

DOL Penalties Increase for 2018

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In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act of 2015 (the “Inflation Adjustment Act”) to direct federal agencies to adjust the civil monetary penalties for inflation every year. Civil penalties ensure compliance with federal regulation by incentivizing employers not to violate federal regulation and providing federal agencies the power to ensure compliance. However, when penalties are too low, or have failed to be increased for inflation, compliance with federal regulation remains stagnant.

The Department of Labor (DOL) recently published the annual adjustments for 2018 that increase certain penalties applicable to employee benefit plans.

The updated penalties went into effect on January 2, 2018 and apply to penalties assessed after the effective date

Annual Penalty Adjustments for 2018

The following updated penalties are applicable to health and welfare plans subject to ERISA.

Description	Current Penalty	Updated Penalty
Failure to file Form 5500	Up to \$2,097 per day	Up to \$2,140 per day
Failure of a MEWA to file reports	Up to \$1,527 per day	Up to \$1,558 per day
Failure to provide CHIP Notice	Up to \$112 per day per employee	Up to \$114 per day per employee
Failure to disclose CHIP/Medicare Coordination to the State	\$112 per day per violation (per participant/beneficiary)	\$114 per day per violation (per participant/beneficiary)
Failure to provide SBCs	Up to \$1,105 per failure	Up to \$1,128 per failure
Failure to furnish plan documents (including SPDs/SMMs)	\$149 per day \$1,496 cap per request	\$152 per day \$1,527 cap per request
Genetic information failures	\$112 per day	\$114 per day
De minimis failures to meet genetic information requirements	\$2,790 minimum	\$2,847 minimum
Failure to meet genetic information requirements – not de minimis failures	\$16,742 minimum	\$17,084 minimum
Cap on unintentional failures to meet genetic information requirements	\$558,078 maximum	\$569,468 maximum

Employer Action

Private employers, including non-profits, should ensure employees receive required notices timely (SBC, CHIP, SPD, etc.) to prevent civil penalty assessments. In addition, employers should ensure Form 5500s are properly and timely filed. Finally, employers facing document requests from EBSA should ensure documents are provided timely, as requested.