



# Consider this OSHA: Eliminate Many Penalties and Create Safer Workplaces

Insights

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OSHA recently surprised us with the announcement it had authority to increase penalties for the first time since 1990. Given this development, we expect OSHA to increase the maximum fine for serious citations to \$12,500 and willful/repeat citations to \$125,000 in August 2016. Additional increases reflecting inflation likely will follow on January 15 of each subsequent year.

On the heels of this news, OSHA has touted a recent study finding that the risk of increased penalties leads to lower illness and injury rates. Research by the Canadian-based Institute for Work and Health found that illness and injury rates decrease at an establishment following an OSHA inspection resulting in penalties.

Ironically, the same study found that State-Plan inspections, which have historically resulted in lower penalties, usually lead to lower injury rates than Fed-OSHA citations.

## Is it about the money?

It probably is. The risk of losing hard-earned income generally has a deterrent effect on employers. Especially when the government receives payment. But instead of paying higher penalty amounts to fund a state agency or pad the federal government's coffers, could we invest this money in a manner that more directly creates safer workplaces?

Perhaps we can.

## Adopt the "Professional Training Option," eliminate many penalties, and enhance employee safety.

Instead of increasing penalty amounts, OSHA would better serve employee safety by giving employers the option to pay a third-party, certified vendor to conduct training on the hazard for which the employer was cited in lieu of paying the proposed penalty.

Here's an example:

Following a programmed-based inspection, Fed-OSHA cites ABC Company, Inc. ("ABC") for violations of lock-out tag-out and fall protection standards. Both citations carry the maximum (current) penalty of \$7,000.

Under current Fed-OSHA procedure, ABC is given the option of accepting the citations and paying \$14,000 to the government, paying a lesser amount after a settlement is reached, or engaging in costly, protracted litigation to contest the citations. Why not also give ABC the option of paying a professional, third-party vendor to provide 4-hour training sessions to all of ABC's employees affected by the alleged hazards, in exchange for dismissal of the citations?

Wouldn't that use of the money more directly support and promote employee safety? Even OSHA claims that every dollar spent on an illness and injury prevention program, including training, results in 4 to 6 dollars in savings from an increase in productivity and fewer injuries. Spending money on professional training instead of penalties would certainly promote employee safety.

**In-house safety training is often insufficient.**

Unfortunately, the in-house training provided by many employers is not effective or virtually non-existent. I've heard horror stories of plagiarized employee sign-in sheets, and training conducted while the employee works on an assembly line, or sits in a cafeteria. Employees cannot retain important safety information under these circumstances.

Professional, third-party safety training would result in higher-caliber, more consistent instruction. Organizations such as the National Safety and Health Council offer excellent, comprehensive training. Training by such professionals leads to employees who are more knowledgeable about the hazards in their workplace and safer work environments.

Unfortunately, this generally doesn't happen when the employer simply strokes a check to pay a penalty.

Of course, there should be limitations to the "Professional Training Option."

**The proposed parameters:**

1. The Professional Training Option would only be available in inspections where there is no fatality or willful citation, and where the employer has been not cited for any serious violation within the last three years by Fed-OSHA or any State Plan;
2. The Professional Training Option could not be used in lieu of paying a penalty for more than three citation items arising from any single inspection;
3. OSHA and the eligible employer can negotiate the details of the proposed training, including the duration and number of employees to be included;
4. Any training conducted under the Professional Training Option could not serve as a substitute for any other training mandated by OSHA regulations;
5. The employer must certify to OSHA within ninety days after settlement that the training has been completed, including providing employee sign-in sheets, and documents confirming certification/licensure of the training party; and

6. An eligible employer cannot be compelled to exercise the Professional Training Option if it wishes not to do so.

Upon the employer's certification of such training, the citation at issue would be vacated.

Consider this OSHA. Give employers the option of spending more money on professional safety training instead of higher penalties. Safer workplaces will result.

### ***Related People***



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