

## The Inadequate Costs of Labor Law Violations

Employers have little reason to abide by the National Labor Relations Act (NLRA), as the financial disincentives of violating the law are minimal. From firing, demoting, or retaliating against workers for their support of a union to ignoring their duty to negotiate a contract, many employers blatantly violate the NLRA. Other major federal employment laws impose fines or damages on employers who break the law. Yet the NLRA's nominal deterrents do little to prevent employer lawlessness compared to the costs of violating minimum wage, discrimination, and health and safety protections. If passed, the Employee Free Choice Act will address the insufficient law by increasing penalties on those who break the law and giving workers the just compensation they deserve.



### Comparison of Employer Costs for Violating Federal Employment Laws

Federal Law	Backpay Paid to Employees	Compensatory Damages	Civil Fines or Punitive Damages	Additional Penalties
<b>The National Labor Relations Act</b> Provides the right to organize and collectively bargain	Yes 	No 	None 	None 
<b>Equal Employment Opportunity laws*</b> Prohibits employment discrimination on the basis of race, sex, age, national origin, disability, and religion	Yes, plus frontpay** 	Right to sue for compensatory damages for intentional discrimination and retaliation against claimants, capped at \$50,000 to \$300,000 per employee, based on employer size 	Right to sue for punitive damages for intentional discrimination and retaliation against claimants, capped at \$50,000 to \$300,000 per employee, based on employer size 	Attorneys fees and court costs; violating employers can be barred from receiving government contracts 
<b>Fair Labor Standards Act</b> Establishes minimum wage and overtime standards	Yes 	Right to sue for damages of up to equal amount of backpay; unlimited compensatory damages for retaliation against claimants 	Fines of up to \$1,100 for a repeated or willful violation; up to \$100,000 for a willful violation of child labor provisions which resulted in serious injury or death and up to \$11,000 for no-injury violations; unlimited punitive damages for retaliation against claimants 	Imprisonment; attorneys fees and court costs; employers can be barred from receiving government contracts, have goods seized, and lose business licenses. 
<b>Occupational Safety &amp; Health Act</b> Protects workplace health and safety	N/A	No 	Fines of up to \$70,000 for willful or repeat violations and up to \$7,000 for serious or other violations; up to \$250,000 for an individual and \$500,000 for a company for willful violations resulting in death 	Imprisonment 

## References

This research was conducted as an update to Morris Kleiner's comparison of federal employment laws his 2001 article, "Intensity of Management Resistance: Understanding the Decline of Unionization in the Private Sector," *Journal of Labor Research*, Vol. 22, No. 3.

### 1. National Labor Relations Act

Source: National Labor Relations Act, 29 U.S.C. §§ 151-169 <[http://www.nlr.gov/about\\_us/overview/national\\_labor\\_relations\\_act.aspx](http://www.nlr.gov/about_us/overview/national_labor_relations_act.aspx)>

Note: There are no fines or other penalties assessed against employers for committing unfair labor practices under the National Labor Relations Act. The law only assesses fines or penalties on employers in cases where they unlawfully make payments to employee representatives or where they interfere with the duties of an NLRB agent.

### 2. Equal Employment Opportunity Laws

Sources: U.S. Equal Opportunity Commission. "EEOC Compliance Manual, Section 15: Race and Color Discrimination," April 2006. <<http://www.eeoc.gov/policy/docs/race-color.html#VIII>>; U.S. Equal Opportunity Commission. "EEOC Compliance Manual, Section 10: Compensation Discrimination," December 2000. <<http://www.eeoc.gov/policy/docs/compensation.html#10-VI%20RELIEF>>; U.S. Department of Labor, Employment Standards Administration. "Facts on Executive Order 11246 — Affirmative Action," January 2002. <<http://www.dol.gov/esa/ofccp/regs/compliance/aa.htm>>

\*Includes: Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act, Age Discrimination in Employment Act, and Equal Pay Act.

\*\*The remedy of front pay compensates a victim in situations where reinstatement or nondiscriminatory placement would be an available remedy, but is denied for reasons peculiar to the individual claim. The compensation of front pay makes the victim of discrimination whole generally until such nondiscriminatory placement can be accomplished. <<http://www.eeoc.gov/federal/digest/xi-7-4.html>>

### 3. Fair Labor Standards Act

Sources: Lott, John R. and Russell D. Roberts. 1995. "The Expected Penalty for Committing a Crime: An Analysis of Minimum Wage Violations," *The Journal of Human Resources*, Vol. 30, No. 2; Smith, Allen. "Penalties for child labor violations increase," HR Magazine, July 2008. <[http://findarticles.com/p/articles/mi\\_m3495/is\\_7\\_53/ai\\_n27945022](http://findarticles.com/p/articles/mi_m3495/is_7_53/ai_n27945022)>; Law Memo.Com. "Employment Law Memo: 6th - Emotional distress damages available for FLSA retaliation claims," 16 Jan. 2004. <[http://www.lawmemo.com/sample/e20040116.htm#\\_Toc61950785](http://www.lawmemo.com/sample/e20040116.htm#_Toc61950785)>

### 4. Occupational Safety and Health Act

Source: U.S. Department of Labor. "All About OSHA, Occupational Safety and Health Administration," OSHA 2056-07R, 2003. <<http://www.nalc.org/depart/safety/pdf/osha2056.pdf>>; Rabinowitz, Randy. 2004. *Occupational Safety and Health Law*, BNA Books. p 622.