



# OSHA Announces Massive Penalty Increases (and for other Agencies)

Insights

7.01.16

We know that you're tired of hearing about major new federal Employment law changes but an unusually important announcement came out yesterday. OSHA has released details on the penalty increases effective August 1, 2016, but retroactive to ongoing inspections as far back as November 2, 2015 if the citations are issued after August 1.

OSHA's maximum penalties will **increase by 78 percent.**

- The top penalty for serious violations will rise from \$7,000 to \$12,471.
- The maximum penalty for willful or repeated violations will increase from \$70,000 to \$124,709.

Many employers have rarely been inspected or have only received modest citations and penalties, and as a result, do not worry much about OSHA exposure. However, the following changes suggest that it is time to evaluate both your compliance efforts and your safety and health culture and programs:

- Employers are more likely to be visited now that employers must report a single hospitalization, amputation or loss of an eye.
- OSHA is visiting industries less frequently targeted such as Hospitals for ergonomic and workplace violence concerns, distributors for ergonomics concerns, and retail stores for blocked exits, electric panels and fire extinguishers.
- OSHA is implementing the Electronic Recordkeeping Rule, which beginning in 2017, will require that many employers electronically report their injury and illness data, which will be publically posted.
- OSHA's biggest penalties result from routine items which can serve as the basis for a "Repeat" citation for five years at other locations in other Federal-OSHA States;
- Cal-OSHA has moved to follow the Fed-OSHA Repeat model.
- OSHA's Electronic recordkeeping Rule states that effective August, 2016, OSHA will consider the following employer practices to be retaliatory because OSHA believes that they discourage employees from reporting injuries:

- maintain incentive programs which reward employees for experiencing no recordable workplace injuries and illnesses;
- maintain rules requiring disciplining employees who do not immediately report workplace injuries; and
- automatically conduct post-accident drug testing of injured employees.
- OSHA is piloting a Whistleblowers Severe Violators Protection Program, similar to its Safety-Severe Violators Protection Program, which places “bad” employers in a program where their other locations and practices are scrutinized.

The good news is that many employer responses may strengthen their safety efforts and improve quality and efficiency. We recommend that you consider taking certain actions:

- Determine if your “Safety Program” is simply an impressive document which may not reflect actual practices, or may not be followed at all locations. Under OSHA’s proposed “Voluntary” (but not so voluntary) Safety and Health Program Guidelines, an employer’s failure to follow their stated safety procedures will be used against them.
- Do you maintain Job Safety Analysis (JSA) for tasks and use those JSAs to devise safety training, audits and how to manage safety?
- How often and when do you hold safety meetings, Tool Box Talks, refresher training and pre-shift or pre-work safety meetings?
- Does your safety committee do anything?
- What are your industry’s common exposure areas?
- What OSHA National, Regional and Local Emphasis efforts affect your business?
- Have you ever taken a “Safety Attitude” Survey?
- What safety (and disciplinary and counselling) training do you provide supervisors?
- Do you ever issue safety discipline when an injury is not involved, or is that the only occasion that you catch unsafe behavior?
- Do you maintain a safety incentive program, no matter how minor, that rewards employees for not getting injured?
- What “leading indicators” could you incentivize, such as undergoing training, recommending improvements, reporting safety issues, participating in self audits, etc.?
- Do you maintain a rule threatening discipline for failure to timely report a workplace injury?
- Other than for DOT-mandated drug and alcohol testing, do you conduct automatic post-accident testing?
- What other events or incidents might also warrant testing after an incident?
- Do you maintain Lock Out programs? Have you conducted the Annual Evaluation?

- Have you followed through on all longer term updates to guarding, interlocks and other systems?
- Have you checked your periodic Insurance Audits by workers comp and GL carriers to ensure that you've completed or addressed all recommendations?
- If you have dust collection systems and bag houses, have you recently audited for combustible dust compliance?
- If you are in construction, do you use an effective site safety analysis and tie it in with tool box talks and briefings?
- Have you updated and practiced your evacuation plan?
- Do you maintain an Emergency Action Plan (EAP)?
- Do you provide the required annual fire extinguisher training or maintain a "fight or flight" program and an EAP?
- Do you share OSHA citations throughout the corporation and affiliated companies?
- Do you manage OSHA inspections and vigorously make every effort to avoid citations which will serve as the basis for later costly Repeat citations?
- Have you conducted a webinar or otherwise trained site management on responding to an OSHA inspection?

These are just some possible actions to reduce your exposure and develop a more effective safety process and culture. There are many more steps which can be taken.

Please don't hesitate to contact us if we can be of any assistance.

### ***Related People***



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