VOSHA Penalty Increase Explained
The Vermont Department of Labor operates the Vermont Occupational Safety and Health Administration (VOSHA) State Plan and is required by federal OSHA laws and regulations to maintain maximum penalties that are “at least as effective” as those of federal OSHA.

In August of 2015 the U.S. Congress passed the Federal Civil Penalties Inflation Act.

This Act required Federal OSHA (among other federal agencies) to calculate and upgrade their penalties from the date of the last upgrade (For Federal OSHA that was 1991).
VOSHA 2017 Penalty Increase (continued)

• The calculation rate is based on the Consumer price Index (CPI). This is otherwise known as “Inflation”

• In the 25 years between 1991 and 2016 (when the law became effective Federally) the CPI had increased by 78.15%

• The Federal Register is available at: https://www.federalregister.gov/documents/2016/07/01/2016-15378/department-of-labor-federal-civil-penalties-inflation-adjustment-act-catch-up-adjustments
• Under Vermont S.135, Vermont Department of Labor increased the maximum statutory penalties for violations of safety and health code.

• Increases are as follows:
  • Serious, Other than serious, Posting Violations;
    • From $7,000 to $12,675
  • Serious Willful or Repeat Violations;
    • From $70,000 to $126,749
In Addition

- The following language was enacted:

§ 210. PENALTIES

(9) (A) As provided under the federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and the Act, the penalties provided in subdivisions (1), (2), (3), (4), (5), and (8) of this subsection shall annually, on January 1, be adjusted to reflect the increase in the Consumer Price Index, CPI-U, U.S. City Average, not seasonally adjusted, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous December 1.

(B) The Commissioner shall calculate and publish the adjustment to the penalties on or before January 1 of each year, and the penalties shall apply to fines imposed on or after that date.
VOSHA Gravity Based Penalty

- VOSHA generally follows OSHA’s Gravity Based Penalty (GBP) methodology for calculating proposed penalties which includes an assessment of the “Severity” of the hazard cited and the “Probability” that an injury or illness would result from the cited hazard.
- VOSHA GBP penalty levels differ from OSHA in certain areas discussed later in this presentation.
2017
VOSHA Gravity Based Penalty

• “Severity” is classified as:
  • High, Medium or Low
• “Probability” is classified as:
  • Greater or Lesser
2017
VOSHA Gravity Based Penalty

• There are six main Gravity Based Penalty levels for proposed “serious” violations:
  • High Severity/Greater Probability
  • High Severity/Lesser Probability
  • Medium Severity/Greater Probability
  • Medium Severity/Lesser Probability
  • Low Severity/Greater Probability
  • Low Severity/Lesser Probability
VOSHA Gravity Based Penalty

• In Addition, certain reductions were allowed for the size of the employer (how many employees within the 12 previous months)
  • Employers of 1-25 employees received a 60% reduction
  • Employers of 26 - 100 employees received a 30% reduction
  • Employers of 101 - 250 employees received a 10% reduction
  • Employers of 251+ employees received no reduction for size
### VOSHA Penalties as they exist in 2016

<table>
<thead>
<tr>
<th>Severity/probability</th>
<th>Penalty</th>
<th>1-25; 60%</th>
<th>26-100; 30%</th>
<th>101-250; 10%</th>
<th>251 +; 0%</th>
</tr>
</thead>
<tbody>
<tr>
<td>High/Greater</td>
<td>7,000</td>
<td>2,800</td>
<td>4,900</td>
<td>6,300</td>
<td>7,000</td>
</tr>
<tr>
<td>Medium Greater</td>
<td>6,000</td>
<td>2,400</td>
<td>4,200</td>
<td>5,400</td>
<td>6,000</td>
</tr>
<tr>
<td>Low/Greater</td>
<td>5,000</td>
<td>2,000</td>
<td>3,500</td>
<td>4,500</td>
<td>5,000</td>
</tr>
<tr>
<td>High/Lesser</td>
<td>5,000</td>
<td>2,000</td>
<td>3,500</td>
<td>4,500</td>
<td>5,000</td>
</tr>
<tr>
<td>Medium/Lesser</td>
<td>4,000</td>
<td>1,600</td>
<td>2,800</td>
<td>3,600</td>
<td>4,000</td>
</tr>
<tr>
<td>Low/Lesser</td>
<td>3,000</td>
<td>1,200</td>
<td>2,100</td>
<td>2,700</td>
<td>3,000</td>
</tr>
<tr>
<td>Serious Willful</td>
<td>70,000</td>
<td>28,000</td>
<td>49,000</td>
<td>63,000</td>
<td>70,000</td>
</tr>
</tbody>
</table>

Note: Failure to Abate and Repeat citations up to $70,000 per citation
2017
OSHA GBP Penalty Table

<table>
<thead>
<tr>
<th>Sev./Prob.</th>
<th>Penalty</th>
<th>1-10; 70%</th>
<th>11-25; 60%</th>
<th>26-100; 30%</th>
<th>101-250; 10%</th>
<th>251+; 0%</th>
</tr>
</thead>
<tbody>
<tr>
<td>High/Greater</td>
<td>12,675</td>
<td>3,802</td>
<td>5,070</td>
<td>8,872</td>
<td>11,408</td>
<td>12,675</td>
</tr>
<tr>
<td>Med./Greater</td>
<td>10,864</td>
<td>3,259</td>
<td>4,346</td>
<td>7,605</td>
<td>9,778</td>
<td>10,864</td>
</tr>
<tr>
<td>Low/Greater</td>
<td>9,054</td>
<td>2,716</td>
<td>3,622</td>
<td>6,338</td>
<td>8,149</td>
<td>9,054</td>
</tr>
<tr>
<td>High/lesser</td>
<td>9,054</td>
<td>2,716</td>
<td>3,622</td>
<td>6,338</td>
<td>8,149</td>
<td>9,054</td>
</tr>
<tr>
<td>Med./Lesser</td>
<td>7,243</td>
<td>2,173</td>
<td>2,897</td>
<td>5,070</td>
<td>6,519</td>
<td>7,243</td>
</tr>
<tr>
<td>Low/Lesser</td>
<td>5,432</td>
<td>1,630</td>
<td>2,173</td>
<td>3,802</td>
<td>4,889</td>
<td>5,432</td>
</tr>
</tbody>
</table>

Note: These amounts will be adjusted annually
### 2017 OSHA GBP Penalty Table - Serious Willful

<table>
<thead>
<tr>
<th>Serious Willful Penalty</th>
<th>1-10;80%</th>
<th>11-20;60%</th>
<th>21-30;50%</th>
<th>31-40;40%</th>
<th>41-50;30%</th>
<th>51-100;20%</th>
<th>101-250;10%</th>
<th>251+;0%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>High Gravity</strong></td>
<td>126,749</td>
<td>25,350</td>
<td>50,700</td>
<td>63,375</td>
<td>76,049</td>
<td>88,724</td>
<td>101,399</td>
<td>114,074</td>
</tr>
<tr>
<td><strong>Moderate Gravity</strong></td>
<td>108,636</td>
<td>21,727</td>
<td>43,454</td>
<td>54,318</td>
<td>65,182</td>
<td>76,045</td>
<td>86,909</td>
<td>97,772</td>
</tr>
<tr>
<td><strong>Low gravity</strong></td>
<td>90,537</td>
<td>18,107</td>
<td>36,215</td>
<td>45,269</td>
<td>54,322</td>
<td>63,376</td>
<td>72,430</td>
<td>81,483</td>
</tr>
</tbody>
</table>

Note: Failure to Abate and Repeat citations up to $126,749 per citation

Note: These amounts will be adjusted annually
VOSHA Penalties As Of September 2017

<table>
<thead>
<tr>
<th>Sev./Prob</th>
<th>Penalty</th>
<th>1-25; 70%</th>
<th>26-50; 40%</th>
<th>51-100 30%</th>
<th>101-250; 10%</th>
<th>251+; 0%</th>
</tr>
</thead>
<tbody>
<tr>
<td>High/Greater</td>
<td>12,675</td>
<td>3,802</td>
<td>7,605</td>
<td>8,872</td>
<td>11,408</td>
<td>12,675</td>
</tr>
<tr>
<td>Med./Greater</td>
<td>10,864</td>
<td>3,259</td>
<td>6,518</td>
<td>7,605</td>
<td>9,778</td>
<td>10,864</td>
</tr>
<tr>
<td>Low/Greater</td>
<td>9,054</td>
<td>2,716</td>
<td>5,432</td>
<td>6,338</td>
<td>8,149</td>
<td>9,054</td>
</tr>
<tr>
<td>High/Lesser</td>
<td>9,054</td>
<td>2,716</td>
<td>5,432</td>
<td>6,338</td>
<td>8,149</td>
<td>9,054</td>
</tr>
<tr>
<td>Med./Lesser</td>
<td>7,243</td>
<td>2,173</td>
<td>4,346</td>
<td>5,070</td>
<td>6,519</td>
<td>7,243</td>
</tr>
<tr>
<td>Low/Lesser</td>
<td>5,432</td>
<td>1,630</td>
<td>3,259</td>
<td>3,802</td>
<td>4,889</td>
<td>5,432</td>
</tr>
</tbody>
</table>

Note: These amounts will be adjusted annually
<table>
<thead>
<tr>
<th>Serious Willful Penalty</th>
<th>1-10.80%</th>
<th>11-25;70%</th>
<th>26-30.50%</th>
<th>31-40;40%</th>
<th>41-50;30%</th>
<th>51-100;20%</th>
<th>101-250;10%</th>
<th>251+;0%</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Gravity</td>
<td>126,749</td>
<td>25,350</td>
<td>50,700</td>
<td>63,375</td>
<td>76,049</td>
<td>88,724</td>
<td>101,399</td>
<td>114,074</td>
</tr>
<tr>
<td>Moderate Gravity</td>
<td>108,636</td>
<td>21,727</td>
<td>32,590</td>
<td>54,318</td>
<td>65,182</td>
<td>76,045</td>
<td>86,909</td>
<td>97,772</td>
</tr>
<tr>
<td>Low Gravity</td>
<td>90,537</td>
<td>18,107</td>
<td>27,161</td>
<td>45,269</td>
<td>54,322</td>
<td>63,376</td>
<td>72,430</td>
<td>81,483</td>
</tr>
</tbody>
</table>

Note: Failure to Abate and Repeat citations up to $126,749 per citation

Note: These amounts will be adjusted annually
Comparisons of VOSHA and OSHA Citations

• In a comparison of the penalties and how they affect employers of varying sizes:

• An employer of 16 employees is cited for two citations (note penalties for employers of 1-10 employees would remain the same as current OSHA penalties)

  • Citation 1 Serious, Low/Greater: Current VOSHA; $2,000, Current OSHA; $3,622, VOSHA Sept. 2017; $2,716
  • Citation 2 Serious repeat Low/Greater: Current VOSHA; $4,000, Current OSHA; $7,244, VOSHA Sept. 2017; $5,432

• Total; ______________________________________________________________

• Current VOSHA: $6,000, Current OSHA: $10,866, VOSHA (Sept.-2017): $9,960
• An employer of 45 employees is cited for three citations:

• **Citation 1 Serious, Medium/Lesser**: Current VOSHA; $2,800, Current OSHA $5,070; VOSHA Sept. 2017; $4,346

• **Citation 2 Serious, Low/Lesser**: Current VOSHA; $2,100, Current OSHA; $3,802, VOSHA Sept. 2017; $3,259

• **Citation 3 Serious, High/Greater**: Current VOSHA; $4,900, Current OSHA; $8,872, VOSHA Sept. 2017; $7,605

• **Total**: Current VOSHA; $9,800 Current OSHA; $17,744 VOSHA (Sept. 2017); $15,210
• Under VOSHA’s Penalty System:

• Employers of 11-25 employees would be included in the “small employer” category and would receive an additional reduction of 10% (from 60% to 70% total reduction).

• Employers of 26 to 50 employees would get an additional 10% from current OSHA penalty structure (from 30% to 40% total reduction).

• All other categories would remain the same as current OSHA policy.
Serious Willful Penalties

• Serious Willful penalties are subject to increases as well (as shown in previous slides)

• VOSHA’s penalties have included an extra reduction for employers of 11-25 employees, thus reducing the impact of the penalty for employers of this size range
How To Avoid VOSHA Penalties

• The best way for employers to avoid exposure to increased VOSHA penalties is to proactively address workplace hazards before a VOSHA inspector shows up at the work site:

• CONTACT THE CONSULTATION SERVICES DIVISION, Project WorkSAFE
The Vermont Department of Labor offers free On-Site Consultation Services to help employers better understand and voluntarily comply with VOSHA standards. Priority is given to high hazard workplaces with 250 or fewer employees and all services are offered to employers at no cost.

On-Site Consultation Services helps employers identify and correct potential safety and health hazards through walk-through surveys (without citations or penalties), provide abatement advice, provide on-site training, and provide program assistance to develop safety and health programs.

Additional information about On-Site Consultation Services can be obtained by contacting the Vermont Department of Labor, Project WorkSAFE at http://labor.vermont.gov/project-worksafe/ or by calling toll free 1 (888) 723-3937.
For More Information on VOSHA Penalties Contact Dan Whipple, VOSHA Program Manager Vermont Department of Labor 802-828-5084 or dan.Whipple@Vermont.gov
Your Decision to Work Safely Matters

Thank You!