

Penalties for State OSHA Programs May Increase

June 22, 2017

PRACTICES Labor and Employment, OSHA

In August 2016, OSHA promulgated rules that significantly increased the maximum penalties for violations of safety regulations by 78 percent. This constituted the *first* penalty increase since 1990 and was explained as a one-time inflation catch-up.

Several states questioned the legitimacy of the rule change and asserted that they were not required to match the new fines. However, OSHA gave guidance to the states just days before President Trump took office, explaining that “OSHA-approved State Plans must have maximum and minimum penalty levels that are at least as effective as federal OSHA’s.” Department of Labor Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2017, 82 Fed. Reg. 5373-5377 (Jan. 18, 2017). The agency went on to say that “at least effective” requires that State Plans have penalty levels “at least as high as OSHA’s.” States resistant to the regulation have considered whether the Trump administration will reverse course and allow states to set penalty levels independently from their federal counterpart. However, until OSHA explicitly changes its rules, states must comply with the current regulations.

To date, the new head of OSHA has not been appointed, and it is unclear whether Secretary of Labor Acosta will appoint someone who would eliminate the increased fines. In the meantime, regulated employers should anticipate penalties in line with the increased requirements until a change is made, if at all.

OSHA published the following table to help determine which penalty applies:

Violations Occurring	Penalty Assessed	Which Penalty Level Applies
On or before November 2, 2015	On or before August 1, 2016	Pre-August 1, 2016 levels
On or before November 2, 2015	After August 1, 2016	Pre-August 1, 2016 levels
After November 2, 2015	After August 1, 2016 but on or before January 13, 2017	August 1, 2016 levels
After November 2, 2015	After January 13, 2017	January 13, 2017 levels