

FLT #504 – Occupational Safety and Health Penalty Compliance

Section 6427 of the Labor Code is amended to read:

6427. Any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up ~~seven thousand dollars (7,000)~~ twelve thousand four hundred and seventy one dollars (\$12,471) for each violation.

Commencing on January 1, 2017, and each January 1 thereafter, the maximum penalty amount specified in this section shall be increased based on the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), not seasonally adjusted, for the month of October immediately preceding the date of the adjustment, as compared to the prior year's October CPI-U. Any regulation issued pursuant to this section increasing penalty amounts based on the annual increase in CPI-U shall be exempt from the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except that such regulation shall be filed with the Office of Administrative Law for publication in the California Code of Regulations. Any penalty shall be calculated using the penalty amounts in effect during the calendar year in which the citation was issued.

Section 6429 of the Labor Code is amended to read:

6429. (a) Any employer who willfully or repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, may be assessed a civil penalty of not more than ~~seventy thousand dollars (\$70,000)~~ one hundred twenty four thousand seven hundred and nine dollars (\$124,709) for each violation, but in no case less than ~~five thousand dollars (\$5,000)~~ eight thousand nine hundred and eight dollars (\$8,908) for each willful violation.

Commencing on January 1, 2017, and each January 1 thereafter, the penalty amounts specified in this section shall be increased based on the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), not seasonally adjusted, for the month of October immediately preceding the date of the adjustment, as compared to the prior year's October CPI-U. Any regulation issued pursuant to this section increasing penalty amounts based on the annual increase in CPI-U shall be exempt from the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except that such regulation shall be filed with the Office of Administrative Law for publication in the California Code of Regulations. Any penalty shall be calculated using the penalty amounts in effect during the calendar year in which the citation was issued.

(b) Any employer who repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, shall not receive any adjustment of a penalty assessed pursuant to this section on the basis of the regulations

promulgated pursuant to subdivision (c) of Section 6319 pertaining to the good faith of the employer or the history of previous violations of the employer.

(c) The division shall preserve and maintain records of its investigations and inspections and citations for a period of not less than seven years.

Section 6431 of the Labor Code is amended to read:

6431. Any employer who violates any of the posting or recordkeeping requirements as prescribed by regulations adopted pursuant to Sections 6408 and 6410, or who fails to post any notice required by Section 3550, shall be assessed a civil penalty of up to ~~seven thousand dollars (\$7,000)~~ twelve thousand four hundred and seventy one dollars (\$12,471) for each violation.

Commencing on January 1, 2017, and each January 1 thereafter, the maximum penalty amount specified in this section shall be increased based on the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), not seasonally adjusted, for the month of October immediately preceding the date of the adjustment, as compared to the prior year's October CPI-U. Any regulation issued pursuant to this section increasing maximum penalty amounts based on the annual increase in CPI-U shall be exempt from the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except that such regulation shall be filed with the Office of Administrative Law for publication in the California Code of Regulations. Any penalty shall be calculated using the penalty amounts in effect during the calendar year in which the citation was issued.

Section 6505.5 of the Labor Code is amended to read:

6505.5. (a) The division may, upon good cause shown, and after notice to the employer or contractor by the division and an opportunity to be heard, revoke or suspend any registration issued to the employer or contractor to do asbestos-related work until certain specified written conditions are met.

(b) Any person who owns a commercial or industrial building or structure, any employer who engages in or contracts for asbestos-related work, any contractor, public agency, or any employee acting for any of the foregoing, who, contracts for, or who begins, asbestos-related work in any commercial or industrial building or structure built prior to 1978 without first determining if asbestos-containing material is present, and thereby fails to comply with the applicable laws and regulations, is subject to one of the following penalties:

(1) For a knowing or negligent violation, a fine of not more than five thousand dollars (\$5,000) or imprisonment in the county jail for not more than six months, or both the fine and imprisonment.

(2) For a willful violation which results in death, serious injury or illness, or serious exposure, a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than one year, or both the fine and imprisonment. A second or subsequent conviction under this paragraph may be punishable by a fine of not more than twenty thousand dollars

(\$20,000) or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

~~(3) A civil penalty of not more than two thousand dollars (\$2,000) for each violation, to be imposed pursuant to the procedures set forth in Sections 6317, 6318, and 6319.~~

~~(4) For a willful or repeat violation, a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation.~~

(c) It is a defense to an action for violation of this section if the owner, contractor, employer, public agency, or agent thereof, proves, by a preponderance of the evidence, that he or she made a reasonable effort to determine whether asbestos was present.

Section 7381 of the Labor Code is amended to read:

7381. (a) Notwithstanding Sections 6319 and 6425, if serious injury or death is caused by any serious or willful repeated violation of a crane standard, order, or special order, or by any failure to correct a serious violation of a crane standard, order, or special order within the time specified for its correction, the employer shall be assessed a civil penalty in an amount equal to double the maximum penalty allowable for each violation contributing to the injury or death.

(b) Notwithstanding any provision of this division, any employer who violates any tower crane standard, order, or special order, if that violation is a serious violation, shall be assessed a civil penalty of not less than one thousand dollars (\$1,000) ~~nor more than two thousand dollars (\$2,000) for each serious violation.~~ The penalty shall not be reduced for any of the reasons listed in Section 6319.

Section 9060 of the Labor Code is amended to read:

9060. The civil penalties prescribed by Chapter 4 (commencing with Section 6423) of Part 1 shall be applicable to violations of standards and special orders regulating the use of carcinogens, except as modified by the following:

(a) A civil penalty assessed against an employer because of failure to report, as required by standards specified in Section 9030, shall be not less than five hundred dollars (\$500).

~~(b) A civil penalty assessed against an employer for a serious violation, as defined in Section 9061, involving the use of a carcinogen in violation of standards or special orders, except as provided by subdivision (d) and by Section 6429, shall be in the amount of two thousand dollars (\$2,000).~~

~~(c)~~(b) A civil penalty assessed pursuant to Section 6429 for repeated violations of standards or special orders specified in subdivision (a) shall be not less than five thousand dollars (\$5,000).

~~(d)~~(c) A civil penalty assessed pursuant to Section 6429 for repeated serious violations of ~~standards and special orders specified in subdivision (b)~~ as defined in Section 9061, involving the use of a carcinogen in violation of standards or special orders shall be not less than ten thousand dollars (\$10,000).

The maximum limitations on civil penalties specified in Chapter 4 (commencing with Section 6423) of Part 1 shall be applicable to civil penalties for which the minimum amount is prescribed

by subdivision (a), ~~(e)(b)~~, or ~~(d)(c)~~. Nothing in this section shall supersede any provision of law prescribing criminal offenses or penalties.