

# One Minute Memo®



## New Budget Deal to Significantly Increase OSHA Fines for the First Time in Twenty-Five Years

*By James L. Curtis and Patrick D. Joyce*

Employers beware! The new [bipartisan budget](#), passed by both the House and the Senate and signed by President Obama on November 2, 2015, contains provisions that will raise OSHA penalties for the first time in 25 years.

The budget allows for an initial penalty “catch up adjustment,” which must be in place by August 1, 2016. The catch up adjustment is tied to the percentage difference between the October 2015 Consumer Price Index (CPI) and the October 1990 CPI.

Because the October 2015 CPI will not be available until November 17, 2015, the actual percentage increase is unknown at this time. However, based on recent CPI trends, the increase will likely be in the range of **70% - 80% over current penalty amounts**. OSHA would be required to pass an interim final rulemaking to finalize the “catch up” increase.

Assuming an 80% catch up adjustment, starting in August 2016, new maximum penalties would be as follows:

- Other than Serious violations: \$12,600
- Serious violations: \$12,600
- Willful violations: \$126,000
- Repeat violations: \$126,000

After the initial catch up adjustment, OSHA will be required to implement annual cost of living increases, with the adjustment tied to the year over year percentage increase in the CPI. Adjustments must be made by mid-January each subsequent year.

OSHA has the option to implement a catch up adjustment less than the maximum if the Agency determines increasing penalties by the maximum amount would (1) have a “negative economic impact” or the social costs of the increase outweigh the benefits and (2) the Office of Management and Budget agrees. However, OSHA Chief Dr. David Michaels has long advocated for a substantial increase in penalties so it is difficult to envision the Agency seeking anything other than the maximum increase.

The changes in the budget go into effect on July 1, 2016, with the new penalties coming into effect by August 1, 2016.

Such a large increase in penalties along with the yearly cost of living increases will require employers to change how they handle OSHA inspections and the financial ramifications of citations.

*James L. Curtis* is a partner in the Seyfarth's Chicago office and *Patrick D. Joyce* is an associate in the firm's Chicago office. If you would like further information, please contact your Seyfarth attorney, James Curtis at [jcurtis@seyfarth.com](mailto:jcurtis@seyfarth.com) or Patrick Joyce at [pjoyce@seyfarth.com](mailto:pjoyce@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)



Attorney Advertising. This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

---

**Seyfarth Shaw LLP One Minute Memo® | November 3, 2015**

©2015 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.