

OSHA Penalties Will Increase in 2016

In a move that took businesses and employers by surprise, the recent bipartisan Federal Budget Agreement authorized (the "Authorization") the Occupational Safety and Health Administration ("OSHA") to increase penalties for OSHA violations for the first time in a quarter of a century. The Authorization strikes a 1990 exemption that prevented OSHA from increasing its penalties to account for inflation. A one-time "catch-up" increase initially adjusts the civil monetary penalties to account for inflation. Additionally, future annual penalty limit adjustments will keep up with inflation. The resulting OSHA penalties could exceed current penalty amounts by more than 80%. Assuming an 80% increase, however, maximum OSHA penalties will increase as follows:

- Other than Serious Violation: from \$7,000 to \$12,600
- Serious Violation: from \$7,000 to \$12,600
- Repeat Violation: from \$70,000 to \$126,000
- Willful Violation: from \$70,000 to \$126,000

Though industry representatives believe that the higher fines will be overly burdensome for small businesses, OSHA has lamented penalty limits as an obstacle to its enforcement efforts, citing the higher penalties that other agencies have at their disposal. For example:

The Environmental Protection Agency can impose a penalty of \$270,000 for violations of the Clean Air Act and a penalty of \$1 million for attempting to tamper with a public water system. Yet, the maximum civil penalty OSHA may impose when a hard-working man or woman is killed on the job — even when the death is caused by a willful violation of an OSHA requirement — is \$70,000.

In 2001 a tank full of sulfuric acid exploded at a Motiva refinery. A worker was killed and his body literally dissolved. The OSHA penalty was only \$175,000. Yet, in the same incident, thousands of dead fish and crabs were discovered, allowing an EPA Clean Water Act violation amounting to \$10 million — 50 times higher.^[1]

Because of this penalty disparity, OSHA has long advocated "[s]wift, certain and meaningful penalties," and the recent budget changes are meant to help it accomplish this goal. The Office of Management and Budget ("OMB") now has until January 31, 2016 to publish guidance for implementing the new penalty calculation process. OSHA then must publish any maximum penalty adjustment by July 1, 2016, and such increase will take effect no later than August 1, 2016.

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Although it is currently unclear whether OSHA will institute the penalty increases prior to August 2016, there is no doubt that, by the end of 2016, OSHA will be assigning substantially increased penalties for violations of its standards.

[1] See March 2010 testimony given by Department of Labor Assistant Secretary for Occupational Safety and Health David Michaels to a U.S. House of Representatives subcommittee.

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