



The Department of Industrial Relations was established to improve working conditions for workers, and to advance opportunities for profitable employment in California. For comments or questions, please e-mail us at info@dir.ca.gov.

[Director's Message](#)

[What's New?](#)

[Employment Opportunities](#)

[News Releases](#)

[Title 8](#)

[Biennial Report](#)

[Org Chart](#)

[Full Text Search](#)



[Site Map](#)

[Databases](#)

[California Labor Code](#)

[DIR Home Page](#)

[California Home Page](#)

 [Cal/OSHA IMPLEMENTS AB 1127](#) - Effective January 1, 2000 

 [Understanding AB 60: An In Depth Look at the Provisions of the:](#)

["Eight Hour Day Restoration and Workplace Flexibility Act of 1999"](#) 

Workers' Compensation

- claims settlement, benefits and rehabilitation for job-related injuries and illnesses

Occupational Safety & Health

- safe and healthful working conditions on the job

Labor Law

- wages, hours of work, and conditions of employment

Apprenticeship

- worksite job training to help meet skill needs of industry

Mediation & Conciliation

- harmony in labor / management relations

Statistics & Research

- Prevailing Wage Determinations
- Occupational Injuries and Illnesses

AB 1127 IMPLEMENTATION PLAN

On 6 October 1999, Governor Davis signed Assembly Bill 1127, authored by Assemblymember Steinberg into law (Chapter 615, Statutes of 1999). AB 1127 makes changes to twelve (12) sections of the California Labor Code. Save for one statutory change to Labor Code Section 98.7, all of AB 1127's changes involve the California Occupational Safety and Health Act (Labor Code Section 6300 et seq.).

The purpose of this memorandum is to describe the regulatory and policy changes that the Division of Occupational Safety and Health has made in order to implement the provisions of AB 1127 for Cal/OSHA inspections and investigations commencing on or after 1 January 2000.

REGULATORY CHANGES

Four provisions of AB 1127 require regulatory changes to 8 CCR Section 334 or to Section 336. These AB 1127 changes to the Labor Code, with their corresponding Section 334 or 336 regulatory sections, are as follows:

- (1) Labor Code Section 6428 was amended to require that if a violation is serious, the employer shall be assessed a civil penalty of up to \$25,000 for each violation. See 8 CCR Section 336(c)(1).
- (2) Labor Code Section 6429 was amended to require that any employer who repeatedly violates a standard shall not receive any penalty adjustment for good faith or for history. See 8 CCR Section 336(d)(12).
- (3) Labor Code Section 6430 was amended to require that if a violation is for failure to abate a violation, the employer shall be assessed a civil penalty of not more than \$15,000 for each day during which failure to abate continues. See 8 CCR Section 336(f).
- (4) Labor Code Section 6432 was amended to redefine serious violation. See 8 CCR Section 334(c).

Emergency Cal/OSHA Civil Penalty Regulations

In order that the four provisions of AB 1127 outlined above can be enforced on 1 January 2000, the Division submitted to the Office of Administrative Law (OAL) a rulemaking package containing changes to 8 CCR Section 334(c), 336(c)(1), 336(d)(12) and 336(f) and requested that the four changes be promulgated on an "emergency" basis. OAL approved the Division's request and filed the "emergency regulations" with the Secretary of State on 16 December 1999.

The four (4) provisions of the "emergency" Cal/OSHA Civil Penalty regulations are enforceable for all inspections and investigations commencing on or after 1 January 2000 together with the eight (8) which are enforceable without the need for regulatory changes.

§334. Classification of Violations and Definitions.

§336. Assessment of Civil Penalties.

Permanent Cal/OSHA Civil Penalty Regulations

The emergency Cal/OSHA Civil Penalty regulations remain in effect for 120 days and will expire on 1 May 2000. During the period of time from 1 January through 1 May 2000, the Division will submit to OAL for final approval a set of permanent Cal/OSHA civil penalty regulations which will make the changes contained in the emergency regulations permanent. Adoption of permanent Cal/OSHA Civil Penalty regulations requires that the Division conduct a hearing to receive public comment on the new Cal/OSHA Civil Penalty regulations. A public hearing is scheduled for 22 February 2000 at 10:00 a.m. in the Auditorium of the Hiram Johnson State Building in San Francisco.

Proposed Permanent Cal/OSHA Civil Penalty Regulations.

POLICY CHANGES

The Division has revised several sections of the Volume II (Compliance) of its Policy and Procedures Manual to enable compliance personnel to be able to enforce the provisions of AB 1127 applicable to the Division for all inspections and investigations commencing on or after 1 January 2000. The sections of the Volume II (Compliance) of the Division's Policy and Procedures Manual which have been revised to incorporate the AB 1127 changes are: P&PC-1, 1B, 1C, 2, 7, 10, 11, 13, 15, 23, 24 and 90.

The following is a summary of the twelve AB 1127 changes to the Labor Code, indicating which P&P C sections have been revised and what the revisions are.

(1) AB 1127 Change to Labor Code Section 98.7

Section 98.7 extends the period of time for any person to file a Cal/OSHA discrimination complaint with the Division of Labor Standards Enforcement from 30 days to 6 months.

P&P C-11, Section B., has been changed to reflect the extension of the time to file a Cal/OSHA discrimination complaint. In addition, in P&P C-7, Letters "a," "d," "e," "f," "h" and "m" have been modified to reflect the new time of six months to file a Cal/OSHA discrimination complaint.

In P&P C-11, a non-AB 1127 change was also made in that the requirement for compliance personnel to complete a Cross-Jurisdictional Questionnaire (Cal/OSHA 11) under specified circumstances was eliminated, as was the Cal/OSHA 11. Information about an employer's workers' compensation coverage will continue to be gathered and documented on the Cal/OSHA 1.

(2) AB 1127 Change to Labor Code Section 6304.5

Section 6304.5 is amended and now includes a provision relating to the testimony of DOSH employees.

P&P C-24, Section B., has been changed to reflect new procedures affecting DOSH employee participation in depositions and administrative and civil trial proceedings.

(3) AB 1127 Change to Labor Code Section 6309

Section 6309 is amended with regard to the following three issues pertaining to complaints:

a. Defines "employee representative" as "including, but not limited to, an attorney, health or safety professional, union representative; or representative of a government agency..."

P&P C-7, Section D., has been changed to reflect the new definition of employee representative, and inclusion of representative of a government agency as a complainant as opposed to a person who makes a referral.

b. Requires that the Division attempt to determine the period of time in the future that the complainant believes that the unsafe condition may continue to exist and to allocate inspection resources so as to respond first to those situations where time is of the essence.

P&P C-1, Section B. 2.b.(2), has been changed to reflect that, for all formal complaints, informal serious complaints and serious referrals, the Division will attempt to determine the period of time the complainant believes that the unsafe condition will exist and to allocate inspection resources so as to respond to those situations where time is of the essence.

c. Requires that when a complaint alleging a serious violation is received from a state or local prosecutor, the complaint must be investigated within 24 hours of receipt.

P&P C-1, Section B.2.b.(1), has been changed to reflect a first level inspection priority (24 hours) for a complaint made by a state or local prosecutor alleging a serious violation.

(4) AB 1127 Change to Labor Code Section 6400

Section 6400 is amended to codify the Division's multi-employer worksite regulation (8 CCR Section 336.10) into statute.

P&P C-1C has been finalized from its longstanding "draft" format.

(5) AB 1127 Change to Labor Code Section 6423

Section 6423 is amended to increase fines and prison sentence that a court may impose for certain Title 8 violations charged by a district attorney.

Section 6423 goes into effect on 1 January 2000 without need for regulatory or policy changes by the Division.

(6) AB 1127 Change to Labor Code Section 6425

Section 6425 is amended to increase the fines and prison terms that a court may impose for willful violations causing an employee's death or permanent or prolonged impairment of the body charged by a district attorney.

Section 6425 goes into effect on 1 January 2000 without need for regulatory or policy changes by the Division.

(7) AB 1127 Change to Labor Code Section 6428

Section 6428 is amended to increase the maximum statutory civil penalty for a serious violation to \$25,000. The Division's emergency Cal/OSHA Civil Penalty regulations have made changes to 8 CCR Section 336(c)(1) as follows:

"Any employer who violates any occupational safety and health standard, order, or special order, and such violation is determined to be a Serious violation (as provided in section 334c(1) of this article) shall be assessed a civil penalty of up to \$25,000 for each such violation. Because of the extreme gravity of a Serious violation an initial base penalty of \$18,000 shall be assessed."

Thus, for all inspections and investigations commencing on or after 1 January 2000, the new initial base penalty to be used as a starting point for calculating the proposed civil penalty for a serious violation is \$18,000.

P&P C-10, Section B.3.b. and Attachment B, have been changed to reflect the new higher penalties for serious violations.

In addition, P&P C-2, Section A.2.c. (2), has been revised to increase the monetary level at which a proposed civil penalty must have upper management review prior to issuance from \$50,000 to \$75,000.

Similarly, P&P C-23, Section G.4.b., has been revised to increase the monetary level at which a proposed case disposition, which results in a change of the proposed civil penalty of \$25,000 or more, must receive Administration approval before finalization.

(8) AB 1127 Change to Labor Code Section 6429

Section 6429 is amended in two ways:

(a) Section 6429(b) prohibits adjustment of the proposed civil penalty for a repeat violation for anything other than Size. The Division's emergency Cal/OSHA Civil Penalty regulation made changes to 8 CCR Section 336 (d)(12) as follows:

"For any employer who commits a repeat violation (as provided under section 335(d) of this article), the penalty shall not be subject to adjustment pursuant to this subsection, other than for Size as set forth in part (1) of this subsection."

Thus, for all inspections commencing on or after 1 January 2000, the proposed civil penalty for a repeat violation shall not be adjusted except for Size.

P&P C-10, Section b.4.(a), has been changed to reflect the prohibition against adjusting the penalty for a repeat violation for anything other than for Size.

(b) Section 6429(c) requires the Division to preserve and maintain records of its

investigations, inspection and citations for a period not less than seven (7) years.

In P&P C-1, Section D.5. has been added to reflect the new retention requirement for records of Cal/OSHA inspections, investigations and citations.

(9) AB 1127 Change to Labor Code Section 6430

Section 6430 is amended in two ways:

(a) Section 6430(a) requires that if a violation is for failure to abate a violation, the employer shall be assessed a penalty of not more than \$15,000 for each day during which the failure to abate continues. The Division's emergency Civil Penalty regulations have made changes to 8 CCR Section 336(f) as follows:

"The daily additional penalty for failure to abate a violation shall not exceed \$15,000."

P&P C-2, Attachments H (Sample 161 Reminder Letter) and J (Sample 161 Reminder Letter After Final Order) have been changed to reflect the new higher penalty for a failure-to-abate violation.

P&P C-10, Section B.7.b., and P&P C-15, Section C.1., have also been changed to reflect the new higher penalty for a failure-to-abate violation.

(b) Section 6430(c) is amended to provide that any employer who submits a signed statement of abatement, and is found by the Division not to have abated the violation is guilty of a public offense punishable in court by a fine or imprisonment.

Even though the new "public offense" of submitting a fraudulent statement of abatement is enforceable by a district attorney, new Section C.4. has been added to P&P C-15 to require that if compliance personnel determine that an employer has submitted a fraudulent statement of abatement, they shall make a referral to the Bureau of Investigations (BOI).

P&P C-90, Section C. 5. c.(2), has been changed to add a new grounds for a mandatory referral to the BOI, i.e., submission of a fraudulent statement of abatement, and the 90B has also been changed to reflect the new referral category.

(10) AB 1127 Change to Labor Code Section 6432

Section 6432 is amended to provide a revised definition of serious violation. The Division's emergency Civil Penalty regulations made changes to 8 CCR Section 334(c)(1), (2) and (3) as follows:

(1) A "serious violation" shall be deemed to exist in a place of employment if there is substantial probability that death or serious physical harm could result from a violation, including, but not limited to, circumstances where there is a substantial probability that either of the following could result in death or great bodily injury:

(A) A serious exposure exceeding an established permissible exposure limit or

(B) A condition which exists, or from one or more practices, means, methods, operations, or

processes which have been adopted or are in use, in the place of employment.

(2) Notwithstanding subsection (c)(1), a serious violation shall not be deemed to exist if the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) As used in subsection (c)(1), "substantial probability" refers not to the probability that an accident or exposure will occur as a result of the violation, but rather to the probability that death or serious physical harm will result assuming an accident or exposure occurs as a result of the violation."

P&P C-1B, Section D.3., has been changed to reflect the revised definition of serious violation. Although AB 1127 places the burden for demonstrating lack of knowledge of a violative condition on the employer, P&P C-1B will continue to require compliance personnel to determine through investigation the employer's knowledge of violative conditions.

(11) AB 1127 Change to Labor Code Section 6434

Section 6434 is amended to delete the longstanding statutory exemption for governmental entities from imposition of Cal/OSHA civil penalties. Effective 1 January 2000, governmental entities will no longer be exempt from civil penalties, including failure-to-abate penalties.

The Note to the Policy Statement at the beginning of P&P C-10, stating that "civil penalties shall not be proposed for employers that are governmental entities," has been deleted and a statement that governmental entities are not exempt from the imposition of civil penalties has been added to P&P c-10, Section C.6..

In place of the former governmental entity exemption, new Section 6434(a) provides that the civil penalties arising from citations issued to any governmental educational entities (as enumerated) shall be deposited in the Workplace Health and Safety Revolving Fund.

Furthermore, new Section 6434(b) provides that civil penalties paid by governmental educational entities (as enumerated) can be refunded by the Department of Industrial Relations (DIR) if the governmental entities meet three specified conditions.

P&P C-15, Section C.3., sets forth the three conditions under which civil penalties can be refunded to a governmental educational entity and instructs Districts to refer all refund requests to DIR Accounting.

(12) AB 1127 Change to Labor Code Section 6719

Labor Code Section 6719 is a new section of the Labor Code and it reaffirms the Legislature's concern over the prevalence of repetitive motion injuries and the Standards Board's continuing duty to carry out Labor Code Section 6357.

Although the Division does not have to make any regulatory or policy changes in response to Labor Code Section 6719, it is relevant to point out here that the P&P C-13 (formerly P&P C-173) has been finalized and retitled "Enforcement of 8 CCR Section 5110."

SUMMARY

AB 1127 makes many changes to the Cal/OSHA Enforcement Program and represents a challenge for all of Cal/Osha to implement. AB 1127 not only makes statutory, regulatory and policy changes to the Cal/OSHA Enforcement Program, it also will have a significant resource impact.

The increase in the number of complaints which must be categorized as formal, the effect of the increases in civil penalties for serious, repeat and failure-to-abate violations, the ending the exemption for governmental entity exemption from civil penalties, and the requirement to allocate resources where time is of the essence, will cumulatively have a sizeable resource impact.

To meet the challenge of effectively implementing the provisions of AB 1127, the Cal/OSHA Program will need to augment its compliance personnel resources at the District level in 2000. in addition to bringing many new challenges for the Program, AB 1127 also has the potential to greatly increase the effectiveness of Cal/OSHA's enforcement efforts and, in doing so, to increase the safety and health protections afforded to California's workers.

January 1, 2000

**STATE OF CALIFORNIA
DEPARTMENT OF OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

**TEXT OF "EMERGENCY" REGULATIONS --
Approved by OAL and filed with the Secretary of State on 16 December 1999.
Effective on 1 January 2000. Expire on 1 May 2000.**

**DIRECTOR OF THE DEPARTMENT OF INDUSTRIAL RELATIONS,
TITLE 8, CALIFORNIA CODE OF REGULATIONS**

**Chapter 3.2. California Occupational Safety and Health Regulations (CAL/OSHA)
Subchapter 1. Regulations of the Director of Industrial Relations;
Article 4. Proposed Penalty Procedure**

§334. Classification of Violations and Definitions.

For purposes of penalty assessments, violations of occupational safety and health standards, violations of California Health and Safety Code Sections 2950 and 25910, orders, special orders and regulations are classified as follows:

(a) Regulatory Violation--is a violation, other than one defined as Serious or General that pertains to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute. For example, failure to obtain permit; failure to post citation, poster; failure to keep required records; failure to report industrial accidents, etc.

(b) General Violation--is a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees.

c. (c) Serious Violation.

(1) A "serious violation" shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a violation, including, but not limited to, circumstances where there is a substantial probability that either of the following could result in death or great bodily injury:

(A) a A serious exposure exceeding an established permissible exposure limit or

(B) a A condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in the place of employment.

(2) ~~unless~~ Notwithstanding subsection (c)(1), a serious violation shall not be deemed to exist if the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) As used in subsection (c)(1), "substantial probability" refers not to the probability that an accident or exposure will occur as a result of the violation, but rather to the probability that death or serious physical harm will result assuming an accident or exposure occurs as a result of the violation.

(e) (2) (4) For Carcinogens--is a violation of any standard, order, or special order respecting the use of a carcinogen, as defined in 8 Cal. Adm. Code California Code of Regulations 330(f). However, the violation shall not be considered serious if the employer can demonstrate that he did not, and could not with the exercise of reasonable diligence, know of the presence of the violation or he can demonstrate that the Division should have determined that the violation was minor and resulted in no substantial health hazard.

(d) Repeat Violation

(1) General--is a violation where the employer has corrected, or indicated correction of an earlier violation, for which a citation was issued, and upon a later inspection is found to have committed the same violation again within a period of three years immediately preceding the latter violation. For the purpose of considering whether a violation is repeated, a repeat citation issued to employers having fixed establishments (e.g., factories, terminals, stores . . .) will be limited to the cited establishment; for employers engaged in businesses having no fixed establishments (e.g., construction, painting, excavation . . .) a repeat violation will be based on prior violations cited within the same Region of the Division.

(2) Field Sanitation Violations--Is a violation of the State Field Sanitation Standard, currently set forth in 8 CCR 3457, or of the Federal Field Sanitation Standard, currently set forth in 29 CFR 1928.110, where the employer has corrected, or indicated correction of an earlier violation, for which a citation was issued, and upon a later inspection is found to have committed the same violation within a period of five years immediately preceding the latter violation. For the purpose of considering whether a violation is repeated, a repeat violation will be based on prior violations cited within the State.

(e) Willful Violation--is a violation where evidence shows that the employer committed an intentional and knowing, as contrasted with inadvertent, violation, and the employer is conscious of the fact that what he is doing constitutes a violation of a safety law; or, even though the employer was not consciously violating a safety law, he was aware that an unsafe or hazardous condition existed and made no reasonable effort to eliminate the condition.

(f) Abatement Date--is the date by which the employer is allowed and required to correct the condition constituting the violation.

NOTE: Authority cited: Sections 54, 55, and 6319, Labor Code. Reference: Sections 6302(i), 6319, 6432 and 6712, Labor Code; and Sections 2950 and 25910, Health and Safety Code.

§336. Assessment of Civil Penalties.

Civil penalties for Regulatory, General, Serious, Repeat, Willful, and Failure to Abate violations shall be assessed in the following manner:

(a) Regulatory Violation--

(1) In General--Any employer who commits any Regulatory violation (as provided in Section 334(a) of this article) shall be assessed a civil penalty of up to \$7000 for each such violation. Except as set forth in parts (2) through (4) of this subsection, a minimum proposed penalty of \$500, representing the gravity of the violation, shall be assessed against employers who commit Regulatory violations. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(2) For Carcinogens--A minimum proposed penalty of \$1,000 for all carcinogen standard regulatory

violations, other than reporting use violations, representing the gravity of the violation, shall be assessed against the employers who commit such violations. The proposed penalty shall be adjusted for Size, Good Faith and History; however, an abatement credit shall not be granted.

(3) For Carcinogens Failure to Report Use. Any employer who violates a reporting requirement respecting the use of a carcinogen as defined in Title 8 of the California Code of Regulations section 330(f), shall be assessed a minimum proposed civil penalty of \$2,500. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(4) For Violation of Permit or Registration Requirements. Any employer who violates the permit requirements of article 2, Permits--Excavations, Trenches, Construction and Demolition, and The Underground Use of Diesel Engines in Work in Mines and Tunnels, commencing with section 341 of Title 8 of the California Code of Regulations, or the Registration requirements of article 2.5, Registration--Asbestos-Related Work commencing with section 341.6 of Title 8 of the California Code of Regulations, shall be assessed a minimum proposed civil penalty of \$1,250. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(5) For Violation of Elevator Permit and Posting Requirements. Any person owning or having custody, management, or operation of an elevator who operates any such elevator without a valid permit, or who fails to post the permit as required, may be assessed a civil penalty pursuant to the provisions of this article of up to \$1000.

(b) General Violation--Any employer who violates any occupational safety and health standard, order or special order and such violation is determined to be a General violation (as provided in section 334(b) of this article) may be assessed a civil penalty of up to \$7000 for each such violation.

Gravity of a General Violation--The Base Penalty of a General violation is determined by evaluating Severity (as provided in section 335(a)(1)(A) of this article). If the Severity is:

LOW--	The Base Penalty shall be \$1,000.
MEDIUM--	The Base Penalty shall be \$1,500.
HIGH--	The Base Penalty shall be \$2,000.

The Base Penalty for the General violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW--	25% of the Base Penalty shall be subtracted.
MEDIUM--	No adjustment shall be made.
HIGH--	25% of the Base Penalty shall be added.

The Base Penalty for the General violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW--	25% of the Base Penalty shall be subtracted.
MEDIUM--	No adjustment shall be made.
HIGH--	25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

(c) Serious Violation

(1) In General--Any employer who violates any occupational safety and health standard, order, or special order, and such violation is determined to be a Serious violation (as provided in section 334(c)(1) of this article) shall be assessed a civil penalty of up to ~~\$7,000~~ \$25,000 for each such violation. Because of the extreme gravity of a Serious violation an initial base penalty of ~~\$5,000~~ \$18,000 shall be assessed.

The Base Penalty for the Serious violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW-- 25% of the Base Penalty shall be subtracted.
 MEDIUM-- No adjustment shall be made.
 HIGH-- 25% of the Base Penalty shall be added.

The Base Penalty for the Serious violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW-- 25% of the Base Penalty shall be subtracted.
 MEDIUM-- No adjustment shall be made.
 HIGH-- 25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

(2) For Carcinogens--Any employer who violates any occupational safety and health standard, order, or special order respecting the use of a carcinogen, and such violation is determined to be a Serious violation (as provided in section 334(c)(~~2~~)(4) of this article) shall be assessed a total civil penalty of \$2000 for each such violation. This penalty is not subject to adjustment.

(3) Serious Violation Causing Death or Serious Injury, Illness or Exposure--If the employer commits a Serious violation and the Division has determined that the violation caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, the penalty shall not be reduced pursuant to this subsection, except the penalty may be reduced for Size as set forth in subsection (d)(1) of this section. The penalty shall not exceed ~~\$7,000~~ \$25,000.

(4) Operation of an Elevator in an Unsafe Condition or in Violation of an Order Prohibiting Use.

Any person owning or having custody, management or operation of an elevator who operates or permits the operation of the elevator in a condition which is dangerous to life or the safety of any person, or who operates or permits the operation of the elevator in violation of any Order Prohibiting Use issued by the Division, may be assessed a civil penalty pursuant to the provisions of this article of up to \$2000.

(5) For Tower Cranes--Any employer who violates any tower crane standard, order or special order and such violation is determined to be a serious violation (as provided in section 334(c)(~~2~~)(1) of this article) shall be assessed a penalty of \$2,000. The penalty shall not be subject to adjustment as set forth in subsections (d) and (e) of this section.

(d) Further Adjustment of Regulatory, General, and Serious Violations--Subject to the provisions of parts (5) through (9) of this subsection, the Gravity-based Penalty established under either subsection (a), (b) or

(c) of this section, shall be appropriately adjusted by giving due consideration to the following factors:

(1) The Size of the Business If the Size of the Business (as provided under section 335(b) of this article) is:

10 or fewer employess	40% of the Gravity-basedPenalty shall be subtracted.
11-25 employess	30% of the Gravity-basedPenalty shall be subtracted.
26-60 Employess	20% of the Gravity-based Penalty shall be subtracted.
61-100 Employess	10% of the Gravity-based Penalty shall be subtracted.
More than 100 employees	No adjustment shall be made.

(2) The Good Faith of the Employer--If the Good Faith of the Employer (as provided under section 335(c) of this article) is:

GOOD	30% of the Gravity-based Penalty shall be subtracted.
FAIR	15% of the Gravity-based Penalty shall be subtracted.
POOR	No adjustment shall be made.

(3) The History of Previous Violations--If the employer's History of Compliance (as provided under section 335(d) of this article) is:

GOOD	10% of the Gravity-based Penalty shall be subtracted.
FAIR	5% of the Gravity-based Penalty shall be subtracted.
POOR	No adjustment shall be made.

Following the preceding adjustments of the Gravity-based Penalty, the resultant penalty is termed Adjusted Penalty.

(4) If an employer cited for a violation of a safety and health provision within title 8 of the California Code of Regulations was, at the time of citation, making a good faith effort to abate the alleged violation, pursuant to written recommendations of a Consultant of the CAL/OSHA Consultation Service, the following penalty adjustments may apply:

(A) General Violation. All penalties assessed for such General violations may be waived by the Division.

(B) Serious Violation. All penalties for such Serious violations may be subject to an additional adjustment reducing the proposed penalty 50%.

(5) Serious Violations Respecting the Use of a Carcinogen--The penalty for any Serious violation respecting the use of a carcinogen as set forth in subsection (c)(2) of this section is not subject to adjustment pursuant to this subsection and shall not be otherwise reduced.

(6) Regulatory Violations of the Permit and Registration Requirements--The minimum penalty for any Regulatory violation of the permit or registration requirements as set forth in subsection (a)(4) of this section is \$250.

(7) Serious Violations Causing Death or Serious Injury, Illness or Exposure--Subject to the provisions of subsection (c)(3) of this section, the penalty for any Serious violation determined by the Division to have caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, shall not be adjusted pursuant to this subsection, except for Size set forth in part (1) of this subsection.

(8) Injury Prevention Program--The penalty for any Serious violation shall not be subject to adjustment pursuant to this subsection other than for Size as set forth in part (1) of this subsection where the employer does not have an operative injury prevention program as set forth in Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(9) False Declarations of Abatement--Subject to the provisions of subsection (e) of this section, where it is determined after reinspection that the employer has not complied with the abatement requirements of the Division and employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size as set forth in part (1) of this subsection.

(10) No civil penalty shall be assessed against any new employer for a period of one year after the date the new employer establishes a business in the state for a regulatory or general violation of the Injury and Illness Prevention Program Standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board, if the employer has made a good faith effort to comply with the requirement set forth therein.

(11) No civil penalty shall be assessed against an employer who adopts, posts, and implements in good faith the Model Injury and Illness Prevention Program for Non-High-Hazard Employment prepared by the Division for a first violation of the Injury and Illness Prevention Program standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(12) For an employer who commits a repeat violation (as provided under section 334(d) of this article), the penalty shall not be subject to adjustment pursuant to this subsection, other than for Size as set forth in part (1) of this subsection.

(e) Abatement Credit for General and Serious Violations--The Adjusted Penalty for General and Serious violations is reduced by 50% on the presumption that the employer will correct the violations by the abatement date. The resultant penalty is termed Proposed Penalty. The following types of violations are not subject to an abatement credit:

(1) Violations designated as Repeat or Willful;

(2) Serious violations for which extent and likelihood are rated high;

(3) Serious violations respecting the use of a carcinogen; and

(4) Serious violation causing death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302.

(f) Penalty for Failure to Abate Regulatory, General or Serious Violations--If the employer fails to abate the violation by the date permitted for its correction or fails to submit to the Division a signed statement of abatement of a Serious violation within ten working days of the date set by the Division for correction of the violative condition, any abatement credit extended pursuant to subsection (e) of this Section shall be

rescinded and this amount assessed as part of the failure to abate penalty (~~for Serious violations this amount shall not exceed the difference between \$7,000 minus the initial proposed penalty~~). In addition, a penalty shall be assessed that is based upon the initial Gravity-based penalty for each calendar day that the previously cited violation continues unabated after expiration of the abatement period. Subject to the provisions of part (1) hereof, the Gravity-based penalty is reduced by the reevaluated adjustment factors. The adjustment factors of Size, Good Faith, and History shall be determined by evaluation of the circumstances at the time of the subsequent inspection when the failure to abate is discovered. The daily additional penalty for failure to abate a violation shall not exceed ~~\$7,000~~ \$15,000.

Limitations:

(1) Except (A) where the gravity of the violation is high and exposure to employees is continuous, or (B) the employer has exhibited a high degree of negligence in failing to correct the violation, the daily penalty for failure to abate a Regulatory or General violation may be further reduced up to 90% for the first 120 days the violation continues to exist and up to 50% thereafter where the violation does not bear a direct relationship on employee health and safety. The daily penalty for a Serious violation may be reduced up to 50% where the adjustment factors calculated pursuant to subsection (c) of this section are Low and the History and Good Faith calculated pursuant to subsection (d) of this section are Good.

(2) When a violation consisted of a number of instances and upon subsequent inspection some instances are found to have been abated and others have not, the daily penalty shall be calculated in proportion to the extent that the violation has been abated.

(3) Failure to Abate a Serious Violation Causing Death or Serious Injury, Illness or Exposure--If the employer fails to abate a Serious violation and the Division has determined that the failure to abate caused death or serious injury, illness, or exposure as defined pursuant to Labor Code section 6302, the penalty shall not be adjusted pursuant to this subsection, except for Size as set forth in subsection (d)(1) of this section.

(4) Failure to Abate a Serious Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury--If the employer fails to abate a serious violation of a crane standard, order, or special order and the Division has determined that the failure to abate caused death or serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$14,000 for each calendar day. The penalty is not subject to adjustment.

(5) False Declaration of Abatement--If it is determined after reinspection that the employer has not complied with the abatement requirements of the Division, and the employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size pursuant to part (1) of subsection (d) of this section.

(g) Repeat Violation--

(1) In General--If a Regulatory, General, or Serious violation is repeated (as provided under section 334(d) of this article) the Proposed Penalty is adjusted upward as follows:

1st report	the Proposed Penalty is multiplied by two.
2nd report	the Proposed Penalty is multiplied by four.
3rd report	the Proposed Penalty is multiplied by ten.

The resultant penalty shall not exceed \$70,000.

2) For Carcinogens--If a Serious violation respecting the use of a carcinogen or a Regulatory violation concerning a reporting requirement respecting the use of a carcinogen is repeated (as provided in section 334(d) of this article), the total civil penalty shall be as follows:

(A) For repeated Regulatory violations concerning a reporting requirement.

1st report	\$5,000
2nd report	\$10,000
3rd report	\$20,000

(B) For repeated Serious violations respecting the use of a carcinogen.

1st report	\$10,000
2nd report	\$20,000
3rd report	\$40,000

These penalties are not subject to adjustment.

(3) Repeated Violation Causing Death or Serious Injury, Illness or Exposure--The computation of the Proposed Penalty for a repeated violation shall not be subject to reduction, other than the Size pursuant to part (1) of subsection (d) of this section, where the violation is determined by the Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(h) Willful Violation--If a Regulatory, General, or Serious violation is determined to be willful (as provided under section 334(e) of this article) the Proposed Penalty is adjusted upward as follows:

Regulatory ~~and, General~~ --~~the Proposed Penalty is multiplied by five.~~

~~and Serious~~--the Proposed Penalty is multiplied by ~~ten~~ five. However, the penalty for any willful violation shall not be less than \$5,000 and shall not exceed \$70,000.

(1) Willful Violation Causing Death or Serious Injury, Illness or Exposure--The computation of the Proposed Penalty for a willful violation shall not be subject to reduction, other than the Size pursuant to part (1) of subsection (d) of this section, where the violation is determined by the Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(i) Serious Repeated or Willful Repeated Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury--If the employer commits a serious repeated or willful repeated violation of a crane standard, order, or special order, and the Division has determined that the violation caused death or

serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$140,000. This penalty is not subject to adjustment.

(j) Rounding of the Fractions Amounts of the civil penalties are rounded down to the next whole dollar during the calculation stages, and final figures are adjusted downward to the next lower five dollar (\$5) value.

(k) Multiple Violations Pertaining To A Single Hazard. When a single hazard is the subject matter of multiple violations resulting in civil penalties, the Division may, in its discretion, depart from the preceding criteria to mitigate the cumulative effect of such penalties.

(l) This subsection does not apply to any penalty assessed for a Serious, Willful or Repeated violation or a failure to abate a Serious violation where such violation or violations have been determined by the Division to have caused death or serious injury, illness or exposure pursuant to Labor Code section 6302. This subsection does not apply to any Regulatory, General or Serious violation where the employer does not have an operative injury prevention program as set forth in subsection (d) of this section.

NOTE: Authority cited: Sections 54, 55, 6319, 6319.3, 6401.7, and 9060 Labor Code. Reference: Sections 6314.5, 6318, 6319, 6320, 6401.7, 6427-6432, 6434, 6511, 7320, 7321, 7321.5, 7381 and 9060, Labor Code.