



New Interim Rules Impose 78% Increase in Maximum Monetary Penalties Under OSHA

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On June 30, 2016, the U.S. Department of Labor announced the implementation of two interim final rules that will increase penalties under various federal statutes, including the Occupational Safety and Health Act (OSHA).

The interim rules were passed in compliance with the Federal Civil Penalties Inflation Adjustment Act, enacted by Congress in 2015. The 2015 law directed agencies, such as OSHA, to adjust their penalties for inflation each year using a much more straightforward method than previously available. The law also required agencies to publish "catch up" rules this summer to make up for lost time since the last adjustments. Agencies were directed to publish interim final rules by July 1, 2016.

The stated purpose of the penalty increase is to maintain the deterrent effect of such penalties. "Civil penalties should be a credible deterrent that influences behavior far and wide," said U.S. Secretary of Labor Thomas E. Perez of the upcoming increases. "Adjusting our penalties to keep pace with the cost of living can lead to significant benefits for workers and can level the playing field [for] responsible employers who should not have to compete with those who don't follow the law."

OSHA prescribes minimum and maximum monetary penalties for certain types of offenses. "Serious" violations occur when an employer knows or should know about a violative condition, policy or practice that is substantially likely to cause death or serious injury in the event of an accident, while "Other-than-Serious" violations are violations of OSHA rules that usually would not cause death or serious injury but that are related nevertheless to job safety or employee health.

Under the interim rules, these maximum penalties will rise significantly by 78%. These maximum penalties, which have not been increased since 1990, will increase as follows:

- The maximum penalty for "Serious" violations will rise from \$7,000 to \$12,471.

- The maximum penalty for "Other-than-Serious" violations, posting requirement violations, and failures to abate will also rise from \$7,000 to \$12,471.
- The maximum penalty for willful or repeated violations will rise from \$ \$70,000 to \$124,709.

The new civil penalty amounts apply only to civil penalties assessed after Aug. 1, 2016, whose associated violations occurred after Nov. 2, 2015.

Certain industries, such as the construction industry, may be especially affected by the penalty increase. Out of 4,386 worker fatalities in private industry in calendar year 2014, 899 fatalities, or 20.5%, were in construction. More than half of worker deaths on construction sites were caused by the so-called "Fatal Four": falls, electrocution, strikes by objects, and being caught in or between objects. See OSHA Commonly Used Statistics, available at www.osha.gov/oshstats/commonstats.html. Therefore, employers can expect penalty amounts to be high for violations that cause or are likely to cause these types of injuries.

The DOL will accept public comments on the interim rules for 45 days to inform its publication of any final rule. In light of the increased penalties, employers are cautioned to be diligent about workplace safety to ensure compliance with OSHA or its applicable state counterpart—in Virginia, the Virginia Occupational Safety and Health Compliance Program ("VOSH"). Although the statutory maximum penalty amounts will not always be imposed depending on the particular circumstances of each violation, and employers are afforded the opportunity to engage in the informal settlement process to reduce such penalties, employers should nevertheless take steps now to ensure the safety of their workers and avoid workplace accidents.

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