

## Understanding Cal/OSHA Mining and Tunneling Citation Penalties

As most California mine operators are aware, Cal/OSHA maintains a “Mining and Tunneling Division” that duplicates the federal Mine Safety and Health Administration’s safety oversight over mining operations. And, just like MSHA, Cal/OSHA Mining and Tunneling can issue citations for safety violations observed during an inspection, as well as citations resulting from a safety incident. These citations, like those written by MSHA, are accompanied by penalties ranging from a few hundred dollars into the hundreds of thousands of dollars.

Cal/OSHA follows a convoluted set of rules to determine what magnitude of penalty to propose for a given citation. These rules, which are adopted by formal regulation, group violations into five categories, each with their own minimum and maximum penalty amounts. These categories are summarized below:

Category	Minimum	Maximum
<b>Regulatory</b> (reporting, posting, recordkeeping)	\$500 \$5,000 (for failure to report a serious injury, illness, death)	\$13,277
<b>General</b> (safety and health standards)	\$1,000	\$13,277
	Penalties for General violations can be adjusted upward or downward depending on the gravity of the violation, the number of people affected, and likelihood of illness or injury.	
<b>Serious</b> (realistic possibility of death or serious harm)	\$18,000	\$25,000
	Penalties for Serious violations can be adjusted upward or downward depending on the number of people affected and likelihood of illness or injury,	
<b>Repeat</b> (for Regulatory, General or Serious violations)	<ul style="list-style-type: none"> <li>• 1st repeat — the Proposed Penalty is multiplied by two.</li> <li>• 2nd repeat — the Proposed Penalty is multiplied by four.</li> <li>• 3rd repeat — the Proposed Penalty is multiplied by ten.</li> </ul>	
	The resultant penalty cannot exceed \$ 132,765.	
<b>Willful</b>	\$9,483	\$132,765

Penalties for Regulatory, General and Serious violations can be adjusted further based on the following factors:

- **Size of Business:** A 10% to 40% reduction based on number of employees, for employers with fewer than 100 employees.
- **Good Faith:** A 15% or 30% reduction depending on the employer's "Good Faith" (the quality and extent of the employer's safety program).
- **History of Previous Violations:** A 5% or 10% reduction based on the employer's history "rating" within the last three years. A single Serious citation within the last three years disqualifies the employer for a history reduction.
- **Abatement:** A 50% to 100% reduction if an employer 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.

(See 8 CCR § 333 et seq. for specific regulatory text.)

Cal/OSHA generally has wide latitude to adjust penalty amounts in the course of settlement discussions related to citations that have been appealed. For this reason, an appeal often makes good financial sense where the proposed penalty amount exceeds a few thousand dollars, and always when the citation is written as "Serious" or "Willful". Please contact this office for assistance filing and litigating a Cal/OSHA or MSHA appeal.

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