

## Alert | OSHA



January 2023

### **No Longer a Slap on the Wrist: OSHA Continues to Raise Its Maximum Penalty Amounts**

On Jan. 12, 2023, 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 10% higher than the current maximum penalty amounts.

Effective Jan. 17, 2023, the maximum penalty for “Willful” or “Repeated” violations is \$156,259, a more than \$10,000 increase from the 2022 maximum for the same kinds of violations. The maximum penalty for “Failure to Abate” violations is \$15,625 per day after the abatement date. Finally, the maximum penalty allowed for “Serious,” “Other-Than-Serious,” and “Posting Requirements” violations is also \$15,625, an increase of more than \$1,000 from the 2022 maximum amounts. Importantly, states that operate their own Occupational Safety and Health plans are required to adopt maximum penalties levels 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 published in the Federal Register. The current adjustment is tied to the percent change between the October 2022 Consumer Price Index for All Urban Consumers (CPI-U) and the October 2022 CPI-U. As a result of the Inflation

Adjustment Act, the maximum penalty for a single “Serious” OSHA violation has increased from \$7,000 in 2015 to more than \$15,000.

It is important for employers to be aware of these increases. While it might sometimes seem like an attractive option to simply accept a “Serious” or “Other-than-Serious” penalty and pay the \$15,625 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, consider the following: it is routine for an employer to receive multiple violations in one OSHA Citation and Notification of Penalty. If an employer accepts Serious violations, substantially similar violations in the future could result in multiple penalties at \$156,259 for Willful or Repeat violations. This could have drastic financial effects for a business and/or a worksite. Therefore, employers should consciously weigh the potential exposure the inflated rates may pose in the future when considering whether to challenge “Serious” violations today.

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