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OSHA Penalty Limits Are Increasing For the First Time in 25 Years

On November 2, 2015, President Obama signed into law the Bipartisan Budget Act of 2015 (H.R. 1314). Buried within the budget, in a section entitled the "Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015," are provisions requiring OSHA to increase the limits on penalties that the agency can assess through its enforcement activities. These increases will go into effect sometime within the next nine months and will mark the first time in 25 years that OSHA has increased its penalty limits.

The last time OSHA's penalties increased was under the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508). That law increased OSHA's authorized penalties from \$1,000 to \$7,000 for Serious and Other-than-Serious violations and from \$10,000 to \$70,000 for Willful and Repeat violations. And while most federal regulatory agencies have automatically increased fines to keep pace with inflation, Congress specifically exempted OSHA from those automatic penalty increases under the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, title III, §31001(s)(1)). The exemption for OSHA has now been lifted.

In terms of the timing of the penalty increases, the Bipartisan Budget Act of 2015 requires that OSHA make its "catch-up adjustment" of authorized penalty amounts no later than August 1, 2016, but OSHA will probably impose the penalty increases well before that deadline. As for the amount of the increases, the law provides that the adjustment be calculated based upon the percentage difference between the October 1990 Consumer Price Index (CPI) and the October 2015 CPI. October 2015 CPI figures have not yet been published, but experts anticipate that the calculation will result in an increase of roughly 75% to 80% over current penalty limits. While the budget technically gives OSHA discretion to propose a smaller penalty increase, it is unlikely the agency will authorize anything less than the maximum.

Assuming October 2015 CPI figures result in an adjustment calculation permitting an 80% penalty increase and that OSHA

chooses to impose the maximum permissible increase, the new maximum penalties for OSHA violations would be as follows:

- Other-than-Serious violations – \$12,600
- Serious violations – \$12,600
- Willful violations – \$126,000
- Repeat violations – \$126,000

In addition, after the initial adjustment, OSHA will be required to implement annual cost-of-living increases by January 15 of each subsequent year, with the adjustment tied to increases in CPI.

We will continue to monitor this development. Please contact [Jay Schoeny](#) or any Frost Brown Todd OSHA specialist if you have questions about OSHA's penalty increases or any other matter related to OSHA compliance, inspections, or citations.

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