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DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INDUSTRIAL RELATIONS  
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

**Date: March 23, 2023**

**To: Nevada Businesses**

**Re: Nevada OSHA's Instance-by-Instance (IBI) Penalty Policy**

On January 26, 2023, Federal OSHA issued a memorandum to regional administrators and state plan designees regarding the expansion and application of instance-by-instance penalty adjustments. **Nevada OSHA intends to implement the new directive on March 27, 2023.**

This instruction updates enforcement policies and procedures for Nevada OSHA's IBI penalty policy, and expands on OSHA's [October 21, 1990 Compliance Directive CPL 02-00-080 for the Handling Of Cases To Be Proposed for Violation-By-Violation Penalties](#).

The scope of this guidance is limited to high-gravity serious violations specific to falls, trenching, machine guarding, respiratory protection, permit required confined spaces, lockout/tagout, and other-than-serious violations specific to recordkeeping. The scope applies to all industries within Nevada OSHA's jurisdiction.

### **Updates Regarding Criteria for IBI Violations**

This guidance is part of NV OSHA's enforcement policy and shall generally be applied for the purpose of additional deterrence to employers meeting the criteria set forth below. District Managers can exercise discretion to depart from this IBI policy in cases where IBI penalty adjustments do not advance the deterrent goal of this memo. District Managers have the discretion to not group violations in appropriate cases to achieve a deterrent effect.

A decision to use instance-by-instance citations will normally be based on consideration of one or more of the following 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 [Nevada Revised Statute 618.378](#)
- 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

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IBI citations may be applied when the text of the relevant standard allows (such as, but not limited to, per machine, location, entry, or employee), and when the instances of violation cannot be abated by a single method of abatement.

A separate penalty shall be assessed for each violation and the adjustment factors shall be applied in accordance with the Nevada Operations Manual (NOM), Chapter 6. Recordkeeping violations must be processed and categorized following guidance in [OSHA Compliance Directive, CPL 02-00-080](#). District Managers have discretion to apply IBI citations to some, but not all violations resulting from the same inspection. Additionally, the use of IBI does not preclude the use of other OSHA initiatives, directives, or emphasis programs within the same inspection.

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