

State and Local Government Penalties



DEPARTMENT OF LABOR AND INDUSTRY

<http://www.doli.virginia.gov>

Virginia State Plan for Occupational Safety and Health

- The Virginia Department of Labor and Industry (DOLI) operates the Virginia State Plan for Occupational Safety and Health (VOSH) through a grant from the U.S. Department of Labor – Occupational Safety and Health Administration (OSHA)
- VOSH is required by federal OSHA laws and regulations to operate a program that is “at least as effective” as those of federal OSHA.

Virginia Occupational Safety and Health (VOSH)

Virginia is one of 28 States and territories that operates its own OSH program:

- Must cover state and local government employees
- Compliance, Public Sector Consultation and VPP funded 50% by federal OSHA
- Private Sector Consultation funded 90% by OSHA



Virginia Occupational Safety and Health (VOSH)



OSH Act

- Also called Williams-Steiger Act
- Signed December 29, 1970
- Effective April 29, 1971



Virginia State Plan:

- Must be “as effective as” but can be different
- In states covered by federal OSHA jurisdiction, there are no OSHA protections for state and local government employees
- Virginia receives an annual evaluation from federal OSHA Region III – Philadelphia
- <https://www.osha.gov/dcsp/osp/efame/virginia.html>

State and Local Government Penalties

- Injury and illness rates for Virginia State and Local Government employees are **60% higher** than private industry in Virginia.

	Virginia	State/Local Government	Difference
2016 Overall TCR Rate	2.8	4.0	42.9%
2016 Private Industry TCR* Rate	2.5	4.0	60.0%
2016 Construction TCR Rate	3.3	4.0	21.2%
2016 Manufacturing TCR Rate	3.5	4.0	14.3%

* TCR - total recordable cases

* DART - days away from work, job transfer, or restriction

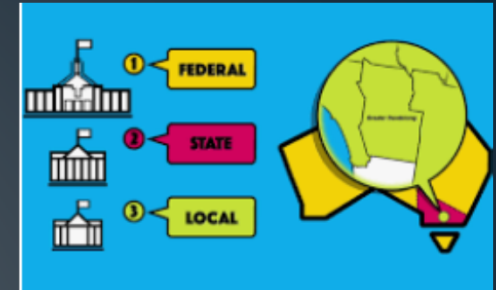


State and Local Government Penalty Legislation

- Senate Bill 607 was passed by the Virginia General Assembly and signed into law by Governor Terry McAuliffe to direct the Virginia Safety and Health Codes Board to **adopt regulations for the issuance of proposed penalties to the Commonwealth, its agencies, political subdivisions, or any public body.** The law became effective July 1, 2016. Information can be found at:
- <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=161&typ=bil&val=sb607>

Public Employer Defined

- 16VAC25-60-10
- "Public employer" means the Commonwealth of Virginia, including its agencies, authorities, or instrumentalities or any political subdivision or public body.
- The Department considers authorities and instrumentalities such as the Washington Metropolitan Airports Authority, the Washington Metropolitan Area Transit Authority, and the GRTC Transit System to be public employers covered by the state and local government penalty regulation.



State and Local Government Penalty Regulation



- The Virginia Safety and Health Codes Board adopted a proposed regulation on February 16, 2017, amending the VOSH Administrative Regulations Manual (ARM), 16VAC25-60.
- The regulation allows issuance of penalties to state and local government employers for **willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as “high gravity”**.

State and Local Government Penalty Regulation



- Based on an analysis of historical data, approximately five percent (5%) of the serious violations issued in the private and public sectors are classified as high gravity (high severity and greater probability).
- VOSH estimates that approximately 15 high gravity serious violations in state and local government would be subject to penalties per year.
- VOSH estimates that up to three willful violations and up to five repeat violations per year will be subject to penalties in state and local government.



State and Local Government Penalty Regulation

- The final regulation was adopted on November 30, 2017.
- The regulation takes effect on **VOSH inspections opened on or after November 1, 2018**
- Information on the final regulation can be tracked on the Virginia Regulatory Town Hall at:

<http://townhall.virginia.gov/L/ViewAction.cfm?actionid=4681>

VOSH Maximum Penalties

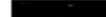
- Serious \$12,726
- Willful \$127,254
- Repeat \$127,254
- Failure to Abate \$12,726 per day
- NOTE: Other-than-serious violations issued to state and local government employers will not receive penalties

Virginia Department of Labor and Industry
Occupational Safety and Health Compliance
Intercom Corporate Center, Building 6
6363 Center Drive, Suite 101
Norfolk, VA 23502
Phone: (757) 455-0899 Fax: (757) 455-0899



Citation and Notification of Penalty

To:  Inspection Number: 
Inspection Date(s): 02/19/2010 - 02/19/2010
Issuance Date: 03/11/2010

Inspection Site: 

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the date(s) the inspection was made unless otherwise indicated within the description given below.

Described herein are alleged violations of Virginia's Occupational Safety and Health Laws, standards and/or regulations. Any penalty proposed is based on the corresponding violation. In accordance with Virginia Code §40.1-495(b), you must abate all alleged violations by the dates listed and pay the penalties proposed, within 15 working days (excluding weekends and Federal and State holidays) from the date you receive this citation. You submit a notice of contest to the Virginia Department of Labor and Industry Regional Office at the address listed above. Issuance of this citation does not constitute a finding by the Commissioner that you have violated the law, standard or regulation described unless you fail to file a notice of contest or this citation is affirmed by a court of law.

Please read the enclosed booklet entitled *Employers Rights* in conjunction with this citation to learn your rights and responsibilities.

Posting - Virginia law requires you to immediately post a copy of this Citation in a prominent place at or near the location of the violation(s), or, if it is not practicable because of the nature of your operations to do so, in a place where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) have been abated, or for 3 working days (excluding weekends, State and Federal holidays), whichever is longer. The penalty amount may be marked out or covered up prior to posting. It should be noted that these amounts, however, are releasable by the Department in response to a Freedom of Information Act (FOIA) request.

Informal Conference - You have the right to an informal conference with the VOSH Regional Director at which you may present evidence which you believe supports amending either the citation or penalties proposed. An informal conference, which is held during the 15 working day contest period, is optional. If you wish to attend an informal conference, you must contact the VOSH Regional Director at the Regional Office listed above.



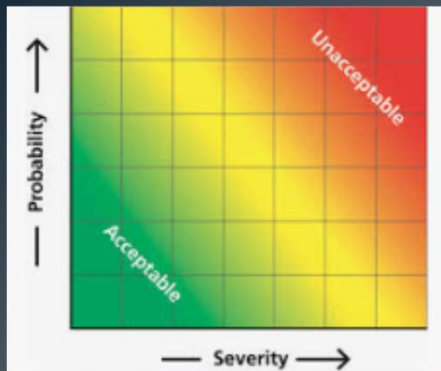
Annual Increase in VOSH Maximum Penalties

- Va. Code §40.1-49.4. provides that the Commissioner of Labor and Industry will annually increase the maximum civil penalty amounts by an amount that reflects the percentage increase, if any, in the **Consumer Price Index - Urban (CPI-U)** from the previous calendar year.
- Information on VOSH Maximum Penalties can be found at:
- <https://www.doli.virginia.gov/vosh-penalty-increases/>

VOSH Penalty Calculation Factors

- As provided for in Va. Code §40.1-49.4.A.4(a), VOSH penalty calculation procedures are required to take into account:
 - the gravity of the violation,
 - the size of the employer's business,
 - the good faith of the employer, and
 - the history of previous violation





VOSH Gravity Based Penalty

- VOSH generally follows OSHA's Gravity Based Penalty (GBP) methodology for calculating proposed penalties, which includes an assessment of the “Severity” of the hazard cited and the “Probability” that an injury or illness would result from the cited hazard.
- VOSH GBP penalty levels differ from OSHA in certain areas discussed later in this presentation.

VOSH Gravity Based Penalty

- “Severity” is classified as:
 - High, Medium or Low
- “Probability” is classified as:
 - Greater or Lesser
- Consult Chapter 11 the VOSH Field Operations Manual (FOM) for a detailed discussion on penalty calculation procedures:
- <http://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=5354>



VOSH Gravity Based Penalty

- There are six main Gravity Based Penalty levels for proposed “serious” violations:
- High Severity/**Greater** Probability [**High Gravity**]
- High Severity/**Lesser** Probability
- Medium Severity/**Greater** Probability
- Medium Severity/**Lesser** Probability
- Low Severity/**Greater** Probability
- Low Severity/**Lesser** Probability

2018 VOSH Serious Penalty Table

Effective on State and Local Government Inspections

Opened After November 1, 2018

VOSH Field Operations Manual

Table 11-1 Penalty Table

Rounded to nearest 0 or 5

Penalty Reduction in Dollars	Gravity Assessments						
	OTS	Low/Lesser	Low/Greater	Med/Lesser	Med/Greater	High/Lesser	High/Greater
GBP	\$1,300	\$5,650	\$7,020	\$8,220	\$9,760	\$10,790	\$12,726
10%	\$1,170	\$5,085	\$6,320	\$7,400	\$8,785	\$9,710	\$11,455
15%	\$1,105	\$4,805	\$5,965	\$6,990	\$8,300	\$9,170	NA
20%	\$1,040	\$4,520	\$5,615	\$6,575	\$7,810	\$8,630	\$10,180
25%	\$975	\$4,240	\$5,265	\$6,165	\$7,320	\$8,095	NA
30%	\$910	\$3,955	\$4,915	\$5,755	\$6,830	\$7,555	\$8,910
35%	\$845	\$3,675	\$4,565	\$5,345	\$6,345	\$7,015	NA
40%	\$780	\$3,390	\$4,210	\$4,930	\$5,855	\$6,475	\$7,635
45%	\$715	\$3,110	\$3,860	\$4,520	\$5,370	\$5,935	NA
50%	\$650	\$2,825	\$3,510	\$4,110	\$4,880	\$5,395	\$6,365
55%	\$585	\$2,545	\$3,160	\$3,700	\$4,390	\$4,855	NA
60%	\$520	\$2,260	\$2,810	\$3,290	\$3,905	\$4,315	\$5,090
65%	\$455	\$1,980	\$2,455	\$2,880	\$3,415	\$3,780	NA
70%	\$390	\$1,695	\$2,105	\$2,465	\$2,930	\$3,235	\$3,820
75%	\$325	\$1,415	\$1,755	\$2,055	\$2,440	\$2,700	NA
80%	\$260	\$1,130	\$1,405	\$1,645	\$1,950	\$2,160	\$2,545
85%	\$195	\$850	\$1,055	\$1,235	\$1,465	\$1,620	NA
90%	\$130	\$600*	\$700	\$820	\$975	\$1,080	NA
95%	\$65	\$600*	\$600*	\$600*	600*	600*	NA

Note 1: Increases Minimum Serious penalty to \$600.00

Note 2: No reduction for good faith is permitted for High Gravity Serious

State and Local Government Penalty Regulation - RECAP

- As previously noted, VOSH will only be issuing penalties to state and local government employers for:
 - Willful,
 - Repeat
 - Failure-to-abate violations,
 - Serious violations that cause a fatal accident and
 - Serious violations classified as “high gravity” (high severity and greater probability)



State and Local Government Penalty Regulation

- Penalties will not be issued for other-than-serious violations
- Penalties will not be issued for serious violations that are classified as non-high gravity (ie., other than high severity and greater probability)



Penalty Reduction Factors Used by VOSH in Calculating Proposed Penalties

- **History:**
- A reduction of **10%** shall be given to employers who have not been cited by VOSH for any serious, willful or repeated violations in the past three years.



Penalty Reduction Factors Used by VOSH in Calculating Proposed Penalties

- **Good Faith:**
- A penalty reduction of up to **25 percent** is permitted in recognition of an employer's "good faith" in increments of 0%, 5%, 10%, 15%, 20% and 25%.

GOOD FAITH

Penalty Reduction Factors Used by VOSH in Calculating Proposed Penalties

- **Good Faith:**
- The maximum allowable good faith reduction for **written safety and health programs** is **10%**.
- The maximum allowable good faith reduction for “**primary considerations**” (see below) is **15%**.

Core Elements of the Safety and Health Program Management Guidelines	
Management Leadership	- The management demonstrates its commitment to continuous improvement in safety and health, including the development of policies, plans and program components and the implementation of all applicable safety and health laws, regulations, standards, codes and requirements. - Management provides adequate resources and support for the program, and ensures that the program is integrated into the organization's overall business strategy.
Worker Participation	- Workers and their representatives are involved in all aspects of the program including setting goals, identifying and resolving hazards, monitoring incidents, and training activities. - Workers, including contractors and temporary workers, understand their role and responsibilities under the program and are encouraged to participate, report hazards, and report safety and health concerns without fear of retaliation. - Workers are encouraged to provide input and suggestions to the program, and to be involved in decision-making on safety and health issues.
Hazard Identification and Assessment	- Procedures are put in place to continuously identify workplace hazards and evaluate risks. - A risk assessment of existing hazards is conducted to determine the likelihood of injury, illness, or death, and the severity of the consequences. - Procedures are put in place to identify new hazards.
Hazard Prevention and Control	- Employers and workers collaborate to identify and select options for eliminating, preventing, or controlling workplace hazards. - At least a hierarchy of controls is implemented, where protection is provided, engineering controls, and the effectiveness of controls is monitored.
Education and Training	- All workers are trained to understand the program and how to carry out the responsibilities assigned to them under the program. - Workers are trained to recognize and report hazards and to understand the control measures that have been implemented.
Program Evaluation and Improvement	- Control measures are periodically evaluated for effectiveness. - Incidents are investigated to determine program deficiencies, and program improvements are implemented to prevent similar incidents from occurring. - Workers are encouraged to provide input and suggestions to the program, and to be involved in decision-making on safety and health issues.
Coordination and Communication with Other Employers or Workplaces	- The first employer and all other employers contribute to each other's safety and health by identifying and reporting hazards that could impact safety or health. - Employers are encouraged to coordinate safety and health programs with other employers in the industry and to share information on safety and health issues.



Penalty Reduction Factors Used by VOSH in Calculating Proposed Penalties

GOOD FAITH

- **Good Faith** - “Primary Considerations” include:
- efforts to comply with VOSH standards before the inspection;
GOOD FAITH
- prompt abatement of violations during the inspection
- employer originated worksite inspection programs
- employee comments on safety and health during the inspection
GOOD FAITH
- the employer’s cooperation and attitude during the inspection
GOOD FAITH
- employer participation in professional organizations

Penalty Reduction Factors Used by VOSH in Calculating Proposed Penalties

- No Good Faith Reduction:

A violation that is classified as willful, repeat or failure to abate is not eligible for a good faith penalty reduction.

Penalty Reduction Factors Used by VOSH in Calculating Proposed Penalties

- **Size of the Employer:**
- The maximum allowable size reduction is 70%, but size is determined by the total number of employees employed by the governing body (e.g., total employment in state government; total employment in county/city government)



Penalty Reduction Factors Used by VOSH in Calculating Proposed Penalties



- **Size of the Employer:**
- No state government agency will receive a penalty reduction for size
- Most local government agencies will not receive a penalty reduction for size, unless total government employment for the city or county is 250 or fewer employees

Penalty Reduction Factors Used by VOSH in Calculating Proposed Penalties

2018 VOSH Penalty Reduction for Size of Employer

VOSH			OSHA	
Number of Employees	Percent Reduction		Number of Employees	Percent Reduction
1 to 25	70%		1 to 10	70%
			11 to 25	60%
26 to 100	40%		26 to 100	30%
101 to 250	20%		101 to 250	10%
251 or more	None		251 or more	None

Penalties in Fatal Accidents

- A violation related to the cause of a **fatal accident** is classified as “high severity/greater probability” and will be issued with the maximum statutory penalty. **No reductions for good faith, history or size will be applied.**



Penalties in Serious Non-Fatal Accidents



- A violation related to the cause of a non-fatal but serious accident which result in serious physical harm to the employee is classified as “high severity/greater probability” will be issued with the maximum statutory penalty. **No reductions for good faith, history or size will be applied.**

Notice of Contest Process



- 16VAC25-60-280. General contest proceedings applicable to the public sector.
- A. Public employers **may contest citations, abatement orders or proposed penalties by notifying the commissioner in writing of the contest.** The notice of contest must be mailed or delivered by hand within 15 working days from receipt of the citation or abatement order. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period during which the employer may contest.
- B. The notice of contest shall indicate whether the public employer is contesting the alleged violations, the proposed penalty or the abatement order.
- D. The commissioner shall seek to resolve any controversies or issues rising from a citation issued to any public employer in an **informal conference** as described in 16VAC25-60-330.

State Government Contest Procedures

- 16VAC25-60-300. Contest proceedings applicable to the Commonwealth.
- A. Where the informal conference has failed to resolve any controversies arising from a citation issued to the Commonwealth or one of its agencies, and a timely notice of contest has been received, the Commissioner of Labor and Industry shall refer the case to the Governor, whose written decision on the contested matter shall become a final order of the commissioner.
- NOTE: VOSH will normally work through the respective Secretariats to achieve resolution of the case prior to making a formal referral to the Governor.

Local Government Contest Procedures

- A. Where the informal conference has failed to resolve any controversies arising from the citation, and a timely notice of contest has been received regarding a citation issued to a public employer other than the Commonwealth or one of its agencies, the Commissioner of Labor and Industry shall schedule a hearing in accordance with the provisions of §§ 2.2-4019 [informal fact finding conference] and 2.2-4021 of the Code of Virginia [Virginia Administrative Process Act]. Upon conclusion of the hearing, the commissioner will notify all participants within five working days of the decision to affirm, modify or vacate the contested aspects of the citation or abatement order.
- B. Public employers may appeal decisions of the commissioner in the manner provided for in §§ 2.2-4025 through 2.2-4029 of the Code of Virginia.

VOSH Consultation Services for State and Local Government Employers

- Take advantage of free and confidential VOSH's On-Site Consultation services for State and Local Government employers to help identify and correct potential safety and health hazards:

Improving SHMS

Safety and Health
Management System
Evaluation

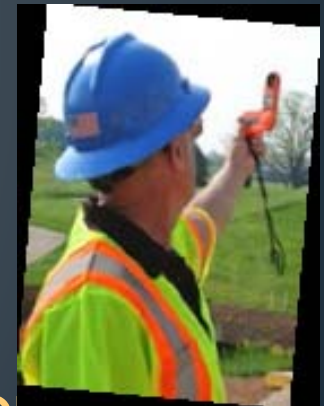


Training

Onsite Formal and
Informal Safety and
Health Training

VOSH Consultation Services for State and Local Government Employers

- VOSH's free and confidential On-Site Consultation services for State and Local Government employers:
- Safety and Health Walk-Through Surveys
- Abatement
- On-site Training
- Safety and Health Program Assistance
- In Virginia, contact Allen Hatch, Consultation and Training Program Manager at Allen.Hatch@doli.virginia.gov





VOSH CONSULTATION AND TRAINING

Southwest Region
(540) 562-3580

Central Region
(804) 371-3104

Lynchburg Field Office
(434) 385-0806

NOVA Region
(703) 392-0900

Abingdon Field Office
(276) 676-5465

Verona Field Office
(540) 248-9280

Tidewater Region
(757) 455-0891



www.doli.virginia.gov

OUTREACH



OUTREACH

- A webpage will be added to the DOLI website
- Blast emails will be sent to DOLI stakeholders
- This PowerPoint will be provided on the DOLI webpage so that state and local government employers can use it for training purposes
- This PowerPoint will be sent out to DOLI Regional Offices to disseminate to any state and local government entities they come in contact with
- State and local government penalties will be highlighted in presentations made to organizations

State and Local Government Penalties

- **QUESTIONS?**



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