

Legal Update Article

Hidden Costs of an OSHA Citation for Manufacturers

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Manufacturing employees are involved in significant physical labor or with potentially hazardous material, and manufacturers are one of the most common targets of Occupational Safety and Health Administration (OSHA) investigations, citations, and penalties. While OSHA often offers to settle penalties quickly, manufacturers should consider carefully whether accepting is in their best interest.

Congress surprised employers when it hiked penalties nearly 80 percent in 2016 and permitted OSHA to adjust penalty amounts to track inflation. Today, a “serious” violation can cost up to \$13,494, and a “willful” or “repeat” violation can cost up to \$134,937. Citations often include multiple items, which can multiply these amounts.

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

For many employers, the greatest hidden cost is the loss of business opportunity. Many companies bid to prequalify or perform work for federal or state agencies. These 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. These companies also may 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 up an employer 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. What might have seemed like a good deal can turn into a trap for a much bigger penalty four years later.

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 a citation – and considering a contest if a viable defense is available – is often worth the effort.

Jackson Lewis attorneys are available to assist employers with this and other workplace issues.

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