

# Michigan Senate Labor Committee

## MIOSHA Penalty Legislation

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## **MIOSHA** **Mission**

Help Protect the Safety and Health of Michigan Workers!

## **MIOSHA** **Motto**

Educate Before We Regulate!



# Michigan State Plan Basics

## State Plan Program:

- One of 29 State Plans Authorized by Federal OSHA
- Must be “**at least as effective as,**” Federal OSHA
- Program covers **400,000 Michigan businesses** and **5 million+ Michigan workers**

## State Plan Benefits:

- Flexibility/Accessibility/Accountability to Stakeholders
- Broader Consultation Strategy – Additional State Funding
- **Covers additional 600,000+ Michigan public sector workers that would not have protections under OSHA**



## PROTECTING PUBLIC-SECTOR EMPLOYEES

The Occupational Safety and Health Act of 1970 does not cover public-sector employees; however, the state plans give equal protection to public- and private-sector employees. This is a significant benefit to public employees because some of the most hazardous occupations — firefighting, emergency response, corrections, law enforcement, publicly funded health care facilities and transportation — are in the public sector.



# Federal OSHA Maximum Penalty Increases

- ❑ Federal OSHA increased the maximum penalty amounts for various types of citations in 2016
- ❑ State Plan states are required to be “at least as effective” as federal OSHA
- ❑ When federal OSHA determines a State Plan is not “at least as effective,” they will initiate action to take over jurisdiction of the State Plan
- ❑ Federal OSHA had initiated steps to take over jurisdiction in the states of Arizona and Utah before they increased their maximum penalty amounts
- ❑ Michigan is currently one of only six states that have not adopted the federal OSHA maximum penalties



# Federal OSHA Maximum Penalty Increases

- ❑ MIOSHA Current Maximum Penalties
  - ❑ Serious Citations - \$7,000
  - ❑ Willful or Repeat Citations - \$70,000
- ❑ Federal OSHA Current Maximum Penalties
  - ❑ Serious Citations - \$16,550
  - ❑ Willful or Repeat Citations - \$165,514
- ❑ There is an annual adjustment to the maximum penalty amounts based on the Consumer Price Index

# Federal OSHA Maximum Penalty Increases

- ❑ MIOSHA's philosophy on penalties is that they are part of the deterrent effect along with enforcement presence  
(What keeps you driving the speed limit?)
- ❑ All penalty money collected goes to the State of Michigan General Fund - MIOSHA does not receive any funding from the General Fund – No quotas
- ❑ MIOSHA penalties are not designed to be punitive  
(i.e., make up for the loss of life or limb)



# Federal OSHA Maximum Penalty Increases

## When calculating penalties, MIOSHA evaluates:

- Severity of the injury or illness if it were to occur
- Probability of the injury or illness occurring
- Size of the employer (small employers up to 80% reduction)
- Good faith of the employer (up to 30% reduction)
- Citation history of the employer (up to 10% reduction)

# Federal OSHA Maximum Penalty Increases

- ❑ Due to the severity, probability, and penalty reduction assessments, MIOSHA does not routinely issue the Maximum Penalty amount
- ❑ MIOSHA's current serious penalty maximum is \$7,000 but MIOSHA's average penalty amount for serious citations is \$1,333 for all employers and \$637 for employers with 25 or less employees
- ❑ MIOSHA will continue to calculate penalties using same processes

# Federal OSHA Maximum Penalty Increases

If federal OSHA takes over jurisdiction in Michigan, the following advantages of the state plan MIOSHA program would be lost:

- ❑ Public sector employees have no OSHA coverage
- ❑ Extensive consultative outreach and education for employers
- ❑ Program administration located in Lansing with legislative control
- ❑ Michigan stakeholders involved in policy development through advisory committees and focus groups
- ❑ Affordable safety training through MIOSHA Training Institute



# Maximum Penalty Increases

## Key Points



- ❑ Penalties are a deterrent, but MIOSHA strives first and foremost to proactively educate employers through consultation and other services. Even when penalties are issued, MIOSHA reduces penalties based on numerous factors. The average penalty issued by MIOSHA for serious violations is only 20% of the maximum penalty allowed under statute.
- ❑ OSHA is mandating that Michigan update their penalties to match federal penalties, which were passed nine years ago (2016). Since then, Michigan has received audit findings and a warning that failure to update our statute to match federal amounts may result in US OSHA taking over jurisdiction in Michigan and the loss of local oversight.
- ❑ If US OSHA were to take over, more than 600,000 public sector employees – including those in some of the most hazardous occupations like firefighting, emergency response, and law enforcement – would lose the protections that are afforded them under our state-run plan.

# Federal OSHA Maximum Penalty Increases

- ❑ Michigan employers are not going to avoid the increase to the maximum penalties
- ❑ It is a matter of who will enforce them, federal OSHA or MIOSHA
- ❑ Results from Customer Surveys and Customer Comment Cards used to rate MIOSHA services show more than 98% “useful” rating



**Thank You!**

**Questions**