

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

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DIVISION 1, GENERAL ADMINISTRATIVE

437-001-0135 Evaluation of Probability to Establish Penalties

(1) The probability of an accident [~~which~~ **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 [~~which~~ **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.

Stat. Auth.: ORS 654.025(2) and 656.726(~~3~~**4**).

Stats. Implemented: ORS 654.001 to 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
 WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
 WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
 APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
 APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 01/01/18.

437-001-0140 Evaluation of Severity to Establish Penalties

(1) A severity rating for each violation shall be determined by the Compliance Officer on the basis of the degree of injury or illness ~~which~~ **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 ~~which~~ **that** would affect the severity of the possible injury or illness.

Stat. Auth.: ORS 654.025(2) and 656.726(~~3~~**4**).
 Stats. Implemented: ORS 654.001 to 654.295.

Hist: WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.
 WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
 WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
 WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
 APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
 APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
 OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 01/01/18.

437-001-0145 Penalty for Other than Serious or Serious Violation

(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

Probability		Severity		Probability		Severity	
Other Than Serious		Serious		Serious		Death	
		Physical Harm					
Low	0	Low	\$300	[\$2,100]	\$3,500		
High	\$300	Medium	[\$500]	\$700	[\$3,500]	\$6,000	

High ~~[\$1,250]~~ **\$2,000** ~~[\$7,000]~~ **\$12,500**

(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

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

(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:

- 10% reduction if the compliance officer determines that the information demonstrates a positive history overall.
- No reduction if the compliance officer determines that history is what would be expected of a typical employer.
- 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:

- Evidence of an overall safety and health program.
- Effective communication of safety and health policies.
- Promotion of safety and health prior to the inspection.
- Employees are clearly involved in the safety and health program.
- Management’s commitment at all levels is apparent.
- Worksite hazard analysis is conducted.
- Employees and managers alike are held accountable for safety and health.

Adjustments will be made as follows:

- 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.
- No adjustment if the compliance officer determines that the information demonstrates an employer’s good faith effort is at the norm.
- ~~[May increase penalties by]~~ 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 ~~[which]~~ **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 ~~[which]~~ **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 ~~[\$7,000]~~ **\$12,675** for any violation after considering the facts.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

WCD Admin. Order, Safety 12-1982, f. 9-20-84, ef. 11-1-84.

APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.

APD Admin. Order 5-1988, f. 5-16-88, ef. 5-16-88.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.

OR-OSHA Admin. Order 7-1995, f. 7/5/95, ef. 7/5/95.

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 01/01/18.

437-001-0155 Determination of Penalty – Failure to Correct

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

(2) Penalties of not more than ~~[\$7,000]~~ **\$12,675** per day for failure to correct a violation:

(a) May be assessed for each workday, 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 be 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.

Stat. Auth.: ORS 654.025(2) and 656.726(~~3~~**4**).

Stats. Implemented: ORS 654.001 to 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74 ef. 7-1-74.
WCB Admin. Order 8-1975, f. 8-5-75, ef. 9-1-75.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 01/01/18.

437-001-0165 Determination of Penalty – Repeat Violation

(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	X 2
2nd repeat	X 5
3rd repeat	X 10
4th repeat	X 15
5th repeat	X 20
Additional repeats	Discretion of Administrator

(2) The total penalty for a repeat violation will not be less than \$200, nor more than [the statutory] a maximum of [~~\$70,000~~] **\$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.

Stat. Auth.: ORS 654.025(2) and 656.726(4).
Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.
WCB Admin. Order 33-1974, f. 9-5-74, ef. 9-26-74.
WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
APD Admin. Order 7-1989, f. 5-1-89, ef. 5-1-89 (temp).
APD Admin. Order 10-1989, f. 7-7-89, ef. 7-7-89 (perm).
OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.
OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 01/01/18.

437-001-0170 Determination of Penalty – Failure to Report an Occupational Fatality, Catastrophe, or Accident

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 [~~\$7,000~~] **\$12,675**, shall be assessed.

Stat. Auth.: ORS 654.025(2) and 656.726(4).
Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCD Admin. Order, Safety 4-1981, f. 5-22-81 ef. 7-1-81.
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 7-2002, f. 11/15/02, ef. 11/15/02.
OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 01/01/18.

437-001-0171 Determination of Penalty – Failure to Register a Farm Labor Camp/Facility

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 [~~\$7,000~~] **\$12,675**, shall be assessed.

Stat. Auth.: ORS 654.025(2) and 656.726(4).
Stats. Implemented: ORS 315.164, 658.750, 658.755, 658.780, 658.785, 658.805, 658.810 and 658.825.

Hist: OR-OSHA Admin. Order 10-1995, f. 11/29/95, ef. 11/29/95.
OR-OSHA Admin. Order 6-2003, f. 11/26/03, ef. 11/26/03.
OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 01/01/18.

437-001-0175 Determination of Penalty – Willful or Egregious Violation

For a willful violation, the Administrator, after considering the facts of the violation, may assess a penalty of not less than [~~\$5,000~~] **\$8,900**, nor more than [~~\$70,000~~] **\$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.

Stat. Auth.: ORS 654.025(2) and 656.726(4).
Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.
OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 01/01/18.