

Human Resources Series



Federal Labor Law Penalties

BY COMPANY SIZE



Federal Labor Law Penalties by Company Size

The following is an overview of various civil penalties that may apply if an employer is found to have violated federal law. Depending on the particular law and violation, employers may be subject to lawsuits brought by individuals or the federal agency responsible for enforcement of the law, as well as civil fines. Criminal penalties, which are not covered in this summary, may also apply (in most cases limited to willful violations of the law).

Please Note: This list is not all-inclusive and additional federal laws may apply to your company. The penalties imposed for a particular violation may vary depending on a number of factors, including the severity and impact of the violation, the employer's history of violations, good faith demonstrated by the employer, and company size.

ALL EMPLOYERS

[Affordable Care Act \(PPACA\)](#)

Imposes a number of new requirements on employers and group health plans related to Health Care Reform, including rules regarding dependent coverage to age 26, lifetime and annual limits, coverage of preventive services, limits on health FSA contributions, preexisting condition exclusions, and new Summary of Benefits and Coverage (SBC) and Health Insurance Exchange (Marketplace) notice requirements

Penalties for Noncompliance: Penalties vary depending on the specific violation. In general, the [Employee Retirement Income Security Act](#) (ERISA) gives the U.S. Department of Labor authority to bring a civil action to correct violations of the law (including certain requirements relating to group health plans added by PPACA). Affected persons may also file a lawsuit. The IRS may impose a penalty tax for certain violations.

Note that the federal agencies responsible for enforcement have indicated on several occasions that compliance assistance is a high priority. The agencies' [basic approach to implementation](#) of the requirements under Health Care Reform emphasizes assisting (rather than imposing penalties on) plans, issuers and others that are working diligently and in good faith to understand and come into compliance with the law.

Note: Compliance requirements may vary depending on employer size, grandfathered plan status and other factors.

[Employee Polygraph Protection Act](#)

Prohibits employers from using lie detector tests, either for pre-employment screening or during the course of employment, with certain exemptions

Penalties for Noncompliance: Civil money penalties may be assessed up to \$10,000 per violation. Employers may also be liable to the employee/prospective employee for appropriate legal and equitable relief, including employment, reinstatement, promotion, and payment of lost wages and benefits.

[Equal Pay Act](#)

Prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions

Penalties for Noncompliance: Employers may be liable for a salary increase, back pay (which includes unpaid minimum wages and unpaid overtime compensation), attorneys' fees and court costs. Liquidated damages (equal to the amount of back pay) may also be awarded, unless the employer can prove it acted in "good faith" and that it had reasonable grounds to believe its actions did not violate the law.

Federal Labor Law Penalties by Company Size

ALL EMPLOYERS (cont'd)

Fair Labor Standards Act (FLSA)

Establishes minimum wage, overtime pay, recordkeeping, and child labor standards

Penalties for Noncompliance: Employers may be liable for back pay and an equal amount in liquidated damages for violations of the minimum wage and overtime pay requirements. Civil money penalties of up to \$1,100 per violation may also be imposed for willful or repeated violations. Injunctions to restrain persons from violating the FLSA may be imposed.

For child labor violations, employers are subject to a civil money penalty of up to \$11,000 per worker for each violation and \$50,000 for each violation that causes the death or serious injury of a minor employee (which may be doubled for willful or repeated violations, up to \$100,000).

Immigration Reform & Control Act

Makes it unlawful for an employer to hire any person who is not legally authorized to work in the U.S. and requires employers to collect and document information regarding an employee's identity and employment eligibility on Form I-9; prohibits discrimination on the basis of national origin, citizenship, or immigration status for employers with 4 or more employees

Penalties for Noncompliance: Failure to comply with Form I-9 requirements may result in civil fines of \$110 to \$1,100 for each form. Hiring or continuing to employ a person knowing he or she is not authorized to work in the U.S. may result in civil fines of \$375 to \$3,200 per worker for a first offense.

Employers who unlawfully discriminate may be ordered to stop the prohibited practice and take corrective steps, including hiring or reinstating the individual discriminated against (with or without back pay), and may also be ordered to pay civil money penalties of \$375 to \$3,200 per individual for a first offense.

Occupational Safety and Health Act (OSH Act)

Requires employers to provide their employees with working conditions that are free of known dangers and created the Occupational Safety and Health Administration (OSHA), which sets and enforces protective workplace safety and health standards

Penalties for Noncompliance: Penalties are based upon the nature of the violation—

- **De minimus violations** have no direct or immediate relationship to safety and health and no penalty is required.
- A violation **other than a serious violation**, which has a direct relationship to job safety and health but probably would not cause death or serious physical harm, carries a discretionary penalty of up to \$7,000 for each violation.
- A penalty of up to \$7,000 for each violation must be proposed in the case of a **serious violation**, where there is a substantial probability that death or serious physical harm could result and the employer knew, or should have known, of the hazard.
- An employer who commits a **willful violation** may be assessed a civil penalty of not more than \$70,000 but not less than \$5,000 for each violation.
- **Repeat violations** can bring fines of up to \$70,000 for each such violation.
- **Failure to correct a prior violation** may bring a civil penalty of up to \$7,000 for each day the violation continues beyond the prescribed abatement date.

Federal Labor Law Penalties by Company Size

ALL EMPLOYERS (cont'd)

Uniformed Services Employment & Reemployment Rights Act (USERRA)

Prohibits employment discrimination against a person on the basis of past military service, current military obligations, or intent to serve

Penalties for Noncompliance: Employers may be liable for lost wages and benefits, as well as reasonable attorney and expert witness fees where an individual pursues and prevails on a court claim. Liquidated damages may also be awarded for willful violations.

EMPLOYERS WITH 15 OR MORE EMPLOYEES

Americans with Disabilities Act (ADA)

Prohibits employment discrimination against qualified individuals with disabilities

Pregnancy Discrimination Act (PDA)

Prohibits sex discrimination on the basis of pregnancy, childbirth, or related medical conditions

Title VII of the Civil Rights Act (Title VII)

Prohibits employment discrimination based on race, color, religion, sex or national origin

Penalties for Noncompliance: The remedies available for [employment discrimination](#) under the ADA, PDA, and Title VII, whether caused by intentional acts or by practices that have a discriminatory effect, may include:

- [Front pay](#) or back pay,
- Hiring, promotion, or reinstatement,
- [Reasonable accommodation](#), or
- Other actions that will make an individual "whole" (in the condition he or she would have been but for the discrimination).

Remedies also may include payment of attorneys' fees, expert witness fees, and court costs. Compensatory and punitive damages may be awarded in cases involving intentional discrimination. There are limits on the amount of compensatory and punitive damages a person can recover. These limits vary depending on the size of the employer:

- For employers with 15-100 employees, the limit is \$50,000.
- For employers with 101-200 employees, the limit is \$100,000.
- For employers with 201-500 employees, the limit is \$200,000.
- For employers with more than 500 employees, the limit is \$300,000.

The employer also may be required to take corrective or preventive actions to cure the source of the identified discrimination and minimize the chance of its recurrence, as well as discontinue the specific discriminatory practices involved in the case.

Federal Labor Law Penalties by Company Size

EMPLOYERS WITH 20 OR MORE EMPLOYEES

Age Discrimination in Employment Act (ADEA)

Prohibits employment discrimination against persons 40 years of age or older

Penalties for Noncompliance: Employers may be liable for a number of penalties, including [front pay](#) or back pay; hiring, promotion, or reinstatement; and other actions that will make an individual "whole" (in the condition he or she would have been but for the discrimination), as well as attorneys' and expert witness fees and court costs. Liquidated damages equal to the amount of back pay awarded the victim may be awarded for willful violations.

Consolidated Omnibus Budget Reconciliation Act (COBRA)

Provides workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time due to certain events such as voluntary or involuntary job loss, reduction in the hours worked, death, divorce, and other life events

Penalties for Noncompliance: Employers may be liable for a tax penalty of \$100 per qualified beneficiary (up to \$200 per family) for each day of noncompliance with COBRA. For unintentional violations that are due to reasonable cause and not willful neglect, the maximum tax penalty is the lesser of 10% of the amount paid or incurred by the employer during the preceding tax year for group health plans or \$500,000.

Under [ERISA](#), civil money penalties up to \$110 per day may be assessed for failure to comply with the COBRA notice requirements. Affected persons may also file a lawsuit.

EMPLOYERS WITH 50 OR MORE EMPLOYEES

Family and Medical Leave Act (FMLA)

Entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave

Penalties for Noncompliance: Employers may be liable to affected employees for—

- Lost wages, salary, benefits or other compensation
- Actual monetary losses sustained by the employee as a direct result of the violation (such as the cost of providing care), up to a sum equal to 12 weeks of wages or salary for the employee (26 weeks in the case of military caregiver leave)
- Interest on the above amounts calculated at the prevailing rate
- Liquidated damages
- Appropriate equitable relief, including employment, reinstatement, or promotion
- Attorneys' fees, expert witness fees and court costs

Federal Labor Law Penalties by Company Size

EMPLOYERS WITH 50 OR MORE EMPLOYEES (cont'd)

PPACA "Pay or Play" (Employer Shared Responsibility)

Special Update: Employers with 100 or more full time employees (including full-time equivalents) are subject to the requirements starting in 2015. The requirements will not apply until 2016 for employers with 50 to 99 full-time employees (including full-time equivalents) who certify that they meet [certain eligibility criteria](#) related to workforce size and maintenance of workforce, hours of service, and previously offered health coverage.

Requires large employers—generally those with at least 50 full-time employees, including full-time equivalent employees—to offer affordable health insurance that provides a minimum level of coverage to full-time employees (and their dependents) or pay a penalty tax if any full-time employee is certified to receive a premium tax credit for purchasing individual coverage on a Health Insurance Exchange (Marketplace)

Penalty for Employers Not Offering Coverage*: A large employer that does not offer coverage or offers coverage to fewer than 95% (70% in 2015) of its full-time employees (and their dependents) during the calendar year owes a penalty equal to the number of full-time employees employed for the year (minus up to 30) multiplied by \$2,000, as long as at least one full-time employee receives a premium tax credit. For an employer that offers coverage for some months but not others during the calendar year, the penalty is computed separately for each month for which coverage was not offered. The amount of the penalty for the month equals the number of full-time employees employed for the month (minus up to 30) multiplied by 1/12 of \$2,000.

Penalty for Employers Offering Coverage That is Not Affordable or Does Not Provide Minimum Value*: For a large employer that offers coverage to at least 95% (70% in 2015) of its full-time employees (and their dependents), but has one or more full-time employees who receive a premium tax credit, the penalty is computed separately for each month. The amount of the penalty for the month equals the number of full-time employees who receive a premium tax credit for that month multiplied by 1/12 of \$3,000. The amount of the penalty for any calendar month is capped at the number of the employer's full-time employees for the month (minus up to 30) multiplied by 1/12 of \$2,000.

**Note: Penalty amounts are subject to adjustment for inflation. [Transition relief](#) may be available to certain employers for 2015 with respect to offers of coverage (including offers of coverage to dependents) and calculating the payment.*

EMPLOYERS WITH 100 OR MORE EMPLOYEES

Worker Adjustment & Retraining Notification Act (WARN)

Requires employers to provide notification 60 calendar days in advance of qualified plant closings and mass layoffs to affected workers and notice to state dislocated worker units so that they can promptly offer dislocated worker assistance

Penalties for Noncompliance: Affected employees may bring individual or class action lawsuits against an employer believed to be in violation of the law (reasonable attorneys' fees may be awarded to the prevailing party). An employer who violates the WARN provisions is liable to each affected employee for an amount equal to back pay and benefits for the period of the violation, up to 60 days. This may be reduced by the period of any notice that was given, and any voluntary payments that the employer made to the employee.

An employer who fails to provide the required notice to the unit of local government is subject to a civil penalty not to exceed \$500 for each day of violation. The employer may avoid this penalty by satisfying the liability to each employee within three weeks after the closing or layoff.

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Provided by:



Stratford Employer Services
271 US Highway 46, G206/G207
Fairfield, NJ 07004

Phone: 866-217-9053
www.getstratford.com

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