

BUSINESS

By Jamie Herzlich

Safety first, or it will cost you

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Employers have a responsibility to keep workers safe, which should be incentive enough to do so.

It also makes good monetary sense given the Occupational Safety and Health Administration (OSHA) raised its penalties for 2020 nearly 2%. Maximum penalties could reach up to \$134,937 for "willful or repeated violations."

The agency announced in December that for fiscal year 2019 it conducted 33,401 inspections — more inspections than the previous three years.

"Companies should be proactive and not wait for OSHA to come in and cite you for a violation," says Neil Brunetz, an attorney at Drew Eckl & Farnham in Atlanta. "It's kind of like paying them to be your safety consultant."

But that comes at a high price if you factor in both penalty and abatement costs.

An analysis Drew Eckl & Farnham did of the 100 largest OSHA enforcement cases over a four-year period found that, on average, companies cited for violations saw a 41% reduction of penalties, which were likely based on the amount the firms spent to abate their violations, says Brunetz.

But it's kind of a wash even with those savings, he says, because these firms still had to pay a penalty on top of abatement costs.

As for the penalty increases, they were expected and represent an annual inflation adjustment, says Travis Rhoden, senior workplace safety editor at J.J. Keller & Associates Inc. a Neenah, WI-based firm that provides safety and compliance services and publications.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires the DOL to adjust its assessed penalty levels no later than Jan. 15 of each year, he says. See [nwsdy.li/OSHApenalties](https://www.nwsdy.li/OSHApenalties) for amount of penalty increases.

Before that “OSHA penalties had been stagnant since the ‘90s,” says Rhoden, noting increases have been consistent since 2015 and will continue.

Angelo Garcia, III, principal industrial hygienist at Syosset-based Future Environment Designs, an indoor air quality and industrial hygiene consulting firm that provides OSHA compliance training, agrees, noting “this is not an unusual thing.”

He said for the most part penalties can be negotiated down, but any penalty hurts the bottom line so avoiding them is prudent.

He advises employers to look at OSHA’s top 10 violations if they want some insight on what OSHA is focused on. See [nwsdy.li/standards](https://www.nwsdy.li/standards).

He believes the increased number of inspections reported for fiscal year 2019 will continue into 2020, noting most OSHA visits to workplaces he sees are prompted by an injury or complaint rather than random inspections.

Inspections are “reactionary” and “that doesn’t bode well for workers,” says Deborah Berkowitz, worker health and safety program director for the National Employment Law Project (NELP), a nonprofit research and advocacy organization.

She notes the total number of workplaces inspected after a work-related death or catastrophe rose from 837 in fiscal year 2017 to 941 in fiscal year 2018.

NELP has criticized OSHA for cutting back on the “more complicated and often the highest-impact inspections” and noted OSHA has [the lowest number of inspectors](#) in the agency’s history (875 as of Jan. 1, 2019).

NELP also noted that enforcement under the Trump Administration [has declined to levels below](#) Obama and Bush administrations.

OSHA didn’t confirm the number of inspectors when queried by Newsday and didn’t provide comment regarding NELP’s claim that they were doing more quick inspections over more complicated.

The only response a Department of Labor representative provided was: “Even with record employment, the 2018 nonfatal occupation injury and illness incidence rates continues at the lowest rate since 2002, when the current tracking system was implemented.” The latest available figures come from 2018, when there were 2.8 cases per 100 full-time equivalent workers.

In New York, the incidence rate for nonfatal workplace injuries and illnesses for 2018 was 2.2 cases per 100 full-time equivalent workers.

To be sure, reducing workplace injuries starts with tracking past injuries at your site and seeing how you can prevent/mitigate them in the future, says Charles Hunt, chief operating officer at ABLE Safety Consulting in Massapequa Park, which provides OSHA compliance assistance and training.

It’s also critical to have a health and safety plan, which would document and outline workplace safety regulations and rules equal or more stringent than OSHA standards, he says.

“Most companies don’t have that and they get a citation,” says Hunt.

Training is also key in reducing the risk of injuries, says Hunt, noting there's some free training resources companies can access.

For instance, ABLE Safety offers a silica hazard awareness training class for free on its website and LadderSafetyTraining.org, offers four free ladder safety classes, says Hunt.

OSHA also offers a [free on-site consultation program](#).