



DOL Announces 2023 Penalties for Health & Welfare Plan Compliance Errors

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Since 2015, federal agencies have been required to annually review the laws and regulations they enforce to adjust applicable penalties for inflation. These adjustments, or so the theory goes, provide higher incentives for plan sponsors to ensure their benefit plans and programs remain compliant. Specifically, the U.S. Department of Labor (DOL) must adjust penalties under the Employee Retirement Income Security Act (ERISA) annually. The DOL recently issued its annual adjusted amounts for penalties assessed after January 15, 2023, for violations that occur after November 2, 2015.

Action steps

To avoid penalties, employers should review their health plans to ensure compliance with ERISA’s requirements. Specifically, employers should ensure they are complying with ERISA’s reporting and disclosure rules, including Form 5500, annual CHIP notice, and SBC requirements.

Adjustments for 2023

Violation	2022 Penalty	2023 Penalty
Failure or refusal to file an annual report (Form 5500) with the DOL (unless a filing exemption applies)	Up to \$2,400 per day	Up to \$2,586 per day
Failure of a multiple employer welfare arrangement (MEWA) to file an annual report (Form M-1) with the DOL	Up to \$1,746 per day	Up to \$1,881 per day
Failure to furnish plan-related information requested by the DOL	Up to \$171 per day, not to exceed \$1,713 per request	Up to \$184 per day, not to exceed \$1,846 per request

Violation	2022 Penalty	2023 Penalty
<p>Failure to provide the annual notice regarding Children’s Health Insurance Program (CHIP) coverage opportunities</p> <p>(Applies to employers with group health plans that cover residents of states that provide a premium assistance subsidy under CHIP.)</p>	<p>Up to \$127 per day per failure (each employee is a separate violation)</p>	<p>Up to \$137 per day per failure (each employee is a separate violation)</p>
<p>Failure to timely disclose information to a state regarding group health plan coverage of an individual who is covered under a Medicaid or CHIP plan</p>	<p>Up to \$127 per day (each participant/beneficiary is a separate violation)</p>	<p>Up to \$137 per day (each participant/beneficiary is a separate violation)</p>
<p>Failure by any health plan sponsor (or any health insurance issuer offering health insurance coverage in connection with the plan) to comply with the requirements of the Genetic Information Nondiscrimination Act (GINA) for health plans</p>	<p>\$127 per participant or beneficiary per day during noncompliance period</p> <ul style="list-style-type: none"> ▪ Minimum penalty of \$3,192 per participant or beneficiary for de minimis failures not corrected prior to notice from the DOL ▪ Minimum penalty of \$19,157 per participant or beneficiary for failures not corrected prior to notice from the DOL and that are not de minimis ▪ \$638,556 cap on unintentional failures 	<p>\$137 per participant or beneficiary per day during noncompliance period</p> <ul style="list-style-type: none"> ▪ Minimum penalty of \$3,439 per participant or beneficiary for de minimis failures not corrected prior to notice from the DOL ▪ Minimum penalty of \$20,641 per participant or beneficiary for failures not corrected prior to notice from the DOL and that are not de minimis ▪ \$688,012 cap on unintentional failures
<p>Failure to provide Summary of Benefits and Coverage (SBC)</p>	<p>Up to \$1,264 per failure to provide the SBC</p>	<p>Up to \$1,362 per failure to provide the SBC</p>

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