

Penalties For OSHA Record-Keeping Violations Can Add Up

February 1st is an important date for most workplaces. That's when workplaces that fall under the Occupational Safety & Health Act (OSH Act) must post OSHA Form 300A, Summary of Work-Related Injuries and Illnesses. The summary must be posted through April 30, even if there were no recordable injuries or illnesses and each column total is zero.

Filling out **Form 300A (and the related OSHA Forms 300 and 301)** often falls by the wayside, whether due to more pressing concerns, a lack of trained safety personnel, or deliberate under-reporting to hide unsafe conditions. Whatever the reason, know that OSHA (the Occupational Safety and Health Administration) does not take record-keeping violations lightly, especially willful violations. Here's a case that provides great incentive for ensuring that OSHA forms are filled out properly.

Last year, the Fifth Circuit Court of Appeals (Louisiana, Mississippi, Texas) upheld the issuance of individual penalties for each of 141 willful record-keeping violations, costing two companies a total of \$1.21 million. Not even the Occupational Safety and Health Review Commission could save the companies from the huge penalties.

Penalties range from a minimum of \$5,000 to a maximum of \$70,000 for each willful violation. OSHA cited the first company for 82 willful record-keeping violations with proposed penalties of \$9,000 per violation, while the second company received citations for 59 violations with proposed penalties of \$8,000 per violation. Both companies contested OSHA's findings and penalties before the Review Commission. A Commission administrative law judge agreed that the violations were willful, but grouped the violations as if each company had committed only one willful violation and assessed a single penalty of \$70,000 to each company.

Appeals court: Although the Review Commission has the authority to vacate citations, reclassify them if they are improperly classified by OSHA, and determine the appropriate penalty for each violation, it does not have the authority to group separately charged and proven willful offenses for the purpose of assessing a penalty.

Late last year, the U.S. Supreme Court refused to review the decision, leaving the appeals court ruling intact. (*Jindal United Steel Corp. v. Chao*, U.S. Sup. Ct., No. 07-128, 2007)

Where OSHA concludes an employer deliberately avoids recording occupational injuries and illnesses, resulting in significant under-reporting, it may cite the employer for a willful violation. Although multiple record-keeping violations may stem from a single company policy, each failure to record may represent a separate and distinct violation, said the appeals court, resulting in individual penalties. Avoid violations by:

- *training appropriate staff members* on how and what they must record. Emphasize why it must be done correctly.
- *rectifying safety issues*. Obviously, you don't want employees to get hurt in the first place. But there may be managers who don't want to admit to multiple injuries in their department, so they choose not to report them. Issues that get buried aren't likely to get solved.
- *auditing OSHA logs*. Check entries against personnel and medical records for consistency and to ensure that all required information has been included.

[Click here to download all of the OSHA-required injury and illness record-keeping forms.](#)