



Oregon

Kate Brown, Governor

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December 22, 2017

[Text of changes](#)
[July 1, 2016 Federal Register](#)

Oregon OSHA's Increase of Certain Minimum and Maximum Penalties for Alleged Violations

In November of 2015 Congress passed legislation requiring federal OSHA to increase maximum and minimum penalties for alleged violations by up to 78%. Federal OSHA had not raised these penalties since 1990, reducing the effectiveness of penalties as a deterrent for non compliance. In addition the rule will provide a more level "playing field" for employers that strive for compliance with employers who are not following the law. Under federal law OSHA state plans must include effective sanctions for violations. Oregon must adopt similar standards as federal OSHA to maintain state plan authority.

Oregon historically has a high percentage of smaller employers. An additional base penalty reduction for employers with 10 or fewer employees will help maintain a balance between providing an effective deterrent through penalties and promoting a positive business climate with penalties that are not over burdensome for small businesses.

The proposed rule would increase the maximum penalty for a serious violation from \$7,000 to \$12,471. It would increase the maximum penalty for willful or repeated violations from \$70,000 to \$124,709. The base penalties set for serious alleged violations would increase similarly. Alleged violations at the lowest level of the penalty structure would not increase. Oregon's smallest employers (10 or fewer) would see an additional 15% reduction from the base penalty for size, changing the reduction from 60% to 75%.

One public hearing was held during November of 2017. Oregon OSHA received oral testimony at this hearing in addition to a written comment. Oregon OSHA considered all comments received, and will publish an explanation of rulemaking on its website.

This is Oregon OSHA Administrative Order 8-2017, adopted December 22, 2017 and effective January 1, 2018.

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Please visit our web site osha.oregon.gov Click 'Rules and laws' in the Topics, rules, guidelines column and view our proposed rules, or select other rule activity from this page.

Note: In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats by calling 503-378-3272.

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on Dec 22, 2017 by the
Date prior to or same as filing date

Department of Consumer & Business Services/Oregon Occupational Safety & Health Division 437
Agency and Division Administrative Rules Chapter Number

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to become effective January 1, 2018 as Oregon OSHA Administrative Order 8-2017.
Date upon filing or later

Rulemaking Notice was published in the November 2017 *Oregon Bulletin*.**
Month and Year

RULE CAPTION

Oregon OSHA's increase of certain minimum and maximum penalties for alleged violations.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

AMEND: OAR 437-001-0135, 437-001-0140, 437-001-0145, 437-001-0155, 437-001-0165, 437-001-0170, 437-001-0171, 437-001-0175.

ORS 654.025(2), 656.726(4)
Stat. Auth.

ORS 654.001 through 654.295
Stats. Implemented

RULE SUMMARY

In November of 2015 Congress passed legislation requiring federal OSHA to increase maximum and minimum penalties for alleged violations by up to 78%. Federal OSHA had not raised these penalties since 1990, reducing the effectiveness of penalties as a deterrent for non compliance. In addition the rule will provide a more level "playing field" for employers that strive for compliance with employers who are not following the law. Under federal law OSHA state plans must include effective sanctions for violations. Oregon must adopt similar standards as federal OSHA to maintain state plan authority.

Oregon historically has a high percentage of smaller employers. An additional base penalty reduction for employers with 10 or fewer employees will help maintain a balance between providing an effective deterrent through penalties and promoting a positive business climate with penalties that are not over burdensome for small businesses.

The amended rules will increase the maximum penalty for a serious violation from \$7,000 to \$12,500. It would increase the maximum penalty for willful or repeated violations from \$70,000 to \$126,749. The base penalties set for serious alleged violations would increase similarly. Alleged violations at the lowest level of the penalty structure would not increase. Oregon's smallest employers (10 or fewer) would see an addition 15% reduction from the base penalty for size, changing the reduction from 60% to 75%.

One public hearing was held during November of 2017. Oregon OSHA received oral testimony at this hearing in addition to a written comment. Oregon OSHA considered all comments received, and will publish an explanation of rulemaking on its website.

Please visit our web site osha.oregon.gov Click 'Rule changes' in the Topics, rules, guidelines column and view our adopted rules; or, select other rule activity from the left vertical column on the Adopted Rules page.


Authorized Signer

Michael D. Wood
Printed name

12/22/2017
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

**The *Oregon Bulletin* is published on the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.
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PERMANENT ADMINISTRATIVE ORDER

OSHA 8-2017
CHAPTER 437
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION

FILED

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FILING CAPTION: Oregon OSHA's Increase of Certain Minimum and Maximum Penalties for Alleged Violations.

EFFECTIVE DATE: 01/01/2018

AGENCY APPROVED DATE: 12/22/2017

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RULES:

437-001-0135, 437-001-0140, 437-001-0145, 437-001-0155, 437-001-0165, 437-001-0170, 437-001-0171, 437-001-0175

AMEND: 437-001-0135

RULE TITLE: Evaluation of Probability to Establish Penalties

NOTICE FILED DATE: 10/13/2017

RULE SUMMARY: Grammatical and typographical error corrections.

RULE TEXT:

- (1) The probability of an accident that could result in an injury or illness from a violation shall be determined by the Compliance Officer and shall be expressed as a probability rating.
- (2) The factors to be considered in determining a probability rating may include, as applicable:
 - (a) The number of employees exposed;
 - (b) The frequency and duration of exposure;
 - (c) The proximity of employees to the point of danger;
 - (d) Factors, which require work under stress;
 - (e) Lack of proper training and supervision or improper workplace design; or
 - (f) Other factors that may significantly affect the degree of probability of an accident occurring.
- (3) The probability rating is:
 - (a) Low — If the factors considered indicate it would be unlikely that an accident could occur;
 - (b) Medium — If the factors considered indicate it would be likely that an accident could occur; or
 - (c) High — If the factors considered indicate it would be very likely that an accident could occur.
- (4) The probability rating may be adjusted on the basis of any other relevant facts which would affect the likelihood of injury or illness.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 - 654.295

AMEND: 437-001-0140

RULE TITLE: Evaluation of Severity to Establish Penalties

NOTICE FILED DATE: 10/13/2017

RULE SUMMARY: Grammatical and typographical changes.

RULE TEXT:

(1) A severity rating for each violation shall be determined by the Compliance Officer on the basis of the degree of injury or illness that is reasonably predictable. If more than one injury or illness is reasonably predictable, the Compliance Officer will determine the severity based upon the most severe injury or illness. Severity ratings will be selected from the following schedule:

(a) Other than Serious — Conditions that could cause injury or illness to employees but would not include serious physical harm;

(b) Serious Physical Harm; or

(c) Death.

(2) The severity rating may be adjusted on the basis of any other relevant facts that would affect the severity of the possible injury or illness.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 - 654.295

AMEND: 437-001-0145

RULE TITLE: Penalty for Other than Serious or Serious Violation

NOTICE FILED DATE: 10/13/2017

RULE SUMMARY: Note: Tables 1 and 2 must be attached as a PDF due to their layout. Changes to the tables as a result of this filing are as follows:

Change in amounts on the penalty schedule table- Medium serious violations changed from \$500 to \$700. High serious violations changed from \$1250 to \$2000. Low death violations changed from \$2100 to \$3500. Medium death violations changed from \$3500 to \$6000. High death violations changed from \$7000 to \$12500.

Changes in Table 2- Penalty Size Adjustments are as follows:

Added a new size adjustment category: employers with 1-10 employees will receive a 75% penalty reduction based on size. Employers with 11-25 employees will receive the 60% penalty reduction based on size. Other size adjustments remain the same.

Other changes to text within the rule:

Made a grammatical change in the explanation of good faith adjustment. Increase in maximum penalty the administrator can apply after considering the facts, from \$7000 to \$12,675.

RULE TEXT:

(1) A penalty must be assessed for any serious violation and may be assessed for any other than serious violation as established by the intersection of the probability rating and severity rating on the Penalty Schedule (Table 1). In a case where probability and severity are not appropriate considerations, a penalty may be assessed by considering the facts of the violation.

Table 1- Penalty Table (See Attached)

(2) Penalty adjustments will be made based on an employer's size for all violations except failure to correct. Additional adjustments for an employer's compliance history, injury and illness history, demonstrated good faith efforts and corrective action taken at the time of the inspection will be determined by the Compliance Officer and assessed as follows:

(a) Size adjustments – based on state wide peak employment:

Table 2- Penalty Size Adjustments (See Attached)

(b) History adjustments will be based on injuries and illnesses (and trends) during the previous three years, including available information from both Workers' Compensation data and Bureau of Labor Statistics. This assessment will also include a review of the employer's violation history within the past 3 years. Adjustments will be made as follows:

(A) 10% reduction if the compliance officer determines that the information demonstrates a positive history overall.

(B) No reduction if the compliance officer determines that history is what would be expected of a typical employer.

(C) 10% increase if the compliance officer determines that the information demonstrates a negative history overall.

(c) Good faith adjustments will be determined by, but not limited to, review of certain criteria as follows:

(A) Evidence of an overall safety and health program.

(B) Effective communication of safety and health policies.

(C) Promotion of safety and health prior to the inspection.

(D) Employees are clearly involved in the safety and health program.

(E) Management's commitment at all levels is apparent.

(F) Worksite hazard analysis is conducted.

(G) Employees and managers alike are held accountable for safety and health.

Adjustments will be made as follows:

(H) 20% reduction in penalties if the compliance officer determines that the information demonstrates a better than average effort to comply with the law and rules.

(I) No adjustment if the compliance officer determines that the information demonstrates an employer's good faith effort is at the norm.

(J) 20% increase in penalties if the compliance officer determines that the information demonstrates a poorer than normal effort to comply with the law and rules.

(d) A 10% reduction will be provided for immediate corrections of violations or other unsafe conditions identified during the inspection provided that such corrective action is substantial and not temporary or superficial.

(3) Penalty adjustments, except for size, will not be applied to repeat violations, willful violations or to any violation that the compliance officer determines contributed to an injury, illness or death of an employee. Adjustments will not reduce the penalty to less than the mandatory minimum penalty that has been established by rule or statute or increase them beyond the maximum penalty established by statute.

(4) The adjusted penalty for a serious violation will not be less than \$100.

(5) Penalties for combined violations will be calculated by taking the number of violations into account when assessing probability. Severity will be determined by identifying the most severe reasonably predictable injury or illness that could occur.

(6) The penalty for grouped violations of different rules is calculated by determining the probability and severity for the entire group.

(7) The Administrator may assess a penalty of up to \$12,675 for any violation after considering the facts.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 - 654.295

Table 1- Penalty Table

Probability	Severity	Probability	Severity	
Other Than Serious		Serious		
			Serious Physical Harm	Death
Low	0	Low	\$300	\$3,500
High	\$300	Medium	\$700	\$6,000
		High	\$2,000	\$12,500

Table 2- Penalty Size Adjustments

Number of employees	Percent reduction
1-10	75
11-25	60
26-90	40
91-130	30
131-175	20
176-250	10
251 or more	No adjustment

AMEND: 437-001-0155

RULE TITLE: Determination of Penalty — Failure to Correct

NOTICE FILED DATE: 10/13/2017

RULE SUMMARY: Failure to correct maximum penalty increased from \$7,000 to \$12,675 per day.

RULE TEXT:

(1) A citation shall be issued for an employer's nonabatement of a violation.

(2) Penalties of not more than \$12,675 per day for failure to correct a violation:

(a) May be assessed for each work day, or part of a day, that the violation results in continued exposure after the ordered correction date;

(b) Shall be determined by considering the probability and severity of the original violation, the efforts of the employer to correct the violation, and factors which delayed the employer in correcting the violation; and

(c) If failure to correct the violation results from the employer's lack of diligence, the penalty shall not less than \$50 for other than serious violations, and not less than \$250 for serious violations, for each day or part of a day, during which the violation remains uncorrected.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 - 654.295

AMEND: 437-001-0165

RULE TITLE: Determination of Penalty — Repeat Violation

NOTICE FILED DATE: 10/13/2017

RULE SUMMARY: Note: Table 1 was originally included in this rule as an attachment, however it is now included within the text of the rule. This table appears to be all new text, but no changes were made to the table in this rulemaking.

Grammatical changes were made in paragraph 2. Also changed maximum total penalty for a repeat violation from \$70,000 to \$126,749.

RULE TEXT:

(1) The penalty for a repeat violation will be calculated by multiplying the penalty for the current violation by the following factors:

Table 1 - Penalties for Repeat Violations

1st Repeat	X2
2nd Repeat	X5
3rd Repeat	X10
4th Repeat	X15
5th Repeat	X20
Additional Repeats	Discretion of Administrator

(2) The total penalty for a repeat violation will not be less than \$200, nor more than a maximum of \$126,749.

(3) For a repeated other than serious violation that otherwise would have no initial penalty, a penalty of \$200 will be assessed for the first repeated violation, \$500 if the violation has been cited twice before, and \$1,000 for a third repeat.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 - 654.295

AMEND: 437-001-0170

RULE TITLE: Determination of Penalty — Failure to Report an Occupational Fatality, Catastrophe, or Accident

NOTICE FILED DATE: 10/13/2017

RULE SUMMARY: Maximum amount for failure to report increased, from \$7,000 to \$12,675. Additionally, changed the rule number referenced as this rule referenced the incorrect rule number regarding reporting an occupational fatality, catastrophe, or accident.

RULE TEXT:

If an employer fails to report an occupational fatality, catastrophe, or accident as provided in OAR 437-001-0704, a penalty of not less than \$250, nor more than \$12,675, shall be assessed.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 - 654.295

AMEND: 437-001-0171

RULE TITLE: Determination of Penalty — Failure to Register a Farm Labor Camp/Facility

NOTICE FILED DATE: 10/13/2017

RULE SUMMARY: Maximum amount for failure to register a farm labor camp/facility increased from \$7,000 to \$12,675.

RULE TEXT:

If an operator, employer or contractor fails to register a Farm Labor Camp or facility with Oregon OSHA as required in Division 4/J, 437-004-1120(5)(b), a penalty of not less than \$250 nor more than \$12,675, shall be assessed.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 315.164, 658.750, 658.755, 658.780, 658.785, 658.805, 658.810, 658.825

AMEND: 437-001-0175

RULE TITLE: Determination of Penalty — Willful or Egregious Violation

NOTICE FILED DATE: 10/13/2017

RULE SUMMARY: Minimum and maximum amounts for willful and egregious violations increased: from \$5,000 to \$8,900 and from \$70,000 to \$126,749. Also clarifying language added regarding size adjustments allowed for egregious violations as well as willful.

RULE TEXT:

For a willful violation, the Administrator, after considering the facts of the violation, may assess a penalty of not less than \$8,900, nor more than \$126,749. The base penalty will normally be multiplied by 25. For egregious violations, the Administrator may assess a separate penalty, after any appropriate adjustments based on the employer's size, for each instance of a violation.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 - 654.295