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Ohio Bureau of Workers' Compensation Continues and Expands Safety Council Discount Program

The Ohio Bureau of Workers' Compensation ("BWC") has announced that it intends to continue the Safety Council Rebate Incentive Program and to expand it to include group-rated employers.

The Program allowed qualified employers to earn a 2% premium discount for participating in local safety council programs and an additional 2% discount for reductions in accident frequency and severity statistics. The Program had excluded self-insured employers, state agencies, and employers who were either group-rated or group retrospectively-rated.

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The Program for private, state-funded employers will continue as is. To qualify for the 2% discount, an employer must: 1) join a local safety council; 2) attend 10 safety council meetings or safety trainings annually (eight of which must be through a safety council); 3) make sure a senior level manager attends at least one safety council meeting; and 4) submit workplace accident reports to the BWC semi-annually.

To qualify for the additional 2% discount, the employer must reduce frequency or severity by 10% or keep both indicators at zero. Going forward, group-rated employers may qualify for the 2% premium discount for reducing their frequency and severity statistics. The discount is in addition to their group-rated discount. Group-rated employers are not, however, eligible for the 2% safety council participation discount.

(Anastasia "Stasia" Hanson, Esq.; Spengler Nathanson P.L.L.; 4/11)

OSHA's Severe Violator Enforcement Program and Its Ramifications for Employers

On June 18, 2010, the Occupational Safety and Health Administration's ("OSHA") Severe Violator Enforcement Program (SVEP) became effective. The Obama Administration replaced OSHA's Enhanced Enforcement Programs with the SVEP. The SVEP is a program intended to focus OSHA's enforcement efforts on employers that endanger workers by committing willful, repeat, or failure-to-abate citations in the instances discussed below. OSHA's regional offices, including the Toledo office, have issued citations alleging violations that meet the requirements of the SVEP.

Targeted Employers

The targeted employers are those who have "demonstrated recalcitrance or indifference to their OSH Act obligations by committing willful, repeated, or failure-to-abate violations" in one or more of the following circumstances:

- (1) In a fatality or catastrophe situation;
- (2) In industry operations or processes that expose employees to the most severe occupational hazards and those identified as "High-Emphasis Hazards;"
- (3) In exposing employees to hazards related to the potential release of a highly hazardous chemical; and
- (4) In all egregious enforcement actions.

High-Emphasis Hazards

High-Emphasis Hazards are targeted and include fall hazards and hazards identified from the following National Emphasis Programs (NEPs): amputations, combustible dust, crystalline silica, excavation/trenching, lead, and shipbreaking.

Criteria For A Severe Violator Enforcement Case

During its inspection, OSHA will determine whether a SVEP violation has occurred using the following criteria:

A. Fatality/Catastrophe Criterion.

A fatality/catastrophe inspection in which OSHA finds one or more willful or repeated violations or failure-to-abate notices based on a serious violation related to a death of an employee or three or more hospitalizations.

B. Non-Fatality/Catastrophe Criterion Related to High-Emphasis Hazards.

An inspection in which OSHA finds two or more willful or repeated violations or failure-to-abate notices (or any combination of these violations/notices), based on underlying high gravity serious violations related to a High-Emphasis Hazard.

C. Non-Fatality/Catastrophe Criterion for Hazards Due to the Potential Release of a Highly Hazardous Chemical (Process Safety Management).

An inspection in which OSHA finds three or more willful or repeated violations or failure-to-abate notices (or any combination of these violations/notices), based on high gravity serious violations related to hazards due to the potential release of a highly hazardous chemical, as defined in the PSM Standard.

D. Egregious Criterion.

All egregious (e.g., per-instance citations) enforcement actions will be considered SVEP cases.

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