

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-140 Monetary penalties.

Summary:

Employer responsibility:

To pay monetary penalties if assessed.

Contents:

Reasons for monetary penalties

WAC 296-900-14005.

Base penalties

WAC 296-900-14010.

Base penalty adjustments

WAC 296-900-14015.

Increases to adjusted base penalties

WAC 296-900-14020.

Definitions:

• "Base penalty" means that penalty amount calculated for a violation by considering either specific statutory penalty amounts or the gravity of the violation.

• "Division" or "DOSH" means the division of occupational safety and health, Washington state department of labor and industries.

• "Gravity" for purposes of calculating a penalty, means the amount calculated by multiplying a violation's severity rate by its probability rate.

• "Inpatient hospitalization" means formal admission to the inpatient service of a hospital or an equivalent medical facility on an emergent basis for a work-related injury, or illness.

• "Monetary penalties" are fines assessed against an employer for violations of safety and health requirements.

• "Probability" means a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest).

• "Severity" for purposes of calculating a penalty, means the most serious injury, illness, or disease that could be reasonably expected to occur, ranging from 1 (lowest) to 3 (highest), because of a hazardous condition.

• "WISHA" means the Washington Industrial Safety and Health Act.

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-14005 Reasons for monetary penalties.

• ((WISHA)) DOSH may assess monetary penalties when a citation and notice is issued for any violation of safety and health rules or statutes.

• ((WISHA)) DOSH will assess monetary penalties under the following conditions:

- When a citation and notice is issued for a serious, willful, or egregious violation.

- When civil penalties are specified by statute as described in RCW 49.17.180.

Note: In addition to penalties specified by WISHA, there are penalties specified by other statutes, such as:

- Asbestos construction projects, RCW 49.26.016.
- Right to know (RTK)—MSDS, RCW 49.70.190.
- Right to know—Penalty for late payment, RCW 49.70.177.

- The minimum civil penalties assessed by ((WISHA)) DOSH are:
 - One hundred dollars for any penalty.
 - Two thousand five hundred dollars per violation for violations contributing to a fatality.
 - Five thousand dollars per violation for all willful violations.
 - Two hundred fifty dollars per day for asbestos good faith inspection (RCW 49.26.016 and 49.26.013).

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-14010 Base penalties.

• ((WISHA)) DOSH calculates the base penalty for a violation by considering the following:

- Specific amounts that are dictated by statute;

OR

- By assigning a weight to a violation, called "gravity." Gravity is calculated by multiplying a violation's severity rate by its probability rate. Expressed as a formula:

$$\text{Gravity} = \text{Severity} \times \text{Probability}$$

Note: Most base penalties are calculated by the gravity method.

- Severity and probability are established in the following ways:

Severity:

- Severity rates are based on the most serious injury, illness, or disease that could be reasonably expected to occur because of a hazardous condition.

- Severity rates are expressed in whole numbers and range from 1 (lowest) to ((6)) 3 (highest). ((Violations with a severity rating of 4, 5, or 6 are considered serious.

- ~~WISHA uses~~) = Tables 3 ((~~Severity Rates~~)) and 4 are used to determine the severity rate for a violation.

**Table 3
Severity ((Rates)) - Serious Violations**

((Severity	Most serious injury, illness, or disease from the violation is likely to be:
6)) <u>3</u>	<ul style="list-style-type: none"> • Death • Injuries involving permanent ((severe)) disability • Chronic, irreversible illness
((5)) <u>2</u>	<ul style="list-style-type: none"> • ((Permanent)) <u>Disability</u> of a limited ((or less severe)) nature • Injuries or reversible illnesses resulting in hospitalization
((4)) <u>1</u>	<ul style="list-style-type: none"> • Injuries or temporary, reversible illnesses resulting in serious physical harm • May require removal from exposure or supportive treatment without hospitalization for recovery

((Severity	Most serious injury, illness, or disease from the violation is likely to be:
((3	<ul style="list-style-type: none"> • Would probably not cause death or serious physical harm, but have at least a major impact on and indirect relationship to serious injury, illness, or disease • Could have direct and immediate relationship to safety and health of employees • First aid is the only medical treatment needed
2	<ul style="list-style-type: none"> • Indirect relationship to nonserious injury, illness, or disease • No injury, illness, or disease without additional violations
1	<ul style="list-style-type: none"> • No injury, illness, disease • Not likely to result in injury even in the presence of other violations))

Table 4
Severity - General Violations

General violation
<ul style="list-style-type: none"> • <u>Conditions that could cause injury or illness to an employee but would not result in serious physical harm</u>

Probability:

Definition:

A probability rate is a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest). See Table 5.

- When determining probability, DOSH considers a variety of factors, depending on the situation, such as:

- Frequency and amount of exposure.
- Number of employees exposed.
- Instances, or number of times, the hazard is identified in the workplace.
- How close an employee is to the hazard, i.e., the proximity of the employee to the hazard.
- Weather and other working conditions.
- Employee skill level and training.
- Employee awareness of the hazard.
- The pace, speed, and nature of the task or work.
- Use of personal protective equipment.
- Other mitigating or contributing circumstances.

Table 5
Probability

<u>3</u>	<ul style="list-style-type: none"> • <u>If the factors considered indicate the likelihood of injury or illness would be relatively high.</u>
<u>2</u>	<ul style="list-style-type: none"> • <u>If the factors considered indicate the likelihood of injury or illness would be moderate.</u>

<u>1</u>	<ul style="list-style-type: none"> • <u>If the factors considered indicate an injury or illness could occur, but the likelihood would be relatively low.</u>
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- (~~WISHA uses Table 4, Gravity Based Penalty,~~) Table 6 is used to determine the dollar amount for each gravity-based penalty, unless otherwise specified by statute.

~~((Table 4
Gravity Based Penalty~~

Gravity	Base Penalty
1	\$100
2	\$200
3	\$300
4	\$400
5	\$500
6	\$1000
8	\$1500
9	\$2000
10	\$2500
12	\$3000
15	\$3500
16	\$4000
18	\$4500
20	\$5000
24	\$5500
25	\$6000
30	\$6500
36	\$7000))

Table 6
Gravity-Based Penalty - Serious Violations
Severity x Probability = Gravity

<u>9</u> <u>High</u>	<u>\$7,000</u>
<u>6</u>	<u>\$6,000</u>
<u>4</u>	<u>\$4,000</u>
<u>3</u>	<u>\$3,000</u>
<u>2</u>	<u>\$2,000</u>
<u>1</u> <u>Low</u>	<u>\$1,000</u>

The minimum penalty for a serious violation = \$100.

(A penalty is required by statute for a serious violation; where adjustments would result in a penalty below the minimum, the minimum will be applied.)

The maximum statutory penalty for a serious violation = \$7,000.

Table 7
General Violations Penalty

<u>General violation (first time nonstatutory)</u>	<u>\$0</u>
<u>General violation base penalty</u>	<u>\$200</u>

A penalty is not applied to first time general violations. The base penalty is used to calculate the penalty for willful, repeat, or failure to abate general violations.

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-14015 Base penalty adjustments.

• (~~WISHA may adjust base penalties. Table 5, Adjusted Base Penalties,~~) Tables 8 through 11 describe(~~s~~) the various factors (~~WISHA~~) DOSH considers when adjusting a base penalty, and the effect on the fine.

- The minimum adjusted base penalty for any violation carrying a penalty is one hundred dollars.

- The minimum adjusted penalty for serious violations contributing to a fatality is two thousand five hundred dollars.

- The minimum penalty for willful violations is five thousand dollars.

- The maximum adjusted base penalty for a violation is seven thousand dollars.

• No adjustments are made to minimum penalty amounts specified by statute.

Note: Repeat, willful, egregious, or failure-to-abate (failure to correct) penalty adjustments can exceed seven thousand dollars. See (~~Increases to adjusted base penalties;~~) Tables 12 through 14 in WAC 296-900-14020(~~s~~) for those penalties.

~~(Table 5
Adjusted Base Penalties)~~

For this type of adjustment:	WISHA will consider:	The base penalty will be adjusted as follows:
Good faith effort	<ul style="list-style-type: none"> • Awareness of act • Effort before an inspection to provide a safe and healthful workplace for employees • Effort to follow a requirement they have violated • Cooperation during an inspection, measured by a desire to follow the cited requirement and immediately correct identified hazards 	<p>Excellent rating = 35% reduction</p> <p>Good rating = 20% reduction</p> <p>Average rating = No adjustment</p> <p>Poor rating = 20% increase</p>

For this type of adjustment:	WISHA will consider:	The base penalty will be adjusted as follows:
Size of workforce	<ul style="list-style-type: none"> Work force size at all sites in Washington state 	1-25 employees = 60% reduction 26-100 employees = 40% reduction 101-250 employees = 20% reduction More than 250 employees = No adjustment
Employer history	<ul style="list-style-type: none"> History of previous safety and health violations in Washington state and injury and illness rates for that employer 	Good history = 10% reduction Average history = No adjustment Poor history = 10% increase))

**Table 8
Employer Inspection History**

<u>History Assessment</u>	<u>Penalty Adjustment</u>
<u>Above Average:</u> <u>Previous inspections with less than one serious violation on average and no willful, repeat, or failure to abate violations.</u>	<u>-10%</u>
<u>Average:</u> <u>No previous inspections or inspections with less than two serious violations on average.</u>	<u>None</u>
<u>Below Average:</u> <u>Previous inspections with willful, repeat, or failure to abate violations or inspections with two or more serious violations on average.</u>	<u>+10%</u>

- History is based on the prior three years statewide.
- No reduction is given for violations classified as willful, repeat, failure to abate, or violations contributing to an inpatient hospitalization with an assigned gravity of 6 or 9 or any violations contributing to a fatality.

**Table 9
Good Faith**

<u>Good Faith</u>	<u>Penalty Adjustment</u>
<u>Good</u>	<u>-20%</u>
<u>Average</u>	<u>None</u>
<u>Below Average</u>	<u>+20%</u>

Based on:

- Evidence of an overall safety and health program, including a written accident prevention program (APP), other required written programs, training, etc.
 - Efforts to fully communicate safety and health policies.
 - Employees are clearly involved in the safety and health programs.
 - Management's commitment at all levels is apparent.
 - Employer's injury and illness rate.
- No reduction is given for violations classified as willful, repeat, or failure to abate.

Table 10
Abatement Quick-Fix Reduction

<u>Immediate correction of hazard provided such corrective action is substantial and not temporary or superficial</u>	<u>-15%</u>
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No reduction is given for:

- Violations classified as willful, repeat, or failure to abate.
- Violations contributing to an inpatient hospitalization or fatality, or to any incidents resulting in serious injuries to employees.
- Blatant violations that are easily corrected or "abated" due to the short-term duration of work at a specific location.

Table 11
Size of Workforce

<u>Number of Employees</u>	<u>Penalty Adjustment</u>
<u>1 - 10</u>	<u>-70%</u>
<u>11 - 25</u>	<u>-60%</u>
<u>26 - 100</u>	<u>-40%</u>
<u>101 - 250</u>	<u>-20%</u>
<u>251 or more</u>	<u>None</u>

Based on workforce size nationwide.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-900-14020 Increases to adjusted base penalties.

~~• ((WISHA may increase an adjusted base penalty in certain circumstances. Table 6, Increases to Adjusted Base Penalties,))~~ Tables 12 through 14 describe((s)) circumstances where an increase may be applied by DOSH to an adjusted base penalty.

~~((Table 6
Increases to Adjusted Base Penalties~~

For this circumstance:	The adjusted base penalty may be increased as follows:
<p>Repeat violation</p> <p>When the employer has been previously cited for a substantially similar hazard, with a final order for the previous violation dated no more than 3 years prior to the employer committing the violation being cited.</p>	<ul style="list-style-type: none"> • Multiplied by the total number of citations with violations involving similar hazards, including the current inspection. <p>Note: The maximum penalty can't exceed seventy thousand dollars for each violation.</p>
<p>Willful violation</p> <p>An act committed with the intentional, knowing, or voluntary disregard for the WISHA requirements or with plain indifference to employee safety.</p>	<ul style="list-style-type: none"> • Multiplied by ten with at least the statutory minimum penalty of five thousand dollars <p>Note: The maximum penalty can't exceed \$70,000 for each violation.</p>
<p>Egregious violation</p> <p>If the violation was willful and at least one of the following:</p> <ul style="list-style-type: none"> • The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses. • The violations resulted in persistently high rates of worker injuries or illnesses. • The employer has an extensive history of prior violations. • The employer has intentionally disregarded its safety and health responsibilities. • The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties. • The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place. 	<ul style="list-style-type: none"> • With a separate penalty issued for each instance the employer fails to follow a specific requirement.

For this circumstance:	The adjusted base penalty may be increased as follows:
<p>Failure to abate (FTA) Failure to correct a cited WISHA violation on time.</p> <p>Reference: For how to certify corrected violations, go to Certifying violation corrections; WAC 296-900-15005 through 296-900-15030.</p>	<ul style="list-style-type: none"> • Based on the facts at the time of reinspection, will be multiplied by: <ul style="list-style-type: none"> - At least five, but up to ten, based on the employer's effort to comply. - The number of calendar days past the correction date, with a minimum of five days. <p>Note: The maximum penalty can't exceed seven thousand dollars per day for every day the violation is not corrected.)</p>

Table 12
Repeat Violations
(increases the adjusted base penalty, after willful assessment)

1 st time x 2
2 nd time x 5
3 rd time x 8
4 th time x 12
5 th time x 15

- History is based on the prior three years
- Maximum statutory penalty = \$70,000

Note: For repeat willful violations the repeat adjustment is applied after the willful assessment.

Table 13
Willful Violations

<u>Multiply the adjusted based penalty by 10.</u>
<ul style="list-style-type: none"> • <u>No reduction is given for good faith, history, or abatement quick-fix.</u>

Minimum statutory penalty = \$5,000
Maximum statutory penalty = \$70,000

Table 14
Failure to Abate

<u>Increases the adjusted base penalty:</u>
<u>Adjusted base penalty is multiplied by the number of calendar days past the correction date, with a minimum of five days.</u>
<ul style="list-style-type: none"> • <u>No reduction in the base penalty is given for good faith, history, or abatement quick-fix.</u>

Maximum statutory penalty cannot exceed \$7,000 per day if violation is not corrected.

Table 15

Egregious Violation

<p>If the violation was willful and at least one of the following:</p> <ul style="list-style-type: none">• <u>The violations resulted in worker fatalities, a worksite catastrophe, or large number of injuries or illnesses.</u>• <u>The violation resulted in persistently high rates of worker injuries or illnesses.</u>• <u>The employer has an extensive history of prior violations.</u>• <u>The employer has intentionally disregarded its safety and health responsibilities.</u>• <u>The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties.</u>• <u>The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place.</u>	<ul style="list-style-type: none">• <u>The adjusted base penalty may be increased as follows:</u> <u>With a separate penalty issued for each instance, the employer fails to follow a specific requirement.</u>
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Table 16
Penalty Calculation Method

<p><u>All penalty adjustments factors are summed.</u></p> <ul style="list-style-type: none">• <u>History: Up to a 10% reduction</u>• <u>Good Faith: Up to a 20% reduction</u>• <u>Quick-Fix: Up to a 15% reduction</u>• <u>Size: Up to a 70% reduction</u>

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-180 Definitions.

Affected employees

Employees who could be one of the following:

((-)) • Exposed to unsafe conditions or practices.

((-)) • Affected by a request for, or change in, a variance from WISHA requirements.

Assistant director

The assistant director for the ((~~WISHA services~~)) division of occupational safety and health (DOSH) at the department of labor and industries or his/her designated representative.

Base penalty

The penalty amount calculated for a violation by considering either specific statutory penalty amounts or the gravity of the violation.

Board

The board of industrial insurance appeals.

Certification

An employer's written statement describing when and how a citation violation was corrected.

Citation

See citation and notice.

Citation and notice

Issued to an employer for any violation of WISHA safety and health requirements. Also known as a citation and notice of assessment, or simply citation.

Correction action plans

Your written plans for correcting a WISHA violation.

Correction date

The date by which you must meet the WISHA requirements listed on either a:

- Citation and notice (C&N);

OR

- A Corrective notice of redetermination (CNR).

Corrective notice of redetermination (CNR)

Issued by WISHA after WISHA has reassumed jurisdiction over an appealed citation and notice.

Designated representative

Any of the following:

- Any individual or organization to which an employee gives written authorization.
- A recognized or certified collective bargaining agent without regard to written employee authorization.
- The legal representative of a deceased or legally incapacitated employee.

Division or DOSH

The division of occupational safety and health, Washington state department of labor and industries.

Documentation

Material that an employer submits to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and labor.

Failure to abate (FTA)

A violation that was cited previously which the employer has not fixed.

Final order

Any of the following (unless an employer or other party files a timely appeal):

- Citation and notice.
- Corrective notice of redetermination.
- Decision and order from the board of industrial insurance appeals.
- Denial of petition for review from the board of industrial insurance appeals.

• Decision from a Washington state superior court, court of appeals, or the state supreme court.

Final order date

The date a final order is issued.

Gravity

For purposes of calculating a penalty means the amount calculated by multiplying a violation's severity rate by its probability rate.

Hazard

Any condition, potential or inherent, which can cause injury, death, or occupational disease.

Imminent danger violation

Any violation resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

Inpatient hospitalization

Formal admission to the inpatient service of a hospital or an equivalent medical facility on an emergent basis for a work-related injury, or illness.

Interim order

An order allowing an employer to vary from WISHA requirements until a permanent or temporary variance is granted.

Monetary penalties

Fines assessed against an employer for violations of safety and health requirements.

Movable equipment

A hand-held or nonhand-held machine or device that:

- Is powered or nonpowered.
- Can be moved within or between worksites.

Must

Means mandatory.

Permanent variance

Allows an employer to vary from WISHA requirements when an alternate means, that provides equal protection to workers, is used.

Probability ((rate))

A number that describes the likelihood of an injury, illness, or disease occurring, ranging from 1 (lowest) to ((6)) 3 (highest).

Reassume jurisdiction

WISHA has decided to provide the employer with an informal conference to discuss their appeal.

Repeat violation

A violation where the employer has been cited one or more times previously for a substantially similar hazard, and the prior violation has become a final order no more than three years prior to the employer committing the violation being cited.

Serious violation

When there is a substantial probability that death or serious physical harm could result from one of the following in the workplace:

((-)) • A condition that exists.

((-)) • One or more practices, means, methods, operations, or processes that have been adopted or are in use.

Severity

For purposes of calculating a penalty means the most serious injury, illness, or disease that could be reasonably expected to occur,

ranging from 1 (lowest) to 3 (highest), because of a hazardous condition.

Temporary variance

Allows an employer to vary from WISHA requirements under certain circumstances.

Variance

Provides an approved alternative to WISHA requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

WAC

An acronym for Washington Administrative Code, which are rules developed to address state law.

WISHA

This is an acronym for the Washington Industrial Safety and Health Act.

You

An employer.

Sample Tag for Cited Moveable Equipment

<p>WARNING: EQUIPMENT HAZARD</p> <p>Cited by the Department of Labor and Industries</p>	Equipment cited:
	Hazard cited:
	For detailed information, see L&I citation posted at:

<p>WARNING: EQUIPMENT HAZARD</p> <p>See reverse side</p>	<p>This tag or similar tag or a copy of the citation must remain attached to this equipment until the criteria for removal in WAC 296-900-15035 are met.</p> <p>The tag/citation copy must not be altered, defaced, or covered by other material.</p>
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