



## **Chapter 296-900 Administrative Rules**

*Penalties, Appeals and  
Orders of Immediate  
Restraint*

# Intro to the Zoom Platform

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# Introductions

- Craig Blackwood, Assistant Director
- Ryan Allen, Standards & Technical Services Manager
- Tracy West, Standards Program Manager
- Allison Drake, Policy and Stakeholder Engagement Advisor
- David Gaw, Management Analyst
- Kylie Gillihan, Administrative Support Professional
- Carmyn Shute, ARA

# Agenda

- Why are we doing rulemaking?
- Highlights of changes.
- Timeline
- Questions

# Need for Rulemaking

- OSHA Update / SAMM & FAME
- Enhanced Substitute House Bill (ESHB) 1097
- Minor Housekeeping Changes

# OSHA concerns:

- OSHA uses the State Activities Mandated Measures (SAMM) Report to determine whether State Plans are as effective as OSHA.
- The FY 2023 FAME Report addressed how certain penalties are calculated in order to make penalties more effective. Washington penalties continue to be below the national average, therefore, considered to be “not as effective” as OSHA.

# Gravity

- DOSH calculates the base penalty for a violation by considering:
  - Specific amounts dictated by statute; or
  - By assigning a weight to a violation, called "gravity." Gravity is calculated by multiplying a violation's severity rate by its probability rate. Expressed as a formula:

$$\text{Gravity} = \text{Severity} \times \text{Probability}$$

# Penalty Table

**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

The minimum penalty for a standard serious violation is \$100



# Federal Annual Monitoring Evaluation (FAME) report

**Table A**  
**Average Current Penalty per Serious Violation (Private Sector) by Employer Size**

<b>Number of Workers</b>	<b>WA DOSH FY 2023</b>	<b>Three-Year National Average of all State Plans</b>	<b>FRL (Plus or Minus 25% of the three-year national average)</b>
<b>1-250+</b>	\$1,953.20	\$3,625.21	\$2,718.91 to \$4,531.51
<b>1-25</b>	\$1,343.00	\$2,348.03	\$1,731.02 to \$2,935.04
<b>26-100</b>	\$2,201.70	\$4,167.28	\$3,125.46 to \$5,209.10
<b>101-250</b>	\$3,493.80	\$6,052.04	\$4,539.03 to \$7,565.05
<b>250+</b>	\$3,544.96	\$7,331.41	\$5,498.56 to \$9,164.26

# State Mandated Activity Measures (SAMM) Report

SAMM #	Measure	WA State Plan	All State Plans	National
08	Average Current Penalty per Serious Violation (Private Sector) - Total (1 to greater than 250 Employees)	\$5,665,950.00	\$66,832,734	\$118,832,173
		<b>\$2,000.69</b>	<b>\$4,403</b>	<b>\$4,114</b>
	Average Current Penalty per Serious Violation (Private Sector) - 1-25 Employees	2832	\$15,178	\$28,886
		<b>\$1,387.00</b>	<b>\$2,848</b>	<b>\$2,707</b>
	Average Current Penalty per Serious Violation (Private Sector) - 26-100 Employees	\$2,359,185.00	\$25,095,892	\$46,533,452
		1701	\$8,812	\$17,187
	Average Current Penalty per Serious Violation (Private Sector) - 101-250 Employees	\$1,270,670.00	\$13,673,036	\$24,850,832
		<b>\$2,233.00</b>	<b>\$4,753</b>	<b>\$4,594</b>
	Average Current Penalty per Serious Violation (Private Sector) - Greater than 250 Employees	569	\$2,877	\$5,409
		<b>\$3,073.00</b>	<b>\$7,125</b>	<b>\$6,642</b>
	Penalty Retention Percent Penalty Retained	\$488,550.00	\$8,992,013	\$15,210,820
		159	\$1,262	\$2,290
12	Penalty Retention Percent Penalty Retained	\$1,547,545.00	\$19,071,793	\$32,237,069
		<b>\$3,840.00</b>	<b>\$8,564</b>	<b>\$8,059</b>
12	Penalty Retention Percent Penalty Retained	403	2227	4000
		<b>100.00%</b>	<b>77.34%</b>	<b>74.04%</b>
		\$5,150,603.00	\$78,958,377	\$135,840,192
		\$5,150,603.00	\$102,086,396	\$183,478,067

# ESHB 1097 (OIR):

- RCW 49.17.060
  - (3) An employer may contest an order to restrain any employment condition or practice issued under subsection (1) of this section within 10 working days of the order's effective date by applying to the superior court of the county where the condition or practice exists. The superior courts of Washington State shall have the authority to grant appropriate relief upon receiving such petitions.

# ESHB 1097 (OIR) *con't*:

- RCW 49.17.140
  - (3) When the director has a reasonable belief that an employer has violated an order that immediately restrains a condition, practice, method, process, or means in the workplace, as issued under RCW 49.17.130 or this section, or a notice prohibiting the use of specific machinery or equipment with an attached prohibition notice, the director will inform the employer. This notification will be sent through a tracked mailing or confirmed delivery method, indicating the violation of the order and the penalty to be imposed under RCW 49.17.180 for violating the order. The employer will be given a period of 15 working days from the date of notification and penalty assessment to notify the director if they wish to appeal the penalty. If the employer fails to notify the director of their intention to appeal the penalty within the specified working days, the notification and penalty assessment will be considered a final order from the department, not subject to review by any court or agency.

# Housekeeping:

- The following changes are being made to all rules as we update chapters.
  - ❑ Numbering definitions to aid in education and research.
  - ❑ Removing the terms “you” and “we” and replacing with “Employee” and “Employer.”
  - ❑ Update US Mail and Email resources.

# Rulemaking Timeline

- Filed CR-101 notice - April 16, 2024
- Stakeholder meetings – August 7 & 12, 2024
- File CR-102 Proposed Rulemaking - Sept 3, 2024
- Public Hearings - October 8-15, 2024
- Public Comment Due – November 1, 2024
- File CR-103 Permanent Rule – December 17, 2024
- Effective Date – February 1, 2025

# Questions?



# Thank you for joining us today!

Please submit your comments or questions to us at:

[Carmyn.Shute@Lni.wa.gov](mailto:Carmyn.Shute@Lni.wa.gov)