



Legal Alert: New Guidance Regarding Penalties for Child Labor Violation

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The Department of Labor Wage and Hour Division has issued a Field Assistance Bulletin that provides guidance that employers can use to determine when they can expect to be subject to child labor civil money penalties under the Fair Labor Standards Act (FLSA) and how much they can expect to pay. The Bulletin also addresses the Child Labor Enhanced Penalty Program (CLEPP) created by the Wage and Hour division to incorporate changes made by the Genetic Information Nondiscrimination Act (GINA) to the FLSA's child labor penalty provisions.

As discussed in our May 23, 2008 Legal Alert, the "miscellaneous" provisions in GINA impose a civil penalty of up to \$50,000 for each child labor violation that causes the death or serious injury of an employee under the age of 18. This penalty may be double where the violation is repeated or willful.

The Bulletin outlines three categories of injuries and the different penalties for each.

- A **CLEPP serious injury** is an injury of a minor employee **occurring after May 20, 2008**, that was **caused by a child labor violation**, and that involves a **permanent loss or substantial impairment of one of the five senses** or the **permanent loss, permanent paralysis or substantial impairment of the function of a specified body part**.

A CLEPP serious injury or death requires a direct causal relationship between the child labor violation that occurred and the serious injury or death of the minor employee. The bulletin gives the example of a 16-year-old minor that is employed operating a power-nail gun in violation of child labor rules regarding minors using power-driven woodworking equipment. If that minor employee suffers a serious injury while operating the prohibited equipment, the injury would be caused by the child labor violation and thus could be a CLEPP serious injury. If instead, the minor employee suffers a serious injury when an adult drops a tool kit from the second floor, this would not be a CLEPP serious injury because the child labor violation did not directly cause the injury to occur. However, causation can also be found if the minor's death or serious injury occurs when he or she is employed in a workplace that the DOL has specifically found to be hazardous, such as a manufacturing plant.

- A **Non-CLEPP serious injury** is any injury requiring medical treatment (above first aid) or curtailing the youth's normal activities for at least 5 days that does not meet the definition of "CLEPP serious injury" above either because it occurred before May 20, 2008; did not involve the permanent loss, permanent paralysis, or substantial impairment of one of the senses or a

specified body part; or was not directly caused by the child labor violation. In the hypothetical above, the 16-year-old minor's injuries caused by the falling tool box would be an example of a Non-CLEPP serious injury because, while the injury was not directly caused by the child labor violation (use of the power driven tool), a child labor violation did exist that was associated with the minor's injury.

- A **Nonserious injury** is any injury to a minor employee that requires only a one-time treatment of first aid and does not result in the minor missing school or work, or having his or her normal activities curtailed for more than 5 days.

Civil Penalties

A \$50,000 civil penalty will generally be assessed **for each** child labor violation occurring after May 20, 2008, that causes the **death** of a minor employee. This penalty can be doubled, up to \$100,000 **per violation**, if the child labor violations are willful or repeated.

A civil penalty of \$15,000, \$25,000, or \$40,000 will generally be assessed **for each** child labor violation that causes a **CLEPP serious injury** of a minor employee other than death. The fine depends on the severity and permanency of the injury considering the totality of the circumstances. For example, a \$40,000 penalty would generally be assessed for each child labor violation that caused a CLEPP serious injury resulting in a total body impairment of 35% or more. These penalties can be doubled, up to \$100,000, for willful or repeated violations.

A civil penalty of \$6,000, \$8,000, or \$10,000 will generally be assessed for child labor violations resulting in **Non-CLEPP serious injury** of a minor employee. As with CLEPP serious injuries, these fines will also depend on the on the severity and permanency of the injury considering the totality of the circumstances. These penalties can be increased to up to \$11,000 **per violation**, if the child labor violations are willful or repeated.

A maximum civil penalty of \$11,000 can be assessed against an employer for a minor employee who suffers a **nonserious injury**.

Certain of these civil penalties may be reduced by 30-50% based on the size of the employer's business for employers whose gross business is less than \$1,000,000 and who employ fewer than 100 employees. However, reductions are not available if the violation resulted in the death of a minor employee, if the original assessment was \$40,000 or more, if multiple child labor violations were involved, if the violations were willful or repeated, or if the employer falsified or concealed child labor violations.

Bottom Line

Any employer employing minors should review the work these minors are performing with an eye to the increased civil penalties provided by GINA and the new Child Labor Enhanced Penalty Program (CLEPP). Employers should take special notice that most of the fines outlined above are per violation and not just per injury. For example, if a minor employee is killed as a result of operating a forklift, in violation of rules against minors operating power-driven hoisting apparatuses, in a plant manufacturing explosives, in violation of rules against employing minors in such a setting, the DOL will assert that **two** violations "caused" the minor employee's death. As a result, the civil penalty

for the death would be \$50,000 per child labor violation multiplied by two violations equaling \$100,000. If the violations were willful or repeated, this assessment could be doubled to \$200,000.

If you have any questions regarding this issue or any other labor or employment related issue, please contact the Ford & Harrison attorney with whom you usually work. David P. Maram is the author of this Alert.