

# PUBLICATION

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## OSHA Gets Serious with Severe Violator Initiative

June 29, 2010

The Occupational Safety and Health Administration (OSHA) is amplifying its enforcement of the Occupational Safety and Health (OSH) Act and substantially increasing penalties for employers who violate its provisions. Not only will the new initiatives broaden the reach of the OSH Act, but employers who are or have previously been in contravention of the Act will be subject to much higher, publicized penalties, as well as continued compliance inspections of that workplace and all related employer worksites.

These initiatives are a departure from the approach of the two prior presidential administrations. Previously, OSHA operated under the more employer-friendly Enhanced Enforcement Plan (EEP).

### Severe Violator Enforcement Program Directive

Now, OSHA has replaced the EEP with the Severe Violator Enforcement Program (SVEP), which became effective on June 18, 2010. The SVEP focuses on employers who may have committed willful, repeated, or failure-to-abate violations in one or more of the following circumstances: a fatality or catastrophe situation, plant operations or processes that expose employees to the most severe occupational hazards, employees who are exposed to hazards related to the potential release of a highly hazardous chemical, and all egregious enforcement actions. Though at first blush this seems like a high standard for violations, even an employer with only one OSHA violation can be deemed indifferent to OSH Act obligations and thus a "severe violator."

In a recent press release, the Department of Labor stated that the SVEP will prompt increased OSHA inspections to worksites, as well as mandatory follow-up inspections to worksites found in violation of OSHA provisions. Perhaps most notable is that when one worksite is in violation, OSHA will commence inspections of other worksites by the same employer where similar conditions are present. Moreover, to ensure future compliance, OSHA may require employers to take steps such as hiring independent safety and health consultants, publicizing work-related injuries and illnesses and consenting to inspections based on those reports, or reporting to OSHA a list of current and future worksites.

### Greater and Publicized Penalties

Employers who violate the OSH Act will also be subject to greater penalties than they were previously. The average penalty ceiling for a serious violation has more than tripled, rising from \$1,000 to \$3,000 – \$4,000. Along with higher fines, employers with violations will be subject to enhanced public visibility. OSHA plans to notify an employer's national headquarters of an SVEP case if an employer has more than one worksite. It will also send out notices of the violation to employee organizations detailing the specific penalty that was incurred. For more serious violations, OSHA has the option of announcing press releases on SVEP actions.

### What You Need To Do

OSHA's renewed commitment to punishing OSH Act violations increases the risk to all employers of worksite inspections. Employers should be vigilant of potential hazards and illnesses in their worksite, and review their current compliance procedures. If you have any questions or need more specific advisement on what steps to take to ensure you are in compliance, please contact your Baker Donelson attorney or any of our nearly 70

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