

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
NONCOMPLYING EMPLOYERS

---

EXHIBIT "A"  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 80

EFFECTIVE JULY 26, 1995

**436-80-040 Assessment of Civil Penalties Against Non-complying Employer; Hearing on Proposed Assessment**

(1) [If a person violates ORS 656.052 (1), Compliance shall assess a civil penalty under ORS 656. 735, unless another agency of the State of Oregon has assessed a civil penalty against the person for the same violation of ORS 656.052(1).]

[(2)] **(1)** In accordance with ORS 656.735(1), the amount of penalty for a person's first violation of ORS 656.052(1) shall be **the greater of \$1,000 or twice the premium the employer would have paid during the non-complying period if insurance had been provided.**

(a) Compliance may reduce the amount of the penalty due, to [the lesser of] **105% of** the amount of premium the employer would have paid during the noncomplying period if insurance had been provided [or \$25 for each calendar day of the noncomplying period] if, prior to the penalty order becoming final, the employer:

(A) Agrees to not contest the penalty order;

(B) Provides evidence satisfactory to Compliance that it is no longer a subject employer or, if it is still a subject employer, that it has now complied with ORS 656.052(1);

(C) Provides adequate payroll information to enable Compliance to calculate the amount of premium the employer would have paid during the noncomplying period if insurance had been provided; and

(D) Makes arrangements satisfactory to Compliance for prompt payment of the reduced penalty amount.

(b) If **105% of** the amount of premium the employer would have paid during the noncomplying period is **less than \$500,** [more than \$1,000, and \$25 for each calendar day of the noncomplying period totals more than \$1,000, there will be no reduction of the penalty amount.] **the reduced penalty will be \$500.**

[(3)] **(2)** The amount of penalty, when assessed against the employer pursuant to ORS 656.735(2), shall be **\$250** [25] per day for each calendar day the employer has continued to violate ORS 656.052(1), commencing with the first day of such violation:

(a) Compliance may reduce the amount of the penalty due to **150% of** [250 plus] the amount of premium the employer would have paid during the non-complying period if insurance had been provided if, prior to the penalty order becoming final, the employer:

(A) Agrees to not contest the penalty order;

(B) Provides evidence satisfactory to Compliance that it is no longer a subject employer or, if it is still a subject employer, that is has now complied with ORS 656.052(1);

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
NONCOMPLYING EMPLOYERS**

---

(C) Provides adequate payroll information to enable Compliance to calculate the amount of premium the employer would have paid during the noncomplying period if insurance had been provided; and

(D) Makes arrangements satisfactory to Compliance for prompt payment of the reduced penalty amount.

(b) If **150%** of the amount of premium the employer would have paid during the noncomplying period [plus \$250] is equal to or greater than \$250 [\$25] per calendar day of noncompliance, there will be no reduction of the penalty amount.

**(c) If 150% of the amount of premium the employer would have paid during the noncomplying period is less than \$1000, the reduced penalty will be \$1000.**

**(3) For the purpose of this rule, "premium the employer would have paid during the noncomplying period" means:**

**(a) If payroll records are available, actual premium using the applicable occupational base rate premium applied to the payroll of the employer during the period of noncompliance; or**

**(b) If payroll records are not available, estimated premium based upon the number of workers employed during the noncomplying period times the average weekly wage as defined in ORS 656.005(1), using the applicable Assigned Risk base rated premium during the period of noncompliance.**

(4) If a subject worker of a noncomplying employer receives a compensable injury while in the employ of such employer, Compliance shall assess a civil penalty against the employer in accordance with ORS 656.054(2) and 656.735(3) after the order is final and the worker's claim is closed.

(a) For the purposes of this subsection, a claim for a nondisabling compensable injury is considered closed if 30 days elapse during which the worker receives no medical services, as verified by the reports submitted to the Department under OAR 436-80-070(1);

(b) The amount of penalty shall be ten percent of the total claim cost, reduced to the nearest \$50, but not less than \$100 nor more than the maximum penalty set forth in ORS 656.735(3).

(5) Compliance shall serve an order assessing a civil penalty, with a notice to the employer of rights under ORS 656.740.

(6) When a penalty order becomes final, Compliance shall transfer the matter to the Business Administration Division of the Department to collect the penalty.

Stat. Auth.: ORS 656.052, 656.726 & 656.735  
Hist.: WCB 4-1973(Temp), f. & eff. 12-6-73;  
WCB 4-1974, f. 2-13-74, eff. 3-11-74;  
WCB 15-1975, f. 9-22-75, eff. 10-11-75;  
WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78;  
Renumbered from 436-52-030, 5-1-85; WCD 7-1987, f. 12-18-87, eff. 1-1-88;  
WCD 5-1989, f. 12-22-89, cert. eff. 1-1-90;  
WCD 26-1990, f. 11-29-90, cert. eff. 12-26-90;  
WCD 95-057(Temp), f. 7-26-95, eff. 7-26-95