



October 14, 2016

INDUSTRY NOTICE No. 158

TO: EMPLOYERS AND INSURANCE CARRIERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT (LHWCA), AND OTHER INTERESTED PERSONS

SUBJECT: 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 of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) requires agencies to adjust the levels of existing civil monetary penalties with an initial catchup adjustment, followed by annual adjustments for inflation. To implement the Inflation Adjustment Act, the Department of Labor published a department-wide interim final rule (IFR) adjusting its penalties for inflation for all civil penalties assessed after August 1, 2016. 81 Fed. Reg. 43430 (July 1, 2016).

PURPOSE: The purpose of this Notice is to outline the increased civil monetary penalties as of August 1, 2016. The Office of Workers' Compensation (OWCP), Division of Longshore and Harbor Workers' Compensation (DLHWC), intends to release a new Industry Notice to stakeholders on an annual basis as adjustments are made for inflation. The Inflation Adjustment Act affects the penalties outlined below.

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

The penalty amount has increased from \$110 to **\$275**. 20 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 **\$275** for any violation for which penalties are assessed after August 1, 2016. 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 \$11,000 to **\$22,587**. 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 **\$22,587** for each such failure, refusal, false statement, or misrepresentation for which penalties are assessed after August 1, 2016. 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 as outlined below. 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.

Graduated penalty schedule as of August 1, 2016:

- 1st late report: \$500
- 2nd late report: \$1,000
- 3rd late report: \$2,000
- 4th late report: \$4,000
- 5th late report: \$8,000
- 6th late report: \$16,000
- 7th late report (& above): \$22,587 (statutory maximum)

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

The penalty amount has increased from a \$1,000 minimum and a \$5,000 maximum to a **\$2,259 minimum** and **\$11,293 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 August 1, 2016, shall be liable for a penalty of not less than **\$2,259** or more than **\$11,293** 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 local District Office. Submit the check to the OWCP/DLHWC 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/DLHWC
200 Constitution Ave., N.W.
Room C-4319
Washington, DC 20210

All questions concerning the assessment of penalties should be directed to the local District Office.



ANTONIO A. RIOS
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