

## OSHA's Appropriations Efforts Signal Increased Enforcement and Higher Penalties in 2015

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**President Obama's** recent budget proposal to **Congress** includes a proposed \$592.1 million **budget** for **OSHA** this fiscal year — a 7 percent increase from fiscal 2015. Although gaining approval of the proposal will surely be an uphill battle, which may be insurmountable in light of opposition from Republican lawmakers who oversee the appropriations process, the content of OSHA's budget justification provides strong signals of its agenda for the coming year.

First, *OSHA seeks to add 90 full-time positions* to the agency for fiscal 2016. Sixty of the new positions would be assigned to enforcement activities – forty of the new enforcement employees would be assigned to inspect the anticipated 50,000 – 75,000 new injury and hospitalization reports the agency expects to receive in fiscal 2016 in response to new reporting requirements that took effect on January 1, 2015 (the new reporting regime requires employers to report to OSHA within 24 hours any work-related hospital admissions, amputations, or eye losses). The other twenty enforcement employees would be assigned to high hazard, complex inspections, such as inspections of worksites where the Process Safety Management standard applies or musculoskeletal disorders may be at issue. OSHA states that without this increase in manpower, it will be forced to eliminate many planned inspections of high hazard workplaces, shifting its inspection priorities to responding to injury and hospitalization reports.

Next OSHA urged Congress to increase the statutory civil penalties for workplace health and safety violations. The OSH Act is one of only four statutes not covered by the *Federal Civil Penalties Inflation Adjustment Act*, which includes a mechanism to increase fixed penalties to keep pace with inflation. Without the benefit of this mechanism, OSHA has only been able to increase its civil monetary penalties once in the last forty years. Although OSHA was not explicit in its budget justification, it appears the agency seeks funding for its efforts to increase the monetary civil penalties that the agency can impose in its citations in an effort to increase their deterrent effect.

Even if OSHA receives none of the additional funding it seeks, employers should take note of the clear signals that OSHA has given employers of its intentions in its budget justification:

- OSHA fully intends to respond to the thousands of injuries it expects will be reported in response to the new recordkeeping rule. Employers must make certain that their safety and

human resources professionals know when and how to appropriately report injuries to OSHA and should expect OSHA to act upon these reports.

- OSHA is likely to impose greater penalties, even in the absence of an increase to the statutory penalties currently available to the agency. OSHA inspectors do not consistently impose the maximum penalties available to them when issuing citations under the current penalty scheme. Having clearly expressed its dissatisfaction with the deterrent effect of its penalties, OSHA will likely urge its compliance officers to impose the highest possible penalties when issuing citations going forward.
- High hazard workplaces remain a top priority for OSHA. The agency will, to the extent possible, continue to deploy its inspectors to businesses with high injury and illness rates, worksites subject to the Process Safety Management standard, and worksites presenting musculoskeletal issues.

OSHA has been very aggressive in its enforcement efforts and in seeking large penalties over the last several months. The initiatives it has outlined in its budget justification signal that this will not change, and in fact, will become more intense in coming months. Employers are well-advised to learn their rights and best practices for preparing for an OSHA Inspection. Moreover, employers with worksites that present any of the high hazard risks outlined above should seriously consider engaging counsel to conduct an attorney-client privileged OSHA compliance audit. The Occupational Safety and Health Review Commission has held that compliance audit reports created by third party experts are protected from disclosure to OSHA when they are conducted to aid counsel in providing compliance advice. By conducting such an audit, employers can assess for themselves whether they should be concerned when OSHA comes knocking and if so, improve safety practices and equipment on their own initiative. Such actions demonstrate an employer's commitment to safety, while protecting against the ominous possibility of OSHA using its internal audit report as a guide to potential health and safety issues in the workplace.

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