

## OSHA Announces Delay In Non-Discrimination Provisions, Higher Fines Still Coming In August

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As we have previously covered in a recent [blog post](#), the Occupation Safety and Health Administration's (OSHA) new electronic recordkeeping rules also contain controversial anti-retaliation provisions which originally would have been effective on Aug. 10, 2016, for federal OSHA states (and up to six months later in state plan states). Last week, OSHA announced that it was delaying the enforcement until Nov. 1, 2016, of the new provisions which also include prohibitions on blanket post-accident drug testing policies and safety incentive programs. One of the issues that needs to be resolved is the reference in the preamble that employer drug testing must be able to accurately identify **actual "impairment"** caused by drug use. That is currently impossible since all of the tests reference a certain threshold level found in a urine or blood sample but do not measure the actual impairment of the employee. OSHA's move appears to be in response to the federal court lawsuit filed in Texas (*Texo ABC/AGC, Inc. et al v. Dept. of Labor, et al.*, Civil Action No. 3:16-cv-1998) where the plaintiffs have challenged the legality of the recent regulations and filed a Motion for a Preliminary Injunction on July 12, 2016. OSHA claims in its [press release](#) that the delayed enforcement is in order to "conduct additional outreach and provide educational materials and guidance for employers." While this is a minor reprieve for employers for those issues, OSHA penalties are set to increase 78 percent across the board on [Aug. 1, 2016](#). This will result in much greater potential liabilities for all OSHA citations in general industry, industrial hygiene and construction as follows:

- Serious/Other Than Serious (Max fine): increase from \$7000 to \$12,471
- Willful/Repeat (Max Fine): increase from \$70,000 to \$124,709

It's time to consider reviewing policies and practices to ensure compliance with OSHA regulations as citations are only getting more expensive. As for the non-discrimination provisions of the new recordkeeping regulations, stay tuned for new developments based on the federal lawsuit.

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