

# How does Oregon OSHA determine penalties?



On Nov. 1, 2021, Oregon OSHA amended [several of its Division 1 workplace safety and health rules](#), increasing maximum penalties for alleged violations. The changes took effect Dec. 1, 2021. They capped a series of penalty adjustments that began at the federal level when Congress passed the Inflation Adjustment Act in 2015.

The act required agencies within the U.S. Department of Labor, including federal OSHA, to update their civil monetary penalties with an initial “catch-up” inflation adjustment and then adjust them for inflation every year. Because federal OSHA had not raised its penalties since 1990, the agency established new minimum and maximum penalties for alleged violations, which took effect in 2015. Since then, incremental adjustments have been made each January. Oregon OSHA followed suit with its Division 1 amendments to realign with the federal numbers and to ensure the state meets the “at least as effective” standard, which you can [read about here](#).

Because of those recent amendments, the maximum penalty for an alleged violation in Oregon is now \$13,653 (the minimum penalty remains at \$100). But what accounts for the difference between the minimum and maximum penalty? How do Oregon OSHA compliance officers determine the amount for a violation? Let’s take a closer look.

## DETERMINING THE VIOLATION TYPE

There are two basic types of violations: Other-than-serious and serious. Both types of violations are issued for workplace hazards, but before compliance officers can issue a violation, they must identify and document the hazards that employees are exposed to and that could cause an injury or an illness.

### Other-than-serious violations

Other-than-serious violations are issued for hazards that would not typically result in serious physical harm. Minor cuts, bruises, and violations of Oregon OSHA’s [recordkeeping](#) rules are examples.

### Serious violations: Serious physical harm and death

Serious violations are issued for hazards that could result in serious physical harm or death. Serious physical harm includes injuries and illnesses that significantly reduce a worker’s “physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a body part.” Essentially, it is an injury or illness that could result in a person losing time from work or working a modified schedule that allows the person to heal.



- Examples of injuries that can cause serious physical harm include severe lacerations, contusions, burns, frostbite, concussions, fractures, and amputations.
- Examples of illnesses that could cause serious physical harm include chemically induced pneumonia, pulmonary edema, chronic bronchitis, hearing loss, and dermatitis.
- Electrocutation, asphyxiation, and drowning are examples of death-related injuries.
- Silicosis, asbestosis, and lung cancer are examples of death-related illnesses.

## DETERMINING THE BASE PENALTY

Most penalties are determined from a base penalty, which is the initial penalty for an other-than-serious violation – although many such violations do not carry penalties because the probability of their occurrence

is rated low – and for a serious violation. Two factors that compliance officers generally use to determine base penalties are the severity of a potential injury and the probability that it could happen. (Some penalties are not affected by severity and probability; see the complete list [here](#).)

Compliance officers assign one of the following severity ratings for each violation:

- Other than serious, for hazards that do not cause serious physical harm
- Serious physical harm, for hazards that could cause serious physical harm
- Death, for hazards that could result in death

Compliance officers must also determine a probability rating of low, medium, or high for each violation, based on:

- The number of employees potentially exposed
- The frequency and duration of exposure
- The proximity of the employees to the point of danger
- Factors that require work under stress
- Lack of proper training and supervision, or improper workplace design
- Any other factors that may significantly affect the probability of an accident occurring

Compliance officers use their severity and probability ratings for each violation to determine a [base penalty](#).

### Adjusting base penalties

Base penalties for serious violations are then reduced or increased using the following considerations established by penalty rules when appropriate:

- Employer size, based on the employer's statewide employment
- Employer history, based on the employer's injury and illness trends during the past three years

- Employer “good faith,” based on evidence of the employer’s effort to provide a safe and healthful workplace
- Employer’s immediate correction of violations or other unsafe conditions identified during the inspection

When [adjusting a base penalty for a violation](#), compliance officers determine the amount of each adjustment; then, they apply the total adjustment amount to the base penalty. However, no final penalty for a single serious violation can be less than \$100 or exceed \$13,653. **Only employer size can be used to adjust:**

- Repeat violations. Repeat violations include two or more or violations, cited within the past three years, that are “substantially similar” to the first violation; the circumstances of each subsequent violation ultimately determine if they are substantially similar. The minimum penalty for a repeat violation is \$200; the maximum penalty is \$135,653.

- Failure-to-correct violations. The maximum penalty is \$13,653 per day for failure to correct a previously cited violation. If failure to correct the violation results from an employer’s lack of diligence, the minimum daily penalty is \$50 for other-than-serious violations, and \$100 for serious violations.
- Willful violations. Willful violations are determined by establishing the base penalty for the violation, applying an adjustment for employer size, and multiplying the result by a factor of 25. The minimum penalty for a willful violation is \$9,753; the maximum penalty is \$135,653.
- Any violation that a compliance officer determines contributed to an injury, illness, or death of an employee.

### WHERE TO LEARN MORE

There are 13 rules that establish how Oregon OSHA determines penalties. You will find them [here](#), under Oregon OSHA’s Division 1, General Administrative Rules.

