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Penalties Increase for Employers Violating Certain Federal Labor Laws

Employers that do not comply with certain requirements under a number of federal labor laws will face increased fines beginning with civil penalties assessed **after August 1, 2016** (whose associated violations occurred after November 2, 2015).

Key Penalty Increases

Penalty increases [announced by the U.S. Department of Labor](#) that may be of particular interest include:

- Repeated or willful violations of the Fair Labor Standards Act (FLSA) minimum wage or [overtime](#) pay requirements will be subject to a penalty of **up to \$1,894** per violation (formerly \$1,100);
- Willful violations of the Family and Medical Leave Act (FMLA) [posting requirement](#) will be subject to a penalty **not to exceed \$163** for each separate offense (formerly \$110) (*note*: covered employers must post this general notice **even if no employees are eligible** for FMLA leave);
- Failure to provide employees with a Children's Health Insurance Program (CHIP) [notice](#) will be subject to a penalty of **up to \$110 per day** per violation (formerly \$100);
- Failure to provide a [Summary of Benefits and Coverage](#) (SBC) will be subject to a penalty of **up to \$1,087 per failure** (formerly \$1,000);
- Failure or refusal to file a Form 5500 will be subject to a penalty of **up to \$2,063 per day** (formerly \$1,100); and
- Violations of the Occupational Safety and Health Administration's [posting requirement](#) will be subject to a maximum penalty of **\$12,471** for each violation (formerly \$7,000).

Our [Compliance by Company Size](#) chart features a summary of key federal labor laws that may apply to a company based on its number of employees.

Proposed Changes to Form 5500 Include Elimination of Filing Exemption for Small Group Health Plans

The U.S. Department of Labor and other federal agencies have released two proposed rules revising the Form 5500 and Form 5500-SF Annual Returns/Reports that are required to be filed by certain employee benefit plans.

Among other changes, the [proposed rules](#) would:

- Introduce basic reporting requirements for **all group health plans that have fewer than 100 participants** and are covered by Title I of the Employee Retirement Income Security Act (ERISA)--most of which are **currently exempt** from reporting requirements;
- Create a **new schedule** (Schedule J), by which applicable group health plans would satisfy certain ERISA reporting requirements added by the Affordable Care Act (ACA); and
- **Revise** the Schedule C reporting requirements to more closely track the information that plan service providers are required to disclose to plan fiduciaries.

The target for implementing the proposed revisions is the **Plan Year 2019** Form 5500 Series Annual Returns/Reports, though some form changes may be made earlier or later.

Employers May Continue to File ACA Information Returns (Forms 1094 & 1095)

While the deadline to electronically file Affordable Care Act (ACA) information returns with the IRS passed on June 30, 2016, the ACA Information Returns (AIR) system used to electronically file those returns, as well as the ability to complete required system testing, **remains up and running**.

Rejected, 'Accepted with Errors,' and Late Filings

Employers whose filings were rejected by the [AIR system](#) have **60 days** from the date of rejection to submit a replacement and have the rejected filing treated as timely filed. In addition, employers whose filings received an "Accepted with Errors" message may continue to submit corrections after June 30, 2016.

Employers unable to submit all required ACA information returns by June 30, 2016 should still file their returns after the deadline. Filers that missed the June 30, 2016 deadline will generally not be assessed late filing penalties if the reporting entity has made legitimate efforts to register with the AIR system and to file its information returns, and it continues to make such efforts and completes the process as soon as possible. In addition, consistent with existing information reporting rules, filers that are assessed penalties may still meet the criteria for a [reasonable cause waiver](#).



Review our [Benefits Notices Calendar](#) for additional notice and disclosure requirements that apply to group health plans under federal law.



Check out our section on [Information Reporting](#) for more on the ACA employer information reporting requirements.

Best Practices for Preventing Workplace Harassment

A new report from the U.S. Equal Employment Opportunity Commission (EEOC) highlights best practices for employers to prevent and respond to workplace harassment.

Harassment Defined

Harassment is a form of [employment discrimination](#) that violates Title VII of the Civil Rights Act (Title VII), the Americans with Disabilities Act (ADA), and the Age Discrimination in Employment Act (ADEA). The EEOC defines harassment as unwelcome conduct that is based on race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age (40 or older), disability, or genetic information.

Harassment becomes unlawful where enduring the offensive conduct becomes a condition of continued employment, or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Best Practices

According to the [EEOC report](#), employers should:

- Foster an **organizational culture** in which harassment is not tolerated;
- Adopt and maintain a comprehensive **anti-harassment policy** (which prohibits harassment based on any protected characteristic, and which includes social media considerations) and establish **procedures** consistent with the best practices outlined in the report;
- Ensure that any such anti-harassment policy--especially details about **how to complain** of harassment and **how to report** observed harassment--is **frequently communicated** to employees, in a variety of forms and methods;
- Ensure that where harassment is found to have occurred, discipline is **prompt and proportionate** to the severity of the infraction. Discipline should be **consistent**, and not give (or create the appearance of) undue favor to any particular employee; and
- Dedicate sufficient resources to **training middle-management and first-line supervisors** on how to respond effectively to harassment that they observe, that is reported to them, or of which they have knowledge or information--even before such harassment reaches a legally-actionable level.

Note: Employers may have specific obligations regarding harassment under state or local laws (e.g., training or notice requirements and/or additional protected classes).

More information regarding employer responsibilities under federal nondiscrimination laws may be found in our section on [Discrimination](#).



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5 Guidelines for Protecting Employees from Heat Stress

With a heat wave spreading across much of the country, it is critical that employers recognize the hazards of working in hot environments and take steps to reduce the risk to workers. Consider the following actions that can help [protect employees](#):

1. **Provide heat stress training.** Topics you may wish to address include worker risk, prevention, symptoms (including the importance of workers monitoring themselves and coworkers), treatment, and personal protective equipment.
2. **Schedule hot jobs for the cooler part of the day.** The best way to prevent heat illness is to make the work environment cooler. Monitor weather reports daily and reschedule jobs with high heat exposure to cooler times of the day. When possible, routine maintenance and repair projects should be scheduled for the cooler seasons of the year.
3. **Provide rest periods with water breaks.** Provide workers with plenty of cool water in convenient, visible locations in shade or air conditioning that are close to the work area. Avoid alcohol and drinks with large amounts of caffeine or sugar.
4. **Monitor workers who are at risk of heat stress.** Workers are at an increased risk of heat stress from personal protective equipment, when the outside temperature exceeds 70°F, or while working at high energy levels. Workers should be monitored by establishing a routine to periodically check them for signs and symptoms of overexposure.
5. **Acclimatize workers by exposing them for progressively longer periods to hot work environments.** Allow workers to get used to hot environments by gradually increasing exposure over at least a 5-day work period. The U.S. Occupational Safety and Health Administration (OSHA) suggests beginning with 50% of the normal workload and time spent in the hot environment, and then gradually building up to 100% by the fifth day.

Under federal law, employers have a [legal obligation](#) to provide a workplace free of heat-related hazards that are likely to cause death or serious bodily harm. Additionally, certain states may have their own heat-illness prevention standards.

Resources for Employers and Workers

OSHA's [Heat Illness Website](#) provides information and resources on heat illness for workers and employers, including how to prevent it, what to do in the case of an emergency, educational materials, and a curriculum to be used for workplace training. The Centers for Disease Control and Prevention also has a page dedicated to providing [information on heat stress](#) (including symptoms and first aid), along with fact sheets and other resources for protecting employees.



Our section on [Safety & Wellness](#) includes additional tips for maintaining a safe and healthy workplace.

Marshall & Sterling Insurance will continue to provide you with updates and information regarding important issues. Should you have specific questions or need more information, please contact us.

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