**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 procedural 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, MRS Chapter 7.

**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 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. A ‘willful’ violation includes an employer’s intentional or reckless disregard of its obligations under the law.

**Section III: Penalty Calculation**

 The penalty for a violation or set of violations must be based on the statutory penalty for the violation. 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 result will then be multiplied by the severity and/or history of 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 1.50

 Occupation; or the average underpayment

 was more than two weeks average pay for

 the affected employees; or the employer was

 in violation of 26 MRS §643 subsection 1, A

 through E.

 The average underpayment was more 1.25

 than one weeks average pay for the

 affected employees.

 The average underpayment was more 1.10

 than one-half weeks average pay for the

 affected employees.

 2. **History of Previous Violations** **Multiplier**

 The employer has been adjudged in 2.0

 violation of the labor laws as set forth

 in Sec. I, has entered into a settlement

 agreement or consent decree,

 and/or has been penalized

 under these rules for the same or

 similar violations.

 The employer has previous violations of 1.5

 the same or similar nature that did not result

 in court action or penalty.

 3. **Repeat Violations** **Multiplier**

 First repeat violation 2.0

 Second through fourth repeat violation 5.0

 Fifth or greater repeat violation 10.0

 4. **Willful Violations** **Multiplier**

 If the Division Director determines, in accordance with

 Section II**.** H. above, that the violation is willful 2.0

 **B**. **Penalty Adjustments**

 The result of the above calculation will then be 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**

1. **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.

1. **Conduct of Hearing on Appeal to Bureau Director**
2. The Bureau Director may serve as the hearing officer or may assign the appeal to a qualified Hearing Officer.
3. The Hearing Officer may call upon the parties to appear telephonically for a pre-hearing conference to identify issues, witnesses, exhibits and such other matters that may aid in the conduct of the hearing.
4. The Hearing Officer shall establish a hearing date and provide notice to the parties at least 10 days in advance of the hearing.
5. A parties’ failure to participate in a pre-hearing conference and/or to comply with requirements of a pre-hearing order, such as providing witness and exhibit lists, may result in a default in accordance with 5 M.R.S. §9053(3).
6. The hearing will be conducted pursuant to the provisions of the *Administrative Procedure Act* governing adjudicatory proceedings, 5 M.R.S. §§ 9051-9064.
7. 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.
8. The Hearing Officer may sequester witnesses, except a representative of the employer, the Director of the Bureau, and the Director of the Division of Wage and Hour. 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.
9. 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.
10. All witnesses shall be sworn by the Hearing Officer.
11. The parties will have an opportunity to present evidence. Cross-examination of all witnesses shall be allowed.
12. The Hearing Officer decides the Order of Proceedings. The Division Director has the burden of production. The appellant has the burden of proof.
13. 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.
14. 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.

 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.

**Section V. Collections**

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

STATUTORY AUTHORITY:

 26 M.R.S. §§ 42 and 53

EFFECTIVE DATE:

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