

**§ 530.301**

(a) The certificate holder, despite the exercise of due care, did not know and did not have reason to know of the violations;

(b) All back wages and civil money penalties found by the Administrator to be owing by the certificate holder have been paid; and

(c) The certificate holder has taken appropriate steps to prevent recurrence of the violations.

**Subpart D—Civil Money Penalties**

SOURCE: 53 FR 45724, Nov. 10, 1988, unless otherwise noted.

**§ 530.301 General.**

A system of civil money penalties is established to provide a remedy for any violation of the FLSA related to homework (except child labor violations, which are subject to civil money penalties pursuant to part 579 of this chapter), or for any violation of the homeworker regulations or employers' assurances pursuant to this part, which are not so serious as to warrant denial or revocation of a certificate. Accordingly, no civil money penalty will be assessed for conduct which serves as the basis of proposed denial or revocation of a certificate. (See subpart C of this part.) Civil money penalties will be assessed only against employers who are operating under a certificate or who are seeking certification.

**§ 530.302 Amounts of civil money penalties.**

(a) A civil money penalty, not to exceed \$500 per affected homeworker for any one violation, may be assessed for any violation of the Act or of this part or of the assurances given in connection with the issuance of a certificate.

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature:

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Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping .....	\$10-100	\$100-200	\$200-500
Monetary violations .....	10-100	100-200	.....
Employment of homeworkers without a certificate .....	.....	100-200	200-500
Other violations of statutes, regulations or employer assurances .....	10-100	100-200	200-500

**§ 530.303 Considerations in determining amounts.**

(a) In determining the amount of a penalty within any range, the Administrator shall take into account the presence or absence of circumstances such as the following:

- (1) Good faith attempts to comply with the Act or regulations;
- (2) Extent to which the violation is under the employer's control;
- (3) Non-culpable ignorance of the requirements of the Act or regulations;
- (4) False documents or representations; and
- (5) Exercise of due care.

(b) An employer's financial inability to meet obligations under the Act shall not constitute a mitigating or extenuating circumstance.

(c) No civil money penalty shall be assessed against an employer, who applies for a certificate, solely for employing homeworkers, provided the employer is not currently under investigation by the Wage and Hour Division.

**§ 530.304 Procedures for assessment.**

Assessment of penalties pursuant to this section, including administrative proceedings, shall be in accordance with the procedures set out in subpart E of this part.

**Subpart E—Administrative Procedures**

SOURCE: 53 FR 45725, Nov. 10, 1988, unless otherwise noted.

**§ 530.401 Applicability of procedures and rules.**

The procedures and rules contained herein prescribe the administrative

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process which will be applied with respect to a determination to deny (including refusal to renew) or revoke a certificate and to a determination to assess civil money penalties. Special rules and procedures for the emergency revocation of certificates are prescribed in § 530.412 of this subpart.

### § 530.402 Notice of determination.

Whenever the Administrator determines to deny or revoke a certificate or determines to assess a civil money penalty, the person affected by such determination shall be notified of the determination in writing, by certified mail to the last known address. The notice required shall:

(a) Set forth the determination of the Administrator, including the specific statutory or regulatory provision or assurance violated, the reasons for denying or revoking a certificate, or the amount of any civil money penalty assessment and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 530.403 of this subpart.

(d) Inform any affected person or persons that in lieu of formal proceedings there is available an alternative summary proceeding under § 530.412 of this subpart.

(e) Inform any affected persons that in the absence of a timely request for a hearing the determination of the Administrator shall become final and unappealable.

### § 530.403 Request for hearing.

(a) Except in the case of an emergency revocation under § 530.411 of this subpart, a request for an administrative hearing on a determination referred to in § 530.402 of this subpart shall be made in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington DC 20210, and must be received no later than thirty (30) days after issuance of the notice referred to in § 530.402 of this subpart.

(b) No particular form is prescribed for any request for a hearing permitted

by this part. However, any such request shall be typewritten or legibly written; specify the issue or issues stated in the notice of determination giving rise to such request; state the specific reason or reasons why the person requesting the hearing believes such determination is in error; be signed by the person making the request or by an authorized representative of such person; and include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) In the case of an emergency revocation, a request for an administrative hearing shall be made in writing to the Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street, NW., suite 700, Washington, DC 20036, and must be received no later than 20 days after the issuance of the notice referred to in § 530.402 of this subpart.

### § 530.404 Referral to Administrative Law Judge.

Upon receipt of a timely request for a hearing, the request and a copy of the notice of administrative determination complained of, shall, by Order of Reference, be referred to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceedings, subject to any amendment that may be permitted under 29 CFR part 18.

### § 530.405 General.

Except as specifically provided in these regulations, the "Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings described in this subpart.

### § 530.406 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, after completion of the