

§ 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—TIP RETENTION, 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: 29 U.S.C. 216(e), as amended by sec. 9, Pub. L. 101-157, 103 Stat. 938, sec. 3103, Pub. L. 101-508, 104 Stat. 1388-29, sec. 302(a), Pub. L. 110-233, 122 Stat. 920, and sec. 1201, Div. S., Tit. XII, Pub. L. 115-141, 132 Stat. 348; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s), Pub. L. 104-134, 110 Stat. 1321-358, 1321-373, and sec. 701, Pub. L. 114-74, 129 Stat 584.

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 \$1,100 for each such violation. In 2001, the Wage and Hour Division (WHD) adjusted this penalty for inflation pursuant to 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)). The Genetic Information Nondiscrimination Act of 2008 amended section 16(e) of the Act to reflect this increase. *See* Public aw. 110-233, sec. 302(a), 122 Stat. 920. Section 1201(b)(3) of the Consolidated Appropriations Act, 2018, amended section 16(e) to add that any person who vio-

lates section 3(m)(2)(B) of the Act shall be subject to a civil money penalty not to exceed \$1,100. 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)) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74, section 701), requires that inflationary adjustments be annually made in these civil money penalties according to a specified cost-of-living formula. This part defines terms necessary for 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 part 580 of this chapter.

[85 FR 86791, Dec. 30, 2020]

§ 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, 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.

[57 FR 49129, Oct. 29, 1992, as amended at 82 FR 2229, Jan. 9, 2017]

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

(a) *In general.* (1) A penalty of up to \$1,409 per violation may be assessed against any person who violates section 3(m)(2)(B) of the Act.

(2) A penalty of up to \$2,515 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act. The amount of the penalties stated in paragraphs (a)(1) and (2) of this section will be determined by applying the criteria in § 578.4.

§ 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 section 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 section 7 of the Act, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with 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, the employer's receipt of advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful, among other situations, can be sufficient to show that the employer's conduct is knowing, but is not automatically dispositive.

(3) For purposes of this section, reckless disregard of the requirements of the Act means, among other situations, that the employer should have inquired further into whether its conduct was in compliance with the Act and failed to make adequate further inquiry.

[86 FR 52986, Sept. 24, 2021, as amended at 87 FR 2335, Jan. 14, 2022; 88 FR 2217, Jan. 13, 2023; 89 FR 1816, Jan. 11, 2024; 90 FR 1861, Jan. 10, 2025]

§ 578.4 Determination of penalty.

(a) In determining the amount of penalty to be assessed for any violation

29 CFR Ch. V (7–1–25 Edition)

of section 3(m)(2)(B) or 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;

(5) The interval between violations;

(6) The number of employees affected; and

(7) Whether there is any pattern to the violations.

[57 FR 49129, Oct. 29, 1992, as amended at 86 FR 52987, Sept. 24, 2021]

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(m), (l), 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. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note.

§ 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