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Expect More Comprehensive OSHA Inspections Under a New "Enforcement Weighting System"

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Over the course of the next year, employers can expect to see longer, more comprehensive OSHA inspections that focus on complex safety and health hazards. This change is associated with OSHA's new enforcement protocol it refers to as the "Enforcement Weighting System" that uses a new metric called the "Enforcement Unit."

Historically, OSHA operated under the assumption that more inspections are better. OSHA's philosophy was that the more workplaces that OSHA is able to inspected, the greater the impact OSHA would have on safety and health, and the more employees it would be able to protect. At the end of every year, the national office would produce data and graphs showing the number of inspections, and gave no consideration for the different types of inspections or the range of complexity of the issues faced in each inspection. It was the classic quota protocol with the classic weaknesses that quota cause – driving enforcement to the simplest, quickest hitting inspections available.

A traditional inspection at a small construction site can last as little as a couple of hours with only one compliance officer, whereas a wall-to-wall inspection at a petrochemical manufacturing plant could last days, if not months, requiring multiple compliance officers and specialists. Under OSHA's historical tracking system, both of those

type of inspection was counted as one unit of measure – one inspection. To account for this wide variation in resources that inspections can consume, in personnel and man hours, OSHA has adopted the new Enforcement Weighting System.



The new tracking system kicked in at the start of the new federal fiscal year. OSHA piloted the system over the two previous fiscal years. At the core of the new Enforcement Weighting System is the introduction of a new unit of measure for inspections – the Enforcement Unit. Different types of inspections are assigned a different number of Enforcement Units. For example, the simple, small construction site inspection would be assigned a single Enforcement Unit, whereas the wall to wall chemical facility inspection would receive seven Enforcement Units.

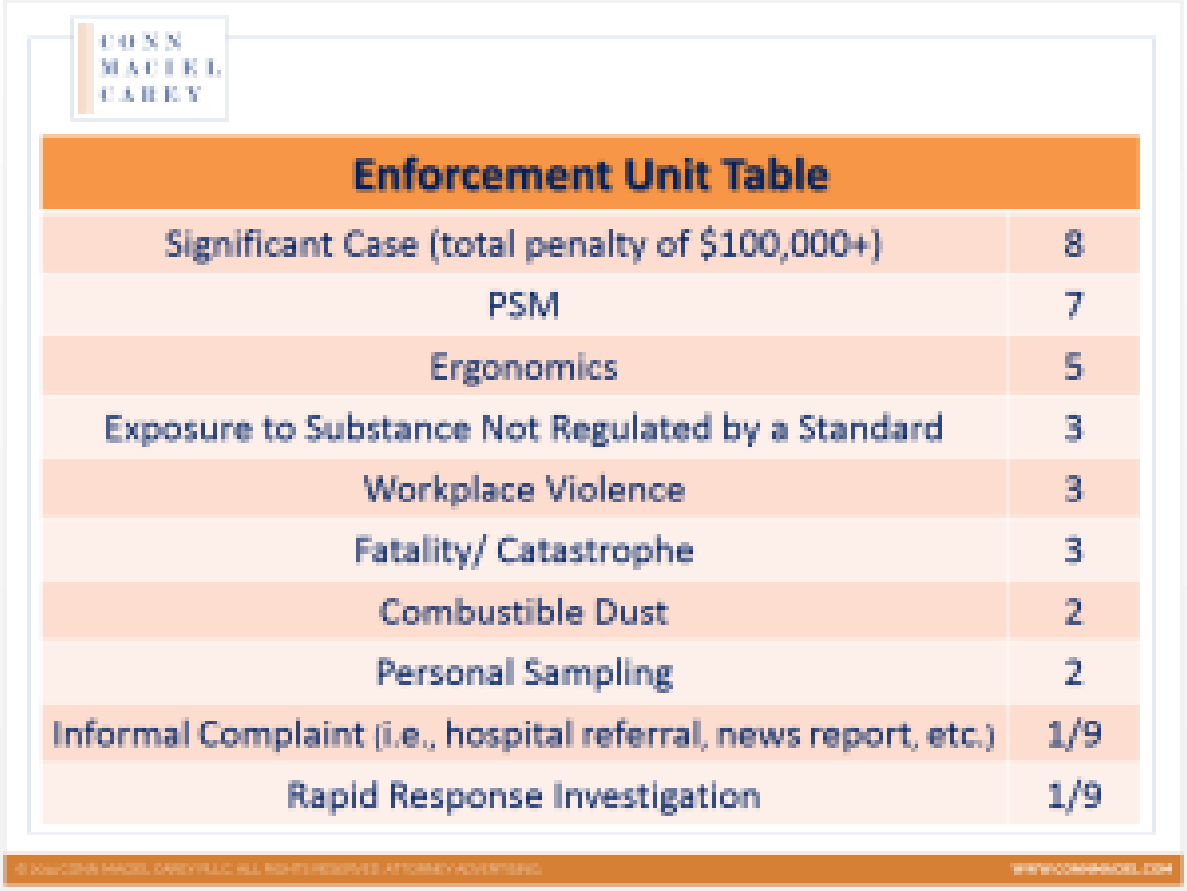
Enforcement Units will be the new metric that OSHA's national office evaluates at the end of the fiscal year and tracks from year-to-year to evaluate enforcement performance of its various regions and area offices.

Assistant Secretary of Labor for OSHA, Dr. David Michaels, explained in the Memorandum announcing the Enforcement Weighting System:

"While [the old] metric served a useful purpose, it penalized those field managers that took on more complex inspections that require a great amount of CSHO effort."

The new Enforcement Weighting System is designed to encourage OSHA enforcement staff to pursue the more time- and resource-intensive inspections. The Enforcement Unit assignment puts a premium on process safety management inspections (the standard intended to prevent catastrophic explosions at refineries and chemical plants) by assigning 7 Enforcement Units to those inspections. There are also a host of health hazards that have to be enforced under OSHA's catch-all General Duty Clause that will get more attention because of the new weighting system; e.g., OSHA assigns 5 EUs to inspections targeting Ergonomics.

Here is the full Enforcement Unit Chart:



Enforcement Unit Table	
Significant Case (total penalty of $100,000+)	8
PSM	7
Ergonomics	5
Exposure to Substance Not Regulated by a Standard	3
Workplace Violence	3
Fatality/ Catastrophe	3
Combustible Dust	2
Personal Sampling	2
Informal Complaint (i.e., hospital referral, news report, etc.)	1/9
Rapid Response Investigation	1/9

As you can see, more than any specific hazard, OSHA rewards Area Offices for finding ways to drive up civil penalties. Specifically, the one "category of activity" to which OSHA assigns the most EUs is enforcement actions with a total penalty exceeding $100,000. That means that a run of the mill employee informal complaint inspection about a basic safety hazard would only be worth 1/9th of an EU, but if the CSHO and Area Director can conceive of a way to characterize a couple otherwise minor items as Willful or Repeat, that inspection that would not be worth much to that Area Office's annual quota gets a huge boost, almost ten times more EUs by pushing the penalty up over $100,000 – a potentially costly, perverse incentive.

By announcing this new protocol, Dr. Michaels believes that these hazards, which have historically been addressed by OSHA inspections less frequently, will get more attention from employers. In other words, employers who may have dismissed these hazards believing an inspection by OSHA was unlikely because such an inspection was too time consuming, will now take steps to address those hazards recognizing that an inspection may be more likely. That population of employers was likely slim to none, but regardless, employers should pay particular attention to the hazards to which OSHA will now assign more enforcement resources.