

July 2016

## Department of Labor Updates ERISA's Civil Penalties

Pursuant to recently amended federal legislation, the Department of Labor (DOL), among several other federal agencies, is increasing its civil monetary penalties to adjust for inflation. Among the penalties to be increased are those relating to noncompliance with mandatory provisions under the Employee Retirement Income Security Act of 1974, as amended (ERISA).

An initial "catch-up" adjustment will apply to penalties assessed after August 1, 2016, for violations that occurred after November 2, 2015. Violations occurring on or before November 2, 2015, and assessments made on or before August 1, 2016, for violations that occurred after November 2, 2015, will continue to be subject to the civil penalties in place under the current regime.

Beginning in January 2017, the DOL will release its inaugural annual adjustments to civil penalties under ERISA. The penalty increases will be published annually on the DOL website.

What follows is a summary of the current penalties and new increased penalties, applicable for assessments made after August 1, 2016, for violations that occurred after November 2, 2015.

ERISA VIOLATION	CURRENT PENALTY	NEW PENALTY
Section 209(b) – failure to furnish or maintain records.	Up to \$11 per employee	Up to \$28 per employee
Section 502(c)(2) – failure or refusal to file an annual report.	Up to \$1,100 per day	Up to \$2,063 per day
Section 502(c)(4) – failure or refusal to provide: (1) Notice of funding-based limits; (2) Actuarial, financial, or funding information; (3) Notice of potential withdrawal liability; (4) Notice of rights and obligations under an automatic contribution arrangement.	Up to \$1,000 per day	Up to \$1,632 per day
Section 502(c)(5) – failure or refusal to file report under ERISA section 101(g) in regards to multiple employer welfare arrangement (MEWA).	Up to \$1,100 per day	Up to \$1,502 per day
Section 502(c)(6) – failure or refusal to furnish any documents relating to employee benefit plans (i.e., summary plan descriptions (SPDs)).	Up to \$110 per day, not to exceed \$1,100 per request	Up to \$147 per day, not to exceed \$1,472 per request

Section 502(c)(7) – failure or refusal to provide blackout period notice or notice of right to divest employer securities.	Up to \$100 per day	Up to \$131 per day
Section 502(c)(8) – failure to adopt a funding improvement or rehabilitation plan or to meet applicable benchmarks.	Up to \$1,100 per day	Up to \$1,296 per day
Section 502(c)(9)(A) – failure to meet notice requirements of State Medicaid and State Child Health Care (CHIP) – each employee a separate violation.	Up to \$100 per day	Up to \$110 per day
Section 502(c)(9)(B) – failure to provide any state information required to be disclosed regarding Medicaid- and CHIP-eligible individuals – each participant/beneficiary a separate violation.	Up to \$100 per day	Up to \$110 per day
Section 502(c)(10)(B)(i) – failure of group health plan or any health insurance issuer offering health insurance coverage in connection with plan to satisfy ERISA Sections 702(a)(1)(F), (b)(3), (c) or (d); or 702(b)(1) regarding genetic information.	\$100 per day during noncompliance period	\$110 per day during noncompliance period
Section 502(c)(10)(C)(i) – minimum penalty for <i>de minimis</i> failures to meet genetic information requirements not rectified prior to DOL notice.	\$2,500 minimum	\$2,745 minimum
Section 502(c)(10)(C)(ii) – minimum penalty for failures to meet genetic information requirements that are not <i>de minimis</i> not rectified prior to DOL notice.	\$15,000 minimum	\$16,473 minimum
Section 502(c)(10)(D)(iii)(II) – maximum penalty for unintentional failures relating to genetic information requirements.	\$500,000 maximum	\$549,095 maximum
Section 502(c)(12) – failure of CSEC Plan (Cooperative and Small Employer Charity Plan) sponsor to establish or update a funding restoration plan.	Up to \$100 per day	Up to \$100 per day
Section 502(m) – prohibited distribution under ERISA Section 206(e).	Up to \$10,000 per distribution	Up to \$15,909 per distribution
Section 715 – failure to provide Summary of Benefits Coverage under Section 2715(f).	Up to \$1,000 per failure	Up to \$1,087 per failure

Notably, although the new rules include an adjustment to the penalty under ERISA Section 502(c)(6) (concerning the failure to provide a SPD), there is no corresponding change to the penalty specified in the SPD regulations. Consequently, it is expected that the SPD rules will either have to be amended or otherwise accommodated through subsequent guidance to correct for the discrepancy between the new inflation-adjusted penalty and the penalty provided in the regulations.

Beginning in January 2017, and continuing annually thereafter, sponsors and administrators can find updated information on the DOL website for ERISA penalty increases.

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For more information, or if you have any questions concerning the new penalty amounts under ERISA, or ERISA and employee benefit plan compliance or administration in general, please contact

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