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DOL Adjusts Penalties for FLSA, FMLA, and OSHAct Violations

Effective January 23, 2019, the DOL has increased the civil monetary penalties for violating federal minimum wage, overtime, posting and safety requirements. The higher penalty amounts apply to penalties assessed after that date for FLSA, FMLA, and OSHAct violations that occurred after November 2, 2015. To minimize potential liability, employers should review their pay practices, postings, and safety protocols to ensure compliance.

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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 Improvements Act of 2015 (Inflation Adjustment Act) amended the law to require agencies to make an initial catch-up inflation adjustment for penalties by August 1, 2016 and to make subsequent annual adjustments for inflation no later than January 15 of each year. Annual adjustments are based on the Consumer Price Index for all Urban Consumers (CPI-U).

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](#).) In 2017, the DOL began adjusting penalty levels annually in January. (See our [January 20, 2017 For Your Information](#).)

Adjusted penalties

On January 23, 2019, the DOL published a [final rule](#) setting forth annual inflation adjustments for 2019, increasing civil monetary penalties under the FLSA, FMLA, OSHAct, and other laws it enforces.

The higher levels apply to penalties assessed by the agency after January 23 for associated violations that occurred after November 2, 2015.

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. Under the final rule, the maximum penalty for repeated and willful violations of the FLSA's minimum wage and overtime provisions increases from \$1,964 to \$2,014.

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

FMLA

Every employer covered by the FMLA is required to conspicuously post a notice explaining the statute's provisions and providing information for filing complaints of violations with the DOL's Wage & Hour Division. Under the final rule, the maximum penalty increases from \$169 to \$173.

OSHA Act

Prior to the Inflation Adjustment Act, OSHA Act penalties were not subject to automatic inflation-adjusted increases. When the Inflation Adjustment Act eliminated the exclusion, OSHA Act penalty levels became subject to the 2016 catch-up adjustment and subsequent annual inflation adjustments.

Under the final rule, the maximum penalty for serious, other-than-serious, and posting violations increases from \$12,934 to \$13,260 for each violation. The maximum penalty for failure to abate violations increases from \$12,934 to \$13,260 per day. The minimum and maximum penalties for willful violations increase from \$9,239 to \$9,472 and from \$129,336 to \$132,598, respectively. The maximum penalty for repeated violations also increases from \$129,336 to \$132,598.

Other penalties

In addition to the penalties described in this *FYI*, DOL's EBSA, the PBGC, and HHS have published their annual updated penalty amounts. The adjusted amounts will be reflected in our annual update to Buck's ERISA Reporting and Disclosure guides, coming next month.

In closing

Increased penalty levels will apply to amounts assessed by the DOL after January 23, 2019 for violations of the FLSA, FMLA, and OSHA Act occurring after November 2, 2015. Employers should review their pay practices, posting and safety protocols to ensure compliance.

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