

12 DEPARTMENT OF LABOR

170 BUREAU OF LABOR STANDARDS

Chapter 9: RULES GOVERNING ADMINISTRATIVE CIVIL MONEY PENALTIES FOR LABOR LAW VIOLATIONS

Summary: The purpose of this chapter is to provide guidance parameters and procedures regarding the assessment of administrative civil money penalties for labor law violations. This rule also sets forth the procedure for appealing administrative civil money penalties.

Section I: Application

These rules apply to the assessment of administrative civil money penalties against employers determined to have violated Title 26, MRSA Chapter 7, ~~Subchapters I–IV and Chapter 15.~~ Areas covered include, but are not limited to, those listed below.

- A. ~~Sec. 601 Rest breaks~~
- B. ~~Sec. 603 Limits on mandatory overtime~~
- C. ~~Sec. 621A Timely payment of wages~~
- D. ~~Sec. 622 Records~~
- E. ~~Sec. 626 Cessation of employment~~
- F. ~~Sec. 628 Equal pay~~
- G. ~~Sec. 629 Unfair agreements~~
- H. ~~Sec. 664 Minimum wage; overtime rate~~
- I. ~~Sec. 665 Powers and duties of commissioner~~
- J. ~~Sec. 681–690 Substance abuse testing~~
- K. ~~Sec. 702 Record of work hours of minors under 16 years of age~~
- L. ~~Sec. 771 Minors under 14 years of age~~
- M. ~~Sec. 772 Minors under 18~~
- N. ~~Sec. 773 Minors under 16; prohibited in certain places~~
- O. ~~Sec. 774 Hour of employment~~
- P. ~~Sec. 775 Work permits~~
- Q. ~~Sec. 1308 Prevailing wages and benefits established at regular intervals; how determined~~

Section II: Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Bureau" means the Bureau of Labor Standards, within the Department of Labor.
- B. "Bureau Director" means the Director of the Bureau or Director's designee(s).
- C. "Business days" means calendar days excluding any Saturday, Sunday, or Maine state holiday.
- D. "Division" means the Division of Wage and Hour within the Bureau of Labor Standards, Department of Labor.
- E. "Division Director" means the Director of the Division of Wage and Hour or Director's designee(s).
- F. "Qualified hearing officer" means an individual with background or experience with adjudicatory proceedings under the Administrative Procedure Act; a Hearing Officer within the Division of Administrative Hearings within the Bureau of Unemployment Compensation, Department of Labor; or an attorney.
- G. "Violation" means a single breach of the law as determined by the Division Director. ~~For failure to respond to the survey and,~~ Where otherwise appropriate, each day may be considered a separate violation.
- H. A "willful" violation is committed when the employer knew or, due to experience or expertise, should have known the operative facts that made its actions a violation of the law. This may include the deliberate avoidance of learning, or the failure to acquire, specific knowledge under circumstances or responsibilities that normally would induce people to acquire that knowledge.

Section III: Penalty Calculation

The penalty for a violation or set of violations must be based on the statutory penalty for the violation. ~~Where there is a penalty range the lowest penalty in the range will be used as the starting point. The final penalty will be calculated~~ The Division Director shall calculate the final penalty according to the following schedule.

- A. Penalty Calculation for violations that have penalty ranges.

The number of violations will be multiplied by the minimum penalty or lowest of any penalty range affixed in the statute ~~the penalty affixed in accordance with the above paragraph.~~ The result will then be multiplied by the severity and/or ~~the~~ history of ~~previous violations~~ factors as outlined below. No per-violation penalty can exceed the statutory maximum or highest of the penalty range for that violation.

1.	Severity	Multiplier
	A minor was exposed to a hazardous occupation or the average underpayment was more than two weeks average pay for the affected employees.	1.50
	The average underpayment was more than one weeks average pay for the affected employees.	1.25
	The average underpayment was more than one-half weeks average pay for the affected employees.	1.10
2.	History of Previous Violations	Multiplier
	The employer has been adjudged in violation of the labor laws as set forth in Sec. I, has entered into a <u>settlement agreement or consent decree</u> , and/or has been penalized under these rules for the same or similar violations.	2.0
	The employer has previous violations of the same or similar nature that did not result in court action or penalty.	1.5
3.	<u>Repeat Violations</u>	<u>Multiplier</u>
	<u>First repeat violation</u>	<u>2.0</u>
	<u>Second through fourth repeat violation</u>	<u>5.0</u>
	<u>Fifth or greater repeat violation</u>	<u>10.0</u>
4.	<u>Willful Violations</u>	<u>Multiplier</u>
	<u>If the Division Director determines, in accordance with Section II, H. above, that the violation is willful</u>	<u>2.0</u>

B. Penalty Adjustments

The result of the above calculation ~~or the statutory maximum of \$1,000 per violation, whichever is less,~~ will then be multiplied by adjusted based upon the good faith and size of employer factors as outlined below.

1. Good Faith

An employer who makes timely restitution to affected employees and institutes procedural changes to reduce the likelihood of future violations will receive a reduction of 25%. An employer who had a multiplier of more than 1.0 under history of previous violations is not eligible for this adjustment.

2. Size of Employer.

Number of Employees	Multiplier
1 - 20	.667
21 - 50	.850
51 - 100	.950
Over 100	1.000

C. Combining or grouping penalties for multiple violations

Where the penalty provision of the statutes allow, the Division Director may combine or group the penalty amounts for multiple violations of the statute.

Section IV: Appeals.

A. Notice of Penalty Assessment and Right to Appeal

The Division Director shall issue a Notice of Penalty Assessment in writing. Such notice must be sent by at least one of the following methods:

1. U.S. mail;
2. By hand; or
3. By email if the Division previously communicated with the employer by email.

The Notice of Penalty Assessment must state that the penalty may be appealed by making a written request for an appeal to the Bureau Director. The employer may request the appeal by U.S mail, hand delivery or email. The request for an appeal must be received by the Bureau Director within fifteen (15) business days from the date the Notice of Penalty Assessment was mailed or otherwise delivered.

~~Notice of penalty assessment must be sent by certified mail. Any employer who wishes to contest any penalty issued under these rules has 15 working days from the date of receipt of such notice to request a hearing. Such request must be in writing and addressed to the Director.~~

B. Conduct of Hearing on Appeal to Bureau Director

1. The Bureau Director may serve as the hearing officer or may assign the appeal to a qualified Hearing Officer.
2. The hearing will be conducted pursuant to the provisions of the Administrative Procedure Act governing adjudicatory proceedings, 5 M.R.S. §§ 9051-9064.
3. The hearing will be at the headquarters of the Bureau or at a place mutually agreeable to the parties. The hearing may be held telephonically or by remote video, at the discretion of the Bureau Director.
4. The Hearing Officer may sequester witnesses, except a representative of the employer, the Bureau Director, and the Division Director. An employer who is represented by counsel may have a representative in addition to counsel present throughout the hearing. The parties may agree not to sequester witnesses.
5. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious business.
6. All witnesses shall be sworn by the Hearing Officer.
7. The parties will have an opportunity to present evidence. Cross-examination of all witnesses shall be allowed.
8. Within 30 days of the close of evidence, including any written closing statements or legal briefs, if allowed, the Hearing Officer shall issue a written Recommended Decision to the parties and to the Bureau Director. The Recommended Decision may be issued by U.S. mail, hand delivery or by email. The Recommended Decision shall include findings of fact sufficient to apprise the parties of the basis for the recommendation.
9. The parties may submit written objections or other comments on the Recommended Decision to the Bureau Director by U.S. mail, hand delivery or email within ten (10) business days after the Recommended Decision was issued.

~~The Director will serve as the hearing officer or may assign the appeal to the Administrative Hearing Division within the Department of Labor. The hearing will be at the headquarters of the Bureau or at a place mutually agreeable to the parties.~~

C. Final Decision of the Bureau Director

The Bureau Director shall issue a Final Decision, which is final agency action within the meaning of 5 M.R.S. § 11001. The Final Decision will be sent by U.S. mail, hand delivery or by email to all parties. The Final Decision of the Bureau Director shall be subject to review by the Superior Court, pursuant to 5 M.R.S. § 11001.

~~The Director may establish a final due date for submission of the requested information. The final due date may not be any sooner than 20 working days after the last day of the pay period covered by the survey or after the first mailing of the survey, which ever is later.~~

~~Any penalty for failure to provide the information requested may be assessed from the final due date. The penalty is subject to the calculation method in Section III of these rules.~~

Collections

Payment of any penalty is due to the Department of Labor within 30 business days after the issuance of the Notice of Penalty Assessemnt by the Division Director. Payment of the penalty is stayed during any appeal.

STATUTORY AUTHORITY: ~~P.L. 1999 c. 181~~ 26 M.R.S. §§ 42 and 53

EFFECTIVE DATE:
May 24, 2002