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New Report: When OSHA Gives Discounts on Danger, Workers Are Put at Risk

As Agency Prepares to Increase Maximum Penalty Levels for Workplace Health and Safety Violations, It Should Reexamine Settlement Policy

Workplace health and safety standards exist for a reason. When companies ignore them, they put their workers in significant danger. Every year, thousands of workers die on the job in the United States, and many more are seriously injured. Unfortunately, the Occupational Safety and Health Administration's (OSHA's) tools to hold employers accountable for endangering workers have been woefully inadequate for decades. While some of those tools are slated to become stronger, [a new report](#) from the Center for Progressive Reform (CPR) shows that the agency needs to seize the moment to reassess additional policies to better deter violators and prevent worker deaths and injuries.

The CPR report, *OSHA's Discount on Danger: OSHA Should Revise Its Informal Settlement Policies to Maximize the Deterrent Value of Citations*, includes a new data analysis that reveals a systematic discounting of fines by the agency. The report is being released one day before the agency's statutory deadline to increase the maximum fines for health and safety violations for the first time in 26 years. CPR Member Scholars and staff see this as an opportune time for OSHA to reexamine related policies, particularly the informal settlement process that so often results in discounted fines.

"Federal law required an act of Congress to increase the amount OSHA is allowed to fine companies that put their workers in danger," said Thomas McGarity, Member Scholar at the Center for Progressive Reform and a contributing author of the report. "But the agency doesn't need congressional legislation to fix the way it settles citations with scofflaw employers or to maximize the deterrent effect of the fines it gives to companies that break the law."

When OSHA issues penalties, companies can contest them, during which time they aren't legally required to correct the violations that put workers in danger. Far too often, the agency agrees to substantially reduced fines in exchange for a promise to fix the hazard "promptly." For example, during the Obama administration, OSHA closed cases at a median of 25 percent below its initial fines in cases involving worker fatalities. In the face of tragedy, OSHA's pursuit of the quick fix resulted in median penalties of only \$5,800, less than the cost of an average funeral.

Even in the poultry processing industry, one of the most dangerous in America, companies that break the law have been granted significant discounts on penalties. OSHA reduced fines for poultry processors by a median of 40 percent. In 2015, that meant the median amount companies paid for failing to do things like install machine guards, provide personal protective equipment, or address ergonomic risks was only \$4,475.

"When violators in one of America's most dangerous industries are awarded significant discounts on danger, it's clearly time for a change," said Katherine Tracy, co-author of the report.

"Companies are supposed to be following the law and keeping their workers safe. They shouldn't be rewarded with lower fines simply because they threaten to contest a citation or because they make empty promises."

To better prevent worker deaths and injuries and to hold employers accountable for violating health and safety standards, the report's authors recommend that OSHA do the following:

- **Establish national guidelines discouraging the agency's area offices from "informally" settling certain types of cases.** When employers ignore basic, proven safety measures, such as trench collapse prevention methods at construction sites and automatic machine shut-downs in situations where workers could be injured and killed, OSHA should strongly discourage its area offices from settling cases. Such egregious safety failures should not be tolerated or rewarded with discounts.
- **Demand that employers do more than simply abate the hazards that caused a specific health or safety violation.** To prevent worker injuries and deaths, OSHA should seek enhanced terms during settlement negotiations with violators. These could include a formal injury and illness prevention plan, comprehensive third-party audits of existing hazards and practices, and fixes to hazards company-wide, rather than focusing on abating one hazard at a time.
- **Engage workers and their representatives in the settlement process.** OSHA can do more to involve and engage workers and their representatives in enforcing health and safety standards, including reaching out to workers and inviting them to participate in the settlement process. Posting paper copies of proposed citations in the breakroom seemed reasonable in the 1970s, but with the advent of e-mail, text messages, and other forms of modern communication, OSHA needs to explore new ways to engage workers.

The report is available online at <http://www.progressivereform.org/OSHADiscountPaper.cfm>. It follows a [March 2016 advocates' manual](#) on ensuring criminal prosecution for egregious worker endangerment, another important accountability and deterrence tool.

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