

OSHA Penalties Soon Getting a Boost

Michael Kinsley once said “A gaffe is when a politician tells the truth.” And one gaffe that has often been repeated is Speaker Pelosi’s statement from 2010, saying about the Affordable Care Act, “we have to pass the bill so that you can find out what is in it.” There was great truth to that statement, as we are now in an age where the public only finds out what was contained in legislation after it has already been passed.

Such as the new 144-page budget deal signed into law last week. It was made public just before midnight on October 26, and with little debate, passed the House on October 28, the Senate on October 30, and was signed into law by the President on November 2. And we are now coming to “find out what is in it.”

Such as a provision allowing OSHA to increase its penalties by up to 82%, to account for inflation since 1990. OSHA’s penalty amounts were previously fixed and not indexed to inflation. However, the “Federal Civil Penalties Inflation Adjustment Act” tucked into the budget deal not only allows OSHA to begin increasing its penalties annually to account for inflation, but also allows it to implement a “catch up” increase for not raising its penalties for the past quarter century. If OSHA elects to do so — and as the sun rises in the east, OSHA will elect to do so — it must implement an interim final rule by July 1 that will go into effect by August 1.

OSHA’s current maximum penalties are \$7,000 (for other-than-serious and serious violations), and \$70,000 (for repeat and willful violations). Those amounts will likely increase to about \$12,500 and \$125,000 — and then increase annually thereafter.

For any employer subject to an inspection, whether due to a complaint, referral, emphasis program, or the site-specific-targeting program, the stakes are about to increase.

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