

Fines & Penalties for Non-ERISA Plans

Noncompliance with the laws that regulate group health plans can result in significant legal issues for an employer. The employer is generally both plan sponsor and plan administrator for a self-insured plan and is generally responsible for funding plan liabilities. Whether a statute imposes a liability on a plan, plan administrator, employer, or plan sponsor, it's generally the employer who ends up paying. The chart below provides examples of compliance failures and their associated consequences.

COMPLIANCE FAILURE	FINE, PENALTY, OR EXCISE TAX
Failure to comply with ACA (PHSA mandates, such as dependent coverage age, lifetime/annual limits, pre-existing conditions, etc.)	\$100 per participant per day excise tax during the non-compliance period
Violation of HIPAA Portability and Nondiscrimination	\$110 per participant per day excise tax during the non-compliance period
Failure to timely distribute a Summary of Benefits and Coverage (SBC)	\$1,128 per failure , calculated on a per participant or beneficiary basis
Failure to file a 1094 or 1095 return or furnish a statement (if applicable)	Up to \$260 per return/statement
Failure to provide notice and information regarding the Children's Health Insurance Program (CHIPRA)	\$114 per participant per day during the non-compliance period
Violation of GINA Nondiscrimination	\$114 per participant per day during the non-compliance period \$2,745 per participant minimum tax for non-compliance after receipt of violation notice

Note: Various maximums apply. Regulators generally have discretion to assess penalties less than those listed above based on mitigating circumstances. The material presented above is for educational purposes only. It is not intended as legal advice. Legal counsel should be consulted for advice on specific legal questions.