Don't Forget To Promptly – And Correctly – Pay OSHA Penalties

Insights
3.04.21

The Occupational Safety and Health Administration (OSHA) conducts workplace safety inspections and issues citations, and, as previously discussed, all penalties assessed after January 15 include increased amounts – with Citations classified as "Serious" having a maximum penalty of $13,653 and Citations classified as "Willful" or "Repeat" having a maximum penalty of $136,532. And while employers may contest these citations, there will be times when you have to pay *some* penalty amounts to OSHA — often after a negotiated settlement with OSHA or after getting some but not all citation items vacated by an Occupational Safety and Health Review administrative law judge. What you may not know is that making payments to OSHA can often lead to additional costs if not done properly.

Background

When ordered to pay penalties to OSHA after litigation, or as part of an informal settlement agreement or stipulated settlement, you are obviously required to submit payment to OSHA. Language in a settlement agreement will often read: "The Employer agrees to pay the proposed penalties, as amended." Such an agreement then lays out either a time period under which one lump-sum payment must be made, such as within 15 days of signing the settlement agreement, or the agreement will indicate a payment plan when payments are due to OSHA—interest free.

Most correspondence from OSHA will indicate that payments may be made by check or money order payable to "DOL-OSHA." And typically, you will be instructed to include the inspection number that resulted in the penalties on the check or money order, with a reference in the correspondence that payments may be made electronically at www.pay.gov.

What Do Employers Need To Know?

For starters, the web address of www.pay.gov is not very helpful, as it brings up a homepage where you have to poke around to find OSHA's specific page. You should instead navigate directly to https://www.pay.gov/public/form/start/53090334 to make online payments, where ACH and debit or credit cards are accepted.

Clicking on the button labeled "Continue to the Form" will take you to a form where you must input your businesses address, contact information, **and the inspection numbers and payment amounts that correspond to these inspections**. Payments over $24,999.99 require a Transaction ID and

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that correspond to those inspections. Payments over $24,999.99 require a Transaction ID and cannot be paid by credit card. If you require a Transaction ID, you should contact the OSHA Debt Collection Team at (202) 693-2170. As a rule, payments to OSHA should always be made online. This is for several reasons: you will receive a payment submission confirmation when making payments online; most payments to OSHA must be received by the due date; and checks can get lost via U.S. Mail.

What happens if employers do not make the required payments to OSHA, even by mistake? It depends. Often, you'll receive a follow-up letter approximately one month after payment was due demanding the full payment amount – which can often be more than double what you and OSHA had agreed. If our firm has handled the underlying OSHA litigation or negotiations, we typically know the OSHA area director and are able to place a phone call to the area director, explain the mix-up, and get approval to immediately go online and submit the agreed-upon payment amount rather that the full amount demanded in OSHA's letter.

On the other hand, in a scenario where you face multiple inspections and enter into a settlement with OSHA to make payments over two years, a mistake as simple as failing to ensure that the internal department issuing the payments to OSHA puts the inspection numbers on the checks can result in OSHA considering the debt delinquent. Without inspection numbers, OSHA will allocate payments in a somewhat random way among the inspections showing monies due.

As a result, you will be deemed to have overpaid and prepaid for some inspections while not paying anything for other inspections. From OSHA's perspective, you would be considered in default, and OSHA refers delinquent accounts to the U.S. Treasury Department—OSHA's debt collector. Delays in mail and employer mishandling of mail can also result in a referral to the Treasury before an employer finds out there is an issue due to OSHA's letters being lost in the mail and then misplaced. Once penalties from OSHA are referred to the Treasury, the debt cannot be transferred back to OSHA without you submitting an appeal and explaining that it was OSHA's error that the debt was referred to collections — a tall order if it was your organization that failed to properly submit the payments. And, while you can enter into a payment plan with the Treasury, such plans carry interest — unlike the interest-free payments plans that OSHA can set up as a condition of settlement — and OSHA adds interest and penalties for late payments before referring accounts to the Treasury for collection. In fact, payment issues between an employer and OSHA happen so often, OSHA has a specific page for Frequently Asked Questions and Background and Resources that you may review.

Many employers outsource payments to a department unconnected with EHS and corporate leadership. These departments often do not understand the importance of making on-time, accurate payments to OSHA. Therefore, you should assign the task of paying penalties to a senior member of management to avoid these issues, and should adopt a policy to pay penalties online if at all possible.

Conclusion

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You should understand the full impact of accepting OSHA citations without contesting them and be prepared to remit prompt payment in those cases and in cases where a settlement agreement has been reached with OSHA.

As predicted, President Biden has ordered OSHA to "consider" whether any emergency standards related to COVID-19 are necessary, and OSHA must issue this emergency standard by March 15, 2021. OSHA will be aggressive under the new Biden administration. Contact your Fisher Phillips attorney for guidance on workplace safety issues.

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