

DOL Hikes FLSA and Other Employer Penalties Again

For the second time in six months, the DOL has increased the civil monetary penalties for violating federal minimum wage, overtime, posting and safety requirements. The increases apply to penalties assessed after January 13 for FLSA, FMLA and OSHAct violations occurring after November 2, 2015. To minimize potential liability, employers should review their pay practices, postings and safety protocols to ensure compliance.

Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 allowed federal agencies to make certain inflation adjustments to civil monetary penalties that could be imposed under laws they enforce. The Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Inflation Adjustment Act) amended the law to require agencies to make an initial catch-up inflation adjustment by August 1, 2016, and subsequent annual inflation adjustments. The law required the DOL to issue an annual adjustment by January 15, 2017, and by January 15 in each successive year. Adjusted penalty levels apply to any penalties assessed after the effective date of any increase.

On July 1, 2016, the DOL issued its initial catch-up adjustment, significantly increasing penalties under the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Occupational Safety & Health Act (OSHAct) and other laws its agencies enforce. The increases applied to penalties assessed after August 1, 2016 for violations that occurred after November 2, 2015 – the date the Inflation Adjustment Act was enacted. (See our [July 14, 2016 For Your Information](#).)

Adjusted Penalties

On January 18, the DOL issued a [final rule](#), increasing civil penalties under the FLSA, FMLA, OSHAct and other laws it enforces for the second time in six months. The new penalty levels apply to penalties assessed after January 13 for violations occurring after November 2, 2015. Penalties assessed after August 1, 2016, but on or before January 13, 2017, for violations occurring after November 2, 2015, will be subject to the civil penalty level that took effect August 1, 2016. Penalties assessed for violations occurring prior to November 2, 2015 will be based on pre-August 1, 2016 penalty levels.



FLSA

The FLSA and applicable DOL regulations provide for the assessment of civil monetary penalties for any person who repeatedly or willfully violates federal minimum wage or overtime requirements. Last August, the maximum penalty was increased from \$1,100 to \$1,894 per violation. Under the final rule, the penalty for repeated and willful violations of the FLSA's minimum wage and overtime provisions increases to \$1,925.

Comment. Because penalties are normally assessed on a per-employee basis, employer liability can escalate quickly if noncompliant pay practices affect a number of workers.

FMLA

Every employer covered by the FMLA is required to post conspicuously a notice explaining the statute's provisions and providing information for filing complaints of violations with the DOL's Wage and Hour Division. Last August, the maximum civil money penalty for willfully violating the posting requirement increased from \$110 to \$163 for each separate offense. Under the final rule, the penalty increases to \$166.

OSHAct

Prior to the Inflation Adjustment Act, OSHAct penalties were not subject to automatic inflation-adjusted increases. With the Inflation Adjustment Act's elimination of the exclusion, OSHAct penalty levels became subject to the 2016 catch-up adjustment and annual inflation adjustments. Last August, the maximum penalty for serious, other-than-serious, and posting violations increased from \$7,000 to \$12,471 for each violation. The maximum penalty for failure to abate violations increased from \$7,000 to \$12,471 per day. The maximum penalty for willful or repeated violations increased from \$70,000 to \$124,709. With the exception of penalties for willful violations, minimum penalties were not affected. The minimum penalty for willful violations increased from \$5,000 to \$8,908.

Under the final rule, the maximum penalty for serious, other-than-serious, and posting violations increases to \$12,675 for each violation. The maximum penalty for failure to abate violations increases to \$12,675 per day. The maximum penalty for willful or repeated violations increases to \$124,749. The minimum penalty for willful violations increases from \$8,908 to \$9,054.

In Closing

Increased penalty levels for violations of the FLSA, FMLA and OSHAct occurring after November 2, 2015 will apply to amounts assessed by the DOL after January 13, 2017. Employers should review their pay practices, postings and safety protocols to ensure compliance.

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