

Hidden Costs of an OSHA Citation

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Congress surprised employers when it increased Occupational Safety and Health Administration (OSHA) penalties nearly 80 percent in 2016. Today, a “serious” violation can cost up to \$13,260, and a “willful” or “repeat” violation can cost up to \$132,598. Those amounts will increase with inflation in January 2020. Citations often include multiple items, which can multiply these amounts.

When OSHA sends serious citations to construction companies or other industrial employers, it often offers an informal conference during which it may suggest a large monetary penalty reduction in settlement. It may sound like a good deal, but saving several thousand dollars and moving on quickly may cost the employer much more over the long term.

For many employers — especially in the construction industry — the greatest hidden cost is the loss of business opportunity. Many construction companies bid to prequalify or perform work for federal or state Departments of Transportation or other agencies. Agencies commonly require prospective contractors to report serious citations they have received. When a prospective contractor exceeds a preset threshold of serious citations, the agency awards the work to another, sometimes costing the contractor hundreds of millions of dollars of work.

In addition, large energy, chemical, and manufacturing companies can have demands much like those of federal and state agencies and will not do business with contractors with too many serious violations on their records. They also judge applicants on their Experience Modification Ratios, which can be based on illnesses and injuries recorded on OSHA 300 forms.

Taking a cut on the monetary penalty while allowing OSHA to enter a Final Order with a violation on record also can set an employer up for a potential “repeat” violation, which can lead to potential tenfold increases if OSHA finds a repeat violation of the same standard or same activity, usually within a three- to five-year period. Large employers with complex operations and multiple worksites are particularly vulnerable to “repeat” violations. Generally, they are the employers that receive penalties exceeding \$1 million.

A “serious” violation may prove more costly than the few thousand dollars saved by early settlement. Taking a critical look at the legal merits of the citation — and considering a contest if a viable defense is available — is often worth the effort.

Jackson Lewis attorneys are available to advise and represent employers facing OSHA citations.

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