### 3. Determine the Likelihood of the Violation

Likelihood is the probability that injury, illness, or disease will occur as a result of the violative condition.

Compliance personnel must establish the Likelihood of a violation by obtaining evidence to support the following criteria:

- (1) The number of employees exposed to the violative condition;
- (2) The extent to which the violation has in the past resulted in injury or illness to the employees of the inspected workplace or to industry in general, as shown by experience, available statistics, or records.

Depending on evidence to support the above two criteria, compliance personnel must rate Likelihood as Low, Moderate, or High. If necessary, compliance personnel should consult with the District Manager (or, if directed by the District Manager, with the Regional or District Senior Safety Engineer) on how to rate the Likelihood of a violation.

## B. DOCUMENTING THE SIZE OF THE BUSINESS OF THE EMPLOYER

The Size of the business of the employer is based upon the number of individuals employed nationwide at the time of the inspection. Size of the business is evaluated based upon the following classifications of the number of persons employed, along with the corresponding adjustment factors:

1. 10 or fewer employees – 40% of the Gravity-based penalty is subtracted
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2. 11 to 25 employees – 30% of the Gravity-based penalty is subtracted
3. 26 to 60 employees – 20% of the Gravity-based penalty is subtracted
4. 61 to 100 employees – 10% of the Gravity-based penalty is subtracted
5. More than 100 employees – No adjustment is made

Compliance personnel must accurately determine and document in the case file the size of the employer.

## C. DOCUMENTING THE GOOD FAITH OF THE EMPLOYER

The Good Faith of the employer is based upon the quality and extent of the safety program the employer has in effect and operating. Good Faith can be rated by assessing the totality of the following factors:

1. Overall evaluation of safety and health program;
2. Degree of cooperation with compliance personnel during the inspection;
3. Genuine effort to comply with Title 8 Safety Orders, including IIPP requirements;
4. Effectiveness of communication with employees about workplace safety and health matters; and
5. Willingness to correct any hazards which were identified during the walkaround.

Compliance personnel must evaluate and document all of these factors during the inspection and, depending on these parameters, rate Good Faith as following (along with the corresponding adjustment factors):

1. GOOD- Effective safety program – 30% of the Gravity-based penalty is subtracted;
2. FAIR - Average safety program – 15% of the Gravity-based penalty is subtracted;
3. POOR - No effective safety program – No adjustment is made.

NOTE: In most cases, if the inspected employer is cited for IIPP violations, a Good Faith rating of GOOD is not appropriate.

If necessary, compliance personnel should consult with the District Manager (or, if directed by the District Manager, with the Regional or District Senior Safety Engineer) on how to rate the Good Faith of the employer.

## D. DOCUMENTING THE HISTORY OF PREVIOUS VIOLATIONS

The employer's History is determined by examining and evaluating the employer's previous citation(s) records within the last three (3) years from the date the inspection is opened.

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Compliance personnel must perform an establishment search by accessing the OIS database and federal OSHA's Establishment Search webpage. When conducting the search, compliance personnel should use name variations and address-matching in their establishment search to maximize their efforts due to possible company name changes and status (e.g., LLC, Inc., sole proprietor, etc.).

The results of federal OSHA's Establishment Search report must be placed in the case file, regardless of whether the employer has been previously inspected.

Depending on such records, the History of previous violations is rated as follows (along with the corresponding adjustment factors):

1. GOOD – No serious, repeat or willful violations and less than one general or regulatory violation per 100 employees - 10% of the Gravity-based penalty is subtracted;
2. FAIR – No serious, repeat or willful violations and less than twenty (20) general or regulatory violations per 100 employees – 5% of the Gravity-based penalty is subtracted;
3. POOR – A serious, repeat or willful violation or more than twenty (20) general or regulatory violations per 100 employees – No adjustment is made.