



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Labor and
Workforce Development**

Labor Standards and Safety

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April 18, 2018

The Honorable Anna MacKinnon
Senate Finance Co-Chair
State Capitol, Room 516
Juneau, AK 99801

Dear Co-Chair MacKinnon:

This letter is in response to questions raised during the Senate Finance Committee hearing of House Bill 38 on April 17th. Senator Von Imhof asked for information about consequences for employers whose negligence results in the death of an employee. She asked what would prevent an employer from continuing business as usual.

Alaska Occupational Safety and Health (AKOSH) is responsible for enforcing the state's occupational safety and health laws. In the event of an employee death, AKOSH investigates the work site and determines whether the employer violated safety and health standards. In the case of clear negligence, AKOSH may issue willful citations. Willful citations are used when an employer disregards standards or acts with plain indifference toward employee safety. Each willful violation may result in a civil penalty of up to \$70,000, deposited to the state general fund. With the passage of House Bill 121, the penalty will increase to \$129,336 per violation. If violations were serious but not willful in nature, AKOSH may issue penalties of up to \$7,000 per violation (\$12,934 after House Bill 121). In the case of a fatality, AKOSH often finds that the employer violated multiple standards.

While these penalties are typically reduced for various factors such as business size, in the most egregious cases the entire penalty may be applied. In March of 2017, the Occupational Safety and Health Review Board upheld a penalty of \$301,000 for five willful violations issued to a contractor whose actions resulted in the death of an employee in a trench collapse.

In addition to civil penalties, a willful violation resulting in the death of an employee may result in a criminal penalty of \$10,000 and up to six months in prison. A subsequent conviction may result in a criminal penalty of up to \$20,000 and up to one year in prison.

A fatality involving willful violations places an employer in AKOSH's Severe Violator Enforcement Program. This program includes mandatory follow-up enforcement inspections, potential company-wide enforcement inspections, and other tools to strengthen oversight and bring the employer into compliance.

In the worst cases, an employer may refuse to correct an unsafe condition that could immediately cause death or serious physical harm to their employees. Under AS 18.60.096 the department may issue an order restraining the condition, requiring the employer to avoid, correct, or remove the imminent danger. The attorney general may seek an injunction in superior court when enforcing such a restraining order.

Regulations resulting from Governor Walker's Administrative Order 286 will soon add one additional tool to sanction willful violators. These regulations, which are in the final stages of promulgation, will

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allow the Department of Labor and Workforce Development to refer negligent employers to the Department of Administration for debarment proceedings. Debarment prohibits an employer from being considered for award of contracts with the state for up to three years.

None of these tools can bring back loved ones lost to workplace accidents, nor do they assist grieving families in finding financial security. However, through its enforcement tools, AKOSH seeks to prevent an employer from continuing negligent practices, and to create a deterrent for other employers who may consider cutting corners on employee safety and health.

Please contact me if you have any additional questions.

Sincerely,



Deborah Kelly
Director

cc: Commissioner Heidi Drygas, Department of Labor and Workforce Development