

OSHA Related Changes in 2019: The New Year Giveth, and the New Year Taketh Away

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[As we have reported in previous blog entries](#), enactment of the Federal Civil Penalties Inflation Adjustment Act of 2015 required federal agencies to make annual inflation adjustments to civil monetary penalties imposed by the federal government. These adjustments are to be made no later than January 15 of each year and are effective upon publication in the Federal Register. Of course, the federal government was in the throes of a partial shutdown on January 15, 2019, so no penalty adjustments were published in the Federal Register by the deadline. But when the government reopened, the Occupational Safety and Health Administration (OSHA) wasted little time publishing the increased penalties, which appeared in the Federal Register on January 23, 2019.

The chart below reflects the changes in the adjusted penalty levels per violation since the 2015 law went into effect.

	2015	2016	2017	2018	2019
Serious					
Other-Than-Serious					
Posting Requirement	\$7,000	\$12,600	\$12,675	\$12,934	\$13,260
Failure to Abate (per had beyond the abatement date)	\$7,000	\$12,600	\$12,675	\$12,934	\$13,260
Willful or Repeated	\$70,000	\$126,000	\$126,749	\$129,336	\$132,598

While the increased civil monetary penalties may impact an employer's bottom line, OSHA did provide welcome relief to employers just two days later. On January 25, 2019, OSHA published a final rule, which substantially changed the requirements for electronically reporting injury data to OSHA.

[As we reported in an earlier blog](#), OSHA modified its reporting regulations, effective January 1, 2017, to require electronic reporting of injury data to OSHA. Employers with 20 to 249 employees were required to electronically file Form 300A (Summary of Work-Related Injuries and Illnesses) and businesses with 250 or more employees, to electronically file Form 300A, OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and Form 301 (Injury and Illness Incident Report). There was an outcry amongst employers when the rule was initially proposed raising a concern that the

electronic reporting of specific and detailed injury data reflected on Forms 300 and 301, which would be available to the public, labor unions, and competitors, could place an employer at a competitive disadvantage or portray them in a false light.

On January 25, 2019, OSHA published its final rule rescinding the obligation to electronically file OSHA Forms 300 and 301. Covered employers are still required to keep and maintain Forms 300 and 301 at the worksite for at least five years, but employers are no longer required to electronically file these reports with OSHA. However, the requirement to electronically file Form 300A for all employers with 20 or more employees remains in place. For calendar year 2018 data, this Form must be filed with OSHA on or before March 2, 2019. Employers with questions regarding the final rule and OSHA reporting requirements would do well to consult with competent counsel.

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National Law Review, Volumess IX, Number 51

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