

Higher OSHA fines could deter all but largest employers



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ATLANTA — The highest fines employers can face for workplace safety violations will increase by 78%, which will help deter some employers from violating health and safety rules but will not have much impact on the largest employers, according to the head of the U.S. Occupational Safety and Health Administration.

The Bipartisan Budget Act of 2015, signed by President Barack Obama in November 2015, required all federal agencies with civil monetary penalties covered by the statute, such as OSHA, to [update their fines](#) and adjust them going forward to keep up with inflation.

The U.S. Department of Labor published details of the updated civil penalty structure for its divisions in the Federal Register on Friday and will accept public comments on the interim final rule for 45 days.

OSHA's maximum penalties, which have not increased since 1990, will rise by 78%. The top penalty for serious violations will rise to \$12,471 from \$7,000, while the maximum penalty for willful or repeat violations will increase to \$124,471 from \$70,000.

"You've heard me say many times, our penalties are too low," Assistant Secretary of Labor for Occupational Safety and Health David Michaels told attendees of the American Society of Safety Engineers annual conference in Atlanta on Tuesday. "We have a new maximum amount that we think will increase deterrence. It's still not going to have an impact on very large employers. Look, a \$100,000 fine has no impact on the largest employers, but on many employers, this is going to have an impact."

Large companies generally have "pretty robust safety and health programs," said John Martin, a Washington-based shareholder with Ogletree, Deakins, Nash, Smoak & Stewart P.C. "There's a real good-faith effort to comply with safety and health regulations. I always thought his focus on larger employers is a little bit misguided because it's usually the smaller companies that can't afford to have full-time safety personnel on their payroll that run into the biggest problems. They're not aware of the regulations. They're usually the ones that when OSHA comes on-site, they're just completely caught off guard and they get hit with a lot of these citations."

Other agencies such as the U.S. Environmental Protection Agency can issue seven-figure fines for violations of the Clean Water Act or Clean Air Act, which Mr. Michaels has often spoken in favor of, Mr. Martin said.

“I think OSHA welcomes the penalty increase, but at the same time they wish it could be a lot more,” he said. “They would clearly love more, but if this is what Congress gives them, they’ll take it and run with it.”

The new civil penalty amounts will apply to fines assessed after Aug. 1, 2016, whose associated violations occurred after Nov. 2, 2015, according to the department. Employers may be unaware that inspections occurring before the Aug. 1 effective date but resulting in OSHA citations issued after that date could be [subject to the higher penalties](#), according to experts.

“I think some people are going to be in for a rude awakening,” Mr. Martin said.

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