Regulations Part 578: Minimum Wage and Overtime Violations— Civil Money Penalties

U.S. Wage and Hour Division

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U.S. Department of Labor
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PART 578—MINIMUM WAGE AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

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AUTHORITY: Sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388–29 (29 U.S.C. 216(e)), Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by Pub. L. 104–134, section 31001(s), 110 Stat. 1321–358, 1321–373.

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 $1,000 for each such violation. 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)), requires that inflationary adjustments be periodically 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 29 CFR part 580.

[66 FR 63503, Dec. 7, 2001]

§ 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, Employment Standards Administration, 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.

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

(a) A penalty of up to $1,000 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act; Provided, however, that for any violation occurring on or after January 7, 2002 the civil money penalty amount will increase to up to $1,100. The amount of the penalty will be determined by applying the criteria in § 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 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 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, an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour

Division to the effect that the conduct in question is not lawful.

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

[57 FR 49129, Oct. 29, 1992; 57 FR 57280, Dec. 3, 1992, as amended at 66 FR 63503, Dec. 7, 2001]

§ 578.4 Determination of penalty.

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