

Labor and Employment Alert: Significant Increases Ahead in OSHA's Civil Penalties

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The federal bipartisan budget contained a little-noticed provision titled the Federal Civil Penalties Inflation Adjustment Act Improvements Act. This Act requires the Occupational Safety and Health Administration (OSHA) to increase its monetary penalties for the first time since 1990. For the past 25 years, OSHA has been exempted from a federal law requiring agencies to increase their fines along with inflation. This will change for OSHA's penalties beginning in August 2016.

The law first requires an initial penalty "catch-up adjustment." The catch-up adjustment is based on the percentage difference between the Consumer Price Index (CPI) in October 2015 and in October 1990. This will likely result in about an 80% increase in the current penalty amounts. This means that if OSHA imposes an 80% increase, the maximum penalties for OSHA violations will be:

- Other Than Serious – \$12,600 (currently \$7,000);
- Serious – \$12,600 (currently \$7,000);
- Repeat – \$126,000 (currently \$70,000); and
- Willful – \$126,000 (currently \$70,000).

The initial increase could be greater because the "maximum adjustment" is set at 150% of the current penalties. Under this scenario, the current \$7,000 penalties could increase to \$17,500, while the current \$70,000 penalties could increase to \$175,000. On the other hand, OSHA could implement a smaller penalty if (a) the maximum amount would result in a "negative economic impact" or if the "social costs" outweigh the benefits, and (b) the Office of Management and Budget agrees to the lesser amount. This is unlikely, as OSHA's assistant secretary of labor has been advocating for the increased penalties.

After this initial catch-up adjustment, the law requires OSHA to adjust the penalty amount annually for inflation. So this adjustment will first occur in January 2017.

To implement the increased penalties, the law directs OSHA to issue an interim final rule, which means that the rule will not go through the usual public notice and comment. Instead, the rule will become effective immediately once published. In State Plans where the state is responsible for enforcing occupational safety and health rather than OSHA, the increased penalties will not automatically apply. However, a State Plan's requirements must be at least as effective as OSHA's requirements, so State Plans may increase their penalties in order to match OSHA's new penalties.

Contact your Vorys lawyer for questions about OSHA compliance, inspections, or citations.