



**DATE:** January 31, 2023  
**TO:** Phylmar Regulatory Roundtable, PRR OSH Forum  
**FROM:** Helen Cleary  
**RE:** **2023 Federal OSHA and Cal/OSHA Civil and Criminal Penalties**

On January 13, 2023, the U.S. Department of Labor (DOL) published in the Federal Register the Federal [Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023](#). Increases to the Occupational Safety and Health Administration (FedOSHA) [penalties](#) are included in this adjustment. The penalties (final rule) became effective on January 15, 2023 and may apply to any penalties assessed after January 15, 2023.

PRR members should be aware that State Plan States are required to increase their penalties for private sector employees in alignment with FedOSHA's increases; State Plan States must maintain at least as effective penalty levels.

**This memo provides information on FedOSHA's 2023 penalty increases and a brief overview of penalty assessment and determination. It also includes a breakdown of Cal/OSHA's penalties.**

### **Background**

Annually, DOL publishes a final rule to adjust for inflation the civil monetary penalties assessed or enforced by the Department, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act of 2015.

The Inflation Adjustment Act requires agencies to annually adjust its civil money penalty levels for inflation no later than January 15<sup>th</sup> of each year. Additionally, the Inflation Adjustment Act provides a cost-of-living formula for adjustment. The cost-of-living adjustment multiplier for 2023 is 1.07745; it is based on the Consumer Price Index for All Urban Consumers (CPI-U) for October 2022 (not seasonally adjusted).

### **Enforcement**

In preparation for the annual adjustment, OSHA Administrators issued a [Memorandum on December 20, 2022](#) to supplement the penalties and debt collection information in OSHA's Field Operations Manual (FOM; Chapter 6). The memo provides three tables:

- Table 1: Maximum and Minimum Amounts for Civil Penalties. *(The table summarizes the amounts)*
- Table 2: Gravity Based Penalty Amounts (GBP) for Serious Violations. *(The table provides the GBP amount for serious violations based on the scale: Severity + Probability = GBP)*
- Table 3: Serious Willful Penalty Reductions. *(The table provides the percent penalty reduction based on number of employees.)*

[Chapter 6: Penalties and Debt Collection](#) of the Field Operations Manual provides additional information and detail on penalty assessment and determination. Consideration is given to four factors:

- The gravity of the violation
- The size of the employer’s business
- The good faith efforts of the employer
- The employer’s history of previous violations

The specific allowable percentages for size, history and good faith are also included in the FOM.

### **Cal/OSHA Penalty Structure**

Effective June 27, 2017, California Legislature enacted Senate Bill 96 (SB 96) to make the California Division of Occupational Safety and Health’s (Cal/OSHA or Division) civil penalties consistent with annual changes in FedOSHA’s penalty structure. The bill amended California Labor Code Chapter 4. Penalties, [§6427\(a\)](#) and [§6431\(a\)](#), with language that aligns with FedOSHA’s annual increase based on the CPI-U for the month of October. In addition, the actual text, required by the bill, allows Cal/OSHA’s civil penalties for general (non-serious), repeat and willful violations to increase each year without requiring the Agency to revise the dollar amounts in Title 8 [§336. Assessment of Civil Penalties](#). The text also allows the annual amendments to be promulgated through a “file and print rulemaking” (i.e., the annual increases are exempt from the regular rulemaking process). The amendments became effective January 1, 2020, via a [Notice of File and Print Rulemaking](#).

*Note: Neither SB 96 nor the Division’s annual amendments address the penalty for Failure to Abate. The current Cal/OSHA penalty, under §336, is a maximum of \$15,000/day. FedOSHA’s 2023 penalty for Failure to Abate increased to \$15,625. It is clear from FedOSHA’s Final Rule that this increase is applicable to Cal/OSHA; however, it is not clear how or when Cal/OSHA will address the required amendment to §336.*

Cal/OSHA also considers gravity, size, history, and good faith when assessing penalties. California labor code [§336](#) (Assessment of Civil Penalties) details the process to assess and determine the gravity-based penalty and potential adjustments.

California may also consider additional factors when determining penalties. For example, violations involving carcinogens and excavation permits require minimum civil penalties.

Following are charts that provide an overview of the civil and criminal penalties related to occupational safety and health violations.

**2023 FedOSHA & Cal/OSHA Penalties**

Issue/Violation	Federal OSHA (minimum – maximum)	Cal/OSHA
Serious	\$1,116 – \$15,625 per violation <sup>1</sup>	Up to \$25,000 per violation <sup>2</sup>
Other Than Serious/General	\$0 – \$15,625 per violation <sup>1</sup>	\$0 - \$15,625 per violation <sup>2</sup>
Willful or Repeated	\$11,162* - \$156,259 per violation <sup>1</sup>	\$11,162 - \$156,259 per violation <sup>2</sup>
Posting Requirements	\$0 – \$15,625 per violation <sup>1</sup>	Up to \$15,625 per violation <sup>3</sup>
Failure to Abate	Up to \$15,625 per day beyond the abatement date (generally limited to 30 days maximum;) <sup>1</sup>	Up to \$15,625 per day beyond the abatement date <sup>2</sup>
Violation-by-Violation/Egregious	Up to \$156,259 per violation; the Gravity Based Penalty will be determined for each instance of non-compliance <sup>4</sup>	Up to \$156,259 per violation; each exposed employee may be considered a separate violation <sup>5</sup>
Knowingly False Written Statement	Up to \$15,625 and/or up to six months imprisonment <sup>6</sup>	Up to \$70,000 and/or up to six months imprisonment <sup>7</sup>
Willful Causing Death	Up to \$134,937 <sup>1</sup> and/or up to six months imprisonment; up to one-year imprisonment for 2 <sup>nd</sup> conviction <sup>6</sup>	
Enterprise-wide		Up to \$156,259 per violation <sup>8</sup>

Issue/Violation	Federal OSHA (minimum – maximum)	Cal/OSHA
Failure to Report Serious Injury, Illness, Death		\$5,000 (minimum) up to \$15,625 <sup>2</sup>
False Statement of Abatement (by employer)		Up to \$30,000 and/or up to one-year imprisonment in county jail; Up to \$300,000 if Corporation or LLC <sup>9</sup>

<sup>1</sup>OSHA 29 CFR [1903.15](#) Proposed Penalties; 2023 Annual Adjustments to OSHA Civil Penalties from U.S. Department of Labor [Memorandum](#); 20 December 2022  
*\*For a repeated other-than-serious violation that otherwise would have no initial penalty, a GBP penalty of \$446 shall be proposed for the first repeated violation, \$1,116 for the second repeated violation, and \$2,232 for a third repetition*

<sup>2</sup> California Code of Regulations, Title 8. Chapter 3.2. Subchapter 1. Article 4. [§336](#). Assessment of Civil Penalties  
<sup>3</sup> California Labor Code, Division 5. Part 1. Chapter 4. Penalties [§6431](#)  
<sup>4</sup> OSHA Memorandum: Application of Instance-by-Instance Penalty Adjustments; [26 January 2023](#)  
<sup>5</sup> California Labor Code, Division 5. Part 1. Chapter 1. Jurisdiction and Duties [§6317.8\(b\)](#)  
<sup>6</sup> OSH Act of 1970, [Section 17](#). Penalties  
<sup>7</sup> California Labor Code, Division 5. Part 1. Chapter 4. Penalties [§6426](#)  
<sup>8</sup> California Labor Code, Division 5. Part 1. Chapter 1. Jurisdiction and Duties [§6317\(b\)](#)  
<sup>9</sup> California Labor Code, Division 5. Part 1. Chapter 4. Penalties [§6430](#)

**Additional Labor Code/OSH Penalties Applicable to Employees**

(i.e., employees w/direct Control, management, control, or who willfully violate OSH requirement)

Issue/Violation	Penalties
Knowing or Negligent Serious Violation	Up to \$5,000 and/or up to six months imprisonment in county jail (misdemeanor) <sup>10</sup>
Repeat Violation Creating Real and Apparent Hazard	Up to \$15,000 and/or up to one-year imprisonment in county jail (misdemeanor); Up to \$150,000 if Corporation or LLC <sup>10</sup>
Knowingly Fails to Report a Death	Up to \$15,000 and/or up to one-year imprisonment in county jail (misdemeanor); Up to \$150,000 if Corporation or LLC <sup>10</sup>
Failure or Refusal to Abate, Creating Real and Apparent Hazard	Up to \$15,000 and/or up to one-year imprisonment in county jail (misdemeanor); Up to \$150,000 if Corporation or LLC <sup>10</sup>

Issue/Violation	Penalties
Directly or Indirectly, Knowingly Inducing another to commit: 1. Serious Violation; 2. Repeat Violation; 3. Failure to Report a Death; 4. Failure to Abate	Up to \$15,000 and/or up to one-year imprisonment in county jail (misdemeanor); Up to \$150,000 if Corporation or LLC <sup>10</sup>
Willful Violation Causing Death or Serious Injury	Up to \$100,000 and/or up to one-year imprisonment in county jail (misdemeanor); or Up to \$250,000 and/or up to three-years in State Prison (felony); Up to \$1,500,000 if Corporation or LLC <sup>11</sup>
Willful Violation Causing Death or Serious Injury within 7 Years after a (Misdemeanor) Conviction of §6423(b), (c), (d) or §6430(c)	Up to \$250,000 and/or up to three years in State Prison (felony); \$500,000 – \$2,500,000 if Corporation or LLC <sup>11</sup>
Willful Violation Causing Death or Serious Injury within 7 Years of a Conviction of §6423(a) that resulted in Death or Serious Injury	Up to \$250,000 and/or up to four years in state prison (felony); \$1,000,000 – \$3,500,000 if Corporation or LLC <sup>11</sup>
Whistleblower Violations	Up to \$1,000 and/or up to one-year imprisonment in county jail; Up to \$10,000 per violation if Corporation or LLC <sup>12</sup>
<sup>10</sup> California Labor Code, Division 5. Part 1. Chapter 4. Penalties <a href="#">§6423</a> <sup>11</sup> California Labor Code, Division 5. Part 1. Chapter 4. Penalties <a href="#">§6425</a> <sup>12</sup> California Labor Code, Division 2. Part 3. Chapter 5. Political Affiliations <a href="#">§1101 - 1106</a>	

### Additional Penalties in California Penal Code

Issue/Violation	Penalty
Involuntary Manslaughter	Up to \$15,625 and/or up to four years in jail (felony) <sup>13</sup>
Crimes Against the Public Health and Safety (serious concealed danger)	Up to \$25,000 and/or up to three years imprisonment in State prison (for managers); Up to \$1,000,000 if Corporation or LLC <sup>14</sup>
<sup>13</sup> California Penal Code, Part 1. Title 8. Chapter 1. <a href="#">§192, §193</a> <sup>14</sup> California Penal Code, Part 1. Title 10. <a href="#">§387</a>	