

BEFORE THE COMMISSIONER

OF THE

BUREAU OF LABOR AND INDUSTRIES

In the matter of rules regulating wage)
claim enforcement and civil penalties) PROPOSED RULES

839-001-0150

Civil Penalties for Violation of ORS 652.020, Maximum Working Hours in Mills, Factories and Manufacturing Establishments: Overtime Hours and Pay

As used in ORS 652.020, 652.900 and OAR 839-001-0150 to 839-001-0160:

(1) [*"Person" means any individual, sole proprietorship, partnership, corporation, or other business or legal entity.*

(2)]"Violation" means a transgression of any statute or rule, or any part thereof and includes both acts and omissions.

[(3)](2) "Knowingly" or "Willfully" means action undertaken with actual knowledge of a thing to be done or omitted. A person "should have known the thing to be done or omitted" if the person has knowledge of facts or circumstances which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done.

839-001-0153

Violations Separate and Distinct

Each violation of ORS 652.020 or any rule adopted pursuant thereto is a separate and distinct offense.[*In the case of continuing violations, each day's continuance is a separate and distinct violation.*]

Repeal OAR 839-001-0157

[839-001-0157

Criteria for Determining a Civil Penalty

Note: Material in [brackets] and *italics* is material that is deleted. Material that is underlined and **bold** is material to be added.

(1) The Commissioner may consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be assessed and cite those the

Commissioner finds to be appropriate:

(a) The history of the employer in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) Prior violations, if any, of statutes or rules;

(c) The magnitude and seriousness of the violation;

(d) Whether the employer knew or should have known of the violation.

(2) It shall be the responsibility of the employer to provide the Commissioner any mitigating evidence concerning the amount of the civil penalty to be assessed.

(3) Notwithstanding any other section of this rule, the Commissioner shall consider all mitigating circumstances presented by the employer for the purpose of reducing the amount of the civil penalty to be assessed.]

839-001-0160

Schedule of Civil Penalties

(1) The civil penalty for any one violation **of ORS 652.020 or any rule adopted pursuant thereto** shall not exceed \$1,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.

(2) When the Commissioner determines to assess a civil penalty for requiring or permitting an employee to work over ten hours in a day when the employee is not paid time and one-half the regular rate of pay in violation of ORS 652.020, the minimum civil penalty to be assessed shall be \$50 per day for each employee affected. For example, when the employer or an employer's agent requires or permits five employees to work over ten hours in a day for four days without paying the employees time and one-half their regular rate of pay for the hours worked over ten in

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a day, the minimum civil penalty to be assessed shall be \$1,000 (5 employees x 4 days x \$50 per day per employee = \$1,000).

(3) When the Commissioner determines to assess a civil penalty for requiring or permitting an employee to work more than 13 hours in any day of 24 hours, the minimum civil penalty shall be \$500 per day for the first offense. For example, when an employer or an employer's agent requires or permits any number of employees to work over 13 hours in a day for four days, the minimum civil penalty shall be \$2,000 (4 days x \$500/day = \$2,000). When the Commissioner determines to assess a civil penalty for subsequent offenses, the Commissioner may assess up to \$1,000 for each such offense.

(4) The civil penalties set out in sections (2) and (3) of this rule shall be in addition to any other penalty imposed by law or rule.

(5) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR [839-001-0157]839-001-0496.

(New Civil Penalty Rules)

839-001-0495
Violations Separate and Distinct

Each violation of ORS 652.110, 652.140, 652.145, 652.610(4), 652.750 or any rule adopted pursuant thereto is a separate and distinct offense.

839-001-0496
Civil Penalties

(1) When assessing a civil penalty for violations of ORS 652.110, 652.140, 652.145, 652.610(4), 652.750 or any rule adopted pursuant thereto, the Commissioner may consider the following mitigating and aggravating circumstances in determining the amount of the civil penalty to be assessed and cite those the Commissioner finds to be appropriate:

Note: Material in [brackets] and *italics* is material that is deleted. Material that is **underlined** and **bold** is material to be added.

(a) The history of the employer in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) Prior violations, if any, of statutes or rules;

(c) The magnitude and seriousness of the violation;

(d) Whether the employer knew or should have known of the violation.

(2) It shall be the responsibility of the employer to provide the Commissioner any mitigating evidence concerning the amount of the civil penalty to be assessed.

(3) Notwithstanding any other section of this rule, the Commissioner shall consider all mitigating circumstances presented by the employer for the purpose of reducing the amount of the civil penalty to be assessed.

839-001-0740

Employee Notification Form

(1) For purposes of complying [*in*]**with** ORS 652.710(3) and OAR 839-001-0720, there is no specific form required. The document used by the employer to notify its employees must contain all the information provided for in OAR 839-001-0720(6).

(2) When the form supplied to the employer by the contractor or insurer contains the required information and when an exact and clearly legible copy of the form is delivered to employees within the time required in ORS 652.710(3) and OAR 839-001-0720(3), the notification requirements are satisfied.

Civil Penalty for Violation of ORS 652.710[(10)](1)** and (3) -- Moneys Collected from Employees for Group Health Insurance Coverage and Notification of Various Parties on Termination of Group Health Insurance Coverage**

839-001-0760

Violations Separate and Distinct

Note: Material in [brackets] and *italics* is material that is deleted. Material that is **underlined** and **bold** is material to be added.

Each violation **of ORS 652.710(1) and (3)** is a separate and distinct offense.[*In the case of continuing violations, each day's continuance is a separate and distinct violation.*]

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