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Compliance Connection

February 2022

Federal Compliance Update

Congress Bans Forced Arbitration/Waivers of Sexual Harassment and Assault Claims

On Feb. 10, 2022, the U.S. Senate passed the [Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act](#) (the Act). The U.S. House of Representatives had previously passed the Act, which is now expected to be signed by President Biden. Once signed, the Act will go into effect immediately.

Ending Forced Arbitration Act

The Act would essentially prohibit employers from requiring employees to resolve claims of workplace sexual harassment or assault through arbitration or other alternatives to court litigation or waive them in advance.

Specifically, under the new law, an employer may not enforce a pre-dispute arbitration agreement or pre-dispute joint-action waiver against a person who files a case alleging sexual harassment or sexual assault in a federal, state or tribal court. An individual making a claim of sexual harassment or assault may choose to participate in arbitration or other litigation alternatives but may not be required to do so.

Covered Disputes

Whether the new law applies to a particular dispute will be determined under federal law and that determination will be made by a court, not an arbitrator. The Act will apply to any dispute or claim arising after the date the law is enacted.

The law applies specifically to cases involving sexual harassment and assault. It does not apply to sex discrimination or other types of harassment or assault. Therefore, it does not prohibit employers from using mandatory arbitration agreements or waivers in other employment-related claims or lawsuits.

The new law would make all pre-dispute arbitration and waiver agreements for workplace sexual harassment and sexual assault claims unenforceable.

Department of Labor Increases Civil Penalty Amounts for 2022

The Department of Labor (DOL) has [released](#) its 2022 inflation-adjusted civil monetary penalties that may be assessed on employers for violations of a wide range of federal laws effective January 15, 2022, including:

Fair Labor Standards Act (FLSA)	Employee Retirement Income Security Act (ERISA)	Family and Medical Leave Act (FMLA)	Occupational Safety and Health Act (OSH Act)
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To maintain their deterrent effect, the DOL is required to adjust these penalties for inflation, no later

than Jan. 15 of each year. Key penalty increases include the following:

- The maximum penalty for violations of federal **minimum wage or overtime requirements** increases from \$2,074 to \$2,203 per violation.
- The maximum penalty for failing to file a **Form 5500** for an employee benefit plan increases from \$2,259 to \$2,400 per day.

The maximum penalty for violations of the **poster requirement under the FMLA** increases from \$178 to \$189 per offense.

Action Steps

Employers should become familiar with the new penalty amounts and review their pay practices, benefit plan administration and safety protocols to ensure compliance with federal requirements.

REQUIREMENT	2021 PENALTY AMOUNT	2022 PENALTY AMOUNT
Wage and Hour		
Repeated or willful violations of minimum wage or overtime requirements (FLSA)	Up to \$2,074 for each violation	Up to \$2,203 for each violation
Violations of child labor laws	Up to \$13,227 for each employee subject to the violation	Up to \$14,050 for each employee subject to the violation
Violations of child labor laws that cause death or serious injury to an employee under age 18	Up to \$60,115 for each violation (doubled to \$120,230 if the violation is repeated or willful)	Up to \$63,855 for each violation (doubled to \$127,710 if the violation is repeated or willful)
Willful failure to post FMLA general notice	Up to \$178 for each separate offense	Up to \$189 for each separate offense
Violations of the Employee Polygraph Protection Act (EPPA)	Up to \$21,663 for each violation	Up to \$23,011 for each violation
Employee Benefits		
Failure to file an annual report (Form 5500) with the DOL (unless a filing exemption applies)	Up to \$2,259 per day	Up to \$2,400 per day
Failure of a multiple employer welfare arrangement (MEWA) to file an annual report (Form M-1) with the DOL	Up to \$1,644 per day	Up to \$1,746 per day
Failure to furnish plan-related information requested by the DOL *Under ERISA, administrators of employee benefit plans must furnish to the DOL, upon request, any documents relating to the	Up to \$161 per day, but not to exceed \$1,613 per request	Up to \$171 per day, but not to exceed \$1,713 per request

REQUIREMENT	2021 PENALTY AMOUNT	2022 PENALTY AMOUNT
employee benefit plan.		

REQUIREMENT	2021 PENALTY AMOUNT	2022 PENALTY AMOUNT
Failure to provide the annual notice regarding CHIP coverage opportunities *This notice applies to employers with group health plans that cover residents of states that provide a premium assistance subsidy under a Medicaid or CHIP program.	Up to \$120 per day for each failure (each employee is a separate violation)	Up to \$127 per day for each failure (each employee is a separate violation)
For 401(k) plans, failure to provide blackout notice or notice of right to divest employer securities	Up to \$143 per day	Up to \$152 per day
Failure to provide summary of benefits and coverage (SBC)	Up to \$1,190 per failure	Up to \$1,264 per failure

Employee Safety – OSH Act		
Violation of posting requirement	Up to \$13,653 for each violation	Up to \$14,502 for each violation
Other-than-serious violation	Up to \$13,653 for each violation	Up to \$14,502 for each violation
Serious violation	Up to \$13,653 for each violation	Up to \$14,502 for each violation
Willful violation	Between \$9,753 and \$136,532 per violation	Between \$10,360 and \$145,027 per violation
Uncorrected violation	Up to \$13,563 per day until the violation is corrected	Up to \$14,502 per day until the violation is corrected

State Compliance Update

Nothing to report...

Compliance Calendar

February

2/1 – Deadline for posting OSHA Form 300A

2/28 – Forms 1094-B, 1095-B, 1094-C, and 1095-C Filing Deadline (paper filers)

March

3/31 – Forms 1094-B, 1095-B, 1094-C, and 1095-C Filing Deadline (electronic filers)

April

4/12 – 2021 EEO-1 Component 1 Data Collection Opening

4/30 – Remove your OSHA Form 300A

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