

# Immigration Penalties Adjusted for Inflation, Increases to Take Effect August 1

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By [John A. Hill](#)



On June 30 and July 1, 2016, the U.S. Department of Homeland Security (DHS), the U.S. Department of Justice (DOJ), and the U.S. Department of Labor (DOL) each published separate interim final rules in the *Federal Register* to increase immigration-related penalties as an adjustment for inflation. The new penalties were calculated pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which also requires the agencies to make subsequent annual adjustments for inflation based on the Consumer Price Index for All Urban Consumers. The penalty increases are significant and underscore the importance for employers of ensuring that their immigration programs are fully compliant with regulatory requirements.

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Act of 2015, which also requires the agencies to make subsequent annual adjustments for inflation based on the Consumer Price Index for All Urban Consumers. The penalty increases are significant and underscore the importance for employers of ensuring that their immigration programs are fully compliant with regulatory requirements.

The new rules are effective August 1, 2016, with respect to violations occurring after November 2, 2015. The penalty levels already in place will continue to apply to violations occurring on or before November 2, 2015, as well as to assessments made prior to August 1, 2016 (even if the violation occurred after November 2, 2015).

The new DHS penalty levels include increases in the penalty ranges for I-9 paperwork violations and for unlawful hires. “I-9 paperwork violations” refers to missing I-9s or improperly completed I-9s, while “unlawful hires” refers to knowingly hiring, recruiting, referring, or retaining unauthorized alien workers.

For I-9 paperwork violations, the current civil penalty range—from a minimum penalty amount of \$110 to a maximum penalty amount of \$1,100—will increase to a penalty range of between \$216 and \$2,156. For unlawful hires, the current civil penalties, which can be assessed in amounts ranging as high as \$16,000 for each unauthorized worker, will increase to a maximum penalty of \$21,563 for each unauthorized worker. More specifically, the new penalties for first offenses involving unlawful hires will increase in a range from a minimum penalty amount of \$539 to a maximum penalty amount of \$4,313 for each unauthorized worker; the penalty amounts for second offenses will top out at \$10,871 for each unauthorized worker; and third or subsequent offenses will be subject to penalty assessments in amounts as high as \$21,563 for each unauthorized worker.

The DOJ’s increases include new penalties for I-9 related discrimination such as document abuse and unfair immigration-related employment practices. “Document abuse” is a form of discrimination in which the employer asks the employee to provide more documents or different documents than the law requires, or where the employer refuses to accept facially genuine documents. “Unfair immigration-related employment practices” include refusing to employ someone because the person is not a U.S. citizen or because the person appears to be foreign, even though the person might have valid authorization to be employed in the United States. For document abuse, the new civil penalty range will increase to between \$178 and \$1,782. For unfair immigration-related employment practices, the new civil penalties will increase to a maximum amount of \$17,816 for each individual discriminated against.

The new DOL penalties increase the penalty scheme that applies to H-1B Labor Condition Application (LCA) violations. The current scheme has civil penalty limits of \$1,000; \$5,000; or \$35,000, depending upon the LCA violation. The new civil penalty limits will increase to \$1,782; \$7,251; and \$50,758.

The new penalty increases are significant and the immigration stakes are now higher. Employers should remain vigilant and maintain sound employment practices with respect to their I-9 programs and H-1B

programs.

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