



Division 1 proposed changes from SB592

Quick summary – SB592

- Changes overall civil penalty structure and includes annual Consumer Price Index (CPI) adjustment
- Adds new penalties for violations that caused or contributed to the work-related fatality of an employee
- Requires comprehensive inspections if specified criteria are met

Detail

New civil penalty structure:

- Established minimum and maximums for civil penalties

<i>Type or category of violation</i>	<i>Minimum - Maximum</i>
Other than serious (OTS) For hazards that would not typically cause serious physical harm (examples include minor cuts, bruises, recordkeeping failures)	\$0-\$15,625
Serious physical harm or death Serious physical harm: For hazards that could cause serious physical harm (some examples include fractures, amputations, hearing loss) A violation can receive a serious rating regardless of whether a worker suffers a serious work-related injury. Death: For hazards that could cause death (some examples include electrocution, asphyxiation, lung cancer) A violation can receive a death rating regardless of whether a worker dies from a work-related incident.	\$1,116-\$15,625
Repeat violations (includes OTS) Repeat violations include two or more or violations, cited within the past three years, that are substantially similar to the first violation.	\$11,162-\$156,259

Willful violations (includes OTS) A willful violation occurs when an employer or supervisor intentionally or knowingly disobeys or recklessly disregards requirements.	\$11,162-\$156,259
Violations that caused or contributed to the death of an employee	\$20,000-\$50,000
Willful or repeat violations that caused or contributed to the death of an employee (includes OTS)	\$50,000-\$250,000

- The only new civil penalty type of violation is “caused or contributed to a work-related fatality.” This type must be applied to:
 - First-instance serious violations
 - Repeat other-than-serious and serious violations
 - Willful other-than-serious and serious violations
- First-instance penalties for serious and death-rated violations (before reductions) are:

<i>Severity Probability</i>	<i>Serious Physical Harm</i>			<i>Death</i>		
	Low	Medium	High	Low	Medium	High
<i>Initial Penalty</i>	\$3,348	\$6,696	\$8,929	\$11,162	\$13,394	\$15,625

- Severity ratings are other-than-serious, serious physical harm, or death.
- Probability ratings of low, medium, or high are based on a number of different factors. Factors include: number of employees potentially exposed to a hazard; frequency and duration of exposure; proximity of employees to the point of danger; lack of proper training and supervision; and improper workplace design.
- Serious repeat violations are calculated as a multiplier (4/6/8 times) of the first-instance penalty. Only employers with 1-50 employees will receive a \$7,000 size reduction. This reduction applies only to repeat violations.
- Civil penalty reductions are not available for the following violations: Willful, caused or contributed to a work-related fatality, repeat caused or contributed to a work-related fatality, willful caused or contributed to a work-related fatality violations.

Civil penalty reductions:

- Current reductions for size, good faith, history, and immediate correction remain in place for first-instance penalties only, but the penalty cannot be less than the statutory minimums.

Civil penalty annual adjustments:

- Requires annual adjustments pursuant to the Consumer Price Index for All Urban Consumers, West Region (All Items) using October information for the following

calendar year. Federal OSHA also updates civil penalties using the Consumer Price Index for All Urban Consumers (national) formula and October information for their annual adjustments.

- The \$7,000 reduction for repeat violations will also be adjusted using the same Consumer Price Index for All Urban Consumers, West Region formula that is applied to the civil penalties.
- Annual civil penalty rates will be published in a bulletin.

New comprehensive inspections – “programmed inspection for cause”:

- Comprehensive inspections must be conducted within one year of the closing conference for the following:
 - Three repeat violations occur in one year
 - Three willful violations occur in one year
 - A violation that caused or contributed to a work-related fatality
- The administrator has the discretion to deem a comprehensive inspection necessary for the protection of employees based on an employer’s history of non-compliance.
- A comprehensive inspection is a substantially complete inspection of a workplace. Its focus is not limited to a potentially hazardous area or operation of a workplace.

Division 1 proposed changes SB907

Quick summary

- SB907 – required Oregon OSHA to clarify the rule regarding discrimination protection following an employee's refusal to perform unsafe work

Note: This is not a rule regarding correction of a hazardous condition. It is a rule regarding the protection from discrimination for an employee refusing to perform a hazardous task. BOLI investigates these complaints.

Detail

General changes:

- 437-001-0295 Discrimination Complaint (1)(b) was updated to provide clarity and (2) was updated with the current protection timeframe.
- Changes are based on current federal OSHA language and current BOLI language.
- There are no new or additional protections for the employer or employee as a result of these changes.

Timeframe:

- An employee has one year after they have reasonable cause that discrimination has occurred to file a complaint with BOLI or any Circuit Court in Oregon.

Refusal of work:

- Clarified that refusal is of a task – not refusal of all work – at a work location. It is refusal of a potentially hazardous task. Other nonhazardous tasks can continue to be completed, if available.
- Clarified that refusal must be in good faith with no reasonable alternative
- Clarified that the work task must have hazardous conditions that present real risk of death or serious physical harm
 - Hazardous conditions are not limited to a specific type of hazard. Nor are any specific type of unmitigated hazards exempt, such as those present in the work environment (extreme heat, wildfire smoke, etc.).

Criteria for refusal of work to be protected:

- All of the following must be met:
 - Where possible, the employee must request the employer correct the hazardous condition.
 - A reasonable person would agree that the task, work area, equipment, or other factors create a hazardous condition that would expose the employee to imminent danger or serious physical harm.
 - Due to the urgency of the hazard, there is not enough time to correct the hazard through a regulatory agency.