

PUBLICATION

OSHA Ushers in Fall with Increased Heat in Penalties

September 28, 2010

Beginning in October, the Occupational Safety and Health Administration (OSHA) will launch "administrative enhancements" to its penalty policies and Field Operations Manual. These enhancements are meant to improve the deterrent effect of a penalty. They will undoubtedly grab the attention of company management and safety and health professionals, probably resulting in the appeal of more citations.

"History" Expanded

Companies have been able to receive a 10% penalty reduction if they had not received a citation in three previous years. That "look-back" is now five years and the company must have been inspected and not cited. In addition, a company that *has* been inspected in the past five years and has received a high-gravity serious, willful, failure-to-abate, or repeat citation will receive a 10% *increase* in the penalty. Companies not falling into either category won't be affected.

"Repeat" Offenders

Similar to the adjustment for history assessment, the window for companies to receive repeat citations has expanded from three to five years.

Gravity-Based Penalties Increased

OSHA is implementing a new formula to determine the gravity based penalty, as shown:

Severity	Probability	Gravity	Former Gravity-based Penalty	New Gravity-based Penalty
High	Greater	High	\$5,000	\$7,000
Medium	Greater	Moderate	\$3,500	\$6,000
Low	Greater	Moderate	\$2,500	\$5,000
High	Lesser	Moderate	\$2,500	\$5,000
Medium	Lesser	Moderate	\$2,000	\$4,000
Low	Lesser	Low	\$1,500	\$3,000

Small Company Penalty Reduction

Small companies will continue to receive a penalty reduction, but not as great:

Employees (at all locations)	Former Penalty Reduction	Current Penalty Reduction
1-25	60%	40%
26-100	40%	30%
100-250	20%	10%
251 or more	None	None

Penalties to be Calculated Serially

Formerly, a penalty was adjusted by an aggregated amount of penalty reduction. Under its new policy, OSHA will calculate – serially – the reduction of the proposed penalty, as such:

Sample Data	Summed	Serially
High/Lesser	\$5,000	\$5,000
History (10%)		\$4,500 (-10%)
Good Faith (15%)		\$3,825 (-10%)
Quick Fix (15%)		\$3,251 (-15%)
Size (30%)	10% + 15% + 15% + 30% + 70%	\$2,275 (30%)
Results	\$1,500	\$2,275

Severe Violator Enforcement Program (SVEP) Violations

Under its Severe Violator Enforcement Program, announced in June, OSHA targets employers who "have demonstrated indifference to their occupational safety and health obligations... ." If a company receiving high-gravity serious citations through SVEP, those citations will not be grouped but will be cited separately, with separate penalties.

Conclusion

Employers in all industries should redouble their efforts to ensure OSHA compliance, through internal audits, increased training, employee-run safety committees and other measures. It's clear that the cost/benefit analysis of these programs is shifting in favor of proactive behavior by the employer.

For a more in-depth analysis or for general information on the various aspects of OSHA regulations and how they affect you, please contact your Baker Donelson attorney.