

# **OSHA Update for PFI**

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**ERIC J. CONN** is Chair of the OSHA • Workplace Safety Practice Group at **Conn Maciel Carey**, where he focuses his practice on all aspects of occupational safety & health law:

- Represents employers in inspections, investigations & enforcement actions involving OSHA, CSB, MSHA, & EPA
- Responds to and manages investigations of catastrophic industrial, construction, and manufacturing workplace accidents, including explosions and chemical releases
- Handles all aspects of OSHA litigation, from criminal prosecutions to appeals of citations
- Writes & speaks regularly on safety & health law issues
- Conducts safety training & compliance counseling



# **Agenda**

**OSHA Civil Penalties Set to Skyrocket** 

New OSHA Electronic Recordkeeping Rule

**New Anti-Retaliation Rule** 

# OSHA CIVIL PENALTIES SET TO SKYROCKET



### "Clear the Barn"

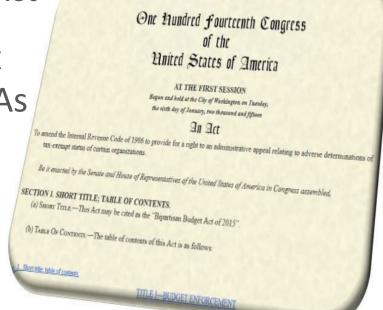




# **OSHA Civil Penalties to Skyrocket**

 Bipartisan Budget Act of 2015 (avoid gov't shutdown) included a little known provision: "Civil Monetary Penalties Inflation Adjustment Act"

- Requires OSHA to increase max penalties to "catch up" w/ COLAs (per CPI) since last time OSHA raised penalties (1990) – 80%
- Initial one time adjustment to be implemented by 8/1/16



Continuous annual increases based on CPI thereafter



### **OSHA Citation Penalties**

Characterization	Max Penalty Per Violation	New Max Penalty Per Violation (Coming Soon)
Other than Serious	\$7,000	\$12,471
Serious	\$7,000	\$12,471
Willful	\$70,000	\$124,709
Repeat	\$70,000	\$124,709
Failure to Abate	\$7,000 per day	\$12,471 per day
Criminal (willful violation causes employee death)	\$250,000 for Indiv. 6 Mos. Prison \$500K for Corp.	\$250,000 for Indiv. 6 Mos. Prison \$500K for Corp.

"Improve Tracking of Workplace Injuries and Illnesses"

**OSHA's New Final Rule** 



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Part III

Department of Labor

Occupational Safety and Health Administration 29 CFR Parts 1904 and 1952

Improve Tracking of Workplace Injuries and Illnesses; Proposed Rule



### **Injury Data Electronic Submission**

May 12, 2016, OSHA published Final Rule re: Injury and Illness Recordkeeping Electronic Data Submission

### 2 Major Provisions:

- 1. Establishments w/ 250+ workers must annually submit to OSHA 300 Logs, 301 Incident Reports and 300A Annual Summaries
- 2. Establishments w/ 20 +

  workers in "High Hazard
  Industries" must annually

  submit 300A Annual Summaries

### **OSHA** Fact Sheet

#### Final Rule to Improve Tracking of Workplace Injuries and Illnesses

Each year, millions of workers suffer serious injuries and illnesses on the job. Under the Federal Occupational Safety and Health Act, employers must provide their workers with worksites free of recognized serious hazards. In order to help prevent work-related injuries and illnesses, the Occupational Safety and Health Administration (OSHA) has for decades required employers to keep track of their workers' injuries and illnesses by recording them in what is often called an "OSHA log."

Under a final rule that becomes effective January 1, 2017, OSHA will revise its requirements for recording and submitting records of workplace injuries and illnesses to require that some of this recorded information be submitted to OSHA electronically for posting to the OSHA website.

We are taking information that employers are already required to collect and using these data to help keep workers safer and make employers, the public, and the government better informed about workplace hazards. Releasing the data in standard, open formats will

- Encourage employers to increase their efforts to prevent worker injuries and illnesses, and, compelled by their competitive spirit, to race to the top in terms of worker safety; and
- Enable researchers to examine these data in innovative ways that may help employers make their workplaces safer and healthier and may also help to identify new workplace safety hazards before they become widespread.

In addition, the final rule includes provisions that encourage workers to report work-related injuries or illnesses to their employers and prohibit employers from retaliating against workers for making those reports.

OSHA expects this new rule will help improve workplace safety through expanded access to timely, establishment-specific injury and illness information for OSHA, employers, employees, employee representatives, potential employees, customers, potential customers, and public health researchers.

The rule will also provide OSHA with data to assist the agency in improving allocation of compliance assistance—help OSHA provide to employers who want to improve their safety standards—and enforcement resources, expanding the Agency's ability to identify, target and remove safety and health hazards, thereby preventing workplace injuries, illnesses and deaths. It will also enable OSHA to conduct more rigorous evaluations of the impact of government injury prevention activities.

in addition, behavioral science suggests that in public disclosure of the data will "nudge" employers to reduce work-related injuries and illnesses in order to demonstrate to investors, job seekers, customers, and the broader public that their worksplaces provide safe and healthy work environments for their employees. Currently, employers cannot compare their injury experience with other businesses in their industry; they can only compare their experience with their industry as a whole. Access to establishment-specific data will enable employers to benchmark their safety and health performance against industry leaders, encouraging them to improve their safety programs.

Finally, public access to very large sets of workplace injury and illness data will provide public health researchers with unprecedented opportunities to advance the fields of injury and illness causation and prevention research.

#### Background

In 2013, OSHA issued a proposed rule to improve tracking of workplace injuries and illnesses through the electronic collection of establishment-specific injury and illness data



### Establishment vs. Corporate-Wide

- Data submission requirements tied to "establishments" "Single physical location where business is conducted or where services or industrial operations are performed"
- Rule requires location-by-location determination based on:
  - Number of employees at each particular location;
  - Whether number meets one of the reporting thresholds; and
  - For 20-249 level, is location a "high-hazard industry"
- Applicable employee count:
  - Total employees at workplace at peak employment during year
  - Includes temps, seasonal workers and part-time employees





### **Recordkeeping Data Submission**

 Data to be submitted electronically through a "secure" website

 OSHA to attempt to "scrub" employ<u>ee</u>-identifying information

- OSHA will publicize employ<u>er</u>-specific info
  - Data will be posted without context

 Quadruples number of employers required to submit injury data to DOL







### **Adverse Impact of Publishing Data**

OSHA intends for the data to harm employers by:

- Discouraging consumers from doing business with them;
- Thwarting contracting opportunities with customers;
- Providing ammunition to organized labor for organizing campaigns or at the bargaining table;
- Scaring off current and prospective employees;
- Eliminating access to business loans; and
- Negatively impacting insurance coverage and rates.



# **Key Reporting Deadlines**

Recordkeeping Forms for Year

2016

2017

2018 and thereafter

Establishments w/ 250+ Employees

300As

300 Logs, 300As & 301s

300 Logs, 300As & 301s Establishments w/ 20-249 Employees

300As

300As

300As

Deadline to Submit Forms

July 1, 2017

July 1, 2018

March 1, 2019 (& March 1<sup>st</sup> each subsequent year)



# **Internal Injury Reporting Policies**

### By November 1, 2016, Employers must:

- Develop and implement injury & illness reporting policy
  - Reasonable reporting procedures
  - Employees must not be deterred/discouraged from reporting injuries and illnesses
- Inform employees:
  - Of the procedures for reporting work-related injuries
  - That Employees have right to report work injuries/illnesses
  - That Employers are prohibited from discriminating against employees for reporting work injuries/illnesses



# **Internal Injury Reporting Policies**

Post-accident drug testing:

"Should limit post-accident testing to situations when employee drug use is likely to have contributed to the accident and for which drug test can accurately identify impairment caused by drug use"

"Blanket post-injury drug testing policies deter proper reporting"

- Safety Incentive Program (may not create incentive to under-report):
  - Bonus for crew of employees (e.g., pizza party, gift cards, etc.) if no injury over certain period
  - Bonus for employee observed working safely, reporting unsafe condition, or participating on safety committee



# **QUESTIONS?**





### **Contact Information**



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