

**Wage and Hour Division, Labor**

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that employment not be in “close proximity” to machinery or equipment.

(g) An employer or group of employers granted such a waiver who owns, operates, or causes to be operated any vehicle for the transportation of such minors shall be responsible for assuring that:

(1) Every such vehicle is in compliance with all applicable Federal and State safety and health standards and with the rules and regulations issued by the Bureau of Motor Carrier Safety, Federal Highway Administration of the U.S. Department of Transportation;

(2) Every such vehicle be designed for transporting passengers and be operated by a lawfully licensed driver; and

(3) A vehicle liability insurance policy provides insurance in an amount not less than the amounts applicable to vehicles used in the transportation of passengers under the Interstate Commerce Act and its regulations. These amounts currently are as follows:

**INSURANCE REQUIRED FOR PASSENGER EQUIPMENT**

	12 or less passengers	More than 12 passengers
Limit for bodily injuries to or death of 1 person .....	\$100,000	\$100,000
Limit for bodily injuries to or death of all persons injured or killed in any 1 accident (subject to a maximum of \$100,000 for bodily injuries to or death of 1 person)	300,000	500,000
Limit for loss or damage in any 1 accident to property of others (excluding cargo) .....	50,000	50,000

(h) A copy of the waiver shall be posted or readily available at the site or sites of such employment of such minors during the entire period.

(i) The employer or group of employers shall maintain and preserve a record of the name, address, and occupation of each minor employed under the waiver in accordance with §516.33(b) of this chapter. In addition, the record shall also include the date of birth, the name and address of the school in which the minor is enrolled, and the number of hours worked each day and each week of the designated period. Each employer required to maintain records under this part shall preserve them for a period of at least 2 years.

(j) A waiver shall be effective for the period designated therein with no provision for amendment

[43 FR 26562, June 21, 1978; 43 FR 28471, June 30, 1978]

**§575.9 Failure to comply with the terms and conditions of the waiver.**

If the employer or group of employers granted a waiver pursuant to section 13(c)(4) of the Act and this part do not comply with the terms and conditions set forth in the waiver and this part, the waiver shall be null and void and the employer or group of employers will be subject to civil money penalties under section 16(e) of the Act.

**PART 578—MINIMUM WAGE AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES**

Sec.

578.1 What does this part cover?

578.2 Definitions.

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

578.4 Determination of penalty.

AUTHORITY: Sec. 9, Pub. L. 101-157, 103 Stat. 938, sec. 3103, Pub. L. 101-508, 104 Stat. 1388-29 (29 U.S.C. 216(e)), Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by Pub. L. 104-134, section 31001(s), 110 Stat. 1321-358, 1321-373.

SOURCE: 57 FR 49129, Oct. 29, 1992, unless otherwise noted.

**§578.1 What does this part cover?**

Section 9 of the Fair Labor Standards Amendments of 1989 amended section 16(e) of the Act to provide that any person who repeatedly or willfully violates the minimum wage (section 6) or overtime provisions (section 7) of the Act shall be subject to a civil money penalty not to exceed \$1,000 for each such violation. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act 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

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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

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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;

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- (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(1), 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 554 of title 5, United States Code, and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 212 of the FLSA, sums collected as penalties pursuant to section 216(e) of the FLSA