



Congressional Proposal Could Mean Massive Increase to Workplace Safety Penalties

Insights

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Democrats recently introduced a budget bill that proposes significant changes to employers nationwide – including massive hikes to penalties in cases where workplace safety officials find employers out of compliance. What do employers need to know about the September 8 proposal, and what should you do to prepare yourself for this potential development?

How Does this Proposal Differ from Business as Usual?

The \$761 billion proposal is part of Democrats' larger \$3.5 trillion reconciliation package and is contained in a "reconciliation" measure. Of note, a reconciliation differs from a typical bill in that, instead of needing 60 votes to pass the Senate, it needs only a simple majority of 51 votes (or 50 votes plus a tiebreaking vote from Vice President Harris). Most recently, Republicans attempted to use a reconciliation measure to dismantle the Affordable Care Act but failed to get the necessary majority vote. In short, a reconciliation measure instructs Congressional committees to change spending or debt limits, and the instructed committees draft recommendations for these spending changes.

What's Included in the Proposal from a Workplace Safety Perspective?

The current version of the bill proposes an increase to the budget for the Occupational Safety and Health Administration (OSHA) if passed. The bill proposes to grant OSHA \$707 million to spend through 2026. OSHA would likely use this budgetary increase to hire additional investigators, an objective President Biden called for during his campaign. OSHA staffing peaked during the first Obama administration and has steadily decreased since as a result of spending cuts, so it's possible we could see a return to Obama-era numbers as a result of the budgetary increase.

Also troubling for employers is that fines could increase significantly under the proposal:

- The bill proposes to raise the maximum fine for willful or repeat violations of OSHA workplace safety rules from \$136,532 to \$700,000, with a \$50,000 minimum.
- The serious failure-to-abate fine limit would increase from \$13,653 to \$70,000.

What's Next – and What Should You Do?

In order to advance to the president's desk, both chambers of Congress must pass identical versions of the bill. If passed, the increased spending for federal agencies like OSHA would help President Biden achieve many of his campaign goals, including his stated goal of increasing OSHA inspections as a means to address worker safety.

As we noted after the election, if additional investigators are hired and trained, employers can expect an accompanying increase in OSHA inspections. In order to prepare yourself for the expected influx of workplace safety scrutiny, you should:

- Ensure workplace safety policies and procedures are current;
- Stay up-to-date with hazard assessments and safety trainings; and
- Maintain proper records as required by OSHA.

Fisher Phillips will continue to monitor these developments and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our Workplace Safety Practice Group.

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