

§ 801.42

(b) The Solicitor of Labor, through authorized representatives, shall represent the Administrator in all administrative hearings under the provisions of section 6 of the Act and this part.

§ 801.42 Civil money penalties—assessment.

(a) A civil money penalty in an amount not to exceed \$26,262 for any violation may be assessed against any employer for:

(1) Requiring, requesting, suggesting or causing an employee or prospective employee to take a lie detector test or using, accepting, referring to or inquiring about the results of any lie detector test of any employee or prospective employee, other than as provided in the Act or this part;

(2) Taking an adverse action or discriminating in any manner against any employee or prospective employee on the basis of the employee's or prospective employee's refusal to take a lie detector test, other than as provided in the Act or this part;

(3) Discriminating or retaliating against an employee or prospective employee for the exercise of any rights under the Act;

(4) Disclosing information obtained during a polygraph test, except as authorized by the Act or this part;

(5) Failing to maintain the records required by the Act or this part;

(6) Resisting, opposing, impeding, intimidating, or interfering with an official of the Department of Labor during the performance of an investigation, inspection, or other law enforcement function under the Act or this part; or

(7) Violating any other provision of the Act or this part.

(b) In determining the amount of penalty to be assessed for any violation of the Act or this part, the Administrator will consider the previous record of the employer in terms of compliance with the Act and regulations, the gravity of the violations, and other pertinent factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of investigation(s) or violation(s) of the Act or this part;

(2) The number of employees or prospective employees affected by the violation or violations;

(3) The seriousness of the violation or violations;

(4) Efforts made in good faith to comply with the provisions of the Act and this part;

(5) If the violations resulted from the actions or inactions of an examiner, the steps taken by the employer to ensure the examiner complied with the Act and the regulations in this part, and the extent to which the employer could reasonably have foreseen the examiner's actions or inactions;

(6) The explanation of the employer, including whether the violations were the result of a bona fide dispute of doubtful legal certainty;

(7) The extent to which the employee(s) or prospective employee(s) suffered loss or damage;

(8) Commitment to future compliance, taking into account the public interest and whether the employer has previously violated the provisions of the Act or this part.

[56 FR 9064, Mar. 4, 1991; 56 FR 14469, Apr. 10, 1991, as amended at 81 FR 43452, July 1, 2016; 82 FR 5382, Jan. 18, 2017; 83 FR 13, Jan. 2, 2018; 84 FR 219, Jan. 23, 2019; 85 FR 2298, Jan. 15, 2020; 86 FR 2969, Jan. 14, 2021; 87 FR 2335, Jan. 14, 2022; 88 FR 2217, Jan. 13, 2023; 89 FR 1817, Jan. 11, 2024; 90 FR 1861, Jan. 10, 2025]

§ 801.43 Civil money penalties—payment and collection.

Where the assessment is directed in a final order of the Department, the amount of the penalty is immediately due and payable to the United States Department of Labor.

The person assessed such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary. Payment shall be made by certified check or money order made payable and delivered or mailed according to the instructions provided by the Department; through the electronic pay portal located at *www.pay.gov* or any successor system; or by any additional payment method deemed acceptable by the Department.

[84 FR 59931, Nov. 7, 2019]