

EMPLOYEE BENEFITS

2023 EBSA Penalties for ERISA Violations

November 2023

On January 13, 2023, the U.S. Department of Labor issued final rules reflecting inflation-adjusted statutory penalties for certain violations applicable to ERISA welfare plans under the Civil Penalties Inflation Adjustment Act. The [2023 inflation-adjusted penalties](#) that apply to health and welfare plans include (but are not limited to) the following key compliance items:

Inflation-Adjusted Penalties		
Description	2023	2022
ERISA Form 5500 Daily penalty for failure to properly file Annual Reports	\$2,586	\$2,400
ERISA Form M-1 Daily penalty for failure of a MEWA to file Form M-1	\$1,881	\$1,746
CHIP Notices and Disclosures Per day penalty for each failure (per beneficiary) by an employer to either inform employees of CHIP opportunities or inform state agencies of coverage confirmation information	\$137	\$127
SBC Disclosure Failure to provide Summary of Benefits Coverage as required under ACA (PHSA)	\$1,362	\$1,264

The final rule is effective January 15, 2023.

The DOL inflation-adjusted penalties for violations of various other labor and employee benefits laws are also addressed in the updated guidance as published in The Federal Register. These include, but are not limited to, the following:

- Federal Mine Safety and Health Act
- ERISA (with respect to qualified retirement plans)
- Occupational Safety and Health Act (OSHA)
- Wage and Hour (Fair Labor Standards Act, Immigration & Nationality, Public Service Contracts Act, FMLA)
- Office of Workers' Compensation Programs (OWCP)

DISCLAIMER: *Brown & Brown, Inc. and all its affiliates, do not provide legal, regulatory or tax guidance, or advice. If legal advice counsel or representation is needed, the services of a legal professional should be sought. The information in this document is intended to provide a general overview of the topics and services contained herein. Brown & Brown, Inc. and all its affiliates, make no representation or warranty as to the accuracy or completeness of the document and undertakes no obligation to update or revise the document based upon new information or future changes.*

Other Penalties for Employee Welfare Benefit Plan Non-Compliance

Applicable Area of Law	Description	Per Violation Penalty
ERISA §502(c)(1)	Plan administrator's refusal to supply requested information to participant or beneficiary within 30 days of request	<ul style="list-style-type: none"> • \$110 per day per violation • Each affected separate participant or beneficiary constitutes a separate violation
ERISA §502(c)(6)	Failure to provide materials requested by the Secretary within 30 days	<ul style="list-style-type: none"> • \$184 per day from the date of failure • Not to exceed \$1,846 per request
ERISA §609(a)	Failure to comply with the terms of a Qualified Medical Child Support Order (QMCSO) or National Medical Support Notice (NMSN)	<ul style="list-style-type: none"> • Civil action to enforce compliance may be brought by participant or beneficiary, a state, an employer or the EBSA
ERISA §510	Interference with ERISA and benefit plan rights of participants or beneficiaries	<ul style="list-style-type: none"> • Equitable relief
Genetic Information Nondiscrimination Act (GINA) §207	Health plan's impermissible use of genetic information	<ul style="list-style-type: none"> • \$137 per day per violation • Each affected separate participant or beneficiary constitutes a separate violation • Minimum penalty \$3,439 per violation (\$20,641 where violations are more than de minimis) • May be waived for unintentional failures due to reasonable cause corrected within 30 days of the date the failure was discovered or would reasonably have been discovered • Cap on penalties for other unintentional failures is the lesser of 10% of the aggregate amount paid or incurred for health plan in previous taxable year or \$688,012
Health Insurance Portability and Accountability Act (HIPAA)	Failure to comply with HIPAA portability or nondiscrimination requirements	<ul style="list-style-type: none"> • Excise tax under Code §4980D or PHSA §2723 - \$100/day of noncompliance • Civil penalties against health plan issuer - \$100/day per violation • Applies to each individual to whom the failure relates • DOL may bring civil action against plan administrator or employer
HIPAA Privacy & Security (Administrative Simplification)	Failure by covered entity to comply with privacy, breach notification and security requirements	<p style="color: #0070C0; margin: 0;">Effective October 6, 2023:</p> <ul style="list-style-type: none"> • Civil penalties of \$137 to \$68,978 per violation (as determined by Health and Human Services) • Maximum fine for uncorrected willful neglect up to \$2,067,813 for identical violations within a calendar year • Criminal penalties may apply for knowing disclosure of individually identifiable health information

Other Penalties for Employee Welfare Benefit Plan Non-Compliance

Applicable Area of Law	Description	Per Violation Penalty
Consolidated Omnibus Budget Reconciliation Act (COBRA)	Failure to comply with COBRA	<ul style="list-style-type: none"> \$110 per day for each notice failure (plans subject to ERISA) Excise tax under Code §4980D - \$100 per day (\$200 per day if more than one qualified beneficiary with respect to same qualifying event is affected) for each day during the noncompliance period (applies only to private sector employers) Qualified beneficiaries may bring suit against non-governmental plans to recover coverage under ERISA Other relief, including court costs, attorney fees and extra-contractual damages may be awarded to prevailing party Qualified beneficiaries under governmental plans may bring suit under Public Health Services Act (PHSA) Civil penalties may be waived for unintentional failures due to reasonable cause corrected within 30 days of the date the failure was discovered or would reasonably have been discovered
2023 Affordable Care Act – Employer Shared Responsibility Requirements	Applicable large employer (ALE) fails to offer minimum essential health coverage to at least 95% of all full-time employees and at least one employee enrolls in Marketplace coverage and qualifies for the Advanced Premium Tax Credit	<ul style="list-style-type: none"> \$2,880 X the (# of full-time employees the employer employs - 30 full-time employees), as indexed for inflation
	ALE fails to offer minimum value health coverage, or coverage is not affordable, and at least one employee enrolls in Marketplace coverage and qualifies for the Advanced Premium Tax Credit	<ul style="list-style-type: none"> \$4,320 X the # of full-time employees who enroll in Marketplace coverage and qualified for the tax credit

Other Penalties for Employee Welfare Benefit Plan Non-Compliance

Applicable Area of Law	Description	Per Violation Penalty
	For 2023 returns: ALE does not report offers of coverage for full-time employees (penalties are indexed for inflation)	<ul style="list-style-type: none"> • Failure corrected within 30 days - \$60 per return or per statement, maximum \$220,500 (\$630,500 for entities with 3-year average annual gross receipts of \$5 million or more) • Failure corrected after 30 days but by 8/1 - \$120 per return, maximum \$630,500 (\$1,891,500 for entities with 3-year average annual gross receipts of \$5 million or more) • Failure corrected after 8/1 - \$310 per return, maximum \$1,261,000 (\$3,783,000 for entities with 3-year average annual gross receipts of \$5 million or more) • Penalties apply both for failure to furnish employee statements (1095-C forms) and failure to file with IRS
Medicare Secondary Payer (MMSEA Section 111) (As of 10/6/2023)	Penalty for GHP non-compliance with reporting requirements	<ul style="list-style-type: none"> • Civil monetary penalty of up to \$1,428 per day per each individual for whom reporting should have been submitted
	Penalty for GHP failure to pay benefits as primary when plan is primary payer	<ul style="list-style-type: none"> • Remedies under Federal Claims Collection Act including repayment of “debt,” administrative costs, interest and tax penalties
	Penalty for providing financial incentives to Medicare-entitled individuals to enroll in Medicare or TRICARE instead of the employer group health plan or other violations of MSP nondiscrimination rules	<ul style="list-style-type: none"> • Civil monetary penalties of up to \$11,162 per violation (indexed for inflation)





How Brown & Brown Can Help

Connect with your Brown & Brown service team to learn more about how we can help find solutions to fit your unique needs.



Find Your Solution at [BBrown.com](https://www.BBrown.com)

DISCLAIMER: *Brown & Brown, Inc. and all its affiliates, do not provide legal, regulatory or tax guidance, or advice. If legal advice counsel or representation is needed, the services of a legal professional should be sought. The information in this document is intended to provide a general overview of the topics and services contained herein. Brown & Brown, Inc. and all its affiliates, make no representation or warranty as to the accuracy or completeness of the document and undertakes no obligation to update or revise the document based upon new information or future changes.*