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FIELD ASSISTANCE BULLETIN No. 2016-5

MEMORANDUM FOR: REGIONAL ADMINISTRATORS
DISTRICT DIRECTORS

FOR: Dr. David Weil
Administrator

SUBJECT: Assessment of Child Labor Civil Money Penalties

This memorandum discusses the guidelines the Wage and Hour Division (WHD) follows to determine when an assessment of child labor civil money penalties under the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*, is appropriate, as well as the amounts of the penalties WHD will assess. These guidelines draw heavily on the child labor civil money penalty (CL CMP) process WHD has developed over the past 30 years. Some of the guidelines reflect the May 21, 2008 amendments to section 16(e) of the FLSA made by the *Genetic Information Nondiscrimination Act of 2008* (GINA). *See* 29 U.S.C. 216(e)(1)(A)(ii). GINA increased the maximum CL CMP from \$11,000 to \$50,000 for any child labor violation that causes the death or serious injury of any employee under the age of 18, and provides that such penalties may be doubled for repeated or willful violations. Additionally, this guidance reflects that the maximum statutory CL CMP levels have been and annually will be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (IAA). *See* Pub. L. 114-74, sec. 701.¹ These guidelines also incorporate into WHD's assessment process interpretations provided to WHD by the Secretary of Labor's Administrative Review Board, and comport with Regulations, 29 C.F.R. Parts 579 and 580.

WHD created the *Child Labor Enhanced Penalty Program* (CLEPP) to incorporate the GINA amendments to section 16(e) into its existing CL CMP assessment process. This memorandum explains how and when WHD assesses heightened CL CMPs under CLEPP, and how CL CMPs are assessed for violations that do not qualify as CLEPP violations, either because they do not

¹ The IAA requires 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 of all CMPs, including CL CMPs, with the adjustments effective August 1, 2016. The adjusted CL CMP levels apply to all penalties assessed after the effective date of the Interim Final Rule, August 1, 2016, for associated violations that occurred after November 2, 2015, the date that the IAA was enacted into law. As required by the IAA, the Department will also adjust 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>.

result in “serious” injuries as defined under CLEPP or because the violations do not meet the statutory causation standard.

These guidelines, originally issued in January 2010, were applied to the very first CLEPP CL CMP cases. This document has been revised to clarify certain sections and to provide additional information to WHD field offices that was not included in the original document.

This Field Assistance Bulletin (FAB) is structured as follows:

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I. CLEPP

A *CLEPP serious injury* is an injury that was caused by a child labor violation(s) and involves:

1. a permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation); *or*
2. a permanent loss or substantial impairment of the function of a bodily member, organ or mental faculty, including the loss of all or part of an arm, leg, foot, hand, or other body part; *or*

3. a permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand, or other body part. 29 U.S.C. 216(e)(1)(B).

A. Permanent Loss, Permanent Paralysis, or Substantial Impairment

WHD's assessment of whether the injury caused by a child labor violation resulted in *permanent loss, permanent paralysis, or substantial impairment* takes into account the totality of the injury, including the prognosis issued by medical practitioners and therapists. The National Office (NO) works with District Offices (DOs), Regional Offices (ROs), and the Office of the Solicitor of Labor to determine the seriousness of an injury and degree of loss, paralysis, or impairment prior to the assessment of CLEPP CMPs. Further information on CLEPP CMP assessments is provided in section III.B.1.

The FLSA requires that WHD take into account the size of the business and the gravity of the violation in assessing CL CMPs. *See* 29 U.S.C. 216(e)(3). In injury cases, the CL CMP assessed also must be proportionate to the degree of injury. *See, e.g., Administrator, Wage and Hour Division v. Chrislin, Inc. d/b/a Big Wally's and Walter A. Christensen*, 2002 WL 31751948, at *7 (ARB No. 00-022, Nov. 27, 2002).

To evaluate the degree of a *permanent loss, permanent paralysis, or substantial impairment*, WHD may utilize evaluations of the degree of loss or paralysis pursuant to sources such as the American Medical Association's *Guide to the Evaluation of Permanent Impairment (AMA Guide)* or state workers' compensation offices.

Even if an injury is expected eventually to heal with no lasting effects, it may qualify as a *substantial impairment* under CLEPP if the impairment lasts for a significant period of time, or has a significant, albeit temporary, impact. Although WHD utilizes the *AMA Guide* to generally gauge the degree of impairment caused by the child labor violation, it is important to note that the *Guide* only provides impairment ratings for *permanent loss* and *permanent impairment*. WHD's assessment of *substantial impairment* also takes into account the potential for recovery, the recovery time, the impact of the injury on the minor's daily life, both during the recovery period and after, and the nature of the treatment required. *As the degree of impairment increases, the duration that is necessary for the impairment to qualify as substantial decreases, and vice versa.* An injury that results in the significantly diminished use of a youth's leg for three months, for example, particularly if the youth is not able to work or attend school for that period of time, will be deemed to be a *substantial impairment* under section 16(e) of the Act. Likewise, a puncture or laceration that results in numbness and curtailed use of a youth's hand for several months may be deemed to have substantially impaired the youth's sense of touch. Scarring that significantly curtails a youth's ability to use the affected body part for a significant period of time will be considered a substantial impairment of that bodily member. A cut or abrasion that impairs a youth's ability to bend his or her knee for one week, on the other hand, does not rise to the level of *substantial impairment* because the injury is neither significant nor long-lasting.

A total body impairment rating of less than 5 percent, in and of itself, in most cases will not place the injury within the parameters of a *CLEPP serious injury*, even if the impairment is permanent.

However, an injury may still be classified as a *CLEPP serious injury*, even when it does not rise to a 5 percent rating, if it results in a long recovery period. One example of a permanent injury that does not qualify as a *CLEPP serious injury* is:

- A 16-year-old minor loses the very tip of one finger of his non-dominant hand while cleaning a power-driven meat slicer in violation of Hazardous Occupations Order (HO) 10. The recovery period was less than three weeks long and the injury constituted less than 5 percent of total body impairment. This injury would be classified by WHD as a serious injury (Non-CLEPP) because the severity of the injury, even though it involves the permanent loss of a body part, does not rise to the “seriousness” contemplated by GINA and because the recovery period was brief, as designated in the chart on pages 12 and 13.

On the other hand, a non-permanent injury that might qualify as a *CLEPP serious injury* is one that, although it receives a low impairment rating because it is not a permanent injury, takes six months of medical treatment and physical therapy to resolve and is thus considered a *substantial impairment* under CLEPP:

- A 16-year-old minor’s arm is crushed by heavy machinery, severely damaging the muscles and ligaments in his right arm. Although the medical provider believes that the youth will eventually recover from this injury and have full use of his arm, the recovery period – medical treatment and physical therapy – takes six months. This injury would be classified by WHD as a serious injury (CLEPP) based on the length of the recovery period.

B. *CLEPP Causation*

Section 16(e) of the FLSA states that CLEPP assessments up to \$50,000 may be made for “each [child labor] violation that *causes* the death or serious injury of any employee under the age of 18 years.” 29 U.S.C. 216(e)(1)(A)(ii) (emphasis added); *see also* House Report No. 110-923, at 3 (Dec. 19, 2008) (explaining that the changes to CL CMPs in GINA “increase[] penalties for violations of the Fair Labor Standards Act that *result in* the death or serious injury of a child” (emphasis added)).² This statutory language requires a particular relationship between the violation and the serious injury or death of the minor employee. Specifically, the CLEPP causation standard will be met if: 1) the death or CLEPP serious injury would not have occurred if the child labor violation had not occurred, and 2) the death or CLEPP serious injury was a foreseeable result of the child labor violation.

² As discussed above, the maximum permissible statutory CL CMPs have been adjusted for inflation in accordance with the IAA, and will be annually adjusted for inflation every January. The initial adjustment was implemented through rulemaking, which revised the corresponding regulations at 29 C.F.R. 579.1(a)(1)(i). These regulations will be further revised for each required annual inflation adjustment. However, the IAA adjustments are not reflected in the FLSA statutory provisions themselves. For example, the United States Code still reflects the \$50,000 amount for CLEPP assessments. *See* 29 U.S.C. 216(e)(1)(A)(ii). For all current CL CMP levels, visit <http://www.dol.gov/whd/flsa/index.htm#cmp>.

- For violations of child labor orders that prohibit the use of certain types of equipment, a death or CLEPP serious injury that results from the dangers inherent in that equipment—such as a sharp object cutting body parts or a crash of a vehicle—will meet the CLEPP causation standard.
- For violations of child labor regulations that prohibit minors from being employed in a workplace that has been specifically found by the Secretary to be hazardous, such as a manufacturing plant (Child Labor Regulation No. 3), a saw mill (HO 4), or a coal mine (HO 3), the second prong of the causation standard will be met for a death or CLEPP serious injury that is related to any of the reasons supporting the Secretary’s regulatory determination that the workplace is hazardous. These reasons could include environmental factors, the presence of power-driven equipment, the presence of toxic materials, or industry-specific occupational death and injury statistics. These prohibited workplaces tend to involve multiple hazards and potential sources of injuries for all workers, routinely requiring a heightened level of safety-consciousness that, because of their youth and inexperience, minor employees are generally unable to maintain.
- The causation standard may be met when a 14- or 15-year-old minor is injured or killed after working in excess of the hours and times of day standards established by 29 C.F.R. 570.35 if it can be demonstrated, for example, that the time of day or the number of hours worked by the minor employed in violation jeopardized the minor’s health, safety, alertness, or mental acumen.

Examples where the CLEPP causation standard would be met include:

- A 16-year-old minor is killed when the forklift he is operating overturns and crushes him. The CLEPP causation standard is met because (1) the youth’s death would not have occurred if he hadn’t been operating the high-lift truck and (2) the death was a foreseeable consequence of using the prohibited equipment.
- A 15-year-old minor’s hand is crushed, such that it must be amputated, while the minor unloads a power-driven compactor that continuously operated during the loading process. The injury is a CLEPP serious injury because it is a permanent loss of a body part. The CLEPP causation standard is met because (1) if the minor had not been unloading the compactor in violation of HO 12 (power-driven balers, compactors, and paper products machines), the minor would not have been injured and (2) having a body part caught in the machinery is a foreseeable result of using a compactor.
- A 16-year-old youth falls to his death while employed in a coal mine. The CLEPP causation requirement is met because (1) the minor would not have died if he had not been in the coal mine and (2) the risk of falls is among the reasons the Secretary has concluded that work in a coal mine is inherently dangerous for youth of that age, that is, it is a foreseeable result of working in the hazardous workplace.

Examples where the CLEPP causation standard might not be met include:

A 15-year-old minor employed by a quick service restaurant operates an open-flame grill in violation of Child Labor Regulation No. 3 (a cooking activity not permitted by 29 C.F.R. 570.34(c)). As the minor exits the restaurant to start her mid-shift meal break, she slips on a wet floor outside the kitchen, and hits her head, causing permanent brain damage. Although the injury qualifies as a CLEPP serious injury, the CLEPP causation requirement is *not* met because slipping on a wet floor in a room outside the kitchen is not a foreseeable result of working over an open-flame grill in the restaurant kitchen.

A 16-year-old minor is standing in a particular spot on the first floor of a worksite to affix a baseboard to the wall with a power-nail gun when he is hit by a falling object accidentally dropped by an employee working on the second floor, which causes permanent paralysis of the minor's right arm. The minor was employed in violation of HO 5 (operating power-driven woodworking equipment) and the injury is a CLEPP serious injury, but the CLEPP causation standard is *not* met because injury from a heavy object falling from above is not a foreseeable result of that particular violation.

Although the injuries in the two preceding examples did not meet the CLEPP causation standard, child labor violations did exist that were associated with injuries to minors. Accordingly, such violations would not fall under CLEPP, but could be assessed as Non-CLEPP violations.

1. “Any Employee Under the Age of 18 Years”

Because the CLEPP statutory provision provides for an assessment for each violation “that causes the death or serious injury of *any* employee under the age of 18 years,” 29 U.S.C. 216(e)(1)(A)(ii) (emphasis added), a CLEPP assessment is appropriate even if the minor employed in violation of a child labor regulation was not the minor who was killed or seriously injured, as long as the violation *caused* the death or CLEPP serious injury of a minor employee. In these circumstances, it is not relevant to a CLEPP assessment whether the employment of the minor who was killed or seriously injured was in violation of the child labor provisions.

An example demonstrating this principle includes:

- A minor is struck by a forklift driven by another minor employee and cannot work or go to school for six months while she recovers from her injuries. Although the injured minor herself was not employed in violation of any child labor hazardous orders, her CLEPP serious injury was caused by an HO 7 violation (power-driven hoisting apparatus), so a CLEPP assessment is appropriate.

2. “Each Such Violation”

Because the CLEPP statutory provision provides for a civil money penalty assessment for “each” child labor violation that causes the death or serious injury of an employee under the age of 18, it is appropriate to issue more than one CLEPP assessment for a single death or CLEPP serious injury if more than one violation meets the causation standard for CLEPP.

- WHD issued multiple CLEPP CMPs utilizing this principle in a case where a young employee was driving a forklift in a rendering plant, which is a workplace that the Secretary has determined to be an inherently dangerous working environment for employees under the age of 18. *See Administrator, Wage & Hour Div. v. Progressive Protein, LLC*, ALJ No. 2010-CLA-00005 (Oct. 14, 2011) (upholding WHD’s assessment of \$100,000 for two HOs – HO 7 (operating a forklift) and HO 10 (working in a rendering plant) – that caused the death of a minor employee).
- Whether multiple violations “caused” the death or serious injury will require careful evaluation of the specific facts of each case. The NO works with DOs, ROs, and the Office of the Solicitor to determine whether the assessment of multiple CLEPP CMPs for a single death or serious injury is appropriate in any given case.

II. Non-CLEPP

CL CMPs can also be assessed under section 16(e)(1)(A)(i) of the Act, which provides for CL CMP assessments up to \$11,000 “for each employee who was the subject of” a violation of the child labor regulations. 29 U.S.C. 216(e)(1)(A)(i).³ CL CMPs assessed under this statutory provision are referred to as “Non-CLEPP.”

A. Serious Injury (Non-CLEPP)

A *serious injury (Non-CLEPP)* is an injury that does not meet the definition of *CLEPP serious injury* because it does not fall within one of the three categories of “serious injuries” defined by CLEPP or fails to meet the level of causation required by CLEPP, and which does not meet the definition of a *nonserious injury* (see below) because it requires the care of a medical practitioner beyond the initial treatment or curtails the youth’s normal activities (school, work, sports) for at least five days. Serious injuries include situations where a minor is required to return to a medical practitioner after an accident to have stitches removed or for an evaluation of the healing process.

An example of a serious injury (*Non-CLEPP*) includes:

- A 14-year-old fry-cook is operating a deep-fat fryer that is not equipped with mechanisms that automatically raise and lower the baskets out of the hot oil in

³ As discussed above, the maximum permissible CL CMPs have been adjusted for inflation in accordance with the IAA and will annually be adjusted for inflation every January. The IAA adjustments are not reflected in the FLSA statutory provisions themselves. Therefore, for current CL CMP levels, visit <http://www.dol.gov/whd/flsa/index.htm#cmp>.

violation of Child Labor Regulation No. 3 (cooking activities not permitted by 29 C.F.R. 570.34(c)). The youth suffers a first degree burn that covers a significant portion of her forearm. The burn requires a physician's care for at least one week and/or the minor loses a week of work. This injury is a *serious injury (Non-CLEPP)*.

1. "Employee Who Was the Subject Of"

The statutory provision providing for non-CLEPP CL CMP assessments permits such assessments "for each employee *who was the subject of such violation.*" 29 U.S.C. 216(e)(1)(A)(i) (emphasis added). Therefore, in a non-CLEPP context, the minor employed in violation of a child labor regulation must be the minor employee that suffers the death or injury for a non-CLEPP assessment to be based on that death or injury. For example, if one minor is operating an unguarded circular saw and another employee under the age of 18 is injured by that saw, a non-CLEPP assessment for the employment of the first minor in violation of HO 14 cannot be based on the injury to the second minor.

B. Nonserious Injury

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.

C. Causation

For a non-CLEPP injury or death assessment to be appropriate, it is necessary only that the child labor violation "contributed to" the employee's death or injury. Under this standard, the violation must only be a factor that played a part in the death or injury; it does not have to be the only factor or even the primary factor; and it does not have to be a foreseeable outcome of the violation. This standard is more relaxed than the CLEPP causation standard.

- A 14-year-old misses a week of work after burning his/her arm while operating a non-automatic deep-fat fryer at a restaurant in violation of Child Labor Regulation No. 3. The injury is not a CLEPP serious injury because it is not a permanent loss or substantial impairment of a body part. The "contributed to" causation standard is met because the violation of Child Labor Regulation No. 3 was a factor that led to the burn.
- A 15-year-old minor suffers a deep cut on his arm when he/she loads a power-driven compactor requiring an initial and follow-up medical appointment. The injury is a non-CLEPP injury because, even though the injury requires stitches and a follow-up medical appointment, the cut heals in three weeks. The "contributed to" causation standard is met because the minor's loading the compactor in violation of HO 12 (power-driven balers, compactors and paper products machines) was a factor in the injury.

D. Statutory Factors Applied to CL CMP Assessments

Section 16(e)(3) of the FLSA requires WHD to consider the size of the business and the gravity of the violation in every CL CMP assessment, CLEPP and Non-CLEPP. 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.

III. General Rules for CL CMP Assessments

When determining the amount of a CL CMP, the WHD will adhere to the following guidelines, many of which are unchanged from procedures WHD followed before the 2008 CLEPP amendments to section 16(e).

A. Unchanged Rules for Minors Who do Not Suffer a Serious Injury or Death (CLEPP or Non-CLEPP)

- As in the past, WHD will continue to use a table that assigns a predetermined “initial assessment amount” to each type of violation for which a CL CMP may be assessed (*see* 29 C.F.R. 579.3 for a list of the violations) when the violation does not cause or contribute to the death or serious injury of a minor employee (*i.e.*, any injury that does not qualify as “serious” under CLEPP or non-CLEPP, or a violation that does not result in any injury). The initial assessment amounts reflect the severity of the particular type of violation. A recordkeeping violation, for example, is assigned a much lower initial assessment amount than a HO violation. As explained below, WHD will not use these predetermined, initial assessment amounts for violations that cause or contribute to the death or serious injury of a minor employee.⁴
- A multiplier of “2” may be applied when child labor violations are found to be willful or repeated. A similar multiplier would be applied if the employer falsifies or conceals the child labor violation or fails to give credible assurances of future compliance.
- As in the past, if a minor performs the same violative act as one that caused or contributed to the death or serious injury of another minor employee, but he or she was not seriously injured or killed, WHD will apply a multiplier *of up to* “5” to the initial assessment amount generated for the uninjured minor (referred to as “bundling”).

⁴ See http://www.dol.gov/whd/CL/CLCMP_TableNonAG.pdf and http://www.dol.gov/whd/CL/CLCMP_TableAG.pdf for the initial CMP assessment amounts. As discussed above, the maximum permissible statutory CL CMPs have been adjusted for inflation in accordance with the IAA and will annually be adjusted for inflation every January. WHD has also administratively adjusted its initial, baseline CL CMP assessment levels, which it utilizes to reflect the gravity of the violation and/or the severity of the injury in any particular case, in an amount proportional to the adjusted maximum statutory CL CMP levels. WHD will annually adjust these baseline CL CMP assessment levels in proportion to the annual adjustment to the maximum CL CMP levels.

- WHD generally will not assess a CL CMP for violations it determines to be *de minimis*. A *de minimis* child labor violation includes:
 - a) recordkeeping violations that involve the employment of no more than one minor employee and no other child labor violations are documented by the investigation.
 - b) violations of the CL Reg. 3 hours standards (beginning and ending of work day, total number of hours worked in a day, and total number of hours worked in a week) could be *de minimis* if the individual violations:
 - (1) are the only child labor violations documented by the investigation;
 - (2) do not violate the standard by more than 15 minutes-*i.e.*, the minor worked no later than 7:15 p.m. on a winter evening, did not work before 6:45 a.m., or worked no more than 3 1/4 hours on a school day;
 - (3) such violations involve the employment of only a single minor; and
 - (4) there are no more than three such violations during that minor's employment with the employer.

- If a minor does not suffer a serious injury or death while employed in violation of the child labor provisions, the maximum civil money penalty that WHD will assess for all child labor violations impacting that child's employment is the non-CLEPP CL CMP statutory maximum, which, as explained above, was \$11,000 prior to the IAA adjustments implemented in August 2016. However, the non-CLEPP CL CMP statutory maximum can be assessed for *each* child labor violation relative to a child's employment. In circumstances where child labor violations contribute to the young employee's death or serious injury, WHD's total CMP assessment for that minor employee's violative employment may exceed the non-CLEPP statutory maximum for a single violation. The implementation of CLEPP did not change this policy.

- The statutory language addressing non-CLEPP deaths and injuries permits assessments "for each employee who was the subject of such violation." 29 U.S.C. 216(e)(A)(i). Therefore, in a non-CLEPP context, the minor employed in violation must be the minor employee that suffers the death or injury for the CL CMP maximum to be assessed for each violation that contributed to the death or injury of the minor.

- Nonserious Injury - WHD will generally determine an initial assessment amount based on the table of predetermined amounts discussed earlier in this document. If the violation contributed to a nonserious injury, WHD will then apply a multiplier of "3" to that base amount. Such amounts may be reduced when the employer and the violation comport with the criteria established for reductions for small businesses (*see* Size of Business heading under III, subpart C at the end of this document).

- Consistent with its past practice, WHD will not consider factors such as whether the minor's own actions contributed to the violation and/or his or her injury or death; whether the parent or guardian attempted to or agreed to waive the child labor provisions on behalf of the minor; and whether the minor or his or her parent or guardian deliberately or accidentally provided an incorrect birth date, to warrant the reduction of a CL CMP. Employers are required to record in their files a birth date for every employee under the age of 19 years. Employers may protect themselves from

unintentional violation of the youth employment provisions by keeping on file a state issued employment or age certificate for each minor employed to show that the minor is the minimum age for the job. WHD does not issue such age certificates.

- Illegal employment – An assessment involving the illegal employment of a worker under the age of 14, in agricultural and nonagricultural employment, would be in addition to any other assessments made for child labor violations involving that same youth. Such assessments may be increased based on the established aggravating factors, but the total civil money penalties involving the employment of that minor will not exceed the non-CLEPP CL CMP maximum (previously \$11,000) unless the violations caused or contributed to the serious injury or death of the minor.

B. Rules After CLEPP for Death and Serious Injury Cases

1. CLEPP Assessments

- For each child labor violation that causes the death of a minor employee, the WHD will generally assess the CLEPP CL CMP maximum (previously \$50,000). Although WHD will typically conclude that a penalty reduction based on the size of the business or any other factor listed in 29 C.F.R. 579.5 is not appropriate where a violation resulted in a youth's death, WHD will consider the facts of each individual case before making such a determination.
- As explained above, the CLEPP statutory provisions provide for a CL CMP assessment for each violation "that causes the death . . . of *any* employee under 18." 29 U.S.C. 216(e)(1)(A)(ii) (emphasis added). Therefore, the maximum CLEPP CL CMP can be assessed for a death even if the minor employed in violation was not the minor employee that suffered the death, provided that the violation caused the death. For example:
 - A 16-year-old minor driving a truck in violation of HO 2 is involved in an accident that kills his 17-year-old coworker who is a passenger in the vehicle. Although it is the driver, not the passenger, whose employment is in violation of the child labor provisions, an assessment under CLEPP is proper since the violation caused the death of an employee under the age of 18, because the death of the 17-year-old coworker would not have occurred if the HO 2 violation had not occurred and the death was a foreseeable result of the HO 2 violation. The 16-year-old was prohibited from driving the vehicle by HO 2. The assessment is proper even when, as in this case, the employment of the youth who died was not in violation of the child labor provisions. The assessment would also be appropriate even if the employment of the minor who was killed was not covered under the provisions of the FLSA, for example, if the 17-year-old is not individually covered and there is no enterprise coverage for the employer.

- A 14-year-old hired farm worker, operating a tractor in violation of Agriculture Hazardous Occupations Order Number 1 (AG H.O. No.1), runs over a 17-year-old coworker. The older hired farm worker suffers injuries that result in the amputation of his or her leg above the knee. Even though the 17-year-old was not employed in violation of any child labor provision, an assessment of a CL CMP under CLEPP is permissible because the violation caused the serious injury of a minor employee under the age of 18. The causation standard is met because the serious injury would not have occurred if the AG HO 1 violation had not occurred and the serious injury to the 17-year-old coworker was a foreseeable result of the AG HO 1 violation.
- The initial assessment amount may be doubled if the violations are determined to be willful or repeated (*e.g.*, prior to the IAA adjustments on August 1, 2016, an initial \$50,000 assessment could be doubled up to \$100,000).
- CLEPP requires causation. Therefore, for each child labor violation that contributes to, but does not cause, the death of a minor employee, the WHD will generally assess the maximum non-CLEPP CL CMP.
- WHD will typically conclude that a CLEPP violation that causes a youth’s death or the highest level of a serious injury does not warrant any reductions based on the size of the business or any other factors listed in 29 C.F.R. 579.5, although WHD will consider the facts of each case when making that determination.
- For each child labor violation that causes a *CLEPP serious injury* of a minor, as defined in FLSA section 16(e)(1)(B), WHD has assigned an initial, baseline CL CMP amount that corresponds to the severity of the injury. The three tiers of CLEPP serious injury CMPs are reflected in the chart below. Note that the amount reflected in each tier may be further adjusted through the assessment process: the ultimate appropriateness of a CLEPP penalty will be considered by the assessing official, in part by applying the regulatory factors in 29 C.F.R. 579.5, before the final assessment is issued.⁵
- As explained above, when evaluating the seriousness of an injury, WHD will consider:
 - the totality of the injury, including such factors as:
 - the potential for recovery;

⁵ These “tier” levels are expressed as a percentage of the applicable maximum CMP level. These percentages correspond to the dollar amounts previously used to indicate these tier levels in WHD guidance. As discussed above, the maximum CL CMP levels have been and annually will be adjusted for inflation. For current maximum CL CMP levels, visit <http://www.dol.gov/whd/flsa/index.htm#cmp>.

- the recovery time;
- the impact of the injury on the minor’s daily life, both during the recovery period and after, and;
- the nature of the treatment required.
- the prognosis issued by medical practitioners and therapists; and
- evaluations of the degree of loss, paralysis, or substantial impairment pursuant to sources such as the American Medical Association’s *Guide to the Evaluation of Permanent Impairment* or state workers’ compensation offices.

Generally, the following chart can be used to determine the initial CLEPP serious injury CMP assessments, which may be modified by the assessing official. As noted above, *as the degree of impairment increases, the duration that is necessary for the impairment to qualify as substantial under CLEPP decreases.*

Impairment Rating OR Recovery Period	CMP assessment on		CMP assessment	
	or before August 1, 2016		after August 1, 2016 ⁶	
TIER I	35% or more	More than nine months	\$40,000	80% of maximum CLEPP CMP
TIER II	20 – 34%	More than six and up to nine months	\$25,000	50% of maximum CLEPP CMP
TIER III	5 – 19%	Three to up to six months	\$15,000	30% of maximum CLEPP CMP
	Less than 5%	With significant recovery period (at least six weeks but less than three months).	May meet CLEPP serious injury standard.	May meet CLEPP serious injury standard.
	Less than 5%	Without significant recovery period (less than six weeks).	Generally will not meet CLEPP serious injury standard.	Generally will not meet CLEPP serious injury standard.

If the injury to the youth technically meets the definition for a CLEPP serious injury, but is very close to not meeting the standard for that highest level of injury, the assessing official

⁶ As noted in footnote 1, the adjusted CL CMP levels apply to all penalties assessed after August 1, 2016, for associated violations that occurred after November 2, 2015.

should use his or her discretion to determine whether an assessment for a CLEPP serious injury tier three CMP is warranted, or whether a Non-CLEPP assessment is more appropriate given the facts of that particular case.

All factors relating to the seriousness of the injury will be considered. For example, if a minor has to undergo one or more surgeries and physical therapy for several months in order to regain the use of a limb, a CLEPP serious injury has occurred even if the permanent impairment rating is less than 5 percent. Similarly a minor who suffers a head injury that severely restricts the minor’s normal daily activities for several months has suffered a CLEPP serious injury, even if there is ultimately a full recovery.

These initial assessments can be doubled if the violations are determined to be willful or repeated. WHD will continue to consider the regulatory factors in 29 C.F.R. 579.5 to decide if the initial CL CMP amount should be reduced based on the facts of each individual case.

2. Serious Injuries (Non-CLEPP) – For *serious injury (Non-CLEPP)* violations, WHD has assigned an initial CL CMP amount that corresponds to the severity of the injury. The three tiers of Non-CLEPP serious injury CMPs are reflected in the chart below. Such injuries may include those serious enough to qualify under CLEPP, but do not meet all the CLEPP requirements (i.e., the injury was not *caused* by the child labor violation). Note that the amount reflected in each tier may be adjusted: the ultimate appropriateness of a CLEPP penalty will be considered by the assessing official, in part by applying the regulatory factors in 29 C.F.R. 579.5, before the final assessment is issued.⁷

- When evaluating the seriousness of an injury, WHD will look at:
 - the totality of the injury, including such factors as:
 - a) the potential for recovery;
 - b) the recovery time;
 - c) the impact of the injury on the minor’s daily life, both during the recovery period and after; and the nature of the treatment required.
 - the prognosis issued by medical practitioners and therapists; and, if relevant,
 - evaluations of the degree of loss, paralysis, or substantial impairment pursuant to, *e.g.*, the American Medical Association’s *Guide to the Evaluation of Permanent Impairment* or state workers’ compensation offices.

The following chart can be used to determine Serious Injury (Non-CLEPP) CMP assessments:

	CMP assessment on		CMP assessment
Impairment Rating OR Recovery Period	or before August 1, 2016		after August 1, 2016 ⁸
TIER I	35% or more	More than six months	\$10,000 91% of maximum Non-CLEPP CMP

⁷ See discussion above regarding annual adjustment of CL CMP assessment levels.

⁸ As noted in footnote 1, the adjusted CL CMP levels apply to all penalties assessed after August 1, 2016, for associated violations that occurred after November 2, 2015.

TIER II	20 to 34%	Three to six months	\$8,000	73% of maximum Non-CLEPP CMP
TIER III	Less than 20%	Less than three months	\$6,000	55% of maximum Non-CLEPP CMP

- If the injury to the youth does not meet the definition for a *nonserious injury* (see below), but is very close to meeting the standard for that lowest level of injury, the assessing official should use his or her discretion to determine whether the assessment of a Non-CLEPP Serious Injury Tier Three CMP for the lowest level of serious injury (non-CLEPP) violation is warranted.
- WHD will typically conclude that a non-CLEPP violation contributing to a youth's death or the highest level of a serious injury does not warrant any reductions based on the size of the business or any other factors listed in 29 C.F.R. 579.5, although WHD will consider the facts of each case when making that determination.

3. CL Record Keeping – WHD generally assesses an initial CL CMP for recordkeeping violations according to these charts http://www.dol.gov/whd/CL/CLCMP_TableNonAG.pdf and http://www.dol.gov/whd/CL/CLCMP_TableAG.pdf

4. Hot Goods Provisions – under FLSA Section 12(a), WHD will generally assess an initial CL CMP for hot goods violations according to these charts http://www.dol.gov/whd/CL/CLCMP_TableNonAG.pdf and http://www.dol.gov/whd/CL/CLCMP_TableAG.pdf, depending upon whether the shipment of hot goods occurred and whether other aggravating factors were present. These initial assessment amounts may be doubled if any of the employer's child labor violations were willful or repeated, the employer falsified or concealed child labor violations, or the employer failed to provide credible assurances of future compliance.

C. CL CMP Reductions Based on Mitigating Factors and Size of Business

Mitigating Factors

In determining the final amount of the CL CMP, the WHD assessing official will follow the guidance of this document as well as other internal guidance, and use his or her independent judgment to evaluate whether an adjustment in the CL CMP is appropriate, given the facts of that particular case, including:

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

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

See 29 C.F.R. 579.5(c) and (d); small business factors in 29 C.F.R. 579.5(b) are discussed below.

Size of Business

WHD may reduce certain initial CL CMP assessment amounts in consideration of the size of the employer's business. WHD will generally find such reduction to be appropriate only when all of the criteria listed below have been met:

1. The employer's gross annual dollar volume of sales made or business done, exclusive of excise taxes, does not exceed \$1,000,000.
2. None of the employer's child labor violations were determined to be willful or repeated.
3. The employer did not conceal or falsify child labor violations.
4. None of the employer's child labor violations caused or contributed to the death of a minor employee.
5. None of the employer's child labor violations caused or contributed to a serious injury of a minor that resulted in an initial assessment amount of CLEPP Serious Injury Tier I or of Non-CLEPP Serious Injury Tier I.
6. The employer has given credible assurance of future compliance.
7. If a child labor violation caused or contributed to a serious injury, there may be only one such violation and only one such injury.

If all the criteria above have been met, the WHD will generally reduce the initial CL CMP assessment amount based on the following formulae:

1. The initial CL CMP amount will be reduced by 50% if the employer has less than 21 employees.
2. The initial CL CMP amount will be reduced by 30% if the employer has between 21 and 99 employees.

Reductions in the CL CMP generally will not be made if the employer has a gross annual dollar volume of sales made or business done, exclusive of excise taxes, that is greater than \$1,000,000 or if the employer employs 100 or more employees.

However, consistent with the statute and the regulatory provisions at 29 C.F.R. 579.5, the assessing official will independently consider the size of the business and the gravity of the violation when determining the appropriate CL CMP, and will in all cases consider whether the size of the penalty is necessary to achieve the objectives of the child labor provisions of the FLSA.