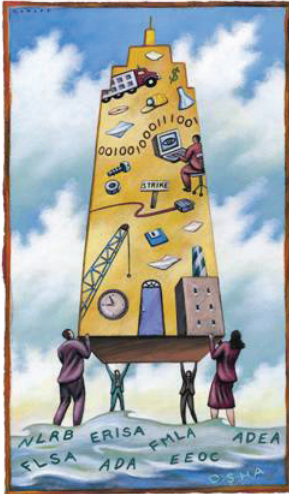


EMPLOYMENT BULLETIN

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Increased OSHA Penalties in 2016

A little-noticed provision in the recently-enacted federal budget permits the Occupational Safety and Health Administration (OSHA) to raise its monetary penalties – which have remained unchanged since 1990 – by nearly 80 percent.

Section 701 of the Bipartisan Budget Act of 2015 (Budget Act) signed into law by President Barack Obama on November 2, 2015 contains amendments to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 1990 which for the first time permit OSHA to impose inflation-adjusted penalties. Section 701(b)(2) of the Budget Act permits OSHA to impose a “catch up adjustment” by August 1, 2016, after notice and comment in accordance with the Administrative Procedures Act. The adjustment can be based on the “percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of October, 2015 exceeds the Consumer Price Index for the month of October of the calendar year during which the amount of such civil monetary penalty was established or adjusted under a provision of law other than this Act.” OSHA’s last adjustment to civil penalties occurred in 1990. The Consumer Price Index for October 1990 was 133.5; in October 2015 it stood at 237.8, an increase of more than 78 percent.

The current OSHA penalty schedule calls for no monetary penalty for *de minimis* “other than serious” violations, penalties of up to \$7000 per “serious” violation, and up to \$70,000 for “willful” and “repeat” violations. Under the new formula, these amounts could increase up to \$12,000 for each “serious” violation and up to \$125,000 for each “willful” and “repeat” violation.

Although OSHA now has new authority to raise its civil penalties, it will continue to apply its Interim Penalty Policy which permits Area Directors to adjust the proposed penalties in consideration of an employer’s size, good faith and other factors. The most recent iteration of the Interim Penalty Policy authorizes the following adjustments in appropriate circumstances:

Employees	Percent Reduction
1-25	60
26-100	30
101-250	10
251 or more	None

But in spite of OSHA’s discretionary authority to reduce penalties, the stakes involved with any OSHA citation, and especially with multiple serious citations, are about to get much higher. Employers should consider a detailed review of their OSHA compliance and safety procedures in advance of the implementation of the new penalty provisions.

Babst Calland’s Employment and Labor Services Group will continue to keep employers apprised of further developments related to OSHA and other employment and labor topics. If you have any questions or need assistance in addressing the above-mentioned area of concern, please contact John A. McCreary, Jr. at (412) 394-6695 or jmccreary@babstcalland.com.