

PENALTIES FOR OSHA NON-COMPLIANCE JUST GOT STIFFER

Client Alert
August 8, 2016

On November 2, 2015, President Obama signed into law the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015. The Act requires numerous federal enforcement agencies, including OSHA, to substantially increase the civil penalties assessed upon employers when regulatory violations are cited. One of the primary purposes of the higher penalties is deterrence.

As of August 1, 2016, penalties assessed upon an employer for an OSHA violation will be significantly higher, all else being equal. Not only will maximum fines immediately increase by some 78% as a “catch up” adjustment, but they are now subject to an annual escalation adjustment based on the percentage changes to the Consumer Price Index for Urban Consumers. Penalties will now be adjusted annually based on a formula that incorporates an inflation adjusted multiplier. The Office of Management and Budget will publish guidance adjustments annually by December 15 and each agency must publish its annual adjustments no later than January 15.

The application of the law to OSHA results in a new penalty structure with substantially increased maximum penalties per violation, as follows:

Violation Type Previous Maximum Maximum after 8/1/2016

Other-Than-Serious \$7,000 \$12,471

Serious \$7,000 \$12,471

Repeat \$70,000 \$124,709

Willful \$70,000 \$124,709

Failure to Abate \$7,000 per day \$12,471 per day

While not every violation will result in the assessment of the maximum penalty and OSHA retains discretion to propose penalties at less than the maximum levels, employers should nonetheless expect that the new structure will substantially

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increase the penalty assigned to any given violation, making OSHA non-compliance more punitive and costly this year, and each year hereafter.

The significant change in penalty structure is good reason for employers to take a hard look at where they stand from a compliance perspective. The increased exposure also highlights the importance of an employer's need to have a full understanding of its legal rights and a clear strategy and procedure for handling OSHA inspections before permitting an OSHA compliance officer to conduct an inspection. Failing to take those steps in advance will likely prove more costly to the employer in the end.