



DOL Announces Higher Penalties for Plan Compliance Errors

Insights

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Since 2015, federal agencies have been required to annually review the laws and regulations they enforce to adjust applicable penalties for inflation. The idea has been to provide increasingly greater incentives for plan sponsors to continue to make sure their benefits plans remain compliant. The law specifically requires the U.S. Department of Labor (DOL) to adjust penalties under the Employee Retirement Income Security Act (ERISA). This past month, the DOL issued its annual adjusted amounts (as shown in the table below) for penalties assessed after January 15, 2022 with respect to any violation that occurs after November 2, 2015.

Action steps

Employers should review their health plans to ensure compliance with ERISA's requirements to avoid penalties. Employers specifically should ensure they are complying with ERISA's reporting and disclosure rules, including Form 5500, annual CHIP notice and SBC requirements.

Adjustments for 2022

VIOLATION	2021 PENALTY AMOUNTS	2022 PENALTY AMOUNTS
Failure or refusal to file an annual report (Form 5500) with the DOL (unless a filing exemption applies)	Up to \$2,259 per day	Up to \$2,400 per day
Failure of a multiple employer welfare arrangement (MEWA) to file an annual report (Form M-1) with the DOL	Up to \$1,644 per day	Up to \$1,746 per day
Failure to furnish plan-related information requested by the DOL *Under ERISA, administrators of employee benefit plans must furnish to the DOL any documents relating to the employee benefit plan upon request	Up to \$161 per day, not to exceed \$1,613 per request	Up to \$171 per day, not to exceed \$1,713 per request
Failure to provide the annual notice regarding Children's Health	Up to \$120 per day for each failure (each employee is a	Up to \$127 per day for each failure (each employee is a

Insurance Program (CHIP) coverage opportunities	separate violation)	separate violation)
*This notice applies to employers with group health plans that cover residents of states that provide a premium assistance subsidy under CHIP		
Failure to timely disclose information to a state regarding group health plan coverage of an individual who is covered under a Medicaid or CHIP plan	Up to \$120 per day (each participant/beneficiary is a separate violation)	Up to \$127 per day (each participant/beneficiary is a separate violation)

VIOLATION	2021 PENALTY AMOUNTS	2022 PENALTY AMOUNTS
Failure by any health plan sponsor (or any health insurance issuer offering health insurance coverage in connection with the plan) to comply with the requirements of the Genetic Information Nondiscrimination Act (GINA) for health plans	<p>\$120 per participant or beneficiary per day during noncompliance period</p> <ul style="list-style-type: none"> • Minimum penalty of \$3,005 per participant or beneficiary for de minimis failures not corrected prior to notice from the DOL • Minimum penalty of \$18,035 per participant or beneficiary for failures which are not corrected prior to notice from the DOL and are not de minimis • \$601,152 cap on unintentional failures 	<p>\$127 per participant or beneficiary per day during noncompliance period</p> <ul style="list-style-type: none"> • Minimum penalty of \$3,192 per participant or beneficiary for de minimis failures not corrected prior to notice from the DOL • Minimum penalty of \$19,157 per participant or beneficiary for failures which are not corrected prior to notice from the DOL and are not de minimis • \$638,556 cap on unintentional failures
Failure to provide Summary of Benefits and Coverage (SBC)	Up to \$1,190 per failure to provide the SBC	Up to \$1,264 per failure to provide the SBC

Conclusion

We will continue to monitor developments and provide updates as events warrant. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have

questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our Employee Benefits and Tax Practice Group.

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