Municipal Technical Advisory Service
INSTITUTE for PUBLIC SERVICE

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Penalties

Dear Reader:

The following document was created from the MTAS website (mtas.tennessee.edu). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

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The FLSA allows the U. S. Department of Labor to assess civil monetary penalties on employers who willfully violate the act's minimum wage and overtime provisions not to exceed $1,100 for each violation. 29 U.S.C. § 216(e)(2). "Civil monetary penalties of not more than $10,000 or imprisonment for not more than six months, or both may be assessed for violating section 206 or 207 (minimum wage and overtime provisions)." 29 U.S.C. § 216(a). The statute of limitation for civil money penalties is five (5) years." Field Operations Handbook § 52 f14(a)(4).

The FLSA provides that any employer who violates the child labor provisions of the act is subject to civil monetary penalties of $10,000 or $50,000 with regard to each violation that causes the death or serious injury of any employee under the age of 18. Child labor violations (29 C.F.R. § 579.3(a) and 29 C.F.R. § 579.5) include:

1. The failure by an employer to maintain and preserve records concerning the date of the minor's birth and proof of the minor's age; and
2. The failure by an employer to take action to assure compliance with all requirements concerning conditions for lawful employment of such minors.

Employers have several defenses that may be used in answering FLSA lawsuits. They include an absolute good faith defense, a defense to liquidated damages and the statute of limitation defense. DOL opinion letters also provide much of the guidance for employers with questions about DOL policies and may be an important defense in a lawsuit brought by employees alleging violations of the FLSA.

The Portal-to-Portal Act provides that "an employer will not be liable for back wages if it can establish that its actions were taken in good faith." Essentially, the absolute good faith defense in the Portal-to-Portal Act (29 U.S.C. § 259(a)) states that:

... no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wage or overtime compensation under the Fair Labor Standards Act of 1938 *... if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the act or proceeding ...*

To use the defense, the employer must establish that it acted in good faith. "Good faith is defined by the regulations as 'honesty of intention ... no knowledge of circumstances which ought to put him on inquiry'." 29 C.F.R. § 790.15(a). For an employer faced with an FLSA lawsuit, the absolute good faith defense means that the employer will not be liable for employee back pay, liquidated damages, pre- or post-judgment interest, costs, etc. Instead, the only relief available is that the employer can be enjoined from committing future violations for the FLSA but cannot be punished for past acts.

On April 29, 2010, the Department of Labor announced that it was ending its decades-old practice of issuing opinion letters explaining how the federal wage and hour law applies to specific scenarios faced by employers. The DOL instead will issue occasional broad pronouncements called 'Administrative Interpretations' that will summarize the agency's 'general interpretation' of the FLSA, but will not explain how the law applies to specific facts. On June 27, 2017, the DOL reinstated its wage and hour opinion letters. The department has established a website [1] where the public can see if existing agency guidance already addresses their questions or submit a request for an opinion.

Finally, an employer cannot retaliate against an employee for "whistle blowing"; that is, it cannot discharge an employee for filing a complaint or participating in an FLSA proceeding. The act "forbids any person, including employers, from discharging, retaliating against, demoting, harassing, or in any other manner discriminating against employees for engaging in such a protected activity." 29 U.S.C. § 215(a)(3). Employers or others who violate the section may face fines of not more than $10,000 or imprisonment for not more than six months or both. 29 U.S.C. § 216(a). Additionally, an employee who suffers discriminatory treatment may seek an injunction ordering the employer to reinstate him.

Links:
[1] http://www.dol.gov/whd/opinion/