

DOL Issues New Penalties for Child Labor Violations

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On January 20, 2010, the Department of Labor (DOL) incorporated stiffer penalties for those who violate child labor laws. The Wage Hour Division of the DOL issued Filed Assistance Bulletin No. 2010-1, which discusses the Child Labor Enhanced Penalty Program (CLEPP). These changes are mandated by the Genetic Information Nondiscrimination Act (GINA). This new program identifies two new "serious injury" categories, CLEPP and non-CLEPP, and increases maximum applicable penalties.

CLEPP Serious Injury

One of the new injury categories, CLEPP serious injury, is defined as an injury that:

- Occurred after May 20, 2008;
- Was caused by a child labor violation; and
- Involves a permanent loss or substantial impairment of:
 - One of the senses, or
 - The function or movement of specified body parts.

A finding that a child injury "was caused by a child labor violation," requires a relationship between the violation and the serious injury or death of the minor employee. This relationship exists if the DOL finds that the work performed was inherently dangerous.

In determining whether an injury resulted in "a permanent loss or substantial impairment," the DOL will take into account the totality of the injury, including the circumstances of impairment, recovery, prognosis, and guides to impairment published by the American Medical Association and state workers' compensation offices.

The 2008 GINA Amendments increased the maximum child labor penalty from \$11,000 to \$50,000. For a CLEPP serious injury not resulting in death, the DOL will generally assess a penalty of \$15,000, \$25,000 or \$40,000, depending on the severity and permanency of the injury. A CLEPP serious injury resulting in death could result in a \$50,000 penalty. Furthermore, this amount may be doubled to \$100,000 if the DOL determines that the child labor violation was willful or repeated.

Serious Injury (non-CLEPP)

A serious injury that fails to meet one of the three requirements of a CLEPP serious injury may constitute a serious injury (non-CLEPP), which is defined as an injury that:

- Requires medical treatment; or
- Requires curtailing a child's normal activities (like school attendance) for at least 5 days.

When a serious injury (non-CLEPP) results in death, the DOL will generally assess the **\$11,000** penalty that was authorized prior to the GINA Amendments. For a serious injury (non-CLEPP) not resulting in death, the DOL will generally assess a penalty of **\$6,000, \$8,000 or \$10,000**, depending on the seriousness of the injury.

Non-Serious Injuries

For injuries that do not meet the serious injury requirements, either CLEPP or non-CLEPP, the DOL will generally use existing procedures in determining the amount of a penalty.

If you have any questions regarding child labor laws, or any other labor and employment matter, please feel free to contact any member of our Labor and Employment Practice Group.