



COMPLIANCE BULLETIN

DOL Increases Civil Penalty Amounts for 2018

OVERVIEW

On Jan. 2, 2018, the Department of Labor (DOL) issued a [final rule](#) that increases the civil penalty amounts that may be imposed on employers under various federal laws. The final rule increases the civil penalty amounts associated with:

- ✓ Failing to file an annual Form 5500 under the Employee Retirement Income Security Act (ERISA);
- ✓ Repeated or willful violations of minimum wage or overtime requirements under the Fair Labor Standards Act (FLSA);
- ✓ Willful violations of the poster requirement under the Family and Medical Leave Act (FMLA); and
- ✓ Violations of the poster requirement under the Occupational Safety and Health Act (OSH Act).

The increased amounts apply to civil penalties that are assessed after Jan. 2, 2018.

ACTION STEPS

Employers should become familiar with the new penalty amounts and review their pay practices, benefit plan administration and safety protocols to ensure compliance with federal requirements.

HIGHLIGHTS

- The DOL must adjust its civil penalty amounts for inflation each year.
- The increased amounts apply to penalties that are assessed after Jan. 2, 2018.
- To minimize potential liability, employers should review their compliance with laws enforced by the DOL, such as the FLSA and ERISA.

IMPORTANT DATE

January 2, 2018

The increased penalty amounts became effective.

Provided By:
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Background

The 2015 Inflation Adjustment Act (Act) includes provisions to strengthen civil monetary penalties under various federal laws in order to maintain their deterrent effect. The Act required federal agencies, including the DOL, to adjust the civil monetary penalties with an initial “catch-up” adjustment. The DOL made this initial adjustment in July 2016. Federal agencies are also required to make subsequent annual adjustments for inflation, no later than Jan. 15 of each year.

2018 Penalty Amounts

The DOL’s final rule implements the 2018 annual adjustments for civil penalties assessed or enforced by the DOL, including penalties under the FLSA, FMLA, OSH Act and ERISA. The increased penalty amounts became effective on Jan. 2, 2018, and may apply for any violations occurring after Nov. 2, 2015. The updated maximum penalty amounts are shown in the table below.

REQUIREMENT	2017 PENALTY AMOUNT	2018 PENALTY AMOUNT
Wage and Hour		
Repeated or willful violations of minimum wage or overtime requirements (FLSA)	Up to \$1,925 for each violation	Up to \$1,964 for each violation
Violations of child labor laws	Up to \$12,278 for each employee subject to the violation	Up to \$12,529 for each employee subject to the violation
Violations of child labor laws that cause death or serious injury to an employee under age 18	Up to \$55,808 for each violation (doubled to \$111,616 if the violation is repeated or willful)	Up to \$56,947 for each violation (doubled to \$113,894 if the violation is repeated or willful)
Willful failure to post FMLA general notice	Up to \$166 for each separate offense	Up to \$169 for each separate offense
Violations of the Employee Polygraph Protection Act (EPPA)	Up to \$20,111 for each violation	Up to \$20,521 for each violation

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Employee Benefits		
Failure to file an annual report (Form 5500) with the DOL (unless a filing exemption applies)	Up to \$2,097 per day	Up to \$2,140 per day
Failure of a multiple employer welfare arrangement (MEWA) to file an annual report (Form M-1) with the DOL	Up to \$1,527 per day	Up to \$1,558 per day
Failure to furnish plan-related information requested by the DOL *Under ERISA, administrators of employee benefit plans must furnish to the DOL, upon request, any documents relating to the employee benefit plan.	Up to \$149 per day, but not to exceed \$1,496 per request	Up to \$152 per day, but not to exceed \$1,527 per request
Failing to provide the annual notice regarding CHIP coverage opportunities *This notice applies to employers with group health plans that cover residents of states that provide a premium assistance subsidy under a Medicaid or CHIP program.	Up to \$112 per day for each failure (each employee is a separate violation)	Up to \$114 per day for each failure (each employee is a separate violation)
For 401(k) plans, failure to provide blackout notice or notice of right to divest employer securities	Up to \$133 per day	Up to \$136 per day
Failure to provide Summary of Benefits and Coverage (SBC)	Up to \$1,105 per failure	Up to \$1,128 per failure
Employee Safety – OSH Act		
Violation of posting requirement	Up to \$12,675 for each violation	Up to \$12,934 for each violation

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Other-than-serious violation	Up to \$12,675 per violation	Up to \$12,934 for each violation
Serious violation	Up to \$12,675 for each violation	Up to \$12,934 for each violation
Willful violation	Between \$9,054 and \$126,749 per violation	Between \$9,239 and \$129,336 per violation
Uncorrected violation	Up to \$12,675 per day until the violation is corrected	Up to \$12,934 per day until the violation is corrected

This Compliance Bulletin is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.