

Penalty for Failure to File Form 5500 Almost Doubles

Labor & Employment Law Update

By Kelly Haab-Tallitsch on July 29, 2016

On July 1, 2016, the DOL issued an interim final rule that significantly increases the penalty amounts that may be imposed on plan sponsors for certain ERISA violations. The final rule ups the penalties for certain failures including failure to file an annual Form 5500 and failure to provide the Summary of Benefits and Coverage, as required by the Affordable Care Act.

These increases are the result of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 whereby federal agencies were directed to adjust their civil monetary penalties for inflation each year. The increased penalty amounts will become effective Aug. 1, 2016, and may apply for any violations occurring after Nov. 2, 2015.

The new penalty amounts will affect both retirement and health and welfare plans, and some increases are substantial. Examples of increased maximum penalty amounts are below:

- Failure to file a Form 5500: **\$2,063** per day (*from \$1,100 per day*)
- Failure of a multiple employer welfare arrangement to file a Form M-1: **\$1,502** per day (*from \$1,100 per day*)
- Failure to furnish plan-related information requested by the DOL: **\$147** per day, up to **\$1,472** per request (*from \$110 per day, up to \$1,100 per request*)
- Willful failure by a health plan sponsor to provide a Summary of Benefits and Coverage: **\$1,087** per failure (*from \$1,000 per failure*)
- Failure of a defined contribution plan to provide participants with blackout notices or notice of the right to divest employer securities: **\$131** per day (*from \$100 per day*)
- Payment by a pension plan in violation of benefit restrictions and limitations: **\$15,909** per distribution (*from \$10,000 per distribution*)
- Failure of a pension plan to:
 - notify participants of certain benefit restrictions and/or benefit limitations
 - furnish certain multiemployer plan financial and actuarial reports upon request
 - furnish an estimate of withdrawal liability

- furnish automatic contribution arrangement notices: **\$1,632** per day (*from \$1,000 per day*)

Beginning in 2017, ERISA penalties will be adjusted on an annual basis no later than Jan. 15 of each year.

The increased penalty amounts are a reminder that it's important for employers to understand the requirements imposed on them by ERISA and make sure they are in compliance with those requirements to avoid potential penalties at the newly increased rates.

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