



FLSA Civil Penalties To Increase Again (Updated 01 18 17)

Insights

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UPDATED 01 18 17: The U.S. Department of Labor has now officially published these increases.

For the second time in less than a year, the U.S. Department of Labor will soon publish increases in the civil money penalties it can impose for certain violations of the federal Fair Labor Standards Act and/or related regulations.

These revisions are being made under the Civil Penalties Inflation Adjustment Act Improvements Act of 2015. USDOL says that it will apply the changes to penalties assessed after January 13, 2017 for predicate violations that occurred after November 2, 2015.

Minimum Wage/Overtime Penalties

The FLSA's Section 16(e)(2) originally authorized USDOL to impose a monetary penalty of up to \$1,100 for each "repeated" or "willful" violation of that law's minimum-wage or overtime requirements. In August 2016, the maximum was raised to \$1,894. The newest increase is to \$1,925.

The assessment is normally a per-person one based upon the number of employees who were unlawfully paid. An employer's transgression can be considered a "repeated" one for penalty purposes even if it is not factually or legally the same as an earlier one. For instance, a minimum-wage violation found in a USDOL investigation years ago can be the predicate for penalty in a subsequent one that discloses overtime violations.

USDOL can assert a penalty for a "willful" violation if the employer knew that it was in violation or acted with reckless disregard for whether it was (although, as we have reported, USDOL might be substituting a lower standard for "willfulness" as a practical matter).

Child Labor Penalties

Under the figure established last August, USDOL could assess a monetary penalty of up to \$12,080 for each worker under 18 years old who was employed in violation of the FLSA's child-labor

restrictions or of those appearing in the agency's related regulations. This sum will jump to \$12,278.

A child-labor violation that results in a minor's serious injury or death will now be punishable by a civil penalty of up to \$55,808, an increase just short of \$900. This sum could be doubled to \$111,616 as the result of a "repeated" or "willful" violation.

The Bottom Line

It is entirely possible for civil money penalties to approximate or even exceed the back-wages due for FLSA violations. Furthermore, USDOL takes child-labor enforcement very seriously, so employers should assume that penalties of at least some significant amount will be imposed when an investigator finds violations of those provisions.

These are additional reasons for employers to be certain that they are in compliance with the FLSA and its related regulations at all times. Even if management has looked into this in the past, it is always wise to conduct a regular check-up.