



FLSA's Civil Money Penalties To Increase

Insights

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The U.S. Labor Department has issued an Interim Final Rule that will substantially increase the civil money penalties it can impose for certain violations of the federal Fair Labor Standards Act and related regulations.

Although the agency has solicited public comments on the changes by August 15, 2016, the IFR will take effect on August 1, 2016. The adjusted levels will apply to (i) penalties USDOL assesses after that date, (ii) for FLSA violations that occurred after November 2, 2015.

Minimum Wage/Overtime Penalties

Under the FLSA's Section 16(e)(2), USDOL is authorized to impose a monetary penalty of up to \$1,100 (for now) as to each repeated or willful violation of that law's minimum-wage or overtime requirements. 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 example, a minimum-wage violation found in a preceding USDOL investigation can be the predicate for penalty in a subsequent one that discloses overtime violations.

USDOL can assert a penalty for willfulness if the employer knew that it was in violation or acted with reckless disregard for whether it was.

The maximum per-violation penalty for repeated or willful violations will jump by \$794, or about 72%, to \$1,894.

Child Labor Penalties

FLSA Section 16(e)(1) permits USDOL to assess a monetary penalty of up to \$11,000 (at present) 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 increase by \$1,080, to \$12,080.

Child-labor violations that result in a minor's serious injury or death are punishable by a penalty of, currently, up to \$50,000. Under the IFR, this maximum will jump to \$54,910, an adjustment of \$4,910. The FLSA calls for doubling the penalty imposed as the result of a repeated or willful

violation of this kind, meaning that the IFR's revision could generate an assessment of as much as *\$109,820*.

The Bottom Line

Presumably, final regulations will be forthcoming at some point after the comment period closes on August 15. The final versions of these FLSA penalties are not likely to differ from the IFR in any material way.

Employers who wish to take exception to FLSA penalty assessments must respond in prescribed ways within a short period of time. If management wants to seek counsel's assistance in this, then it is imperative to do so well in advance of the deadline.