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of 1996 (Pub. L. 104–134, section 31001(s)), requires that inflationary adjustments be periodically made in these civil money penalties according to a specified cost-of-living formula. This part defines terms necessary for administration of the civil money penalty provisions, describes the violations for which a penalty may be imposed, and describes criteria for determining the amount of penalty to be assessed. The procedural requirements for assessing and contesting such penalties are contained in 29 CFR part 580.

[66 FR 63503, Dec. 7, 2001]

§ 578.2 Definitions.

(a) *Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060 (29 U.S.C. 201 et seq.));

(b) *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division who is authorized by the Administrator to perform any of the functions of the Administrator under this part.

(c) *Person* includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

§ 578.3 What types of violations may result in a penalty being assessed?

(a) A penalty of up to $1,000 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act; Provided, however, that for any violation occurring on or after January 7, 2002 the civil money penalty amount will increase to up to $1,100. The amount of the penalty will be determined by applying the criteria in § 578.4.

(b) *Repeated violations*. An employer's violation of section 6 or section 7 of the Act shall be deemed to be ''repeated'' for purposes of this section:

(1) Where the employer has previously violated section 6 or 7 of the Act, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or

(2) Where a court or other tribunal has made a finding that an employer has previously violated section 6 or 7 of the Act, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

(c) *Willful violations*. (1) An employer's violation of section 6 or section 7 of the Act shall be deemed to be ''willful'' for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful.

(2) For purposes of this section, an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful.

(3) For purposes of this section, an employer's conduct shall be deemed to be in reckless disregard of the requirements of the Act, among other situations, if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.

[57 FR 49129, Oct. 29, 1992; 57 FR 57280, Dec. 3, 1992, as amended at 66 FR 63503, Dec. 7, 2001]

§ 578.4 Determination of penalty.

(a) In determining the amount of penalty to be assessed for any repeated or willful violation of section 6 or section 7 of the Act, the Administrator shall consider the seriousness of the violations and the size of the employer's business.

(b) Where appropriate, the Administrator may also consider other relevant factors in assessing the penalty, including but not limited to the following:

(1) Whether the employer has made efforts in good faith to comply with the provisions of the Act and this part;

(2) The employer's explanation for the violations, including whether the violations were the result of a bona fide dispute of doubtful legal certainty;

(3) The previous history of violations, including whether the employer is subject to injunction against violations of the Act;

(4) The employer's commitment to future compliance;

(5) The interval between violations;

(6) The number of employees affected; and

(7) Whether there is any pattern to the violations.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

Sec.
579.1 Purpose and scope.
579.2 Definitions.
579.3 Violations for which child labor civil money penalties may be assessed.
579.4 [Reserved]
579.5 Determining the amount of the penalty and assessing the penalty.

AUTHORITY: 29 U.S.C. 203(l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 09–2009 (Nov. 16, 2009): Delegation of Authorities and Assignment of Responsibilities to the Administrator, Wage and Hour Division, 74 FR 58836; 104 Stat. 890 (28 U.S.C. 2461 note), as amended by 110 Stat. 1321–373 and 112 Stat. 3293.

§ 579.1 Purpose and scope.

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989, the Omnibus Budget Reconciliation Act of 1990, the Compactor and Balers Safety Standards Modernization Act of 1996, and the Genetic Information Nondiscrimination Act of 2008, provides for the imposition of civil money penalties in the following manner:

(1)(i) Any person who violates the provisions of sections 212 or 213(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed:

(A) $11,000 for each employee who was the subject of such a violation; or

(B) $50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

(ii) For purposes of paragraph (a)(1)(i)(B) of this section, the term ''serious injury'' means:

(A) Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(B) Permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(C) Permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(2) Any person who repeatedly or willfully violates section 206 or 207 of the FLSA, relating to wages, shall be subject to a civil penalty not to exceed $1,100 for each such violation.

(3) In determining the amount of any penalty under section 216(e) of the FLSA, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under section 216(e) of the FLSA, when finally determined, may be:

(i) Deducted from any sums owing by the United States to the person charged;

(ii) Recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(iii) Ordered by the court, in an action brought for a violation of section 215(a)(4) or a repeated or willful violation of section 215(a)(2) of the FLSA, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under section 216(e) of the FLSA shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section