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Repeat, Willful, and Failure-to-Abate: How Cal/OSHA Multiplies Penalties

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Most California employers who get a Cal/OSHA citation look at the standard cited and the dollar figure. The word that actually decides what the citation costs is the classification printed next to it. A general and a willful violation can cite the same subsection for the same unguarded machine, and the willful one carries a penalty several times larger with no abatement credit and almost none of the adjustments that soften ordinary citations. If your business has been cited before, or an inspector believes a hazard was known and ignored, the classification is where your defense starts.

Where Classification Comes From

The definitions live in Title 8, Section 334, the factors the Division weighs live in Section 335, and the arithmetic lives in Section 336. Section 334 defines a regulatory violation as one involving permit, posting, recordkeeping, and reporting requirements; a general violation as one that is not serious but has a relationship to employee safety and health; and a serious violation as one where the Division demonstrates a realistic possibility that death or serious physical harm could result from the actual hazard. The serious classification carries a rebuttable presumption, which the employer can overcome with evidence of reasonable diligence: training, hazard procedures, supervision, communication, and prompt correction once the condition was discovered.

Repeat and willful are overlays, not separate hazard categories. A citation is classified as general, serious, or regulatory first, and the repeat or willful label attaches on top. That is why Section 336 works with multipliers.

Repeat: The Five-Year Look-Back

Under Section 334, a repeat violation exists when the employer has previously been cited for a substantially similar requirement and, within the five-year period measured from the date the earlier citation became a final order or became final by operation of law, the Division discovers a substantially similar violation. The clock runs from finality, not the inspection date, and the look-back is statewide: a citation at your Fresno warehouse can make a similar violation at your Ontario facility a repeat.

Section 336 then multiplies. For a first repeat, the proposed penalty is multiplied by two; for a second repeat, by four; for a third, by ten. Section 336 also states that a repeat penalty is not subject to the usual adjustments other than for size of business, and Labor Code Section 6429 confirms that an employer with repeat violations does not receive reductions for good faith or history. Abatement credit is not available for repeat violations. The statutory maximum for a repeat or willful violation is adjusted annually for



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inflation under Labor Code Section 6429, so I will not quote a figure that will be wrong next January; it is well into six figures per violation.

Willful: Knowledge Plus Inaction

Section 334 defines a willful violation as one where the employer committed an intentional and knowing violation, or was aware that an unsafe or hazardous condition existed and made no reasonable effort to eliminate it. The Division does not need to prove you intended to hurt anyone, only that you knew the requirement or the hazard and chose not to act. The evidence usually comes from your own records: a safety committee minute, an earlier consultant report, an employee complaint, a supervisor email.

Under Section 336, a willful penalty is the proposed penalty multiplied by five, subject to a statutory minimum and maximum, with no abatement credit. Where a violation caused death or serious injury, Section 336 allows no reduction other than for size. A willful classification also sits in your history for the next inspection, and where an injury is involved it can draw prosecutors, which is a conversation for your attorney.

Failure to Abate: A Penalty That Runs Daily

Failure to abate is not about a new violation; it is about the original one never being fixed. Labor Code Section 6430 authorizes a civil penalty of up to \$15,000 for each day a previously cited violation continues past the abatement date. Section 336 bases the daily amount on the initial gravity-based penalty of the original citation for each calendar day the violation remains unabated after the abatement period expires. For regulatory and general violations, the daily penalty may be reduced by up to 90 percent for the first 120 days and up to 50 percent after that, with exceptions for high-gravity conditions and continuous exposure.

Two things about failure to abate catch employers off guard. A citation you did not appeal has a company abatement date, and the daily clock runs from it; if you cannot meet the date, the remedy is a timely Petition for Modification of Abatement, not silence. And Labor Code Section 6430 makes a false statement of abatement a serious matter, rescinding the abatement adjustment and creating criminal exposure for an employer who knowingly affirms compliance that did not occur. Never sign an abatement statement you have not personally verified.

How the Arithmetic Actually Works

Each step in the Section 336 sequence is a place to argue.

1. The Division sets a base penalty by classification, with serious violations starting at a fixed base and general violations tiered by severity.
2. For serious and general violations, the base is adjusted up or down by 25 percent for extent and 25 percent for likelihood, using the definitions in Section 335, to produce the gravity-based penalty.



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3. The gravity-based penalty is reduced for size of business, from 40 percent for 10 or fewer employees down to nothing for more than 100; for good faith, up to 30 percent based on the quality of your safety program; and for history, up to 10 percent based on the prior three years.
4. Abatement credit of 50 percent applies to general violations, and to serious violations on proof of abatement, unless the violation is high extent or likelihood, repeat, willful, involves a carcinogen, or caused death or serious injury.
5. The repeat or willful multiplier is then applied, and the reductions in steps 3 and 4 largely fall away.

Section 335 puts numbers on those factors. History looks at the prior three years: good means no serious, repeat, or willful violations and fewer than one general violation per 100 employees; poor means any serious, repeat, or willful violation or 20 or more general violations per 100 employees. Good faith turns on whether you had an effective program, an average one, or none. Each of those boxes is reviewable.

Contesting the Classification

An appeal to the Occupational Safety and Health Appeals Board can contest the existence of the violation, the classification, the penalty, and the abatement date, and you should name each one you dispute in the appeal itself. The Division carries the burden of proving the elements of the classification it chose. In my experience these are the arguments that move a label:

- **The prior citation was not final, or not final within five years.** Pull the docket. A citation withdrawn, vacated, or reclassified at an informal conference or on appeal does not support a repeat.
- **The violations are not substantially similar.** The same section number is not enough if the hazard, equipment, or condition is different. Make the Division explain the similarity.
- **Different employer.** A predecessor entity, an affiliate, or a staffing company's citation is not automatically yours.
- **No knowledge.** For willful, show that the person with authority did not know of the hazard, or that the employer made reasonable efforts once it did: work orders, purchase requests, interim controls, and training records dated before the inspection.
- **Good-faith disagreement.** A documented, reasonable belief that the operation complied with the standard, based on a consultant's or manufacturer's advice, undercuts "intentional and knowing."
- **Abatement actually occurred.** For failure to abate, photographs, invoices, and dated inspection records showing the fix was in place before the abatement date, or a timely petition to modify the date.

The informal conference is also a legitimate venue for reclassification, and repeat and willful labels do come off there when the employer arrives with evidence rather than a complaint about the amount.



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What to Do This Week

- Build a citation history file for every California establishment, with final order dates and classifications.
- Diary the appeal deadline the day the citation arrives and decide whether to contest classification, not just penalty.
- Gather everything showing knowledge and response: safety meeting minutes, work orders, consultant reports, and training logs, dated.
- Confirm every abatement statement you have signed in the past five years is backed by proof the fix is still in place.
- Correct any cited condition immediately, even while appealing, and document it with dates and photos.
- Check your size, good faith, and history ratings on the penalty worksheet and prepare evidence for each factor the Division rated poorly.
- Get counsel involved early if the citation is willful, especially if an injury occurred.

If you are facing a repeat, willful, or failure-to-abate classification and need someone who has sat on both sides of the table to build the technical case, McNeil Safety Consulting can help. Learn more about our [Cal/OSHA violation defense services](#) or call **(626) 546-9384**.

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