

## CHAPTER VI

### PENALTIES

- A. General Policy. The penalty structure provided under §396-10, HRS, is designed primarily to provide an incentive toward correcting violations voluntarily, not only to the offending employer but, more especially, to other employers who may be guilty of the same infractions of the standards or regulations.
1. While penalties are not designed primarily as punishment for violations, the Congress has made clear its intent that penalty amounts should be sufficient to serve as an effective deterrent to violations.
  2. The penalty structure outlined in this chapter is designed as a general guideline. The administrator may deviate from this guideline if warranted, to achieve the appropriate deterrent effect.
- B. Civil Penalties.
1. Statutory Authority. Section 396-10, HRS, provides the director with the statutory authority to propose civil penalties for violations of the Law.
    - a. Section 396-10(b) of the Law provides that any employer who has received a citation for an alleged violation of the Law which is determined to be of a serious nature shall be assessed a civil penalty of up to \$7,000 for each violation.
    - b. Section 396-10(c) provides that, when the violation is specifically determined not to be of a serious nature, a proposed civil penalty of up to \$7,000 may be assessed for each violation.
    - c. Section 396-10(e) provides that, when a violation of a posting requirement is cited, a civil penalty of up to \$7,000 shall be assessed.
  2. Minimum Penalties. The following guidelines apply.
    - a. The proposed penalty for any willful violation shall not be less than \$5,000. The \$5,000 penalty is a statutory minimum and not subject to administrative discretion. See B.13.a.(1)(a), below for applicability to small employers.
    - b. When the adjusted proposed penalty for an other-than-serious violation (citation item) would amount to less than \$100, no penalty shall be proposed for that violation.
    - c. When, however, there is a citation item for posting violation, this minimum penalty amount does not apply with respect to that item since penalties for such items are mandatory under the law.

- d. When the adjusted proposed penalty for a serious violation (citation item) would amount to less than \$100, a \$100 penalty shall be proposed for that violation.
3. Penalty Factors. Section 396-10(j) of the Law provides that penalties shall be assessed on the basis of four factors:
  - a. The gravity of the violation.
  - b. The size of the business.
  - c. The good faith of the employer, and
  - d. The employer's history of previous violations.
4. Gravity of Violation. The gravity of the violation is the primary consideration in determining penalty amounts. It shall be the basis for calculating the basic penalty for both serious and other violations. To determine the gravity of a violation the following two assessments shall be made:
  - a. The severity of the injury or illness, which could result from the alleged violation.
  - b. The probability that an injury or illness could occur as a result of the alleged violation.
5. Severity Assessment. The classification of the alleged violations as serious or other-than-serious, in accordance with the instruction in Chapter IV, B.1, is based on the severity of the injury or illness that could result from the violation. This classification constitutes the first step in determining the gravity of the violation. A severity assessment shall be assigned to a hazard to be cited according to the most serious injury or illness which could reasonably be expected to result from an employee's exposure as follows:
  - a. High Severity: Death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses.
  - b. Medium Severity: Injuries or temporary, reversible illnesses resulting in hospitalization or a variable but limited period of disability.
  - c. Low Severity: Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment.
  - d. Minimal Severity: Other-than-serious violations. Although such violations reflect conditions which have a direct and immediate relationship to the safety and health of employees, the injury or illness not likely to result would probably not cause death or serious physical harm.
6. Probability Assessment. The probability that an injury or illness will result from a hazard has no role in determining the classification of a violation but does affect the amount of the penalty to be proposed.

- a. Categorization. Probability shall be categorized either as greater or as lesser probability.
  - (1) Greater probability results when the likelihood that an injury or illness will occur is judged to be relatively high.
  - (2) Lesser probability results when the likelihood that an injury or illness will occur is judged to be relatively low.
  
- b. Violations. The following circumstances may normally be considered, as appropriate, when violations likely to result in injury or illness are involved:
  - (1) Number of workers exposed.
  - (2) Frequency of exposure or duration of employee overexposure to contaminants.
  - (3) Employee proximity to the hazardous conditions.
  - (4) Use of appropriate personal protective equipment (PPE).
  - (5) Medical surveillance program.
  - (6) Youth and inexperience of workers, especially those under 18 years old.
  - (7) Other pertinent working conditions.
  
- c. Final Probability Assessment. All of the factors outlined above shall be considered together in arriving at a final probability assessment. When strict adherence to the probability assessment procedures would result in an unreasonably high or low gravity, the probability may be adjusted as appropriate based on professional judgment. Such decisions shall be adequately documented in the case file.

7. Gravity-Based Penalty. The gravity-based penalty (GBP) is an unadjusted penalty and is calculated in accordance with the following procedures:

- a. The GBP for each violation shall be determined based on an appropriate and balanced professional judgment combining the severity assessment and the final probability assessment.
- b. For serious violations, the GBP shall be assigned on the basis of the following scale:

Severity	Probability	GBP	Gravity
High	Greater	\$5,000 high	(\$5,000+)
Medium	Greater	\$3,500 - - -	
Low	Greater	\$2,500 l- -	moderate

High	Lesser	\$2,500	
Medium	Lesser	\$2,000-	- -
Low	Lesser	\$1,500	low

**NOTE:** The gravity of a violation is defined by the GBP.

- o A **high gravity** violation is one with a GBP of \$5,000 or greater.
  - o A **moderate gravity** violation is one with GBP of \$2,000 to \$3,500.
  - o A **low gravity** violation is one with a GBP of \$1,500.
- c. The highest gravity classification (high severity and greater probability) shall normally be reserved for the most serious violative conditions, such as those situations involving danger of death or extremely serious injury or illness. If the administrator determines that it is appropriate to achieve the necessary deterrent effect, a GBP of \$7,000 may be proposed. The reason for this determination shall be documented in the case file.
- d. For other-than-serious safety and health violations, there is no severity assessment.
- e. The administrator may authorize a penalty between \$1,000 and \$7,000 for an other-than-serious violation when it is determined to be appropriate to achieve the necessary deterrent effect. The reasons for such a determination shall be documented in the case file.

Probability	GBP
Greater	1,000 - \$7,000
Lesser	\$0

- f. A GBP may be assigned in some cases without using the severity and the probability assessment procedures outlined in this section when these procedures cannot appropriately be used.
- g. The Penalty Table (Table IV-1) may be used for determining appropriate adjusted penalties for serious and other-than-serious violations.
8. Gravity Calculations for Combined or Grouped Violations. Combined or grouped violations will normally be considered as one violation and shall be assessed one GBP. The following procedures apply to the calculation of penalties for combined and grouped violations.
- a. The severity and the probability assessment for combined violations shall be based on the instance with the highest gravity. It is not necessary to complete the penalty calculations for each instance or subitem of a combined or grouped violation if it is clear which instance will have the highest gravity.
  - b. For grouped violations, the following special guidelines shall be adhered to:

- (1) Severity Assessment. There are two considerations to keep in mind in calculating the probability of grouped violations:
    - (a) The severity assigned to the grouped violation shall be no less than the severity of the most serious reasonably predictable injury or illness that could result from the violation of any single item.
    - (b) If a more serious injury or illness is reasonably predictable from the grouped items than from any single violation item, the more serious injury or illness shall serve as the basis for the calculation of the severity factor of the grouped violation.
  - (2) Probability Assessment. There are two considerations to be kept in mind in calculating the probability of grouped items:
    - (a) The probability assigned to the grouped violation shall be no less than the probability of the item which is most likely to result in an injury or illness.
    - (b) If the overall probability of injury or illness is greater with the grouped violation than with any single violation item, the greater probability of injury or illness shall serve as the basis for the calculation of the probability assessment of the grouped violation.
  - (3) In egregious cases an additional factor of up to the number of violation instances may be applied. Such cases shall be handled in accordance with OSHA Instruction CPL 2.80 (GOSH-Guideline on the Handling of Cases to be Proposed for Violation-By-Violation Penalties). Penalties calculated with this additional factor shall not be proposed without the concurrence of the director. (See also B.11.b.(3)(d) of this chapter.)
9. Penalty Adjustment Factors. The GBP may be reduced by as much as 95 percent, depending upon the employer's "good faith," size business," and "history of previous violations." Up to 60-percent reduction is permitted for size; up to 25-percent reduction for good faith, and 10-percent for history.
- a. Since these adjustment factors are based on the general character of a business and its safety and health performance, the factors generally shall be calculated only once for each employer. After the classification and probability ratings have been determined for each violation, the adjustment factors shall be applied subject to the limitations indicated in the following paragraphs.
  - b. Penalties assessed for violations that are classified as high severity and greater probability shall be adjusted only for size and history.

- c. Penalties assessed for violations that are classified as repeated shall be adjusted only for size.
- d. Penalties assessed for regulatory violations, which are classified as willful, shall be adjusted for size. Penalties assessed for serious violations, which are classified as willful, shall be adjusted for size and history.

**NOTE:** If one violation is classified as willful, no reduction for good faith can be applied to any of the violations found during the same inspection. The employer cannot be willfully in violation of the Act and at the same time, be acting in good faith.

- e. The rate of penalty reduction for size of business, employer's good faith and employer's history of previous violations shall be calculated on the basis of the criteria described in the following paragraphs:

(1) Size: A maximum penalty reduction of 60 percent is permitted for small business. "Size of business" shall be measured on the basis of maximum number of employees of an employer at all workplaces at any one time during the previous 12 months.

- (a) The rates of reduction to be applied are as follows:

Employees	Percent reduction
1-25	60
26-100	40
101-250	20
251 or more	none

- (b) When a small business (1-25 employees) has one or more serious violations of high gravity or a number of serious violations of moderate gravity, indicating a lack of concern for employee safety and health, the OSHCO may recommend that a partial reduction in penalty shall be permitted for size of business.

(2) Good Faith. A penalty reduction of up to 25 percent, based on the OSHCO's professional judgment, is permitted in recognition of an employer's "good faith."

- (a) The 25% credit for "good faith" normally requires a written safety and health program. In exceptional cases, the compliance officer may recommend the full 25% for a smaller employer (1-25 employees) who has implemented an efficient safety and health program, but has not reduced it to writing.

1 Provides for appropriate management commitment and employee involvement; worksite analysis for the purpose of hazard identification; hazard prevention and control measures; and safety and health training.

**NOTE:** One example of a framework for such a program is given in OSHA's voluntary "Safety and Health Program management Guidelines" (Federal Register, Vol. 54, No. 16, January 26, 1989, pp. 3904-3916, or later revisions as published).

2 Has deficiencies that are incidental.

- (b) A reduction of 15 percent shall normally be given if the employer has a documentable and effective safety and health program, but with more than incidental deficiencies.
- (c) No reduction shall be given to an employer who has no safety and health program or where a willful violation is found.
- (d) Only these percentages (15% or 25%) may be used to reduce penalties due to the employer's good faith. No intermediate percentages shall be used.
- (e) Where young workers (i.e., less than 18 years old) are employed, the CSHO's evaluation must consider whether the employer's safety and health program appropriately addresses the particular needs of such workers with regard to the types of work they perform and the hazards to which they are exposed.

(3) History. A reduction of 10 percent shall be given to employers who have not been cited by HIOSH for any serious, willful, or repeated violations in the 3 years.

(4) Total. The total reduction will normally be the sum of the reductions for each adjustment factor.

10. Effect on Penalties if Employer Immediately Corrects or Initiates Corrective Action.

Appropriate penalties will be proposed with respect to an alleged violation even though, after being informed of such alleged violation by the OSHCO, the employer immediately corrects or initiates steps to correct the hazard.

11. Failure to Abate. A notification of Failure to Abate an Alleged Violation (HIOSHL-2B) shall be issued in cases where violations have not been corrected as required.

- a. Failure to Abate. Failure to abate penalties shall be applied when an employer has not corrected a previously cited violation, which had become a final order of the Appeals Board. Citation items become final order of the Appeals Board when the abatement date for that item passes, if the employer has not filed a notice of contest prior to that abatement date.
  
- b. Calculation of Additional Penalties. A GBP for unabated violations is to be calculated for failure to abate a serious or other-than-serious violation on the basis of the facts noted upon reinspection. This recalculated GBP, however, shall not be less than that proposed for the item when originally cited, except as provided in B.11.b(d), below.
  - (1) In those instances where no penalty was initially proposed, an appropriate penalty shall be determined after consulting with the Branch Manager. In no case shall the unadjusted penalty be less than \$1,000 per day.
  - (2) Only the adjustment factor for size--based upon the circumstances noted during the reinspection--shall then be applied to arrive at the daily proposed penalty.
  - (3) The daily proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated, except as provided below:
    - (a) The number of days unabated shall be counted from the day following the abatement date specified in the citation or the final order. It will include all calendar days between the date and the date of reinspection, excluding the date of reinspection.
    - (b) Normally the maximum total proposed penalty for failure to abate a particular violation shall not exceed 30 times the amount of the daily proposed penalty.
    - (c) At the discretion of the administrator, a lesser penalty may be proposed with the reasons for doing so (e.g., achievement of an appropriate deterrent effect) documented in the case file.
    - (d) If a penalty in excess of the normal amount of 30 times the amount of the daily proposed penalty is deemed appropriate by the administrator, the case shall be treated under the violation-by-violation (egregious) penalty procedures established in OSHA Instruction CPL 2.80 (GOSH - Guideline on Handling of Cases to be Proposed for Violation-By-Violation Penalties).
  
- c. Partial Abatement.



- (1) When the citation has been partially abated, the administrator may authorize a reduction of 25 percent to 75 percent of the amount the proposed penalty calculation as outlined in B.11.b., above.
- (2) When a violation consists of a number of instances and the followup inspection reveals that only some instances of the violation have been corrected, the additional daily proposed penalty shall take into consideration the extent that the violation has been abated.

**EXAMPLE:** Where 3 out of 5 instances have been corrected, the daily proposed penalty (calculated as outlined in B.11.b., above, with regard to any partial abatement) may be reduced by 60 percent.

- d. Good Faith Effort to Abate. When the OSHCO believes, and so documents in the case file, that the employer has made a good faith effort to correct the violation and had good reason to believe it was fully abated, the administrator may reduce or eliminate the daily proposed penalty that would otherwise be justified.

12. Repeated Violations. Section 396-10(f) of the Law provides that an employer who repeatedly violates the Law may be assessed a civil penalty of not more than \$70,000 for each violation.

- a. Gravity-Based Penalty Factors. Each violation shall be classified as serious or other-than-serious. A GBP shall then be calculated for repeated violations based on facts noted during the current inspection. Only the adjustment factor for size, appropriate to the facts at the time of the reinspection, shall be applied.

- b. Penalty Increase Factors. The amount of the increased penalty to be assessed for a repeated violation shall be determined by the size of the employer.

- (1) Smaller Employers. For employers with 250 or fewer employees, the GBP shall be doubled for the first repeated violation and quintupled if the violation has been cited twice before. If the administrator determines that it is appropriate to achieve the necessary deterrent effect, the GBP may be multiplied by 10.

- (2) Larger Employers. For employers with more than 250 employees, the GBP shall be multiplied by 5 for the first repeated violation and multiplied by 10 for the second repeated violation.

- c. Other-Than-Serious, No Initial Penalty. For a repeated other-than-serious violation that otherwise would have no initial penalty, a GBP penalty of \$200 shall be assessed for the first repeated violation, \$500 if the violation has been cited twice before, and \$1,000 for a third repetition.

**NOTE:** This penalty will not have the penalty increase factors applied as discussed under B.9.b.

- d. Regulatory Violations. For repeated instances of regulatory violations, the initial penalty shall be doubled for the first repeated violation and quintupled if the violation has been cited twice before. If the administrator determines that it is appropriate to achieve the necessary deterrent effect, the initial penalty may be multiplied by 10.

**NOTE:** See Chapter IV, B.5., for additional guidance on citing repeated violations.

- 13. Willful Violations. Section 396-10(f) of the Law provides that an employer who willfully violates the Law may be assessed a civil penalty of not more than \$70,000 but not less than \$5,000 for each violation.

- a. Gravity-Based Penalty Factors. Each willful violation shall be classified as serious or other-than-serious.

- (1) Serious Violations. For willful serious violations, a gravity of **high**, **moderate**, or **low**, shall be assigned based on the GBP of the underlying serious violation, as described at B. 7 .b..

- (a) The adjustment factor for size shall be applied as shown in the following chart:

Employees	Percent Reduction
10 or less	80
11-20	60
21-30	50
31-40	40
41-50	30
51-100	20
101- 250	10
251 or more	0

- (b) The adjustment factor for history shall be applied as described at B.9.e.(3); i.e., a reduction of 10 percent shall be given to employers who have not been cited by HIOSH for any serious, willful, or repeated violations in the past 3 years. There shall be no adjustment for good faith.

- (c) The proposed penalty shall then be determined from the table below:

<b>Penalties to be Proposed</b>			
Total percentage reduction for size and/or history	High Gravity	Moderate Gravity	Low Gravity
0%	\$70,000	\$55,000	\$40,000
10%	\$63,000	\$49,500	\$35,000
20%	\$56,000	\$44,000	\$32,000
30%	\$49,000	\$38,500	\$28,000
40%	\$42,000	\$33,000	\$24,000
50%	\$35,000	\$27,500	\$20,000
60%	\$28,000	\$22,000	\$16,000
70%	\$21,000	\$16,500	\$12,000
80%	\$14,000	\$11,000	\$8,000
90%	\$7,000	\$5,500	\$5,000

(d) In no case shall the proposed penalty be less than \$5,000.

(2) Other-than-Serious Violations. For willful other-than-serious violations, the minimum willful penalty of \$5,000 shall be assessed.

b. Regulatory Violations. In the case of regulatory violations (see B.14., below) that are determined to be willful, the unadjusted initial penalty shall be multiplied by 10. In no event shall the penalty, after adjustment for size, be less than \$5,000.

14. Violation of Regulatory Requirements. Section 396-10(e) of the Law provides that an employer who violates any of the posting requirements shall be assessed civil penalty of up to \$17,000 for each violation and may be assessed a like penalty for recordkeeping violations.

a. General Application. Unadjusted penalties for regulatory violations, including posting requirements, shall have the adjustment factors for size and history applied (excluding willful violations, see B.13.b., above).

b. Posting Requirements. Penalties for violation of posting requirements shall be proposed as follows:

(1) HIOSH Notice (Poster). If the employer has not displayed (posted) the notice furnished by the Hawaii Occupational Safety and Health Division as prescribed in §12-51-2, an other-than-

serious citation shall normally be issued. The unadjusted penalty for this alleged violation shall be \$1,000 provided that the employer received a copy of the poster or had knowledge of the requirement.

- (2) Annual Summary. If an employer fails to post the summary portion of the OSHA 200 Form during the month of February as required by §12-52-5(d), and/or fails to complete the summary prior to February 1, as required by §12-52-5(b), even if there have been no injuries, an other-than-serious citation shall be issued. The unadjusted penalty for this violation shall be \$1,000.
- (3) Citation. If an employer received a citation that has not been posted as prescribed in §12-51-16, an other-than-serious citation shall normally be issued. The unadjusted penalty shall be \$3,000.

~~c. Reporting and Recordkeeping Requirements. Section 396-10(c) of the Law provides that violations of the recordkeeping and reporting requirements may be assessed civil penalties of up to \$7,000 for each violation.~~

~~(1) OSHA 200 Form. If the employer does not maintain the Log and Summary of Occupational Injuries and Illnesses, OSHA 200 Form, as prescribed in §12-52-2, an other than serious citation shall be issued. There shall be an unadjusted penalty of \$1,000 for each year the form was not maintained, for each of the preceding 5 years.~~

~~(a) When no recordable injuries or illnesses have occurred at a workplace during the current calendar year, the OSHA 200 need not be completed until the end of the calendar year for certification of the summary.~~

~~(b) An OSHA 200 with significant deficiencies shall be considered as not maintained.~~

~~(2) OSHA-101 Forms. If the employer does not maintain the Supplementary Record, OSHA-101 Form (or equivalent) as prescribed in §12-52-4, an other than serious citation shall be issued. There shall be an unadjusted penalty of \$1,000 for each OSHA-101 Form not maintained.~~

~~(a) A penalty of \$1,000 for each OSHA-101 Form not maintained at all up to maximum of \$7,000.~~

~~(b) A penalty of \$1,000 for each OSHA-101 Form inaccurately maintained up to a maximum of \$3,000.~~

~~(c) Minor inaccuracies shall be cited, but with no penalties.~~

- (d) ~~If the large numbers of violations or other circumstances indicate that the violations are willful, then other penalties, including, violation by violation, may be applied.~~
- (3) ~~Reporting. Employers are required to report orally to the HIOSH Office within 8 hours, any occurrence of an employment accident, which is fatal to one or more employees; which results in the hospitalization of three or more employees; or involves property damage in excess of \$25,000.~~
- (a) ~~An other than serious citation shall be issued for failure to report such an occurrence. The unadjusted penalty shall be \$5,000.~~
- (b) ~~If the administrator determines that it is appropriate to achieve the necessary deterrent effect, an unadjusted penalty of \$7,000 may be assessed.~~
- (c) ~~If the administrator becomes aware of an incident required to be reported under §12-52-8 through some means other than an employer report, prior to the elapse of the 8 hour reporting period and an inspection of the incident is made, a citable violation for failure to report does not exist.~~
- d. ~~Grouping. Violations of the posting and record keeping requirements, which involve the same document, (e.g., summary portion of the OSHA 200 Form was neither posted nor maintained) shall be grouped as an other than serious violation for penalty purpose. The unadjusted penalty for the grouped violation would then take on the highest dollar value of the individual items, which will normally be \$1,000.~~
- e. ~~Access to Records.~~
- (1) ~~§12-52-8. If the employer fails upon request to provide records required in §12-52-2 for inspection and copying by any employer, former employee, or authorized representative of employees, a citation for violation of §12-52-7(b) shall normally be issued. The adjusted penalty shall be \$1,000 for each form not made available.~~
- (a) ~~Thus, if the OSHA 200 for the 3 preceding years is not made available, the unadjusted penalty would be \$3,000.~~
- (b) ~~If the employer is to be cited for failure to maintain these records, no citation of §12-52-7 shall be issued.~~
- (2) ~~§12-202-3. If the employer is cited for failing to provide records as required under §12-202-3 for inspection and copying by any employee, former employee, authorized representative of employees, an unadjusted penalty of \$1,000 shall be proposed for each record; i.e., either medical record or exposure record, on an~~

individual employee basis. A maximum of \$7,000 may be assessed for such violations. This policy does not preclude the use of violation-by-violation penalties where appropriate. (See OSHA Instruction CPL 2.80 (GOSH – Guideline on Handling of Cases to be Proposed for Violation-By-Violation Penalties)).

(3) **EXAMPLE:** If all the necessary evidence is established where an authorized employee representative requested exposure and medical records for 3 employees and the request was denied by the employer, a citation would be issued for 6 instances of violation of §12-202-3, with an unadjusted penalty of \$6,000.

f. Notification Requirements. When an employer has received advance notice of an inspection and fails to notify the authorized employee representative as required by §12-51-6, an other-than-serious citation shall be issued. The violation shall have an unadjusted penalty of \$2,000.

TABLE IV-1  
PENALTY TABLE

Percent Reduction	Penalty (in dollars)							
	1,000	1,500	2,000	2,500	3,000	3,500	5,000	7,000
0	1,000	1,500	2,000	2,500	3,000	3,500	5,000	7,000
10	900	1,350	1,800	2,250	2,700	3,150	4,500	6,300
15	850	1,275	1,700	2,125	2,550	2,975	4,250*	5,950*
20	800	1,200	1,600	2,000	2,400	2,800	4,000	5,600
25	750	1,125	1,500	1,875	2,250	2,625	3,750*	5,250*
30	700	1,050	1,400	1,750	2,100	2,450	3,500	4,900
35	650	975	1,300	1,625	1,950	2,275	3,250*	4,550*
40	600	900	1,200	1,500	1,800	2,100	3,000	4,200
45	550	825	1,100	1,375	1,650	1,925	2,750*	3,850*
50	500	750	1,000	1,250	1,500	1,750	2,500	3,500
55	450	675	900	1,125	1,350	1,575	2,250*	3,150*
60	400	600	800	1,000	1,200	1,400	2,000	2,800
65	350	525	700	875	1,050	1,225	1,750*	2,450*
70	300	450	600	750	900	1,050	1,500	2,100
75	250	375	500	625	750	875	1,250*	1,750*
85	150	225	300	375	450	525	750*	1,050*
95	100**	100**	100	125	150	175	250*	350*

- \* Starred figures represent penalty amounts that would not normally be proposed for high gravity serious violations because no adjustment for good faith is made in such cases. They may occasionally be applicable for other-than-serious violations where the administrator has determined a high unadjusted penalty amount to be warranted.
- \*\* Administratively, HIOSH will not issue a penalty less than \$100 for a serious violation.

C. Criminal Penalties.

1. Section 396-10 of the Law provides for criminal penalties in the following cases:
  - a. Willful violation a HIOSH standard, rule, or order causing death of an employee. (§396-10(g))
  - b. Giving unauthorized advance notice. (§396-10(i))
  - c. Giving false information. (§396-10(m))
  - d. Killing, assaulting or hampering the work of an OSHCO. (§396-10(n))
2. Criminal penalties are imposed by the courts after trials and not by the Hawaii Occupational Safety and Health Division, Department of Labor and Industrial Relations, or the Appeals Board.

D. Handling Monies Received from Employers.

1. Responsibility of Branch Managers. It is HIOSH policy to collect penalties owed the State as a result of the legitimate exercise of statutory authority. The compliance branch managers are responsible for collecting assessed penalties from employers, reporting the status of uncollected penalties, and tracking cases transferred to the attorney general. The Administration and Technical Support (ATS) branch manager is responsible for mailing collected monies to the Administrative Services Office, Department of Labor and Industrial Relations in accordance with current HIOSH procedures.
2. Collection of Penalties. The compliance branch managers shall be guided by the following with regard to penalty collection.
  - a. Time Allowed for Payment of Penalties. The due date for penalties depends on whether or not the employer contests.
    - (1) Uncontested Penalties. When citations or proposed penalties are uncontested, the payment is due and payable 20 days following receipt of the Citation and Notification of Penalty or, in the case of Informal Settlement Agreements, execution of the agreement.

- (2) Contested Penalties. When citation or proposed penalties are contested, the penalties are due and payable 60 days after the issuance of a final order by the Appeals Board.
- (3) Partially Contested Penalties. When only part of a citation or a proposed penalty is contested, the time limit for payment as expressed in D.2.a.(1) will be used for the uncontested items and the time limit expressed in (2) for the contested items.

- b. Methods of Payment. Employers assessed penalties shall remit the total payment to the division office by certified check, personal check, company check, postal money order, bank draft, or bank money order, payable to the Director of Budget and Finance. Payment in cash shall be accepted. Upon request of the employer and for good cause, alternate methods of payment are permissible, such as payments in installments. In these cases the branch manager shall consult with the administrator before establishing an alternate method of payment.
- c. Identifying Payment. The inspection I.D. and employer's name shall be placed on the ATS branch receipt.

3. Handling Monies Received. Monies received in payment of penalties shall be handled according to the following.

- a. Improper Payee. If an employer erroneously makes the payment payable to an official of HIOSH by name, it shall be endorsed as follows:

- (1) Postal Money Orders. Follow instructions on reverse of the money order.
- (2) All Others. Enter on reverse:

Pay to the order of the Director of Budget and Finance

\_\_\_\_\_  
(Signature)  
(Typewritten name of payee)

- b. Forwarding Payments. Payments shall be restrictively endorsed in accordance with current instructions and forwarded weekly to the Administrative Services Offices.

4. Returning Penalty Payments. In cases of penalty modifications, refunds to the employer shall be initiated by the ATS branch.

E. Delinquent and Contested Penalties.

- 1. Collection and Recovery of Delinquent Penalties. If penalty payments have not been received within the time limit established in D.2.a, the following procedures shall be applied.



a. Collection Letter. If payment has not been received within 25 days after receipt of the citation by the employer, the branch manager shall send a collection letter to the employer, via certified mail, return receipt requested, reviewing the facts and the proposed penalty and informing the employer that:

- (1) The assessed penalty is deemed a final order of the Appeals Board;
- (2) The assessment is not subject to review;
- (3) Payment is due and shall be paid within 15 days unless other arrangements are made; and
- (4) Payment shall be made by certified check, personal check, postal money order, bank draft, or bank money order.

b. Collection Process. If payment has not been received within 30 days after the receipt of the collection letter, the branch manager shall take action to collect the penalty. All penalties will be forwarded to the attorney general for collection.

- (1) Unless requested otherwise by the attorney general, copies of the citations and amendments, notices of receipt establishing due dates, collection letters, and other pertinent correspondence, if any, shall be forwarded with a transmittal letter explaining the particular of the case.
- (2) The transmittal letter shall also include any valuable information regarding the status and current location of the employer. Until settlement is reached, the branch manager shall follow up quarterly with the attorney general's office to determine the status of the case.
- (3) Collection of penalties will be undertaken by the attorney general in conformance with HIOSH policies.
  - (a) The methods used shall be determined by the attorney general but may include additional collection letters and a review of the specifics of the case to determine the possibility of legal action.
  - b) The attorney general may bring suit when the facts warrant this action, as in the case of a particularly recalcitrant employer.
  - (c) The administrator may write off a penalty if, in his/her judgment, it is obviously uncollectible. Actions of this nature shall be fully documented in the case file. If a penalty is written off, the OSHA Office of Management

Data Systems will be promptly notified by appropriate means in accordance with current instructions.

2. Contested Penalties. If the employer files notice to contest a proposed penalty within the 20-day contest period, the administrator shall forward the notice a copy of the case file to the attorney general with a transmittal letter.
  - a. Followup Procedures. While the case files are in the hands of the attorney general, the branch manager shall follow up on a quarterly basis to determine the disposition of the case and to ensure prompt notification of disposition.
  - b. Completion of Litigation. On completion of litigation, the branch manager shall ensure that the penalty, if any, is received by the ATS branch, and that the appropriate forms are completed and submitted to the OSHA office of Management Data Systems. If the penalty has been contested and settlement has been reached but payment has not been received, the collection procedures outlined in E.1, shall be followed.