



## BIE SAFETY ADVISOR

### OSHA Penalty Rates Increase on January 15<sup>th</sup>

The Inflation Adjustment Act requires the Department of Labor to annually adjust its civil monetary penalties for inflation no later than January 15 of each year. The Federal Register published the Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2021 on January 15, 2021. This final rule increases civil penalties the Department of Labor assesses, including those issued by OSHA, based on workplace inspections and potential violations of safety and health standards.

The rule was effective January 15, 2021 and the increased penalty rates will apply to any penalties assessed after the effective date of the rule. So penalties assessed after Jan. 15, 2021, whose violations occurred after Nov. 2, 2015, will be affected by the higher penalty amounts

These are the types of violations that may be cited and the new 2021 maximum penalties:

- **Other Than Serious Violation** – A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. A penalty of up to \$13,653 (increased from \$13,494) for each violation is discretionary. A penalty for an other-than-serious violation may be adjusted downward by as much as 95 percent, depending on the employer's good faith (demonstrated efforts to comply with the Act), history of previous violations, and size of business.
- **Serious Violation** – A violation where there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. A penalty of up to \$13,653 per violation (increased from \$13,494) is mandatory. A penalty for a serious violation

may be adjusted downward, based on the employer's good faith, history of previous violations, the gravity of the alleged violation, and size of business.

- **Willful Violation** – A violation that the employer knowingly commits or commits with plain indifference to the law. The employer either knows that what he or she is doing constitutes a violation, or is aware that a hazardous condition existed and made no reasonable effort to eliminate it. Penalties of up to \$136,532 (increased from \$134,937) for each willful violation can be imposed. A penalty for a willful violation may be adjusted downward, depending on the size of the business and its history of previous violations. Usually, no credit is given for good faith. If an employer is convicted of a willful violation that has resulted in the death of an employee, the offense is punishable by a court-imposed fine or by imprisonment for up to six months, or both. A fine of up to \$250,000 for an individual, or \$500,000 for a corporation, may be imposed for a criminal conviction.
- **Repeat Violation** – A violation of any standard, regulation, rule, or order where, upon re-inspection, a substantially similar violation can bring a fine of up to \$136,532 (increased from \$134,937) per violation. To be the basis of a repeated citation, the original citation must be final; a citation under contest may not serve as the basis for a subsequent repeated citation.
- **Failure to Abate Prior Violation** – Failure to abate a prior violation may bring a civil penalty of up to \$13,494 (increased from \$13,653) for each day the violation continues beyond the prescribed abatement date.



