

# Director's Office Update



## OSHNC Annual Training November 16, 2022

### Presented by:

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Assistant Deputy Commissioner

NC Dept. of Labor/Occupational Safety & Health Division

# Impacts to Date – All Employers

- Average penalty per serious violation for FY2023 (10/1/21 – 9/30/22):

8. Average Current Penalty per Serious Violations (Private Sector)		
Total 1 - 250+	4,565,458.25	
	1,924.73	
		2372

- Average penalty per serious violation for FY2023 (10/1/22 – 11/15/22):

8. Average Current Penalty per Serious Violations (Private Sector)		
Total 1 - 250+	676,993.40	
	4,513.29	
		150

# Impacts to Date – All Employers

- Average penalty per serious violation for FY2023 (10/1/22 – 11/15/22):

8. Average Current Penalty per Serious Violations (Private Sector)	
Total 1 - 250+	676,993.40
	4,513.29
	150

- This may look like a 134% increase when compared to FY2022, but these penalties are all from *newly issued* citations. Employers have not yet requested an informal conference to discuss any violation or penalty concerns. This average will go down over time for these 91 serious violations as settlement agreements are executed.
- If these penalties are reduced by 25% during settlement negotiations, the average penalty becomes **\$3385**.

# FAME Comparison?

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	OSHNC Average	Evaluation Criteria	
Average current serious penalty in private sector - total <b>(1 to greater than 250 workers)</b>	\$1902.40 <b>\$3385</b>	+/- 25% of \$3100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from <b>\$2325.28 to \$3875.46</b> .

# Compliance Summary – FY21 & FY22

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- FY2021
  - 2218 Inspections
  - SWR violations on 53.7% of inspections
  - 3644 SWR violations cited
  - \$6.8M current penalties
  - 4.1% contestment rate
- FY2022 (files in progress)
  - 1953 Inspections
  - SWR violations on 51.9% of inspections
  - 3128 SWR violations cited
  - \$7.6M current penalties
  - 2.9% contestment rate

# Notable Cases

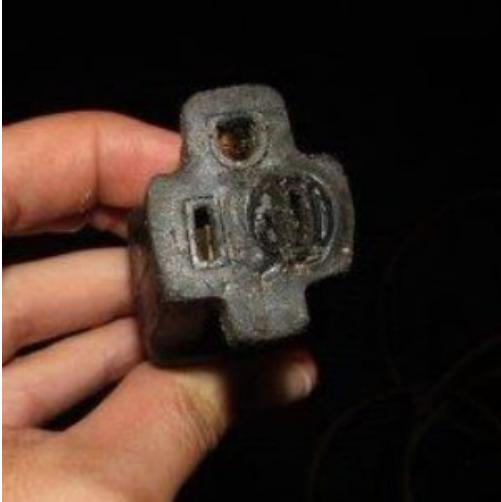
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- A shout-out to the significant cases from Monday:
  - George Calvery – Waste Pro
  - Rob Maedje – Davco/Ramtell
  - Amber Hartis – 3M/Scott Fire & Safety
  - Matt Gruber – DH Griffin
  - Mike Saye – ATCTS
  - Griselle Negron – Snyder-Lance/Campbells Snacks

# Notable Cases

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- Ward's Steak & Cheese food truck (fatality due to faulty electrical cord)
  - Katie Perry, Matthew Fairfield, Bruce Miles
  - Two serious citations related to electrical cords, \$5600 penalty for those items. No appeal by ER.



# Notable Cases

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- Snyder-Lance/Campbell (amputation)
  - Rob Jacobson, Lee Peacock
  - WS LOTO citation, ER agreed to reclassification to Serious, paid full \$70k penalty
- KMS Roofing & Sheet Metal (programmed planned)
  - Alexa Cherry, Nancy Hall
  - Two WS citations for lack of fall protection and fall protection training
  - Both WS citations and the \$100k penalty were upheld by ALJ Joyce Garrett after a hearing

# Notable Case

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- NCDOT Currituck County (trench referral from USDOL)
  - Wesley Herron, Neesia Hill
  - Two WS and one S trenching violation, \$147k penalty.
  - Formal settlement agreement in principle to reclassify from WS to S, with a \$107k penalty plus multiple stipulations

# Notable Cases

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- Industrial Fabricators (four cases involving multiple amputations on press brakes)
  - George Calvery, Carl Burgette, Jennie Cagle
  - Citations for WS and S violations related to LOTO, machine guarding, and other standards were upheld by ALJ Richard Koch – with a total penalty of \$208,200.
  - Appealed to full OSHRC

# Notable Cases

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- Sanderson Farms (multiple cases involving amputations and a fatality)
  - Lafayette Atkinson, Chris Moore, Sheldon Joseph, and Neesia Hill
  - Formal settlement combining multiple LOTO violations into a single violation of 1910.147(c)(1) with a penalty of \$87k. Notice of Contest on the fatality case was withdrawn, thereby accepting the serious GDC citation and penalty.

# Notable Cases

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- MB Haynes Corporation (electrical shock hospitalization)
  - Denese Ballew, Michael Greer, Kay Knezevich
  - WS citation for installing new lights without deenergizing the circuit and Serious GDC citation for apprentice electricians working without a journeyman and a \$76.3k penalty.
  - Settlement executed with WS to S reclassification, full penalty, and additional stipulations.

# Notable Case

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- Berry Global (serious leg injury)
  - Ted Hendrix, Laura Crawford
  - ALJ Mary-Ann Leon affirmed the LOTO citation and the \$5000 penalty.
  - Case has been appealed to the full OSHRC
- Other cases
  - Lennar Homes (multi-employer worksite, appealed to OSHRC)
  - Meritage Homes

# ALJ Order

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BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, judicially noticed information pursuant to N.C. Gen. Stat. §8C-1-201 and the entire record in this proceeding, the Undersigned makes Findings of Fact and Conclusions of Law. In making the Findings of Fact, the undersigned has weighed all the evidence and assessed the credibility of the witnesses. The undersigned has taken into account the appropriate factors for judging credibility of witnesses, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have. Further, the undersigned has carefully considered the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Based upon the foregoing, the undersigned makes the following:

## **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED that Citation 01, Item 001, in violation of 29 CFR 1910.147(c)(4)(i) is AFFIRMED as a Serious Violation with a penalty of \$5,000.00 imposed.

# Questions?

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Josh Dobson, Commissioner of Labor