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2024 OSHA Developments: Non-Compliance Gets Costlier; Employers Must Submit Detailed Injury, Illness Reporting Information

Effective Jan. 16, 2024, the Occupational Safety and Health Act (OSHA)'s maximum penalty for Serious, Other-Than-Serious, and posting violations increased from \$15,625 per violation to \$16,131 per violation; the maximum penalty for Failure to Abate violations increased from \$15,625 per violation to \$16,131 **per day**; and the maximum penalty for Willful and Repeat violations increased from \$156,259 per violation to \$161,323 per violation. States that operate their own Occupational Safety and Health Plans are required to adopt maximum penalty levels that are at least as effective as Federal OSHA's.

In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act to advance the effectiveness of civil monetary penalties and to maintain their deterrent effect. Under the act, federal agencies including OSHA are required to adjust their maximum civil monetary penalties based on the Consumer Price Index for all Urban Consumers (CPI-U) by no later than Jan. 15 of each year (or the following day if the deadline falls on a federal holiday, like this year). As a result of the act, the maximum penalty for a single OSHA violation has more than doubled since 2015, when the maximum penalty was \$7,000 for a Serious violation and \$70,000 for Willful and Repeat violations.

Employers must file a written Notice of Intent to Contest with the local OSHA office within 15 working days of receiving a citation, so they should be aware of the penalty increases and prepared to act expeditiously. Employers should keep in mind that verbal or email communications with the local OSHA

office about scheduling an informal conference and/or resolving a citation do not qualify as a formal Notice of Contest. If a citation is not timely contested, or if a citation is voluntarily accepted, and a subsequent citation is received involving a substantially similar hazard, the new citation could be issued as a Willful or Repeat violation, with the new, significantly higher penalties, potentially leading to drastic financial implications for a business and/or worksite.

In addition, on Jan. 1, 2024, OSHA's new occupational injury and illness recordkeeping regulations went into effect, requiring certain employers to electronically submit detailed information to OSHA from their OSHA 300 Logs by March 2 of each calendar year. These new regulations require employers with 100 or more employees in designated high-hazard industries, which include a wide variety of production and manufacturing facilities, as well as retail sales establishments, to electronically submit detailed information about each recordable injury, including the date, physical location, and severity of the injury or illness, details about the worker who was injured, and details about how the injury or illness occurred. In addition to the new submission requirements, employers must maintain records at the worksite for at least five years, post a summary of the injuries and illnesses recorded the previous year, and, if requested, provide copies of the records to current and former employees. These new requirements greatly expand the information employers must submit to OSHA, and, in turn, will greatly expand the information OSHA may then publish to third parties.

Employers with more than 10 employees are already required to “record” injury and illness information on a yearly 300 Log under the current recordkeeping regulations. OSHA defines a “recordable” injury primarily as “any work-related fatality, any work-related injury or illness that results in loss of consciousness, days away from work, restricted work, or transfer to another job, and any work-related injury or illness requiring medical treatment beyond first aid.” Separate OSHA regulations also require employers to “report” any worker fatality to OSHA within eight hours, and any amputation, loss of an eye, or hospitalization of a worker within 24 hours. Recording a serious work-related injury on the 300 Log, and, if applicable, providing detailed information to OSHA from the Log by March of the following year, would not satisfy OSHA's requirement to timely report a serious work-related injury. Employers should be careful not to confuse their *recording* and *reporting* requirements, as either failure could result in the issuance of a citation at the higher penalty amounts.

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