

PUBLICATION

Remove Me: OSHA Issues Guidance on Removal from Severe Violators List

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The Occupational Safety and Health Administration (OSHA) recently published Guidance on how employers can be removed from its Severe Violator Enforcement Program (SVEP). Since the SVEP has been in effect, more than 300 employers have been labeled "severe violators." This is OSHA's first written guidance on how employers can remove themselves from this list.

Under the new Guidance, an OSHA Regional Administrator (except where national corporate settlements are involved) may consider an employer for removal from the SVEP after:

- Three years pass from the final disposition of the SVEP inspection citation items; and
- All affirmed violations have been abated, all final penalties have been paid, the employer has abided by and completed all settlement provisions and it has not received any additional serious citations related to the hazards identified in the SVEP inspection at any related establishment.

Employers that fail to adhere to the terms and provisions of the agreement will remain in the program for an additional three years before they are eligible for reevaluation.

In cases involving national corporate settlement agreements, OSHA will make a determination, "upon the termination of the agreement, regarding the employer's removal from the program." The Guidance specifies that, pursuant to its 2011 Guidelines for Administering Corporate-Wide Settlement Agreements, the National Corporate Settlement Coordinator "will ensure that the follow-up requirements of the SVEP have been completed and the terms of the agreement have been implemented."

The Guidance further indicates that the agency retains the discretion to remove establishments from its SVEP list for cooperating during settlement negotiations, but that this incentive "cannot be used as an incentive for settlement."

To discuss the impact of this Guidance on your organization, or to schedule an OSHA audit, please contact any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.