

Recent Court Decision Finds That OSHA Can Search Employer Histories As Far Back As Necessary To Issue Citations For Repeat Violations

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The Occupational Safety and Health Administration's (OSHA) authority to issue "repeat violation citations" creates the potential for very costly citations for employers.

As it stands now, the penalty for a serious violation can be as high as \$12,934, while the maximum penalty for repeat violations is roughly ten times that amount. In recent years, OSHA had indicated that as a matter of policy, it would look back five years to determine whether it would issue a repeat citation. However, in a recent, non-precedential summary decision, ***Triumph Construction Corporation v. Secretary of Labor***, the Second Circuit Court of Appeals determined that OSHA's statutory authority to identify repeat citations was not subject to any time limitation.

While OSHA has not yet announced that it intends to alter its current policy, employers should still carefully consider whether to contest serious citations from OSHA, especially on routine tasks, training or equipment where the likelihood of repeat violations can be higher. Employers should also carefully maintain records of citations and document their efforts to abate prior citations, in order to help make sure that when problems get fixed, they stay fixed.

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When trying to assess the costs of appealing a citation, employers should also bear in mind that having a serious citation on the books may not be an issue that OSHA quickly forgets.