

Legal Trends

RECENT DEVELOPMENTS WITH OSHA

Notwithstanding recent cutbacks to both its budget and its enforcement staff -- the number of enforcement personnel decreased by 20% from 2012 to 2017 -- the Occupational Safety and Health Administration (OSHA) continues to be active. Several recent changes and initiatives have left employers of all types, including traditional “white collar” environments, scrambling to ensure compliance and avoid increased monetary penalties.

Fines Now Indexed to Inflation

For many years the amount of fines OSHA could impose was capped by statute, meaning that employers paid a maximum of \$7,000 for each violation classified as “serious.” OSHA’s penalty scheme now is tied to inflation, and each December OSHA now publishes the penalty levels for the following calendar year. Penalty levels for 2018 are as follows:

<u>Type of Violation</u>	<u>Per Violation Penalty</u>
Other than Serious	\$12,934
Serious	\$12,934
Failure to Abate	\$12,934 (per day)
Repeat	\$129,336
Willful	\$129,336

OSHA Can Look Back More than Three Years to Find Repeat Violations

As described above, a “repeat violation” – the same employer being cited for violating the same OSHA standard – carries a hefty penalty. Based on information set forth in OSHA’s *Field Operations Manual*, employers had long assumed that when determining whether a “repeat” violation exists OSHA’s “look back period” would be limited to three years. A Federal Appeals Court in New York, however, recently ruled that the *Manual* is not binding, and because the OSH Act does not “prescribe any temporal limits for determining whether a violation is repeated” OSHA may look back beyond three years. Accordingly, a construction company was cited for a “repeat” violation based on similar violations that had occurred seven years earlier.

Electronic Filing of Injury Logs

For years employers of many types and sizes have been required to maintain records of employee injuries – so-called “OSHA 300 logs.” Such logs were not filed but needed to be made available to OSHA upon request. A new rule enacted in 2016 requires employers with 250 or more workers, or employers with 20 to 249 workers in OSHA-designated hazardous industries, to submit their OSHA 300A forms electronically. The first such filing, for 2016, was due on December 15, 2017. OSHA estimates that only about 150,000 of the 350,000 eligible workplaces complied. Although it has



issued only 34 corresponding citations, OSHA has indicated that it will so be so forgiving with employers who miss the July 2, 2017 deadline for filing 2017 injury logs.

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