North Carolina OSHA's Maximum Penalties More than Doubled This Weekend: 4 Takeaways for Employers

Insights
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Employers may be surprised to learn that North Carolina OSHA's maximum penalties more than doubled on October 1 — and these penalties will increase every January, starting in 2023, to match the maximum penalties available to Federal OSHA. How did this happen? Back in July, Governor Roy Cooper signed into law the Current Operations Appropriations Act of 2022. Tucked deep within the act were provisions that substantially increase North Carolina OSHA's ability to levy stiffer penalties to cited employers and provide NC OSHA with a longer timeframe to conduct its inspections and issue citations. Here are four takeaways for North Carolina employers as you navigate the changes.

The Increase in NC OSHA's Penalties

Employers in the state will see a two-fold increase in penalties under the new scheme. Specifically, the Appropriations Act amends North Carolina G.S. §95-138 to require the state labor commissioner to adjust NC OSHA's minimum and maximum civil penalties to reflect federal OSHA levels.

Prior to the October 1 changes, North Carolina OSHA could levy a maximum penalty of $7,000 per violation for serious (not involving a minor) and other-than-serious violations and $7,000 per day for failure to timely abate hazards. Willful or repeated violations are presently capped at $70,000 per violation.

For citations issued on or after October 1 (even for inspections that began before that time), North Carolina will increase those penalties to match federal OSHA's present levels which are as follows:

- $14,502 per violation for serious and other-than-serious violations of the Occupational Safety and Health (OSH) Act;
- $14,502 per day for failure to timely abate hazards; and
- $145,027 per violation for a repeated or willful violation of the OSH Act.

The Appropriations Act also indicates that North Carolina OSHA will be obligated to adjust the penalties for inflation each year — just like Federal OSHA — in accordance with the United States Consumer Price Index. Finally, the Appropriations Act more than doubled the penalty amount for a serious violation involving a minor from $14,000 to $29,000 per violation.

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NC OSHA Will Have More Time to Investigate and Issue Citations

The Appropriations Act also amends North Carolina G.S. §95-137(b)(3) to state: "No citation may be issued under this section after the expiration of six months following the initiation of an inspection by the Director." The amended language will take effect for those inspections that are initiated on or after October 1, 2022.

Previously, NC OSHA had six months to issue citations from date the agency knew or should have known of the hazard. Effectively, this means NC OSHA will contend that it can receive a reportable injury, or a complaint, and wait several months before it opens an inspection. That delay notwithstanding, NC OSHA will still argue that it has six months to complete its inspection and issue citations under the new statutory language.

4 Key Takeaways

1. North Carolina employers need to be aware that later this fall they could see a substantial increase in the penalties levied by NC OSHA.
2. You should also be aware that NC OSHA may take longer to initiate inspections after a report of injury or a complaint, but that NC OSHA will still likely have six months from the date the inspection is initiated to issue citations.
3. An ounce of prevention is often worth a pound of cure. Given the significant increase in penalties that NC OSHA will levy beginning this month, you should take this opportunity to review and improve your safety programs and trainings.
4. If you do face a NC OSHA investigation, you should be familiar with and avail yourself of your legal rights during and following any inspection. It is often wise to consult with competent legal counsel who is well-versed in defending NC OSHA inspections and contesting NC OSHA citations from the outset of any investigation activity.

Conclusion

We will monitor developments in this area and continue to provide updates, so make sure you are subscribed to Fisher Phillips' Insight system to get the most up-to-date information. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Workplace Safety Team.

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