CLIENT ALERTS & INSIGHTS

DOL's New Assessment Procedures for Calculating Civil Monetary Penalties Significantly Increases Liability for Employers.

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The U.S. Department of Labor recently changed how it assesses civil money penalties against employers for violating federal child labor laws, which could significantly increase fines for hiring underage children to perform dangerous jobs or keeping inaccurate records.

In a memo to regional administrators and district directors, Administrator Jessica Looman said the Wage and Hour Division would no longer fine employers for nonserious injury and noninjury violations on a *per child* basis and instead issue fines on a *per violation* basis.

The new *per violation* assessment has the potential to increase employer penalties significantly. For instance, if there are three separate violations relative to a specific child's employment-for employing an underage child, for having the child work in a dangerous job prohibited under federal law, and for keeping inaccurate records-the employer could be assessed with three separate penalties, *each of which* could reach the statutory maximum of $15,138. Under the prior per child basis, the maximum penalty could not exceed $15,138, regardless of the number of violations relative to a child's unlawful employment. These increased penalties can be adjusted.

In calculating the penalty amount, WHD will apply the statutory maximum of $15,138 and then increase or decrease the amount of the fine based on aggravating or mitigating "gravity" factors and the size of the business. The agency will first look at gravity factors such as the number of minors employed, their ages, the length of their employment, the hours of their employment, whether the work is hazardous, and the number of repeat or willful violations. Once these factors have been considered, the agency will then adjust the fine based on the size of the business, its financial resources, the size of its workforce, and its annual sales. Finally, the agency will consider the size of the business and the gravity of the violation, as well as regulatory factors, to determine the final penalty amount.

In addition, employers can face increased liability under the FLSA, which prohibits the shipment of "hot goods" that were produced in an establishment in or about which oppressive child labor occurred. The previous policy limited the assessments for hot goods cases on a *per investigation* basis. The new policy calls for a *per shipment* or *delivery for shipment* basis.

Under the FLSA, employers also are required to record a birth date for every employee under the age of 19 and retain those records for three years. Notably, the new policy changes the assessment for child labor recordkeeping violations. Recordkeeping violations will now be assessed *per employee*

. For example, if an employer fails to keep records of dates of birth for five of its employees under the age of 19, the agency may assess fines for five separate recordkeeping violations.

If you have any questions on this topic, please contact a member of our Labor & Employment Practice Group.

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