



## Compliance Alert

### *DOL Announces Increased Health Plan Violation Penalties*

February 1, 2019

#### Quick Facts:

- The U.S. Department of Labor (DOL) recently issued its annual inflation-adjusted penalty amounts for certain Employee Retirement Income Security Act (ERISA) violations.
- The adjusted amounts are intended to create greater incentives to comply with certain federal laws applicable to health and welfare benefit plans.
- Federal agencies, including the DOL, are required to make annual adjustments to the adjusted civil penalty amounts by January 15 each year.
- The 2019 adjustments are effective for penalties assessed after January 23, 2019 with respect to violations occurring after November 2, 2015.

#### Background

Legislation enacted in 2015 requires federal agencies to adjust for inflation certain penalty amounts by January 15 of each year to create greater incentives for plan sponsors to comply with their health and welfare benefit plan obligations. The law specifically requires the DOL to adjust penalties applicable to health and welfare benefit plans that the agency regulates under ERISA. In 2018, the DOL provided adjusted penalty amounts for violations assessed after January 2, 2018 with respect to violations occurring after November 2, 2015. This past month, the DOL issued adjusted amounts – as shown in the table on the following pages – for penalties assessed after January 23, 2019, with respect to violations occurring after November 2, 2015.

#### Action steps

Employers should review their health plans to ensure compliance with ERISA's requirements in order to avoid penalties. For example, employers should make sure they are complying with ERISA's reporting and disclosure rules, including Form 5500, annual CHIP notice and SBC requirements.



## Adjustments for 2019

The increased amounts shown below apply to penalties assessed after January 23, 2019.

REQUIREMENT	2018 ADJUSTED PENALTY AMOUNTS	2019 ADJUSTED PENALTY AMOUNTS
Failure or refusal to file an annual report (Form 5500) with the DOL (unless a filing exemption applies)	Up to \$2,140 per day	Up to \$2,194 per day
Failure of a multiple employer welfare arrangement (MEWA) to file an annual report (Form M-1) with the DOL	Up to \$1,558 per day	Up to \$1,597 per day
Failure to furnish plan-related information requested by the DOL  *Under ERISA, administrators of employee benefit plans must furnish to the DOL any documents relating to the employee benefit plan upon request	Up to \$152 per day, not to exceed \$1,527 per request	Up to \$156 per day, not to exceed \$1,566 per request
Failure to provide the annual notice regarding Children's Health Insurance Program (CHIP) coverage opportunities  *This notice applies to employers with group health plans that cover residents of states that provide a premium assistance subsidy under CHIP	Up to \$114 per day for each failure (each employee is a separate violation)	Up to \$117 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 \$114 per day (each participant/beneficiary is a separate violation)	Up to \$117 per day (each participant/beneficiary is a separate violation)



REQUIREMENT	2018 ADJUSTED PENALTY AMOUNTS	2019 ADJUSTED PENALTY AMOUNTS
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	\$114 per participant or beneficiary per day during noncompliance period <ul style="list-style-type: none"> <li>▪ Minimum penalty of \$2,847 per participant or beneficiary for de minimis failures not corrected prior to notice from the DOL</li> <li>▪ Minimum penalty of \$17,084 per participant or beneficiary for failures which are not corrected prior to notice from the DOL and are not de minimis</li> <li>▪ \$569,468 cap on unintentional failures</li> </ul>	\$117 per participant or beneficiary per day during noncompliance period <ul style="list-style-type: none"> <li>▪ Minimum penalty of \$2,919 per participant or beneficiary for de minimis failures not corrected prior to notice from the DOL</li> <li>▪ Minimum penalty of \$17,515 per participant or beneficiary for failures which are not corrected prior to notice from the DOL and are not de minimis</li> <li>▪ \$583,830 cap on unintentional failures</li> </ul>
Failure to provide Summary of Benefits and Coverage (SBC)	Up to \$1,128 per failure to provide the SBC	Up to \$1,156 per failure to provide the SBC

*EPIC Employee Benefits Compliance Services*

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