

## Violations and Penalties

### 437-001-0135 Evaluation of Probability to Establish Penalties

- (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.

Stat. Auth.: ORS 654.025(2) and 656.726(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. 1/1/18.

## 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 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.

Stat. Auth.: ORS 654.025(2) and 656.726(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. 1/1/18.

## 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 Physical Harm	Death
Low	0	Low	\$300	\$3,500
High	\$300	Medium	\$700	\$6,000
		High	\$2,000	\$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
1-10	75
11-25	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.
- 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 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 the penalty 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.

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. 1/1/18.  
OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.

### **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 \$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(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. 1/1/18.

### **437-001-0160 Penalty Criteria – Repeat Violation**

Oregon OSHA will identify repeat violations as follows:

- (1) An employer's second or subsequent violation involving a substantially similar violation, cited within the previous three years, will be cited as a repeat violation as described below.

- (2) When citing an identical standard for a violation of a previously cited statute, regulation, rule, standard, or order it will be presumed to be a repeat violation. That presumption can be disproven only if the circumstances clearly demonstrate that the violation is not substantially similar to a previously cited violation.

Example: Previously a citation was issued for a violation of 1910.212(a)(1) for not guarding in-going nip points. A recent inspection of the same establishment revealed a citation of 1910.212(a)(1) for not guarding against flying chips and sparks. Although the same standard was cited, the hazardous conditions are clearly not substantially similar and a repeat violation would not be appropriate.

- (3) When citing a different standard, in some circumstances, substantially similar conditions can be demonstrated. In such cases, if the violations found are substantially similar a repeat violation would be appropriate even though the standards are different.

Example #1: Previously a citation was issued for a failure to install appropriate scaffold guardrails under the Division 3 Construction standards. A recent inspection of the same employer found a violation for a failure to install appropriate scaffold guardrails, but this time the operation involved activities covered by the Division 2 General Industry standard. Although two different standards are cited, the violations are substantially similar and would therefore be treated as a repeat.

Example #2: Previously a citation was issued for failure to have a respirator program in a Division 2 General Industry situation where exposure to asbestos would require one. A recent inspection of the same employer found a violation for not requiring employees to wear respirators while performing lead related tasks in the Lead, Division 3 Construction standard that requires respiratory protection. Although two different standards are cited, the violations are substantially similar and would therefore be treated as a repeat.

- (4) Where a previously cited violation is under appeal and not yet final:
- (a) The second violation will be cited as a repeat violation; and
  - (b) Such citation will state that the earlier violation is under appeal and the repeat classification of the current violation will be rescinded if the earlier violation does not become final.

- (5) At fixed places of employment, “high serious” and “death” rated violations will be issued as repeat violations at all of an employer’s places of employment in the state. Repeat violations for all other violation types will be limited to the cited place of employment.
- (6) At nonfixed places of employment, repeat violations will be based on earlier violations occurring anywhere within the state. Where the Administrator, or designee, determines in his or her discretion that the span of control and nature of activity for a portion of the state is more readily comparable to fixed location activity, repeat violations will be handled in a manner consistent with fixed places of employment.

Stat. Auth.: ORS 654.025(2) and 656.726(4).  
 Stats. Implemented: ORS 654.001 through 654.295.  
 Hist: 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 6-1994, f. 9/30/94, ef. 9/30/94.  
 OR-OSHA Admin. Order 2-2009, f. 1/27/09, ef. 2/3/09.  
 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 5-2018, f. 11/29/18, ef. 12/17/18.

### 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**

1 <sup>st</sup> repeat	X 2
2 <sup>nd</sup> repeat	X 5
3 <sup>rd</sup> repeat	X 10
4 <sup>th</sup> repeat	X 15
5 <sup>th</sup> 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 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.

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. 1/1/18.

### **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 \$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. 1/1/18.

### **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 \$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. 1/1/18.  
 OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.

### **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 \$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.

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. 1/1/18.

### **437-001-0176 Determination of Penalty – Failure to Notify Employees of Advance Notice**

The Administrator, after considering the related facts, may assess a penalty not to exceed \$1000 for each violation of the employer's failure to give notification by posting to employees of advanced notice.

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

### **437-001-0180 Determination of Penalty – Relating to Red Warning Notice**

The Administrator, after considering the related facts, shall assess a penalty of not less than \$100 and not more than \$5,000 for each violation of the restrictions imposed by a Red Warning Notice (See OAR 437-001-0096(3) or (4)).

Stat. Auth.: ORS 654.025(2) and 656.726(3).  
Stats. Implemented: ORS 654.001 to 654.295.  
Hist: WCD Admin. Order, Safety 5-1978, f. 6-22-78 ef. 8-15-78.  
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.

### **437-001-0201 Determination of Penalty – Relating to Field Sanitation**

The Administrator shall assess a civil penalty of not less than \$250 and not more than \$2,500 to employers of workers who are engaged in field activities for the growing and harvesting of food crops intended for human consumption, who substantially fail to comply with OAR 437-004-1110 in Division 4, Agriculture.

Stat. Auth.: ORS 654.025(2) and 656.726(3).  
Stats. Implemented: ORS 654.001 through 654.295.  
Hist: WCD Admin. Order, Safety 9-1986, f. 10-7-86 ef. 12-1-86.  
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 7-1999, f. 7/15/99, ef. 7/15/99.

### **437-001-0203 Determination of Penalty – Relating to Violations Which Have No Probability and Severity**

- (1) Safety and Health Protection on the Job Poster – If the employer has not displayed the poster, a minimum penalty of \$100 may be assessed.
- (2) Annual Summary – If an employer fails to post the summary portion of the OSHA 300 Form no later than February 1 of the year following the year covered by the records and keep it posted until April 30 in accordance with 437-001-0700(17)(e), a minimum penalty of \$200 may be assessed.
- (3) Citation – If an employer fails to post the citation after receipt, a minimum penalty of \$200 may be assessed.
- (4) OSHA 300 and DCBS 801 Forms – If the employer does not maintain the Log and Summary of Occupational Injuries and Illnesses, OSHA 300 Form, and the Supplementary Record, DCBS Form 801 or equivalent, a minimum penalty of \$100 may be assessed for each OSHA form not maintained.
- (5) Access to Records – If the employer fails upon request to provide records for inspection and copying by any authorized representative of Oregon OSHA or by any employee, former employee, or authorized representative of employees, a minimum penalty of \$100 may be assessed for each form not made available.
- (6) Flush Toilets/Warm Water Hand Washing Facilities – If an employer fails to provide flush toilets or warm water hand washing facilities on a construction site according to OAR 437-003-0020 in OAR 437, Division 3, Construction, a penalty of not less than \$200, nor more than \$2,500, shall be assessed.

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

Stats. Implemented: ORS 654.086.

Hist: 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 9-1995, f. 11/29/95, ef. 11/29/95.

OR-OSHA Admin. Order 11-2001, f. 9/14/01, ef. 1/1/02.

OR-OSHA Admin. Order 6-2003, f. 11/26/03, ef. 11/26/03.

OR-OSHA Admin. Order 9-2008, f. 9/19/08, ef. 1/1/09.

OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.