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TROJAN HORSE IN THE 2015 BUDGET AGREEMENT: OSHA can (and undoubtedly will) raise penalties by 82 percent

Wow! How did this happen? Buried in the fine print of the recent budget agreement between Congress and the White House, and seemingly slipped in at the last minute with no one claiming responsibility for the change, the Occupational Safety and Health Administration now has authority to raise penalties by about 82 percent.

The Federal Civil Penalties Inflation Adjustment Act amends a 1990 law to provide a “catch-up” adjustment that allows OSHA to raise penalties by the amount of inflation that has occurred since 1990. OSHA had previously been exempted from the inflation adjustment provision of the 1990 law, but can now raise the maximum penalty amounts for “Other than Serious,” “Serious,” “Repeat,” and “Willful” violations. For example, although the OSH Act provides for a maximum penalty of \$7,000 for “Other than Serious” or “Serious” violations, under the new law, maximum penalties for these types of violations could be increased to about \$12,744. For “Repeat” and “Willful” violations, the current maximum penalty of \$70,000 could be increased to \$125,438.

The new law does not *require* OSHA to increase the maximum penalty amounts by the authorized 82 percent, but simply *allows* OSHA to increase penalties by that amount. The law requires that these penalty changes be announced by the publication of an interim final rule by July 1, 2016, with the adjusted penalties going into effect by August 1, 2016. These changes will be made through new regulations, with opportunity for public comment.

At first. After the one-time “catch-up” to capture the amount of inflation that has occurred since 1990, OSHA can *annually increase* the maximum penalties for each type of violation consistent with the inflation rate for the prior fiscal year, as determined by the federal government’s Consumer Price Index.

Interested stakeholders in the safety community have uniformly acknowledged that OSHA penalties will be increasing as a result of the new law, with Congress explicitly directing OSHA to raise the penalties. Unless Congress repeals the law through legislation and the repeal survives a veto, higher OSHA penalties will shortly be a way of life.

No one is immune from OSHA citations. With this year’s new requirement to report to OSHA all admissions to a hospital, amputations, and loss of an eye within 24 hours, and with 37 percent of those reports resulting in on-site inspections, the stakes have clearly been raised. Although OSHA’s announced goal is to ensure that employers provide a safe workplace, citations are typically issued as a result of failing to comply with the provisions of OSHA Standards. As you all know, having a safe workplace does not necessarily mean that you have complied with all of the OSHA Standards that are applicable in your workplace. Enhanced enforcement as a result of the last seven years of the present OSHA Administration has become the norm, including “regulation by shaming” through press releases issued when high-penalty cases occur, and now the increased penalties about to go into effect. In this climate, we strongly encourage you to make sure that your safety programs and physical site conditions are fully compliant.

If you have any questions, please email **Bill Principe, David Smith, Pat Tyson, Neil**



OSHA UPDATE

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Wasser, Steve Simko, or Joe Murray. You may also reach any OSHA Practice Group attorney by calling 404-525-8622.

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