

**WAC 296-900-140 Monetary penalties.**

**Summary:**

**Employer responsibility:**

To pay monetary penalties if assessed.

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**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.

- "Standard penalty" means any penalty that does not have an otherwise designated minimum amount.

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

**WAC 296-900-14005 Reasons for monetary penalties.**

- DOSH **may** assess monetary penalties when a citation and notice is issued for any violation of safety and health rules or statutes.

- 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)) SDS, RCW 49.70.190.
  - Right to know—Penalty for late payment, RCW 49.70.177.
- The minimum civil penalties assessed by DOSH are:
- One hundred dollars for any standard penalty.
  - Two thousand five hundred dollars per violation for serious violations contributing to a fatality.
  - Five thousand dollars per violation for all willful violations unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state.
  - Two hundred fifty dollars per day for asbestos good faith inspection (RCW 49.26.016 and 49.26.013).

AMENDATORY SECTION (Amending WSR 15-13-049, filed 6/9/15, effective 9/1/15)

**WAC 296-900-14010 Base penalties.**

- 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 3 (highest).
- Tables 3 and 4 are used to determine the severity rate for a violation.

**Table 3  
Severity - Serious Violations**

3	<ul style="list-style-type: none"> <li>• Death</li> <li>• Injuries involving permanent disability</li> <li>• Chronic, irreversible illness</li> </ul>
2	<ul style="list-style-type: none"> <li>• Disability of a limited nature</li> <li>• Injuries or reversible illnesses resulting in hospitalization</li> </ul>
1	<ul style="list-style-type: none"> <li>• Injuries or temporary, reversible illnesses resulting in serious physical harm</li> <li>• May require removal from exposure or supportive treatment without hospitalization for recovery</li> </ul>

**Table 4**  
**Severity - General Violations**

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

**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**

3	<ul style="list-style-type: none"> <li>• If the factors considered indicate the likelihood of injury or illness would be relatively high.</li> </ul>
2	<ul style="list-style-type: none"> <li>• If the factors considered indicate the likelihood of injury or illness would be moderate.</li> </ul>
1	<ul style="list-style-type: none"> <li>• If the factors considered indicate an injury or illness could occur, but the likelihood would be relatively low.</li> </ul>

- Table 6 is used to determine the dollar amount for each gravity-based penalty, unless otherwise specified by statute.

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

9 High	\$7,000
6	\$6,000
4	\$4,000
3	\$3,000
2	\$2,000
1 Low	\$1,000

The minimum penalty for a standard serious violation = (~~(\$100)~~) one hundred dollars.

(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)) will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seven thousand dollars, whichever is more.

Links:

- Occupational Safety and Health Administration—OSHA penalties.
- Occupational Safety and Health Administration 29 C.F.R. 1903.15

Proposed penalties.

- RCW 49.17.180 Violations—Civil penalties.

**Table 7  
General Violations Penalty**

General violation (first time nonstatutory)	\$0
General violation base penalty	\$200

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 15-13-049, filed 6/9/15, effective 9/1/15)

**WAC 296-900-14015 Base penalty adjustments.**

• Tables 8 through 11 describe the various factors DOSH considers when adjusting a base penalty, and the effect on the fine.

- The minimum adjusted base penalty for any standard 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 per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state.

- The maximum adjusted base penalty for a violation (~~is seven thousand dollars~~) will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seven thousand dollars, whichever is more.

• 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 Tables 12 through 14 in WAC 296-900-14020 for those penalties.))

**Table 8  
Employer Inspection History**

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

- 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**

Good Faith	Penalty Adjustment
Good	-20%
Average	None
Below Average	+20%

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**

Immediate correction of hazard provided such corrective action is substantial and not temporary or superficial	-15%
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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**

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

Based on workforce size nationwide.

AMENDATORY SECTION (Amending WSR 15-13-049, filed 6/9/15, effective 9/1/15)

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

• Tables 12 through 14 describe circumstances where an increase may be applied by DOSH to an adjusted base penalty.

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

1 <sup>st</sup> time x 2
2 <sup>nd</sup> time x 5
3 <sup>rd</sup> time x 8
4 <sup>th</sup> time x 12
5 <sup>th</sup> time x 15

((+)) History is based on the prior three years.

((+)) The maximum statutory penalty ((=~~\$70,000~~)) will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seventy thousand dollars, whichever is more.

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

**Table 13**  
**Willful Violations**

Multiply the adjusted based penalty by 10.
• No reduction is given for good faith, history, or abatement quick-fix.

The minimum statutory penalty ((=~~\$5,000~~)) for willful violations is five thousand dollars per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state.

The maximum statutory penalty ((=~~\$70,000~~)) will be the maximum civil penalty established under the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seventy thousand dollars, whichever is more.

**Table 14**  
**Failure to Abate**

Increases the adjusted base penalty:
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Adjusted base penalty is multiplied by the number of calendar days past the correction date, with a minimum of five days.

- No reduction in the base penalty is given for good faith, history, or abatement quick-fix.

The maximum statutory penalty ((cannot exceed \$7,000)) will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seven thousand dollars, whichever is more, 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"> <li>• The adjusted base penalty may be increased as follows:</li> </ul>
<ul style="list-style-type: none"> <li>• The violations resulted in worker fatalities, a worksite catastrophe, or large number of injuries or illnesses.</li> <li>• The violation resulted in persistently high rates of worker injuries or illnesses.</li> <li>• The employer has an extensive history of prior violations.</li> <li>• The employer has intentionally disregarded its safety and health responsibilities.</li> <li>• The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties.</li> <li>• 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.</li> </ul>	<p>With a separate penalty issued for each instance, the employer fails to follow a specific requirement.</p>

**Table 16  
Penalty Calculation Method**

All penalty adjustments factors are summed.

- History: Up to a 10% reduction
- Good Faith: Up to a 20% reduction
- Quick-Fix: Up to a 15% reduction
- Size: Up to a 70% reduction