



# FLSA Penalties Increase

Insights

1.04.18

This week the U.S. Department of Labor published increases in the civil money penalties it can impose for certain violations of the federal Fair Labor Standards Act.

These new levels, approximately 2% higher than those established last year, apply to any penalties assessed after the effective date of January 2, 2018 for predicate violations that occurred after November 2, 2015.

## Minimum Wage/Overtime Penalties

The FLSA's Section 16(e)(2) authorizes USDOL to impose a monetary penalty for a "repeated" or "willful" violation of that law's minimum-wage or overtime requirements. In accordance with the enactment of the Civil Penalties Inflation Adjustment Act Improvements Act of 2015, agencies now adjust penalties annually. The newest increase, effective immediately, permits USDOL to impose a monetary penalty of up to \$1,964 for a violation.

Whether for "repeated" or "willful" violations, the agency normally imposes these assessments "per-person" based upon the number of employees an employer paid unlawfully. Notably, 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 might be the predicate for penalty in a subsequent investigation that discloses overtime violations. Additionally, 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 in violation. As we have cautioned previously, USDOL might be substituting an even lower standard for "willfulness" as a practical matter.

## Child Labor Penalties

Under the new figure, USDOL can assess a monetary penalty of up to \$12,529 for each worker under 18 years old who was employed in violation of the FLSA's child-labor restrictions set forth in the agency's related regulations. 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 \$56,947. This sum could be doubled to \$113,894 as the result of a "repeated" or "willful" violation.

## The Bottom Line

While these figures are the *maximum* that USDOL can impose, and in isolation the increases appear minor, it is entirely possible for civil money penalties to surpass the back wages due for the underlying FLSA violations. Furthermore, employers should assume that USDOL will impose penalties of at least some significant amount when an investigator finds child labor violations regardless of the absence of back wages due.

Even if management has looked into FLSA compliance in the past, it is always wise to conduct a regular check-up and to bear in mind that the cost of non-compliance continues to rise.