

**OSHA CHANGES COULD BE COSTLY TO EMPLOYERS**  
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OSHA is in the process of increasing enforcement activity and fines. OSHA has hired 150 new Compliance Officers in 2009 and has increased the number of inspections and the number of citations issued to 87,000 in 2009 and at the current pace that number will exceed 100,000 in 2010.

In addition, to the above OSHA is active on several other fronts:

**HUGE HIKES IN OSHA FINES:**

- The U. S. Court of Appeals for the District of Columbia recently handed down a ruling in the National Association of Home Builders v. OSHA. This case involved an OSHA citation where they cited an employer for failure to conduct employee training and provide respirators. OSHA cited the company for **each employee** that was not trained or did not receive proper respirators.
- In the past OSHA cited one violation that covered the particular standard and did not cite on an employee by employee basis. The Appeals Court made it clear that employee by employee citations are now permitted.
- A penalty of \$2,000 could now be multiplied by the number of employees. A company with 25 employees could now be facing a \$50,000 penalty instead of the original \$2,000 penalty.
- OSHA also announced plans to increase maximum penalties for serious violations from \$7,000 to \$12,000 and willful violations from \$70,000 to \$250,000.
- OSHA plans to increase the average penalties issued for serious violations from \$1,000 to between \$3,000 and \$4,000.

**NEW ENFORCEMENT MEMO:**

- Assistant Secretary David Michaels issued a new field memorandum on April 28, 2010. Compliance Officers will now be required to request that the employers provide evidence that all safety training is conducted “using both a language and vocabulary that employees can understand.”
- OSHA Compliance Officers want to see evidence that your employees understand the training that they receive. Employees will need to be able to demonstrate to an OSHA Compliance Officer that they have knowledge of the training provided.
- According to the memorandum, “if a reasonable person would conclude that they employer had not conveyed the training to its employees in a manner they are capable of understanding, then the violation may be cited as serious,” carrying a fine at the current rate of up to \$7,000.
- OSHA has a web-based compliance assistance tool designed to help employers with Spanish-speaking employees. It helps employers identify the library of Spanish-language outreach resources available on the Agency’s website.

**NEW PROPOSED SAFETY LEGISLATION: PROTECTING AMERICA'S WORKERS ACT**  
**HB 2067: The new Bill would do the following if passed:**

- Identify a well-recognized easily preventable violation that leads to employee death or serious injury as a **Presumptively Willful Citation**. The Bill would allow for prison sentences to be handed out for such infractions.
- Employers would be required to put significant penalty amounts into escrow as a means of preventing employers from filing frivolous contest to enforcement actions that "clog the system with litigation."
- Authorizing OSHA to "tag" a hazard or workplace condition that poses an immediate danger of death or serious injury. OSHA cannot take immediate action to shut down a process without an injunction in Federal District Court. Under the proposed Bill, the employer would be required to take immediate corrective action or have the workplace shut down.

**WHAT EMPLOYERS CAN DO:**

- Be ready for an inspection and do not be caught off guard.
- Inspect your facility or have a safety professional do so for you.
- Correct any and all violations as soon as practical.
- Ensure all employees receive the OSHA Required training and document the training.
- Follow-up on employee safety related concerns.
- Review all written programs and update where necessary.
- Establish supervisor responsibilities and hold them accountable.
- Make safety a key priority.
- Know what to do in case of an OSHA inspection.
- Audit your safety programs at least annually and develop a safety action calendar for each new year.
- Recognize and reward employees for good safety performance.
- Enforce your company safety policies fairly and consistently.
- And finally, if you need help, call me at 1-800-356-1274.

If you have any safety related questions, or need help with your safety program, please give me a call at 1-800-356-1274.