

Legal Update Article

Congress Considering \$70,000 and \$700,000 OSHA Penalties

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Workplace Safety and Health

A Congressional committee has approved maximum penalties of \$70,000 for serious items and \$700,000 for repeated, willful, and failure-to-abate items for violations of Occupational Safety and Health Administration (OSHA) standards.

The move would mean more than a fivefold increase of maximum “willful,” “repeated,” and “failure-to-abate” violations from \$136,532. Minimum penalty amounts for such infractions would increase from today’s \$9,753 to \$50,000. “Serious” violations would increase from a current maximum of \$13,653 to \$70,000.

Announcing its intent to “invest in increased enforcement of labor law ... and set meaningful civil monetary penalties for violations of wage and hour, worker safety and labor laws” in the “[Build Back Better Agenda](#),” the House Committee on Education and Labor approved the multiplied penalty levels, as well as a \$707 million budget for the agency.

The penalty increases mirror provisions in the “Protecting America’s Workers Act,” a measure that has been proposed in recent Congresses but has never passed. The House of Representatives is expected to vote on the new measure and send it to the Senate, which could enact the measure with a simple majority vote.

In its last major penalty increase, Congress approved an increase of maximum penalties from \$7,000 per “serious” item to \$12,471 on June 30, 2016, an increase of 78 percent. Congress tied subsequent annual penalty adjustments automatically to the Consumer Price Index, and thus, penalties have made gradual increases since to the current maximum of \$13,653. In 2016, Congress also increased “willful” and “repeated” violations from \$70,000 per item to \$124,709.

A single violation under the proposed penalty structure could effectively put a company out of business. As a result, challenges by cited employers will increase as legal costs may be inevitable to avoid significantly larger penalties. This is reminiscent of what happened in 2006, when Congress’ passage of increased penalties under the Mine Safety and Health Act penalties caused the Mine Safety and Health Administration (MSHA) to experience an increase of citation contests that strained resources and caused a backlog of cases requiring Congress to fund the MSHA backlog project. Such a move also can strain agency resources, requiring compliance officials to make court appearances for litigated citations, and increase demands on judges and government attorneys. In 2010, the Occupational Safety and Health Review Commission (OSHRC) reported that earlier penalty increases sparked an increased workload of 60 percent for administrative law judges due to a rise in the number of disputes resolved not in early settlements, but later, in administrative hearings.

If you have questions or need assistance on OSHA inspections and citations, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [Workplace Safety and Health Practice Group](#).

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