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DOL Increases Penalties for Health Plan Violations

Legislative Alert 22-2016 September 15, 2016

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| Highlights: | <ul style="list-style-type: none">▪ The 2015 Bipartisan Budget Act directed the DOL to increase civil penalty amounts under ERISA to account for inflation.▪ The increased penalty amounts reflect an initial catch-up adjustment.▪ The DOL will adjust civil penalty amounts for inflation every year, beginning in January 2017. | Important Dates: | <ul style="list-style-type: none">▪ July 1, 2016
The DOL published new penalty amounts in the Federal Register.▪ August 1, 2016
New penalty amounts for ERISA violations become effective. |
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On July 1, 2016, the Department of Labor (DOL) issued an [interim final rule](#) that increases the civil penalty amounts that may be imposed under various federal laws, including the Employee Retirement Income Security Act (ERISA). The interim final rule increases the civil penalty amounts associated with:

- Failing to file an annual Form 5500 (as applicable);
- Failing to provide the annual notice regarding premium assistance under the Children’s Health Insurance Program (CHIP); and
- Failing to provide the Summary of Benefits and Coverage (SBC), as required by the Affordable Care Act (ACA).

The increased amounts apply to civil penalties that are assessed after Aug. 1, 2016, for violations that occurred after Nov. 2, 2015.

Action Steps

Employers should become familiar with the new penalty amounts and review their health plans to ensure compliance with ERISA’s requirements. For example, employers should make sure they are complying with ERISA’s reporting and disclosure rules, including the Form 5500, annual CHIP notice and SBC requirements.

Background

The 2015 Bipartisan Budget Act (Act) includes provisions to strengthen the civil monetary penalties under various federal laws in order to maintain their deterrent effect. The Act requires the DOL to adjust the civil monetary penalties that it administers under ERISA for inflation. This adjustment must include:

- An initial “catch-up” increase to the penalty amounts, effective Aug. 1, 2016; and
- Subsequent annual adjustments for inflation, beginning in January 2017.

Catch-up Increase

The DOL’s interim final rule implements the initial catch-up increases to ERISA’s civil monetary penalties. The increased penalty amounts will become effective Aug. 1, 2016, and may apply for any violations occurring after Nov. 2, 2015. The updated maximum penalty amounts are shown in the table below.

Requirement	Current Penalty Amount	New Penalty Amount
Failure to file an annual report (Form 5500) with the DOL (unless a filing exemption applies)	Up to \$1,100 per day	Up to \$2,063 per day
Failure of a multiple employer welfare arrangement (MEWA) to file an annual report (Form M-1) with the DOL	Up to \$1,100 per day	Up to \$1,502 per day
Failure to furnish plan-related information requested by the DOL *Under ERISA, administrators of employee benefit plans must furnish to the DOL, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest summary plan description (including any summaries of plan changes not contained in the summary plan description), and the bargaining agreement, trust agreement, contract or other instrument under which the plan is established or operated.	Up to \$110 per day, but not to exceed \$1,100 per request	Up to \$147 per day, but not to exceed \$1,472 per request
Failing to provide the annual notice regarding CHIP coverage opportunities *This notice applies to employers with group health plans that cover residents of states that provide a premium assistance subsidy under CHIPRA.	Up to \$100 per day for each failure (each employee is a separate violation)	Up to \$110 per day for each failure (each employee is a separate violation)
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 \$100 per day (each participant/beneficiary is a separate violation)	Up to \$110 per day (each participant/beneficiary is a separate violation)
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	\$100 per participant or beneficiary per day during noncompliance period <ul style="list-style-type: none"> ▪ Minimum penalty of \$2,500 per participant or beneficiary for de minimis failures not corrected prior to notice from the DOL ▪ Minimum penalty of \$15,000 per participant or beneficiary for failures which are not corrected prior to notice from the DOL and are not de minimis ▪ \$500,000 cap on unintentional failures 	\$110 per participant or beneficiary per day during noncompliance period <ul style="list-style-type: none"> ▪ Minimum penalty of \$2,745 per participant or beneficiary for de minimis failures not corrected prior to notice from the DOL ▪ Minimum penalty of \$16,473 per participant or beneficiary for failures which are not corrected prior to notice from the DOL and are not de minimis ▪ \$549,095 cap on unintentional failures
Failure to provide Summary of Benefits and Coverage (SBC)	Up to \$1,000 per failure to provide the SBC	Up to \$1,087 per failure to provide the SBC

The excise tax for group health plan violations, including violations of the ACA's market reforms, is not impacted by these adjustments. This excise tax is generally \$100 per day, per individual, per violation, subject to certain minimum and maximum amounts.

Annual Adjustments

After the initial catch-up amounts become effective on Aug. 1, 2016, the DOL must update its maximum penalty amounts based on the Consumer Price Index each year. The first annual inflation adjustment will be allowed for 2017. The DOL is required to publish annual updates reflecting the annual increases. These updates must be published in the Federal Register by Jan. 15 of each year.