

**February 23, 2022****INDUSTRY NOTICE No. 189****TO: EMPLOYERS AND INSURANCE CARRIERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT (LHWCA), AND OTHER INTERESTED PERSONS****SUBJECT: 2022 increase of civil monetary penalties in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015**

BACKGROUND: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust the levels of existing civil monetary penalties annually based on inflation. Industry Notice 158, issued on October 14, 2016, provides background on this required annual adjustment. On January 14, 2022, DOL published a final rule adjusting penalties for 2022. The rule makes small upward adjustments to the penalties assessed by the Office of Workers' Compensation Programs (OWCP) under the Longshore and Harbor Workers' Compensation Act.

PURPOSE: The purpose of this Notice is to outline the increased civil monetary penalties as of January 15, 2022.

Section 14(g) of the LHWCA: Failure to Report Termination of Payments

The penalty amount has increased from \$301 to \$320 C.F.R. § 702.236 now states:

Any employer failing to notify the district director that the final payment of compensation has been made as required by § 702.235 shall be assessed a civil penalty in the amount of \$320 for any violation for which penalties are assessed after January 15, 2022. The district director has the authority and responsibility for assessing a civil penalty under this section.

Section 30(e) of the LHWCA: Penalty for Late Report of Injury or Death

The maximum penalty amount has increased from \$24,730 to \$26,269. 20 C.F.R. § 702.204 now states:

Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by § 702.201, or who knowingly or willfully makes a false statement or misrepresentation in any report, shall be subject to a civil penalty not to exceed \$26,269 for each such failure, refusal, false statement, or misrepresentation for which penalties are assessed after January 15, 2022. The district director has the authority and responsibility for assessing a civil penalty under this section.

When assessing this penalty, the District Director considers how many penalties, if any, have been assessed against the employer in the previous two years. A graduated penalty schedule is then consulted to determine the penalty amount. However, the District Director has broad discretion to increase or decrease the amount of the penalty assessed based on aggravating or mitigating factors. The District Director also considers whether the employer is considered to be a small business as defined by the Small Business Regulatory Enforcement Fairness Act when determining the penalty amount.

Section 49 of the LHWCA: Discrimination Against Employees Who Bring Proceedings

The penalty amount has increased from a \$2,473 minimum and a \$12,363 maximum to a \$2,627 minimum and \$13,132 maximum. 20 C.F.R. § 702.271(a)(2) now states:

Any employer who violates this section, and has penalties assessed for such violation after January 15, 2022, shall be liable for a penalty of not less than \$2,627 or more than \$13,132 to be paid (by the employer alone, and not by a carrier) to the district director for deposit in the special fund described in section 44 of the Act, 33 U.S.C. 944; and shall restore the employee to his or her employment along with all wages lost due to the discrimination unless the employee has ceased to be qualified to perform the duties of employment.

Upon notice of an assessed penalty, do not submit the check to the District Office. Submit the check to the OWCP/DFELHWC National Office in Washington, DC. The check should be made out to the U.S. Department of Labor and must be submitted within 30 days from the date the penalty was assessed. Please include the claimant's full name and case number on the check or include a copy of the penalty assessment letter.

U.S. Department of Labor
OWCP/DFELHWC
200 Constitution Ave., N.W.
Room S-3229
Washington, DC 20210

All questions concerning the assessment of penalties should be directed to the Compensation Districts.

ANTONIO RIOS
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Date: 2022.02.23 10:21:48 -05'00'
ANTONIO RIOS
Director,
Division of Federal Employees, Longshore and Harbor Workers' Compensation