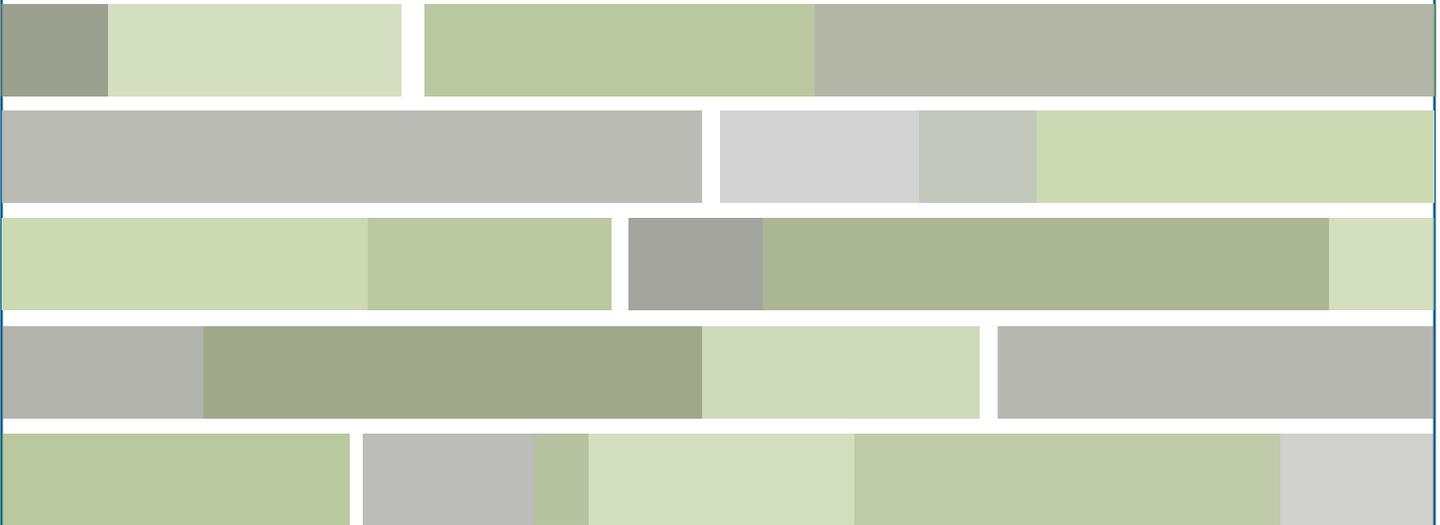


Federal Labor Law Penalties by Company Size



Federal Labor Law Penalties

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 (ACA)

Imposes various requirements on employers and group health plans related to Health Care Reform, including rules regarding **employer payment plans** (arrangements under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy, or uses its funds to directly pay the premium for an individual policy), dependent coverage to age 26, lifetime and annual limits, coverage of preventive services, limits on health FSA contributions, preexisting condition exclusions, and 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 the ACA). Affected persons may also file a lawsuit. The IRS may impose a penalty tax for certain violations.

Penalties for Employer Payment Plans: These arrangements may be subject to a **\$100 per day excise tax per applicable employee** (which is \$36,500 per year, per employee) under the federal tax code. Transition relief was [previously granted](#) to small employers sponsoring employer payment plans (generally those with fewer than 50 full-time employees, including full-time equivalents) through June 30, 2015. **As of July 1, 2015, such employers may be liable for the excise tax.**

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

Federal Labor Law Penalties

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 \$19,787 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.

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 \$1,894 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 \$12,080 per worker for each violation and \$54,910 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 \$109,820).

Federal Labor Law Penalties

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 \$12,471 for each violation.
- A penalty of up to \$12,471 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 \$124,709 but not less than \$8,908 for each violation.
- **Repeat violations** can bring fines of up to \$124,709 for each such violation.
- **Failure to correct a prior violation** may bring a civil penalty of up to \$12,471 for each day the violation continues beyond the prescribed abatement date.

Federal Labor Law Penalties

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

Genetic Information Nondiscrimination Act (GINA)

Prohibits employment discrimination based on genetic information

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 (including sexual orientation and gender identity), or national origin

Penalties for Noncompliance: The remedies available for [employment discrimination](#) under the ADA, GINA, 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).

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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.

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 to the victim may be awarded for willful violations.

Consolidated Omnibus Budget Reconciliation Act (COBRA)

Provides workers and their families who lose their health benefits (including legally married same-sex spouses who are otherwise eligible for coverage under the plan) 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

Federal Labor Law Penalties

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 (including those in legal same-sex marriages) 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.

ACA "Pay or Play" (Employer Shared Responsibility) & Information Reporting

Note: As a reminder, [transition relief](#) delayed compliance with the pay or play requirements until 2016 for employers with **50 to 99 full-time employees** (including full-time equivalents) that certified that they met [certain eligibility criteria](#). For employers with **non-calendar year health plans**, this transition relief **continues to apply** for any calendar month during the 2015 plan year that falls in 2016.

Requires applicable large employers (ALEs)—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). ALEs also have [information reporting responsibilities](#) regarding the coverage offered (or not offered) to employees.*

Federal Labor Law Penalties

Penalty for Employers Not Offering Coverage: An ALE that does not offer coverage or offers coverage to fewer than 95%** 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 \$2,080 (for 2015) and \$2,160 (for 2016), as long as at least one full-time employee receives a premium tax credit. For an ALE 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 \$2,080 (for 2015) and \$2,160 (for 2016).

Penalty for Employers Offering Coverage That is Not Affordable or Does Not Provide Minimum Value: For an ALE that offers coverage to at least 95%** 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 \$3,120 (for 2015) and \$3,240 (for 2016). The penalty is the lesser of the amount calculated or the amount that would be owed if the employer did not offer coverage.

Information Reporting Penalties: General reporting penalty provisions for failure to file correct information returns and employee statements may apply—ranging from \$50-\$260 per return, with a maximum penalty of over \$3 million per year (adjusted for inflation)—with certain exceptions if the failure is due to reasonable cause and not willful neglect. Lower penalties are applicable to employers with gross receipts of **\$5,000,000 or less**. In general, the IRS **will not impose penalties** for 2015 returns and statements filed and furnished in 2016 on reporting entities that can show that they have made good faith efforts to comply.

Self-insured employers providing minimum essential health coverage (regardless of size**) are subject to a [separate set](#) of information reporting requirements; however, the penalties for noncompliance are the same.*

*** For the months in 2016 that are part of the 2015 plan year for employers with non-calendar year plans, 70% should be substituted for 95%, and 80 should be substituted for 30 (for ALEs with 100 or more full-time employees). In addition, the [transition relief for dependent coverage](#) will generally not be available for periods on or after January 1, 2016 (or, if applicable, for any period after the last day of the 2015 plan year).*

Federal Labor Law Penalties

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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