



Washington Division of Occupational Safety and Health to increase WISHA penalties

By Jennifer L. Truong ■ August 20, 2015

Effective September 1, 2015, Washington employers will pay higher penalties for Washington Industrial Safety and Health Act (WISHA) citations. The Federal Occupational Safety and Health Administration (OSHA) changed its policies in October 2012, resulting in the penalty changes for WISHA.

The new penalty calculation requires that the average penalty for serious violations (private sector employers only) be within +/- 25 percent of the three-year national average. The Washington Labor and Industry Division of Occupational Safety and Health (DOSH) is expected to adopt rules and policies that are at least as effective as OSHA's.

As a result, sections of WAC Chapter 296-900 were amended in 2015 to comply with the federal standards and to clarify, streamline and reform agency procedures. Employers may pay special mind to the following:

- The minimum civil penalty assessed by DOSH is \$2,500 per violation for violations contributing to a fatality.¹
- Violation gravity is determined by a weighted calculation: severity is multiplied by the probability rate.² The severity (based upon the most serious injury, illness or disease that could be reasonably expected to occur) and probability (likelihood that an injury, illness, or disease will occur) has been changed to a scale of one (lowest) to nine (highest). Gravity penalties would then be reflected as follows without deductions:

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 |

- No penalty reductions are given for: 1) violations classified as willful, repeat or failure to abate; 2) violations contributing to an inpatient hospitalization

Continued

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or fatality, or to any incidents resulting in serious injuries to employees and 3) blatant violations that are easily corrected or “abated” due to the short-term duration of work at a specific location.³

- Based upon a prior three-year employer history, repeat violations increase the adjusted-base penalties as follows:⁴

Repeat Violations

(increases the adjusted-base penalty, after willful assessment)

1st timex 2

2nd timex 5

3rd timex 8

4th time x 12

5th time x 15

Monies paid for penalties are placed in the Workers’ Compensation Supplemental Pension Fund, which provides a resource for workers and families of workers who have died on the job.

If you have questions about how this amendment may impact your business practices, please do not hesitate to contact this author or any of the other Washington practice attorneys at Reinisch Wilson Weier PC. ■

¹ WAC 296-900-14005
² WAC 296-900-14010
³ WAC 296-900-14015
⁴ WAC 296-900-14020

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