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§ 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)) and the Federal Civil Penalties Inflation Adjustment [Act](#) Improvement [Act](#) of 2015 ([Pub. L. 114-74](#), section 701), requires that inflationary adjustments be annually 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, as amended at [81 FR 43451](#), July 1, 2016]

§ 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, 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.

[[57 FR 49129](#), Oct. 29, 1992, as amended at [82 FR 2229](#), Jan. 9, 2017]

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

(a) A penalty of up to \$2,014 per violation may be assessed against any [person](#) who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the [Act](#). 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.

§ 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.