



OSHA Fines May Increase More Than 80% In 2016

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The recent budget Congress passed included a provision that allows the Occupational Safety and Health Administration (“OSHA”) to raise its fines, which has not been adjusted since 1990.

By way of background, under the Occupational Safety and Health Act “employers are responsible for providing a safe and healthful workplace. OSHA's mission is to assure safe and healthful workplaces by setting and enforcing standards, and by providing training, outreach, education, and assistance. Employers must comply with all applicable OSHA standards. Employers must also comply with the General Duty Clause of the OSH Act, which requires employers to keep their workplace free of serious recognized hazards.”^[1]

The new budget allows OSHA to do a “catch-up” increase in 2016 that would reflect inflation since 1990. More specifically, the fines can increase up to 82 percent beginning on August 1, 2016. Furthermore, OSHA is allowed to increase the penalty every year reflecting the yearly inflation rate after the “catch-up” adjustment.

While the provision does not require that OSHA implement the maximum possible increase, it is anticipated that OSHA will exercise the maximum increase of penalties in 2016. The Assistant Secretary of Labor for OSHA, David Michaels, has been advocating for penalty increase for years. Indeed, David Michaels, before the budget was passed, spoke at a House subcommittee that the “most serious obstacle to effective OSHA enforcement of the law is the very low level of civil penalties allowed under our law, as well as weak criminal sanctions.”

The fine increase followed OSHA’s announcement last month that it will implement more impactful inspections. OSHA refers to its new strategy as the “Enforcement Weighting System,” which emphasizes the quality of inspections over the number of inspections. David Michaels stated that, with the new strategy, OSHA will be able to tackle more complex cases. David Michaels pointed out that many of the inspectors in the past were pressured to meet the expected numbers in inspections, and that the new strategy will enable the inspectors to handle complex inspections that could eventually lead to improvements in workplace safety.

Together with OSHA’s increased enforcement efforts, the fine increase or fine schedule will impact employers tremendously. For example, recently, Ashley Furniture Industries, Inc. faced more than \$2.2 million in OSHA fines for failing to implement procedures to prevent machines from inadvertent start-ups while operators were changing the blades or cleaning the machines. If the anticipated fine increase were to apply, the fine would have been over \$4 million.

Employers should revisit their workplace policies and safety programs and ensure that the policies and programs comply with OSHA's standards. Employers should also provide employees with safety training and follow up with employees to ensure that they understand and implement safety training. In addition to safety training programs, employers are advised to document the implementation of policies, safety programs, and training programs to show that the employer took reasonable steps to ensure workers' safety, which may mitigate future costly OSHA fines.

If you have any questions or concerns regarding employment or education-related issues, please contact James G. Ryan at jryan@cullenanddykman.com or at 516-357-3750.

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[1] <https://www.osha.gov/law-regs.html>