

Employment Practices Liability

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Clarification of Potential Penalties for Violations of Form 5500 Filing Requirements

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Executive Summary: The Form 5500 is an annual report that must be filed for every employee benefit plan that covers 100 or more participants. For calendar year plans, these forms must be filed by July 31, 2017. This Alert provides clarification of the potential penalties for failing to comply with the Form 5500 filing requirements.

Penalties for Noncompliance

- IRS penalties for late filing are \$25 per day up to a maximum of \$15,000.
- DOL penalties:
 - Late filers: \$50 per day (no maximum);
 - Non-filers: \$300 per day (up to \$30,000 per year);
 - Civil Penalty: up to \$2,097 per day (no maximum) for failing or refusing to file a complete and accurate Form 5500;
 - Willful Violations: up to a \$100,000 fine and/or imprisonment up to 10 years.

MEWA Reporting and Registration on Form 5500

Multiple employer welfare arrangements (MEWA) and entities claiming exception (ECE) are generally required to file a Form M-1 both annually and in connection with certain other events (e.g., upon origination, operating in a new state, etc.). The maximum penalty for failing to file a Form M-1 is \$1,527 per day. The deadline for the 2016 annual Form M-1 was **March 1, 2017**.

In addition, all ERISA-covered MEWAs and ECEs subject to the Form M-1 reporting requirements must: (1) file a Form 5500 regardless of the plan size or type of funding; (2) indicate on the Form 5500 whether they are currently in compliance with the Form M-1 requirements; and (3) provide the receipt Confirmation Code for the Form M-1 filing.

Accordingly, if you failed to file the annual 2016 Form M-1 you will need to file it before you file your 2016 Form 5500. Otherwise, you could be subject to penalties for failing to file a Form M-1 (i.e., \$1,527 per day with no maximum) and for filing an incomplete Form 5500 (i.e., \$2,097 per day with no maximum).

Correction Program Available for Delinquent Form 5500s

If your plan is late in filing a 5500 form or your plan never filed a 5500 form because you were not aware that your plan had to do so, the DOL has a correction program to file late forms with reduced penalties.

Penalties under the DOL's Delinquent Filer Voluntary Compliance Program:

- Small Plans (fewer than 100 participants):
 - Penalty is \$10 per day not to exceed \$750.
 - If there are multiple late Form 5500s for the same plan, the maximum penalty is \$750 for each plan year, not to exceed \$1,500 per plan.
- Large Plans (100 or more participants):
 - Penalty is \$10 per day not to exceed \$2,000.
 - If there are multiple late Form 5500s for the same plan, the maximum penalty is \$2,000 for each plan year, not to exceed \$4,000 per plan.

There is no prescribed delinquent filer program providing reduced penalties for delinquent Form M-1 filings.

For more information about CIRMA's Employment Practice Liability Helpline Program, please contact your CIRMA Risk Management Consultant.

Have a question or concern about Employment Practices?

Call the EPL Helpline at 844-426-9086

Or e-mail them at

cirmahotline@fordharrison.com



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