

1975 WL 29290 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 22, 1975

***1 Re: Settlement of OSHA Penalties by Payment on Installment Basis**

Mr. William M. Lybrand, III
Chief Safety Specialist
Division of Occupational Safety and Health
Department of Labor
Post Office Box 11329
Columbia, SC 29211

Dear Mr. Lybrand:

The question has arisen as to the propriety of collecting assessed occupational safety and health penalties by allowing the employer to pay on an installment basis. The situation arises in the context of an employer who proves a need for such a scheme because of his financial situation and shows that a lump sum payment would be detrimental to the continuation of his business.

There is a scarcity of law on this particular subject, due mainly to the fact that an agreement such as this does not create an aggrieved employer who would find his way to Court. Additionally, the Congress and the General Assembly in promulgating OSHA did not speak directly to the issue.

The Commissioner of Labor is given a broad latitude of authority to collect the penalties assessed. Section 40-273, 1962 Code of Laws, as amended, states that all penalty assessments, except those in the form of criminal penalties, shall be made by the Commissioner. This would necessarily imply that the Commissioner has the power to collect these penalties in whatever manner is proper and expeditious. The Federal counterpart of the Commissioner, the Secretary of Labor, has been deemed to have the authority under OSHA to compromise or settle penalties as a natural incident to his enforcement powers. [Dale M. Madden Construction, Inc., v. Hodgson](#), 502 F.2d 278 (9th Cir., 1974).

It could easily be argued that allowing an employer to pay on an installment basis is a form of settlement. The forbearance to collect on the penalty owed is a form of compromising the penalty. If the Commissioner finds that by allowing an installment he will expedite the purpose of the Act and eliminate or reduce administrative costs then he can allow this sort of compromise. Df. [Hodgson](#).

There is one reported case where the employer was allowed to pay his assessed penalty in installments. [In re James A. McAllister](#), OSHRC Docket No. 7780 (Oct. 2, 1974) is reported briefly at ¶18,755 of the CCH Occupational Safety and Health Guide. In that case Hearing Judge Donald K. Duvall allowed the employer to pay off \$770 fine in eleven monthly installments in accordance with a settlement agreement.

In the CCH Reporter on Employment Safety and Health a very general procedure for collection of settlements by installments is explained at ¶4207:

‘Settlements on an installment basis are discouraged but not prohibited. They should liquidate the claim within three years. When the claim exceeds \$750, the Secretary must try and obtain a confess-judgment note. The Secretary may also take security for the deferred payments. His inability to obtain the confess-judgment note or security does not impair his power to settle the claim.’ (p. 1469).

*2 This same language is found in Guidebook to Occupational Safety and Health (CCH, 1974 Ed.) at page 245, ¶834.

In summary, it would seem that the Commissioner could, within the general authority given him, settle the assessed penalties by allowing payment on an installment basis.

Very truly yours,

Cameron B. Littlejohn, Jr.
Legal Assistant

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