



## Health Care Reform Update



### IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update #93

January, 2019

#### DOL Issues 2019 Adjusted Penalty Amounts

The DOL has announced the 2019 annual adjustments to the penalties for a wide range of benefits-related violations. As background, legislation enacted in 2015 requires annual adjustments to certain penalty amounts by January 15 of each year. Due to the government shutdown, the 2019 penalties were not published by this deadline creating a 2019 effective of January 23, 2019 (with respect to violations occurring after November 2, 2015). Here are highlights:

**Form 5500:** The maximum penalty for failing to file Form 5500 (which must be filed annually for most ERISA plans – Public bodies are exempt from this requirement) increases from \$2,140 to \$2,194 per day that the filing is late.

**Group Health Plans:** The maximum penalty for failing to provide the summary of benefits and coverage (SBC) required under the Affordable Care Act increases from \$1,128 to \$1,156 per failure. Violations of the Genetic Information Nondiscrimination Act (GINA), such as establishing eligibility rules based on genetic information or requesting genetic information for underwriting purposes, and failures relating to disclosures regarding the availability of Medicaid or children's health insurance program (CHIP) assistance, may result in penalties of \$117 per participant per day, up from \$114.

**401(k) Plans:** For plans with automatic contribution arrangements, penalties for failure to provide the required ERISA § 514(e) preemption notice to participants increase from \$1,693 to \$1,736 per day. Penalties for failing to provide blackout notices (required in advance of certain periods during which participants may not change their investments or take loans or distributions) or notices of diversification rights increase from \$136 to \$139 per day. And the maximum penalty for failure to comply with the ERISA § 209(b) recordkeeping and reporting requirements increases from \$29 to \$30 per employee.

**Multiple Employer Welfare Arrangements (MEWAs):** Penalties for failure to meet applicable filing requirements, which include annual Form M-1 filings and filings upon origination, increase from \$1,558 to \$1,597 per day.

Adjustments have also been made to other benefits-related penalties, including those for failure to provide certain information requested by the DOL and for certain defined benefit plan compliance failures.

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