

OSHA Announces New Enforcement Guidance: Application of Instance-By-Instance Penalty Adjustments



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The Occupational Safety and Health Administration ("OSHA") announced in a January 26th news release new guidance for Regional and Area Offices when issuing Instance-By-Instance ("IBI") citations for high-gravity serious violations of its standards.

The enforcement Memorandum is specifically applicable to OSHA standards addressing:

- Falls
- Trenching
- Machine guarding
- Respiratory protection
- Permit required confined spaces
- Lockout/Tagout
- Other-than-serious violations related to recordkeeping

Regional Administrators and Area Directors are provided the discretion to apply IBI penalty adjustments in appropriate cases "to achieve a deterrent effect."

The decision to IBI citation is stated to be generally related to consideration of one or more of the following identified factors:

- The employer has received a willful, repeat, or failure to abate violation within the past five years where that classification is current.
- The employer has failed to report a fatality, inpatient hospitalization, amputation, or loss of an eye pursuant to the requirements of 29 CFR 1904.39.
- The proposed citations are related to a fatality/catastrophe.
- The proposed recordkeeping citations are related to injury or illness(es) that occurred as a result of a serious hazard.

The Memorandum states that IBI citations may be applied:

- When the test of the relevant standards allows (citing as examples, per machine, location, entry, or employee)
- When the instances of violations cannot be abated by a single method of abatement

Note that the Memorandum states that a separate penalty should be assessed for each violation and the adjustment factors applied in accordance with the FOM, Chapter 6.

A copy of the Memorandum can be downloaded [here](#).