



UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington, DC 20210



**November 28, 2023**

**FIELD ASSISTANCE BULLETIN No. 2023-4**

**MEMORANDUM FOR: Regional Administrators and district directors**

**FROM: Jessica Looman, Administrator**

**SUBJECT: Child Labor Civil Money Penalty Assessments for Nonserious Injury and Noninjury Violations**

**I. Background**

The federal child labor provisions under the Fair Labor Standards Act (FLSA or Act) ensure that when young people work, the work is safe and does not jeopardize their health, well-being, or educational opportunities. As part of its child labor enforcement efforts, the Wage and Hour Division (WHD) is committed to utilizing all available enforcement tools to combat oppressive child labor and to ensure that the statutory authority to assess civil money penalties is effective in both penalizing and deterring violations of the law.

The goal of this Field Assistance Bulletin (FAB) is to ensure that WHD's Child Labor Civil Money Penalty (CL CMP) assessments are based on the agency's statutory enforcement authority and that the agency is appropriately and consistently utilizing its full authority in every child labor enforcement action. In furtherance of these goals and as explained below, this FAB includes new assessment procedures for nonserious injury and noninjury CL CMP calculations.

The Wage and Hour Division reviews child labor compliance as part of every FLSA investigation, investigates child labor complaints, and conducts agency-initiated child labor investigations. Since 2019, WHD investigations have found an 88% percent increase in children being employed in violation of the child labor provisions of the FLSA. In fiscal year 2023, WHD found that 955 of the employers it investigated had violated child labor laws impacting nearly 5,800 children.

On February 27, 2023, the Department of Labor [announced](#) that it was launching a National Strategic Enforcement Initiative on Child Labor (Strategic Initiative) using data-driven strategies to initiate investigations that are likely to uncover children employed in violation of the child labor provisions of the FLSA, 29 U.S.C. 212(c), and use all of its available enforcement tools,

including CL CMP assessments and injunctions stopping the movement of goods made with child labor (hot goods actions), to hold employers accountable for those violations and to deter future violations.

As part of its Strategic Initiative, WHD earlier this year issued [Field Assistance Bulletin \(FAB\) 2023-3, Prohibitions against the shipment of “Hot Goods” under the Child Labor Provisions of the Fair Labor Standards Act](#), to provide guidance to WHD field staff on how the agency utilizes its authority to bring “hot goods” actions under section 212(a) of the FLSA to address oppressive child labor in supply chains.

This *Child Labor Civil Money Penalty Assessments for Nonserious Injury and Noninjury Violations* FAB, which is also being issued as part of WHD’s Strategic Initiative, identifies the procedures and practices that WHD follows when assessing CL CMPs in nonserious and noninjury cases under section 16(e)(1)(A)(i) of the FLSA, 29 U.S.C. 216(e)(1)(A)(i), and its implementing regulations at 29 C.F.R. Part 579. This FAB should be read in conjunction with the *Assessment of Child Labor Civil Money Penalties* Field Assistance Bulletin 2016-5 (December 2016), which has been amended to note the sections that have been superseded by this FAB. The procedures and practices contained in this FAB will apply to child labor CMP assessments beginning on Tuesday, November 28, 2023.

Previously, WHD practice was to assess CL CMPs in nonserious injury and noninjury cases by assigning an initial CMP amount for a particular type of child labor violation that reflected the agency’s consideration of the gravity of a given violation. These initial CMP amounts could be increased or decreased based on the size of the business or whether the violation was willful or repeated, but the prior practice did not give full effect to the Department’s authority under the statute.<sup>1</sup> The previous policy also limited the assessments in nonserious and noninjury cases by applying the statutory maximum on a per child basis rather than the per violation basis prescribed by the statute. Additionally, the previous policy limited the assessments for hot goods cases on a per investigation basis rather than a per shipment or delivery for shipment, and recordkeeping violations on a per investigation basis rather than on a per employee basis, which limited the agency’s authority as set forth in the statute and regulations, *see* 29 C.F.R. 579.3(a)(1), (5). The sections of FAB 2016-5 which authorized those practices and administrative limitations are superseded by this FAB and the online charts have been discontinued to ensure the agency’s full statutory and regulatory authority to assess CL CMPs.

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<sup>1</sup> The Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 (IAA), Pub. L. 114-74, sec. 701, required agencies to adjust CMP levels for inflation through an initial adjustment by August 1, 2016, followed by annual adjustments every January thereafter. In accordance with the IAA, on July 1, 2016, the Department of Labor published an Interim Final Rule making the initial adjustments to all CMPs assessed in statutory programs that it administers, including CL CMPs, with the adjustments effective August 1, 2016. As required by the IAA, the Department also adjusts CL CMPs for inflation every January. For more information about the IAA and to view the current CL CMP levels, visit <http://www.dol.gov/whd/flsa/index.htm#cmp>.

This FAB also updates the procedures that are used to consider whether CMP reductions are warranted based on the employer's size of business.

## **II. Statutory Authorization to Assess Civil Money Penalties for Child Labor Violations**

The FLSA contains two separate provisions that authorize the assessment of CL CMPs. *See* 29 U.S.C. 216(e)(1)(A). This FAB discusses the application of the FLSA's CL CMP penalty provision at section 16(e)(1)(A)(i) (referred to as non-CLEPP), which currently provides for a CMP up to \$15,138 for each child labor violation. Enacted in 2008, section 16(e)(1)(A)(ii)'s enhanced penalty provision (referred to as the Child Labor Enhanced Penalty Program, or CLEPP) currently provides for a penalty of up to \$68,801 for each child labor violation that causes the death or serious injury of an employee under the age of 18. For more information about CLEPP, please refer to the Assessment of Child Labor Civil Money Penalties Field Assistance Bulletin 2016-5 (December 2016), as amended.

Section 16(e)(3) of the FLSA requires WHD to consider whether a CMP assessment is appropriate given (1) the size of the business and (2) the gravity of the violation. Wage and Hour's regulations at 29 C.F.R. 579.5 interpreting this statutory directive provide guidance regarding both aspects of the statutory mandate.

### **A. Calculating Civil Money Penalties for Nonserious Injury and Noninjury Child Labor Violations**

In order to fully utilize its statutory and regulatory authority, when assessing CL CMPs in nonserious injury<sup>2</sup> and noninjury cases, the agency will no longer determine CL CMP assessments on a per child basis. Instead, the agency will assess CL CMPs *per violation* as authorized in the statute. For instance, if there are three separate violations relative to a child's employment (such as two hazardous occupations orders violations and one recordkeeping violation), the employer will be assessed three separate CMP penalties, each of which can reach the statutory maximum. The agency will use the following methodology, which incorporates the Part 579 gravity factors at 29 C.F.R. 579.5(c), to calculate an initial CMP amount for all nonserious injury and noninjury child labor violations, including recordkeeping and hot goods violations.

After the gravity factors have been considered, the agency will next consider the appropriateness of the CL CMP relative to the size of the business and will adjust percentages based on the regulatory size of business factors (*see* Chart Below, Part C). Finally, the assessing official will independently consider whether the CL CMP assessed achieves the objectives of the Act. No

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<sup>2</sup> *Nonserious injury* means any injury that requires treatment no more extensive than first aid and results in the youth missing school or work, or having their normal activities curtailed, for less than 5 days. The term *first aid* means any one-time treatment, even if it is provided by a physician or other licensed or registered medical professional, and even if it is performed at the place of employment.

employer will be assessed more than the maximum CL CMP under section 16(e)(1)(A)(i) of the statute which is currently \$15,138 per violation.

**i. Applying the Regulatory Factors that Assess the Gravity of Nonserious Injury and Noninjury Violations**

CMP assessments in non-CLEPP cases are assessed under the Act’s CL CMP provision at section 16(e)(1)(A)(i) of the Act, 29 U.S.C. 216(e)(1)(A)(i). As explained above, section 16(e)(3) of the FLSA, 29 U.S.C. 216(e)(3), requires the agency to consider the gravity of the violation when assessing CL CMPs, as the agency has included in its regulations at 29 C.F.R. 579.5(c).

In calculating the initial CMP amount relative to the gravity of a particular violation, WHD will utilize the statutory maximum non-CLEPP CMP (currently \$15,138) and then increase or decrease the amount of the CMP based on aggravating or mitigating facts in each matter (recognizing that under the statute, the non-CLEPP CMP could not exceed \$15,138 per violation). For each regulatory gravity factor in 29 C.F.R. 579.5(c) WHD has assigned a percentage by which the maximum possible non-CLEPP CMP may be increased or decreased in the process of calculating the assessment amount. Each adjustment percentage applies to every violation relative to a particular child’s employment.

Regulatory Gravity Factors	Adjustment %
<b>Factor 1- Repeated Violations:</b> Has the employer previously been found by WHD to have violated the child labor provisions of the Fair Labor Standards Act at 29 U.S.C. 212?	<b>Aggravate</b> +20% if the employer has been found by WHD to have previously violated the child labor laws at 29 U.S.C. 212.
<b>Factor 2- Willfulness:</b> Are the violations willful (was there evidence that the employer knew that its actions were unlawful or showed reckless disregard for the child labor requirements, or did the employer fail to take reasonable precautions to avoid violations)?	<b>Aggravate</b> +20% for willful violations of child labor laws at 29 U.S.C. 212.
<b>Factor 3- Number of Minors Employed:</b> How many minors were unlawfully employed?	<b>Aggravate</b> +10% if 3 or more minors at the establishment are employed in violation of child labor laws.
<b>Factor 4- Age of Minors:</b> (1) Whether the minor was employed below the legal age of employment (14 for both agricultural and nonagricultural employment unless an exception applies) or (2) whether the employer kept records of the required proof of age for the minor.	<b>Aggravate</b> +20% for minors employed under the legal age for employment and where no exception applies.  + 10% if the employer failed to keep records of age, see 29 C.F.R. 516.2(a)(3).

<p><b>Factor 5- Hazardous Work:</b> Were the minors employed in violation of a Hazardous Occupations Order (HO) or an occupation prohibited by 29 C.F.R. 570.33-34 (Reg. 3 occupation order)?</p>	<p><b>Aggravate</b> +20% if the minor was employed in violation of a HO or a Reg. 3 occupation order (<i>see</i> 29 C.F.R. 570.33-34).</p> <p><b>Mitigate</b> -10% when the minor has not been employed in violation of an HO or Reg 3 occupation order.</p>
<p><b>Factor 6- Resultant Injury:</b> The exposure of such minors to hazards and any resultant injury to such minors</p>	<p><b>Aggravate</b> + 25% if the minor employed in violation suffers a <i>nonserious</i> injury.</p> <p><b>Mitigate</b> -10% if there is no injury and the minor has not been employed in an HO or Reg 3 occupation order.</p> <p><i>For resultant serious injuries/fatalities see <a href="#">Field Assistance Bulletin 2016-5, Assessment of Child Labor Civil Money Penalties.</a></i></p>
<p><b>Factor 7- Duration of Illegal Employment:</b> How long was the minor employed in violation of the Act?</p>	<p><b>Mitigate</b> -10% if minor was employed in violation for 1 week or less, but not if minor worked in violation of an HO.</p>
<p><b>Factor 8 – Hours of Employment:</b> What time of day did the violations occur, including whether it was during or outside of school hours?</p>	<p><b>Mitigate</b> -10% Minor is either not subject to the hours standards (e.g., youth over the age of 16) or, if subject to those standards, did not perform work during school hours or (if nonagricultural employment and the child is younger than 16 years of age) between 10PM- 6AM.</p>

**ii.. Applying the Regulatory Size of Business Factors to Nonserious Injury and Noninjury Violations**

Section 16(e)(3) of the FLSA also directs the agency to consider the size of business in assessing CL CMPs, as the agency describes in its regulations at 29 C.F.R. 579.5(b). This FAB establishes new procedures for the consideration of size of business regulatory factors in all CL CMP assessments, including CLEPP and Non-CLEPP fatality and serious injury cases. These factors are taken into account after the initial CL CMP amount has been calculated based on the gravity of the violations. Each size of business factor is considered separately against the initial calculation resulting from application of the gravity chart above. The sections of FAB 2016-5 which conflict with these new procedures have been superseded by this document.

Even after the criteria set forth in the gravity and size of business charts are applied, the assessing official must independently consider the size of the business and the gravity of the violation, as well as the regulatory factors in section iii. below, when determining the ultimate CL CMP assessment. For example, it may not be appropriate to reduce the CMP based on size of business in cases with the most egregious (highest level of gravity) violations, such as cases that involve the death of a young worker or an extremely serious injury, *see* FAB 2016-5. Other factors, such as whether the violation was willful or repeated, whether the employer concealed or falsified the violations, and whether, if there is a serious injury, there is only one, should be taken into account before reducing the CMP assessment based on the size of the business.

Statutory Size of Business Factors	Adjustment %
<b>Factor 1</b> – The number of employees employed.	20% reduction for an employer when there are fewer than 5 employees. 15% reduction for an employer with between 5 and 25 employees.
<b>Factor 2</b> – Annual dollar volume of sales or business done.	Up to 25% reduction if the calculated CMP exceeds 3% of the company’s annual dollar volume of sales for the most recently completed year for the enterprise. The amount of the reduction shall not exceed what is necessary to bring the calculation to 3% of the ADV.
<b>Factors 3 and 4</b> – Amount of capital investment and financial resources, and such other information as may be available relative to the size of the business of such person.	Additional 10% reduction if employer provides additional evidence of inability to pay.

Examples illustrating application of gravity and size of business charts:

**Example 1.** WHD conducts an investigation of an employer with 30 employees and an ADV of \$3.5 million. WHD concludes that a child aged 16 and eleven months has been employed by the employer for nine months to perform roofing work in violation of HO 16 in reckless disregard of the child labor laws. The violations are not repeated.

Using the calculation methodology in this FAB the following percentages are added to or subtracted from the starting point of 100% of the statutory maximum for non-CLEPP CL CMP assessment:

*Gravity Calculation:* Gravity Factor 2 (willful violation +20%), Gravity Factor 5 (hazardous work +20%), Gravity Factor 8 (not subject to hours standards -10%) is calculated as \$15,138 x 130% = \$19,679 per violation

*Size of Business Calculation:* Because the employer has 30 employees Size Factor 1 is not applicable. Because 3% of the employer's ADV is \$105,000 Factor 2 is not applicable. Unless the employer provides additional evidence under factors 3 and 4 no reduction will be made based on the size of business.

*Assessment:* While the calculation would result in an amount of \$19,679 x 1 violation, the assessment for this violation is statutorily capped and therefore the assessment calculation results in a CL CMP of **\$15,138**.

**Example 2.** WHD conducts an investigation of an employer with 15 employees and an ADV of \$5 million. WHD concludes that two 15-year-olds were employed for three months in violation of the child labor laws because they were employed to work until 9:30 on school nights. The violations were identical for both minors. The violations are not repeated or willful.

Using the calculation methodology in this FAB the following percentages are added to or subtracted from the starting point of 100% of the statutory maximum for non-CLEPP CL CMP assessment:

*Gravity Calculation:* Gravity Factor 5 (no hazardous work -10%), Gravity Factor 6 (no injury -10%), Gravity Factor 8 (time of day -10%) is calculated as \$15,138 x 70% = \$10,597 CL CMP per violation

*Size of Business Calculation:* Because the employer has 15 employees Size Factor 1 is applicable. Because the CMP does not exceed 3% of the employer's ADV or \$90,000 in this example, no further reductions are made based on the size of the business unless the employer provides additional evidence under factors 3 and 4.

*Size of Business Calculation:* \$10,597 CL CMP x 85% = \$9,007 CL CMP per violation

*Assessment:* Based on \$9,007 x 2 violations, the assessment calculation results in a CL CMP of **\$18,014**.

### **iii. Additional Regulatory Considerations for assessing CL CMPs**

Before making the final determination of the CL CMP assessment, the WHD assessing official will follow the guidance in this document as well as other internal guidance and use their independent judgment to ensure that all the requisite information about the employer, size of business, and the violation(s) has been taken into consideration and accurately entered in the case management system. The assessing official must ensure the facts of the particular case justifies the assessment of the CMP and must independently consider whether the CMP assessment achieves the objectives of the Act, including consideration of the regulatory language below (*See* 29 C.F.R. 579.5(d)):

- whether the child labor violation is de minimis, the employer has given credible assurances of future compliance, and whether a CMP is necessary to achieve the objectives of the Act; or
- whether the employer has no prior history of CL violations, the violations involved no intentional or heedless exposure of any minor to any obvious hazard and were

inadvertent, that there are credible assurances of future compliance, and whether a CMP is necessary to achieve the objectives of the Act.

### **III. Additional considerations for Hot Goods and Recordkeeping Violations**

#### **A. Hot Goods**

Please refer to [Field Assistance Bulletin \(FAB\) 2023-3, Prohibitions against the shipment of “Hot Goods” under the Child Labor Provisions of the Fair Labor Standards Act](#) for a discussion of the conditions and considerations in which the hot goods provisions of the FLSA are applied in child labor cases. For purposes of calculating CMPs for child labor violations that involve the prohibited movement of goods in violation of the hot goods provision the CMP assessments are calculated using the gravity and size of business factors as well as the additional regulatory considerations as described above and following the relevant regulatory criteria. In addition, WHD will utilize the agency’s full authority under the regulations and CMPs will be assessed for *each shipment or delivery for shipment*. See 29 C.F.R. 579.3(a)(1).

#### **B. Recordkeeping**

Employers are required to record in their files a birth date for every employee under the age of 19 years. 29 C.F.R. 516.2(a)(3). CMPs for violations of the recordkeeping requirement under the federal child labor laws are calculated using the gravity and size of business factors as well as the additional regulatory considerations described above and following the relevant regulatory criteria, *see* 29 C.F.R. 579.3(a)(5). In addition, the CMP assessment for child labor recordkeeping violations will utilize the agency’s full authority under the regulations and will be assessed *per employee*. *See id.* 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 assert and assess for five separate recordkeeping violations.

### **IV. CONCLUSION**

WHD is committed to combatting oppressive child labor by using all appropriate enforcement tools, including the assessment of CL CMPs. Please direct any questions regarding this FAB to the WHD National Office, Office of Policy, through appropriate channels.