

CHAPTER V: VIOLATIONS, PENALTIES, AND CITATIONS

- A. Types of violations and penalties
- B. Citations

If, in the course of an inspection, a compliance officer discovers a suspected violation, a citation may be issued and penalties proposed under the § 9(a) of the Act.⁸⁵ Therefore, firms should be familiar with the different types of OSHA violations, the procedures for issuing and contesting a citation, and the legal and practical consequences of a citation, including abatement, civil penalties, and further inspections.

A. TYPES OF VIOLATIONS AND PENALTIES

OSHA classifies violations according to actual or potential effect on worker health and safety. The greater the hazard to worker safety, the greater will be the penalty proposed for that violation. Under § 17(j) of the Act, proposed penalties may be adjusted downward depending on the gravity of the violation, the employer's good faith, its size, and its safety history.⁸⁶

The classes of violations are as follows:

- 1) A de minimis violation is a condition that has no direct or immediate effect on job safety and health. Generally no fine will be imposed for this type of violation, although a de minimis notice may be issued.⁸⁷

⁸⁵ 29 U.S.C. § 658(a).

⁸⁶ 29 U.S.C. § 666(j); 29 C.F.R. § 1903.15(b); FIRM IV.C.2. In certain circumstances, violations may be combined or grouped for purposes of citation and determination of penalties. See generally FIRM IV.C.2.

⁸⁷ Act § 9(a), 29 U.S.C. 658(a); 29 C.F.R. §§ 1903.14(a), (c); 1903.15(c); FIRM III.C.2.g.

OSHA INSPECTION MANUAL

- 2) An other-than-serious violation is a condition (1) that has a direct effect on job safety and health, but that would not cause death or serious harm; and (2) of which the employer knew, or reasonably should have known. Such violations carry an optional proposed penalty of up to \$7,000 per violation, which may be adjusted downward by as much as 95 percent depending on severity of hazard, the employer's good faith, its history of previous violations, and its size. If the employer abates within the abatement period, the fine may be reduced further.⁸⁸
- 3) A serious violation is a condition (1) creating a substantial probability that death or serious physical harm could result, and (2) of which the employer knew, or reasonably should have known. This type of violation has a mandatory proposed penalty of up to \$7,000 per violation, which may be adjusted downward by as much as 95 percent because of the employer's good faith, history of previous violations, and size of business.⁸⁹
- 4) A repeated violation is a condition where an employer "repeatedly violates" any standard or the Act's general duty clause. A violation is "repeated" when there is a prior final order against the employer for a substantially similar situation. This violation has an optional proposed penalty of up to \$70,000 per violation. In determining what size penalty to propose for repeated violations, OSHA will look at the employer's attitude, geographic proximity or time lapse between violations, the number of prior violations, and the overall safety record of the firm.⁹⁰

⁸⁸ Act § 17(c), (j), (k), 29 U.S.C. § 666(c), (j), (k); 29 C.F.R. § 1903.15(b); IV.C.2.i and j.

⁸⁹ Act § 17(b), (j), (k), 29 U.S.C. § 666(b), (j), (k); 29 C.F.R. § 1903.15(b); FIRM III.C.2.b., IV.C. The distinction between "serious" and "nonserious" violations is blurred because OSHA has not been consistent in the types of violations it identifies as "serious" and "nonserious."

⁹⁰ Act § 17(a), (j), 29 U.S.C. § 666(a), (j); 29 C.F.R. § 1903.15(b); FIRM III.C.2.f., IV.C. Note that repeated violations may result from an inadvertent, accidental, or ordinary negligent act; the violation need not be a willful one. A citation will generally be issued as a repeated violation if it is issued within three years of the previous citation or three years of the final abatement date of that citation, whichever is later.