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Employers Beware: OSHA Penalties to Increase for First Time Since 1990

Hidden away in the Bipartisan Budget Act of 2015 (2015 Budget), signed by President Obama on November 2, 2015, is an obscure provision that will raise the maximum penalties for Occupational Safety and Health Administration (OSHA) violations for the first time since 1990. The financial ramifications of the significantly higher penalties may change how employers evaluate whether to contest OSHA citations.

The Background

Since 1990, most maximum penalties for violations of federal statutes have been inflated every four years. For example, maximum penalties for violation of many environmental laws have been inflated from \$25,000 to \$37,500. Until now, violations of the Occupational Safety and Health Act were exempt from this inflation provision.

Section 701 of the 2015 Budget, titled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Penalties Act), removes the OSHA exemption and requires all agencies to adjust penalties annually. For the first OSHA adjustment, a catch-up adjustment based on the percentage difference between the Consumer Price Index (CPI) in October 2015 and October 1990 may be applied. The October 2015 CPI will not be available until mid-November, but the difference between the CPI in September 2015 and October 1990 was approximately 78.2 percent. Using that figure as a guide, OSHA's maximum penalties for other-than-serious, serious and failure-to-abate violations could change from \$7,000 to approximately \$12,477 per violation, and for repeat and willful violations from \$70,000 to approximately \$124,765 per violation.

The 2015 Penalties Act allows OSHA to limit the catch-up adjustment to "less than the otherwise required amount." To do so, OSHA must determine — and

the director of the Office of Management and Budget (OMB) must concur — that increasing penalties by the maximum amount would have a “negative social impact” or that “the social costs” of increasing the penalties “outweigh the benefits.” Given that OSHA’s assistant secretary has been an outspoken advocate of increased penalties, OSHA is expected to seek the maximum penalty increases.

What This Means to You

The budget changes go into effect July 1, 2016, and the increased penalties will take effect by August 1, 2016, in all states regulated by federal OSHA. After the initial catch-up adjustment, employers can expect to see an annual increase in OSHA penalties, as OSHA is required to adjust penalties using the annual percentage increase in the CPI by no later than January 15 of each year.

The federal changes will not automatically apply in “State Plan” states that regulate occupational safety and health in lieu of OSHA. But since the regulations in State Plan states must be at least as effective as the federal OSHA requirements, penalties in State Plan states may also be increased to match the federal penalties.

The financial ramifications of the catch-up adjustment and annual increases may change how employers evaluate whether to contest a citation issued by OSHA.

The full text of the 2015 Budget is available [here](#).

Contact Us

Husch Blackwell’s Safety & Health attorneys routinely advise companies issued OSHA citations. For more information on how this change will affect your business, please contact Amy Wachs, Brad Hiles, Stephen Cockerham, Megan Caldwell, Ben McMillen or A.J. Weissler.