



Oregon

Tina Kotek, Governor



Department of Consumer
and Business Services

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To: Oregon OSHA Rules Advisory Committee

From: Greig Lowell, Oregon OSHA Policy Manager

Senate Bill 592 requires Oregon OSHA to perform an annual adjustment of civil penalties to reflect changes in the Consumer Price Index. Here are options for implementing the changes required by statute.

The statutory amendment is as follows:

ORS 654.086:

(4) The director shall, not later than January 15 of each year, adjust the amount of civil penalties that may be imposed under this section to account for the percentage increase or decrease, if any, in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor or its successor.

Options for annual adjustment of the civil penalties:

- **Annual rulemaking:**

Oregon OSHA can perform annual rulemaking to adjust its penalty structure. This process would follow the normal course of rule amendments, including a possible advisory committee, rule proposal filing, a public hearing, and adoption of the rule amendments. This process would provide opportunities for public comment, both in writing and oral comments at the public hearing.

However, formal rulemaking for adjustment to reflect changes in the Consumer Price Index invites public comment on a matter in which Oregon OSHA has little discretion. The adjustment is a mathematical calculation required by statute. Public comments and recommendations regarding the penalty amounts (i.e., too high or too low) are not actionable for Oregon OSHA, as the statute sets forth the requirements for adjustment of the penalty amounts. This could be an area of frustration for the public. Rulemaking is also a time-consuming process for staff and stakeholders.

- **Annual Bulletin announcing CPI changes to penalties**

Oregon OSHA could by rule adopt a process for adjustment of civil penalties without further rulemaking. An annual "Bulletin" would be issued to update the regulated community of the new

adjusted penalty amounts. This Bulletin would execute the nondiscretionary application of the formula required under Section (4) of SB 592 (2023).¹

This process is currently used by other divisions and agencies, such as the Oregon Workers' Compensation Division (WCD) and the Oregon Workers' Compensation Board (WCB) to implement statutes on attorney fees or others that require annual adjustments, to reflect changes in the state average weekly wage.

The advantage to this process is that it would not involve the time and expense of formal rulemaking (proposal, public hearing, adoption). Instead, Oregon OSHA would follow the procedures set forth in rule, and issue a Bulletin through its usual channels (published in the Oregon Bulletin, GovDelivery, mailing list, and posting on the website) to notify stakeholders of the new penalty schedule. This Bulletin can be issued in advance of the effective date of the penalty adjustments.

A rule implementing a Bulletin process should set forth a specific date on which the annual CPI adjustments would be calculated, and identify the Bulletin number that will be published in advance of its effective date.

¹ ORS 183.310(9) defines "rule" to mean "any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency."