

Federal OSHA's Penalty Structure Overview*

By: Jeff Carter, Safety Consultant

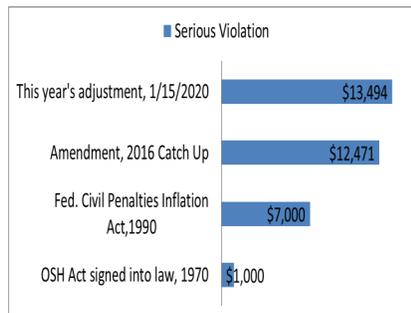
Background

On November 2, 2015, former President Barack Obama signed the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 which was previously amended by the 1996 Debt Collection Improvement Act (collectively, the "Prior Inflation Adjustment Act"). The purpose was to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. The Inflation Adjustment Act required agencies to: (1) adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation, no later than January 15 of each year.

"...to improve the effectiveness of civil monetary penalties and maintain their deterrent effect."

A Serious Violation, Historical Perspective

1970: On December 29, 1970 President Nixon signed into law the Occupational Safety Act (OSH Act), which became effective on April 28, 1971. At that time the monetary penalty for a serious violation was \$1000.



1990: The penalty remained in effect until updated by the Omnibus Budget Reconciliation Act of 1990, and on November 5, 1990 the penalty for a single serious violation was increased to \$7,000.

2016: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) amended The Federal Civil Penalties Inflation Adjustment Act of 1990 requiring agencies to adjust the levels of civil monetary penalties with an initial catch-up adjustment followed by annual adjustments for inflation. As a result, in 2016 the penalty for a single serious violation was increased to \$12,471.

2020: For this year, 2020, the cost-of-living adjustment multiplier based on the Consumer Price Index for the

month of October 2019 is 1.01764. Multiplying the 2019 penalty of \$13,260 and rounding to the nearest dollar OSHA established the monetary penalty of \$13,494 for a single serious violation.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act)

The Inflation Adjustment Act amends the Prior Inflation Adjustment Act in two key respects.

First, the Inflation Adjustment Act rescinds an exemption that previously disallowed inflationary adjustments for violations of the Occupational Safety and Health Act (OSH Act). As a result, the Department of Labor is updating the penalties under the OSH Act for the first time since 1990.

Second, the Inflation Adjustment Act substantially revises the method of calculating inflation adjustments. Although the Act disallowed inflationary adjustments for violations of the OSH Act, other civil penalties were required to be rounded significantly. As a result, penalties were increased infrequently, and when they were finally increased, the amounts of the increases were sometimes substantial. Over time, this formula caused most penalties to lose value relative to total inflation for long periods of time, thereby undermining the Prior Inflation Adjustment Act's purposes of maintaining the deterrent effect of civil money penalties and promoting compliance with the law.

Additionally, the Inflation Adjustment Act provided for an initial "catch-up", subject to a cap increase of 150 percent of the current penalty amount. OSHA calculated the catch-up and subsequent annual adjustments are based on the Consumer Price Index for all Urban Consumers.

Current Federal OSHA Penalties Maximums (1/15/20)

Type of Violation	Penalty
Serious Other-Than-Serious Posting Requirements	\$13,494
Failure to Abate	\$13,494 per day beyond abatement date
Willful or Repeat	\$134,937 per violation

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Comparison; Home Values

Year	Median Home Value
2020	\$200,493
2019	\$185,642
2016	\$172,072
2000	\$119,600
1990	\$79,100
1980	\$47,200
1970	\$17,000
1960	\$11,900
1950	\$7,354
1940	\$2,938



To put the monetary penalty amounts in perspective, this table summarizes the median home value change from 1940 to current, 2020. Note that for the 1970-2020 time period, medium home values have gone up nearly 12-fold and

OSHA penalties have increased 13.5-fold. The increase in OSHA penalties and home prices are in alignment, within a 1.5% margin.

Adjustment Factors

Federal OSHA will continue to follow existing procedures for applying adjustment factors to the penalty, such as size, history, and good faith. These procedures are codified in the OSHA Act:

1903.15(b): The Area Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of section 17 of the Act and paragraph (d) of this section.

Perspective: Federal OSHA Citation Penalties vs. Worker's Compensation Claims

A worker operated a machine that was actuated with a foot pedal. Foot pedals must be guarded to prevent accidental actuation, this foot pedal was not. While reaching across the machine the operator accidentally stepped on the foot pedal, cycling the machine. Fingers of the right hand were severed.

Citations were issued. At last count, the Worker's Compensation claim was exceeding \$325,000, and is likely climbing today. The worker attempted to return to work but was afraid to stand in front of the machine he had operated for over 25 years, forcing the employer to train a new hire with no experience.

The Worker's Compensation claim far exceeded the OSHA monetary penalty by a considerable factor.

*In Connecticut, the Federal OSHA penalty structure applies to private sector employers.

Hazard Corner: A Tragic Fall ***Summarized from the NIOSH Fatality Assessment and Control Evaluation (FACE) Reports*** ***By: Robert Hunt, CCT***

Tragedy can strike at any time and can happen lightning fast. When it comes to ladders, this couldn't be more true. A ladder may be a tool that is used everyday or one that is used once a year. Everyone, even the most experienced, needs to respect ladder safety and understand that disaster can strike and prove fatal. Taking the time to ensure the ladder you utilize is safe and used in a proper manner can prevent it from being your last climb.

The following is an example from a worker who was nearly finished with a project when he climbed a ladder for the last time of his life:

A masonry contractor had been contracted to construct a life center building across the road from a hospital complex. At the time of the incident, the victim was preparing a batch of mortar as instructed by the foreman. The victim's duties included mixing mortar and transporting it to the desired location in pails. The rest of the crew, including the foreman, went up to the third level of the building, which was about 12 feet above the second floor where the victim was working. The workers used a stairway to access the third floor work area.

Although no one saw the victim fall, evidence at the site suggested that the victim took the top portion of an aluminum extension ladder (without safety feet), placed one end on the wet concrete floor, and leaned the other end against a wall to reach the third floor area. Without attempting to tie off the ladder or secure it in any fashion, the victim began to climb the ladder. The bottom of the ladder apparently slipped on the wet floor, causing the victim to fall. There were no indications at the scene that the victim was carrying a pail of mortar when he fell.

The victim was discovered by an employee of another contractor on the site. This individual said that the victim was conscious, but was talking incoherently and bleeding from his ears. By the time the emergency rescue squad arrived 15 minutes after the fall, the victim had lost consciousness. He was transported to the hospital where he died 3 days later.

Prevention Recommendations:

- Employers should ensure that ladders are used in accordance with requirements of existing Federal safety standards.
- The upper sections of extension ladders should not be used as single ladders.
- Employers should train workers in the proper use of tools and equipment used to perform their assigned tasks.

Fatality & Casualty Reporting

State & Town: Report to CONN-OSHA at 1-860-263-6946 or toll free at 1-866-241-4060

Private Employers: Report to Federal OSHA at 1-800-321-6742

Ladder Safety

By: Scott Adams, Compliance Safety and Health Officer

With approximately 20% of all fatalities and lost workdays attributed to falls from ladders, let's review some of the requirements and safety precautions that need to be followed. The OSHA standard for ladders in General Industry is 1910.23 and for ladders in Construction is 1926.1053.

In general industry the standard covers all ladders except the following; a ladder used in emergency operations such as firefighting, police tactical activities, etc. or a ladder designed into or is an integral part of machines or equipment.

The general industry standard begins by addressing ladder rungs, cleats and their spacing based on the type of ladder in use. Common types of ladders would be:

- Step Ladders
- Extension Ladders
- Fixed Ladders
- Rolling Ladders
- Side Step Ladders
- Single Ladders

So let's take a look at some general industry standard requirements.

1910.23(b)(5) states that wooden ladders are not coated with any material that may obscure structural defects.

1910.23(b)(6) covers metal ladders which shall be made with corrosion-resistant material or protected against corrosion.

The standard follows up with 1910.23(b)(7) that ladders surfaces are free of puncture and laceration hazards. Makes sense, not complicated. Think about all the ladders that get thrown in the back of a truck each day going from one work area to the next. Let's keep going. Under 1910.23 (b)(8), ladders are used only for the purposes for which they were designed.

Remember how under (b)(7) it talks about the laceration and puncture hazards? When should you find these hazards? 1910.23(b)(9) states ladders are inspected before use in each work-shift and more frequently as necessary to identify any visible defects that could cause employee injury.

So you have inspected your ladder and have found it to be defective. What are you required to do? Don't worry, OSHA has that covered also. 1910.23(b)(10) states that any ladder with structural or other defects is immediately tagged "DANGEROUS: DO NOT USE" or other appropriate language and removed from service.

Moving along, are spreader bars or locking devices required on a stepladder or combination ladder? Yes! 1910.23(c)(2) points out "Each stepladder or combination ladder used in stepladder mode is equipped with a metal spreader or locking device that securely holds the front and back sections in an open position while in use." Makes sense.

Now let's take a look at the rules that apply to all ladders including job-made ladders normally found on construction sites. Some construction industry standard requirements include:

Do not load ladders beyond their manufacturer's rated capacity.

Use ladders only for their designed purpose.

Use ladders only on stable and level surfaces unless secured or provided with slip-resistant feet to prevent accidental movement. Do not use slip resistant feet as a substitute for exercising care when placing, lashing or holding a ladder upon a slippery surface.

Secure ladders placed in areas such as passageways, doorways, driveways or where they can be displaced by workplace activities or traffic to prevent accidental movement or use a barricade to keep traffic or activity away from the ladder.

Do not move, shift or extend ladders while in use.

Use ladders equipped with nonconductive side rails if the worker or ladder could come in contact with exposed energized electrical equipment.

Face the ladder when ascending or descending.

Use three points of contact (two feet, one hand) while climbing.

Do not carry loads or objects that could cause loss of balance and falling

Double cleated ladders or two or more ladders must be provided when ladders are the only way to enter or exit a work area where 25 or more employees work or when a ladder serves a simultaneous two-way traffic.

Ladder rungs, cleats and steps must be parallel, level and uniformly spaced when the ladder is in position for use.

Do not use single rail ladders.

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In the subject line type "subscribe" and provide your e-mail address. You may also reach us by phone at (860) 263-6900 or visit us at: www.connosha.com

A competent person must inspect each ladder before use.

Do not use cross-bracing on the rear section of a stepladder as a step unless the ladders are designed and provided with steps front and rear for climbing.

Do not use a self-supporting (e.g. stepladder) as a single ladder or in a partially closed position.

Do not place a ladder on barrels, boxes or other unstable bases to obtain additional height.

An extension or straight ladder used to access an elevated surface must extend at least three feet above the point of support.

Do not stand on the top three rungs of a straight, single or extension ladder.

Maintain ladders free of oil, grease and other slipping hazards.

So while we have not covered everything, we have touched on many of the standards components and safety precautions. Remember it is the employer's responsibility to understand the standards, train their employees to understand and follow the standards and ensure the employees are trained in a language they understand.



For more information, visit the Ladder Safety eTool on OSHA's website, <https://www.osha.gov/SLTC/etools/construction/falls/4ladders.html>

You can also request a free consultation from CONN-OSHA. Call 860-263-6900 or visit <https://ctdol.jotform.com/CT1/ConsultationRequest>

CONN-OSHA Training ... Gone Virtual!

During this COVID-19 restrictive time, CONN-OSHA training events will now be provided using the live video-based platform, Zoom.

CALENDAR OF EVENTS

Intro to OSHA	OSHA Injury and Illness Recordkeeping	Hazard Communication	Breakfast Roundtable
December 1, 2020 9 am – 10 am	January 5, 2021 9 am – 11 am	February 2, 2021 9 am – 10 am	3 rd Tuesday of the Month 8:15 am – 9:45 am
This class helps attendees gain an understanding of OSHA operations and how to prevent workplace injuries. Includes OSHA background, standards, the inspection process, implementing a safety & health program, and available assistance and resources.	This class is designed to provide participants with an overview of state and federal recordkeeping requirements. Topics include an overview of the OSHA 300, 300A and 301 forms as well as what type of accident is recordable and the proper way to record these accidents.	This class will cover compliance with the OSHA Hazard Communication Standard, 29 CFR 1910.1200, and discuss compiling a hazardous chemicals list, using Safety Data Sheets (SDS), and labeling of containers.	CONN-OSHA offers Breakfast Roundtable Meetings that cover subjects ranging from evacuation plans and fire extinguishers to air quality and ergonomics. The intent of these free 90-minute workshops is to discuss safety and health issues in a supportive and informal environment.

To register for CONN-OSHA training events go to: <http://www.ctdol.state.ct.us/osha/calendar.htm>

To receive the Breakfast Roundtable notification once per month, email John Able at John.able@ct.gov to be placed on the e-mail distribution list.

If you would like information on an occupational safety and/or health event posted on this page, contact Catherine Zinsser, catherine.zinsser@ct.gov.

If you are not familiar with Zoom technology, we recommend that you watch this "How to Join a Zoom Meeting" video: https://www.youtube.com/embed/hlkCmbvAHQQ?rel=0&autoplay=1&cc_load_policy=1

The ZOOM Help Center <https://support.zoom.us/hc/en-us> is also available to learn more about using this platform prior to CONN-OSHA events.