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The Department of Labor (“DOL”) has published the annual adjustments for 2023 that increase certain penalties applicable to employee benefit plans.

Annual Penalty Adjustments for 2023

The following updated penalties are applicable to health and welfare plans subject to ERISA.

Description	2022 Penalty (Old)	2023 Penalty (NEW)
Failure to file Form 5500	Up to \$2,400 per day	Up to \$2,586 per day
Failure of a MEWA to file reports (i.e., M-1)	Up to \$1,746 per day	Up to \$1,881 per day
Failure to provide CHIP Notice	Up to \$127 per day per employee	Up to \$137 per day per employee
Failure to disclose CHIP/Medicaid coordination to the State	\$127 per day per violation (per participant/beneficiary)	\$137 per day per violation (per participant/beneficiary)
Failure to provide SBCs	Up to \$1,264 per failure	Up to \$1,362 per failure
Failure to furnish plan documents (including SPDs/SMMs) to DOL on request	\$171 per day \$1,713 cap per request	\$184 per day \$1,846 cap per request
Genetic information failures	\$127 per day (per participant/beneficiary)	\$137 per day (per participant/beneficiary)
De minimis failures to meet genetic information requirements	\$3,192 minimum	\$3,439 minimum
Failure to meet genetic information requirements – not de minimis failures	\$19,157 minimum	\$20,641 minimum
Cap on unintentional failures to meet genetic information requirements	\$638,556 maximum	\$688,012 maximum

It should be noted that, with respect to certain notice and disclosure deadlines, a plan will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document throughout the duration of the Outbreak Period if the plan and fiduciary operate in good faith and furnish the notice, disclosure, or document as soon as administratively practicable (which may include the use of electronic means such as email and text messages).

Employer Action

Private employers, including non-profits, should ensure employees receive required notices timely (SBC, CHIP, SPD, etc.) to prevent civil penalty assessments. In addition, employers should ensure Form 5500s are properly and timely filed, if applicable. Finally, employers facing document requests from EBSA should ensure documents are provided timely, as requested.