

## **Alert** | OSHA



January 2020

### **OSHA Is Raising Its Maximum Penalty Amounts, Again!**

On Jan. 10, 2020, the U.S. Occupational Safety and Health Administration (OSHA) announced another increase in the maximum civil monetary penalties for violations of federal Occupational Safety and Health standards and regulations. The new monetary penalties will be nearly 2% higher than the current maximum penalty amounts.

Effective Jan. 15, 2020, the maximum penalty for “Willful” or “Repeated” violations is \$134,937, a more than \$2,000 increase from the 2019 maximum for the same kinds of violations. The maximum penalty for “Failure to Abate” violations is \$13,494 per day after the abatement date. Finally, the maximum penalty allowed for “Serious,” “Other-Than-Serious,” and “Posting Requirements” violations is \$13,494, an increase of over \$200 from the 2019 maximum amounts. Importantly, states that operate their own Occupational Safety and Health plans are required to adopt maximum penalties levels that are at least as effective as federal OSHA’s.

The Federal Civil Penalties Inflation Act Improvements Act of 2015 (Inflation Adjustment Act) requires OSHA to adjust its maximum monetary penalty levels to account for inflation no later than Jan. 15 of each year. Adjustments are made by issuing a final rule, which becomes effective when it is published in the Federal Register. The current adjustment is tied to the percent change between the October 2019 Consumer Price Index for All Urban Consumers (“CPI-U”) and the October 2018 CPI-U.

It is important for employers to be cognizant of these increases. While it might sometimes seem like an attractive option to simply accept a “Serious” penalty and pay the \$13,494 fine instead of paying to challenge the citation, such instant gratification could pose issues (and serious financial headaches) for an employer in the future. This is particularly true where the timeframe for challenging a citation is short, making the business decision on whether to challenge the citation that much more difficult. However, it is important to consider the following: while the maximum penalty for a “Repeated” violation is \$134,937, in the next few years, the maximum penalty could reach over \$150,000 after inflation adjustments are applied. It is also routine for an employer to receive multiple violations in one OSHA Citation and Notification of Penalty. Multiple penalties at \$134,937, let alone any other penalty after inflation, could have drastic effects for a business and/or a worksite. Therefore, it is imperative that employers consciously weigh the potential exposure the inflated rates may pose in the future when considering whether to challenge “Serious” violations today.

## Authors

This GT Alert was prepared by **Michael T. Taylor**<sup>‡</sup> and **Adam Roseman**. Questions about this information can be directed to:

- **Michael T. Taylor**<sup>‡</sup> | +1 703.749.1387 | [taylormt@gtlaw.com](mailto:taylormt@gtlaw.com)
- **Adam Roseman** | +1 215.98 8.7826 | [rosemana@gtlaw.com](mailto:rosemana@gtlaw.com)
- Or your **Greenberg Traurig** attorney

<sup>‡</sup>Admitted in the District of Columbia and Georgia. Not admitted in Virginia. Practice in Virginia limited to federal OSHA and proceedings before federal agencies.

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. <sup>~</sup>Houston. Las Vegas. London. <sup>\*</sup>Los Angeles. Mexico City. <sup>+</sup>Miami. Milan. <sup>»</sup>Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul. <sup>∞</sup>Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. <sup>^</sup>Tokyo. <sup>‡</sup>Warsaw. <sup>-</sup>Washington, D.C.. West Palm Beach. Westchester County.

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