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Stowe Associates Compliance Tips Newsletter



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This month we are featuring the recent changes in OSHA requirements and practices. The result is more severe enforcement and greater penalties. Note the following statement in the Good Faith section on page 3: “Employers must have a safety and health program in place to get any good faith reduction.”

For more information and questions contact your Stowe Associates representative or Alison Smith at asmith@stoweassociates.com or 770-451-6222.

OSHA

OSHA will Require Safety Training to be Offered in a Language Workers Understand

OSHA issued an enforcement memorandum directed at protecting Latino and other non-English speaking workers from workplace hazards. It directs compliance officers to ensure they check and verify that workers are receiving OSHA required training in a language they understand. "This directive conforms to Secretary Solis' clear and urgent goal of reducing injuries and illnesses among Latinos and other vulnerable workers," said Assistant Secretary Michaels.

OSHA Makes Changes to Penalty Policies

Last year, the Occupational Safety and Health Administration assembled a work group to evaluate the Agency's penalty policies. The general consensus of the group was that the Agency's penalties are too low to have an adequate deterrent effect. Based on the group's findings and recommendations, several administrative changes to the penalty calculation system outlined in the Field Operations Manual (FOM) are being made.

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These administrative enhancements will become effective in the next several months, allowing adequate time for affected OSHA personnel to become familiar with the changes and receive training. Some changes will require advanced reprogramming of the IMIS and development for the new OSHA Information System (OIS) scheduled to launch in October of 2010. Some of the anticipated changes are outlined below.

History Reduction

The time frame for considering an employer's history of violations will expand from three years to five years. An employer who has been inspected by OSHA within the previous five years and has no serious, willful, repeat, or failure-to-abate violations will receive a 10 percent reduction for history.

History Increase

An employer that has been cited by OSHA for any high gravity serious, willful, repeat, or failure-to-abate violation within the previous five years will receive a 10 percent increase in their penalty, up to the statutory maximum. Employers who have not been inspected and employers who have received citations for serious violations that were not high gravity will receive neither a reduction nor an increase for history.

Repeat Violations

The time period for repeated violations will also be increased from three to five years. Area Directors may continue to apply a size reduction to the penalty, as appropriate, after considering the need for a deterrent effect.

Severe Violator Enforcement Program (SVEP) Violations

Where circumstances warrant, at the discretion of the Area Director, high gravity serious violations related to standards identified in the SVEP will no longer need to be grouped or combined, but can be cited as separate violations, each with its own proposed penalty. Furthermore, for individual violations for hazards identified in the SVEP, Area Directors must consider the adequacy of the proposed penalty and may, as appropriate, limit adjustment for good faith, history, or size when necessary to achieve the appropriate deterrent effect. The rationale for limited adjustments must be fully documented in the case file.

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Gravity-Based Penalty (GBP)

OSHA will be adopting a gravity-based penalty determination that provides for a gravity-based penalty between \$3,000 and \$7,000, as described below.

Severity	Probability	GBP	Gravity
High	Greater	\$7,000	High
Medium	Greater	\$6,000	Moderate
Low	Greater	\$5,000	Moderate
High	Lesser	\$5,000	Moderate
Medium	Lesser	\$4,000	Moderate
Low	Lesser	\$3,000	Low

Size Reduction

The Agency will be adopting the new penalty reduction structure for size illustrated below, allowing for penalty reduction between 10 and 40 percent for employers with less than 250 employees. No size reduction will be applied for employers with 251 or more employees.

Employees	Percent
	Reduction
1-25	40
26-100	30
101-250	10
251 or more	None

Good Faith

The current good faith procedures in the Field Operations Manual (FOM) will be retained. A penalty reduction is permitted in recognition of an employer's effort to implement an effective workplace safety and health management system. Employers must have a safety and health program in place to get any good faith reduction; furthermore, good faith reductions are not allowed in the cases of high gravity serious, willful, repeat, or failure-to-abate violations.

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The 15% Quick-Fix reduction, which is currently allowed as an abatement incentive program meant to encourage employers to immediately abate hazards found during an inspection, will also be retained. However, the 10% reduction for employers with a strategic partnership agreement will be eliminated.

Increase Proposed Minimum Penalties

The minimum proposed penalty for a serious violation will be increased to \$500. When the proposed penalty for a serious violation would amount to less than \$500, a \$500 penalty will be proposed for that violation. The proposed minimum penalty for a posting violation will increase to \$250 if the company was previously provided a poster by OSHA.

Conclusion

These changes will serve to generally increase the overall dollar amount of all penalties. Furthermore, the average penalty for a serious violation will increase from approximately \$1,000 to an average of \$3,000 to \$4,000. The Agency hopes that higher penalty amounts will provide a greater deterrent and further encourage employers to furnish safe and healthy workplaces for their employees. In the immediate future, OSHA will focus on outreach in preparation for implementing this new penalty policy. The enhancements outlined above will become effective over the next several months, and the Field Operations Manual (FOM) will be revised to reflect the new policy.

These changes will establish general agency policy and will not preclude the agency from assessing a different penalty where appropriate under The Act in light of all the circumstances, in a particular case.

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