

Feds quietly increase civil penalties for employers



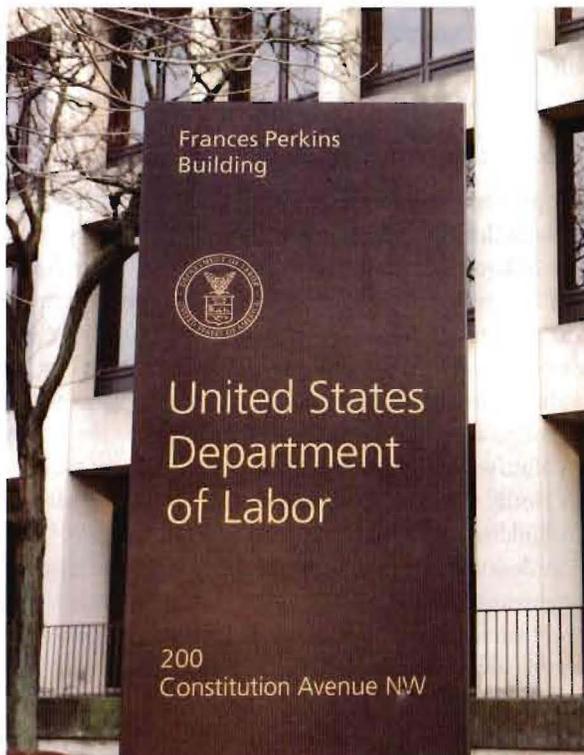
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As I write this month's column, Congress is out on recess until after Labor Day and will be back for the rest of the year, with many gaps for campaigning. The Republicans are just about to kick off their convention in Cleveland, and the Democrats will follow a week later in Philadelphia. The old joke in D.C. is that liberty is safe because the government is out of session.

Even though Congress is out, our regulatory and enforcement folks will be hard at work. This is the time of year when you have everything going on, and you must remember to always remain in full compliance with labor and employment regulations. We know it is difficult, but there is no free pass on employment regulations that relate to wages, health, safety, fairness and immigration just because it was the middle of the season.

To add to the already large risks and potential burdens this year, the U.S. Department of Labor (DOL) and other agencies will significantly increase the maximum Civil Money Penalties (CMPs) for violations effective Aug. 1.

In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act. No one paid much attention at the time, and no one seems to remember it now.



Recently, however, the Federal Register printed DOL's announcements that CMPs for a host of potential violations would be changing, and other agencies followed suit. DOL's Wage and Hour Division alone has the ability to issue 22 different CMPs, and the increases for these penalties vary from a low of around 10 percent to more than 70 percent, depending on when they were last adjusted.

Occupational Safety and Health Administration penalties, which had been frozen at 1990 levels, will increase a whopping 78 percent.

What does this mean for fruit and vegetable growers? First, do not let your guard down on compliance and record keeping. Second, because it is possible that some regulators may be holding audits and or citations until after Aug. 1 in order to maximize the potential penalty, know your rights and responsibilities when faced with a DOL inspector and be prepared to actively defend yourself if there are a flurry of audits coming in August.

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As a reminder, NCAE has a paper to help you prepare for a Wage and Hour audit. You may access it at ncaonline.org/dol-audit-resources/. Because of the potential for significantly increased penalties, it will be important for you to plan in advance and to "drop that dime" and call for help from a legal adviser who is experienced in ag labor issues sooner than you might have done in the past.

Next month, we will know the official platforms of both political parties and will discuss the potential ramifications of the upcoming election for labor-intensive agriculture. **VGN**