

Up, Up and Away: 2020 Increased Penalties for Employee Benefit Plans

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For 2020, legislation enacted in December of 2019 dramatically increases penalties imposed by the Internal Revenue Code (the Code) for late filing of certain employee benefit plan notices and reports. In addition, a final rule published by the Department of Labor (DOL) makes inflation adjustments to a wide range of penalties. This article compiles the penalty amounts that apply beginning in 2020.

In Depth

Sharply Increased Internal Revenue Code Penalties

To raise government revenue, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) increases tenfold the penalties for failure to:

1. Timely file a plan's annual return on IRS Form 5500;
2. Timely file notice of a plan merger, transfer of assets or spin-off on IRS Form 5310-A;
3. Timely file the registration statement for deferred vested benefits under a retirement plan on IRS Form 8955-SSA;
4. Timely file notification of certain changes in a plan's registration information on IRS Form 5500; and
5. Timely provide a required withholding notice to retirement plan participants on IRS Form W-4P.

A late filing of Form 5500 may result in penalties under both ERISA and the Code. For Form 5500, penalty relief may be available under the DOL's Delinquent Filer Voluntary Compliance Program, and that relief may result in IRS penalty relief.

The SECURE Act's increased penalties are generally effective for returns, statements and notices required after December 31, 2019. The table below compares penalty amounts before and after the SECURE Act.

INTERNAL REVENUE CODE PENALTIES			
Code Penalty Section	Description of Code Violations Subject to Penalty	2019 Penalty Amount	2020 Penalty Amount
Code §6652(e)	Failure to timely file annual report (Form 5500) under Code §6058.	\$25 per day, up to \$15,000	\$250 per day, up to \$150,000
Code §6652(e)	Failure to timely file a notice of plan merger, spin-off or asset transfer (Form 5310-A) under Code §6058.	\$25 per day, up to \$15,000	\$250 per day, up to \$150,000
Code §6652(d)(1)	Failure to timely file the registration statement for deferred vested benefits (Form 8955-SSA) under Code § 6057(a).	\$1 per participant per day, up to \$5,000	\$10 per participant per day, up to \$50,000
Code §6652(d)(2)	Failure to timely file notification of certain changes (Form 5500) in a plan's information (name, plan administrator, plan termination, plan merger or spin-off) under Code § 6057(b).	\$1 per day, up to \$1,000	\$10 per day, up to \$10,000
Code §6652(h)	Failure to timely provide a required withholding notice (Form W-4P) under Code § 3405(e)(10)(B).	\$10 per failure, up to \$5,000 per year	\$100 per failure, up to \$50,000 per year

Inflation Adjusted Penalties Announced by the Department of Labor

The Federal Civil Penalties Inflation Adjustment Act of 2015 directs the DOL to make annual inflation adjustments for penalties due to specified ERISA violations. The increased penalties generally apply to reporting and disclosure failures if the penalty is assessed after January 15, 2020, and if the violation occurred after November 2, 2015. The table below compares penalty amounts assessed for violations after January 23, 2019, through January 15, 2020 (the column labeled 2019 Penalty Amount), to penalty amounts assessed after January 15, 2020 (the column labeled 2020 Penalty Amount).

DOL PENALTIES			
ERISA Penalty Statute	Description of ERISA Violations Subject to Penalty	2019 Penalty Amount	2020 Penalty Amount
ERISA §209(b)	Failure to furnish reports (e.g., pension benefit statements) to certain former participants and beneficiaries or maintain records.	\$30 per affected participant and beneficiary	\$31 per affected participant and beneficiary
ERISA §502(c)(2)	Failure or refusal to properly file annual report (Form 5500) required by ERISA §104; and Failure of a multiemployer plan to certify endangered or critical status	Up to \$2,194 per day	Up to \$2,233 per day

	under ERISA §305(b)(3)(C) treated as a failure to file annual report.		
ERISA §502(c)(4)	<p>Failure to notify participants under ERISA §10(j) of certain benefit restrictions and/or limitations arising under Internal Revenue Code §436;</p> <p>Failure to furnish certain multiemployer plan financial and actuarial reports upon request under ERISA §101(k);</p> <p>Failure to furnish estimate of withdrawal liability upon request under ERISA §101(l); and</p> <p>Failure to furnish automatic contribution arrangement notice under ERISA §514(e)(3).</p>	Up to \$1,736 per day per affected participant	Up to \$1,767 per day per affected participant
ERISA §502(c)(5)	Failure of a multiple employer welfare arrangement to file report required by regulations issued under ERISA §101(g).	Up to \$1,597 per day	Up to \$1,625 per day
ERISA §502(c)(6)	Failure to furnish information requested by the Secretary of Labor under ERISA §104(a)(6).	Up to \$156 per day, not to exceed \$1,566 per request	Up to \$159 per day, not to exceed \$1,594 per request
ERISA §502(c)(7)	Failure of a defined contribution plan to furnish a blackout notice under ERISA §101(i) or a notice of the right to divest employer securities under ERISA §101(m).	Up to \$139 per day per affected participant	Up to \$141 per day per affected participant
ERISA §502(c)(8)	Failure by a plan sponsor of a multiemployer plan in endangered status to adopt a funding improvement plan or a multiemployer plan in critical status to adopt a rehabilitation plan. Penalty also applies to a plan sponsor of an endangered status plan (other than a seriously endangered plan) that fails to meet its benchmark by the end of the funding improvement period.	Up to \$1,378 per day	Up to \$1,402 per day
ERISA §502(c)(9)(A)	Failure by an employer to inform employees of Children's Health Insurance Program (CHIP) coverage opportunities under ERISA §701(f)(3)(B)(i)(I).	Up to \$117 per day per affected employee	Up to \$119 per day per affected employee

ERISA §502(c)(9)(B)	Failure by a plan administrator to timely provide to any State the information required to be disclosed regarding coverage coordination under ERISA §701(f)(3)(B)(ii).	Up to \$117 per day per affected participant and beneficiary	Up to \$119 per day per affected participant and beneficiary
ERISA §502(c)(10)(B)(i)	Failure by any plan sponsor of a group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, to meet the requirements of ERISA §§702(a)(1)(F), (b)(3), (c) or (d); or §701; or §702(b)(1) with respect to genetic information.	\$117 per day during non-compliance period	\$119 per day during non-compliance period
ERISA §502(c)(10)(C)(i)	Minimum penalty for <i>de minimis</i> failures to meet genetic information requirements not corrected prior to notice from the Secretary of Labor.	\$2,919 minimum	\$2,970 minimum
ERISA §502(c)(10)(C)(ii)	Minimum penalty for failures to meet genetic information requirements which are not corrected prior to notice from the Secretary of Labor and are more than <i>de minimis</i> .	\$17,515 minimum	\$17,824 minimum
ERISA §502(c)(10)(D)(iii)(II)	Cap on penalty for unintentional failures to meet genetic information requirements.	\$583,830 maximum	\$594,129 maximum
ERISA §502(c)(12)	Failure of Cooperative and Small Employer Charity Act (CSEC) plan sponsor to establish or update a funding restoration plan.	Up to \$107 per day	Up to \$109 per day
ERISA §502(m)	Defined benefit distribution prohibited by ERISA §206(e) due to an impermissible forfeiture following withdrawal of a participant's contributions.	Amount distributed but not more than \$16,915 per distribution	Amount distributed but not more than \$17,213 per distribution
ERISA §715	Failure by a group health plan to provide Summary of Benefits Coverage under Public Health Services Act §2715(f), as incorporated into ERISA §715 and 29 CFR 2590.715-2715(e).	Up to \$1,156 per failure	Up to \$1,176 per failure

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