

Proposed Rules
of
Department of Labor and Workforce Development
Division of Occupational Safety and Health

Chapter 0800-01-04
Occupational Safety And Health
Inspections, Citations And Proposed Penalties

Presented herein are proposed amendments of the Department of Labor and Workforce Development, Division of Occupational Safety and Health, submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate these proposed amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Legal Services Office of the Department of Labor and Workforce Development, 8th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0655, and in the Administrative Procedures Division of the Department of State, 8th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the proposed amendments or submitted by a municipality which will be affected by the proposed amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendment, contact: Michael M. Maenza, Manager of Standards and Procedures, Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health, 3rd Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0659, (615) 741-7036.

The text of the proposed amendment is as follows:

Amendment

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0800-01-04-.16 Proposed Penalties and the Failure to Pay Penalties

Rule 0800-01-04-.16 Proposed Penalties is amended by deleting the Rule Title and that language entirely and substituting the following language, so that, as amended, the Rule Title and rules shall read:

0800-01-04-.16 Proposed Penalties and the Failure to Pay Penalties.

- (1) As used in this chapter the word "penalty" shall be defined as the monetary assessment levied against an employer as a result of a violation of the Tennessee Occupational Safety and Health Act of 1972 or a violation of the Tennessee Occupational Safety and Health standards or rules.
- (2) In accordance with the provisions of T.C.A. §50-3-402, the Commissioner shall determine the amount of any proposed penalty giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the employer's history of previous violations,

- (3) Whenever the Commissioner has determined that such a penalty should be assessed against an employer, the Commissioner shall issue written notification to the employer stating the amount of the penalty to be assessed, the reason for the assessment which may be done by reference to citations issued prior to or simultaneously with such notification. Any notification of proposed penalty shall state that the proposed penalty shall be deemed to be a final order of the Commissioner and not subject to further review unless, within twenty (20) days from the date of receipt of such notice, the employer contests the penalty. See Rule 0800-01-04-.18.
- (4) Appropriate penalties may be proposed with respect to an alleged violation even if an employer immediately abates or initiates steps to abate the alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.
- (5) Uncontested penalties are due payable from the employer within thirty (30) days of the date of receipt of the original or amended Citation and Notification of Penalty.
 - (a) Payments shall be made by check or money order payable to "Treasurer, State of Tennessee" and may be delivered in person or mailed to the Department of Labor and Workforce Development, Division of Occupational Safety and Health.
 - (b) Payments should clearly identify the inspection number to which they apply.
 - (c) Payments shall be credited on the day of receipt if delivered in person or the postmarked date if remitted by mail.
- (6) Interest.
 - (a) Interest calculated at the rate established pursuant to T.C.A. § 67-01-801(a)(1) shall accrue against the penalty, or portion thereof, that remains unpaid after 30 days from the date of receipt of the Citation and Notification of Penalty.
 - (b) Interest shall be added in thirty (30) day increments until the full penalty payment is received.
- (7) Delinquent Fees.
 - (a) A delinquent fee of ten percent (10%) of the unpaid penalty, or portion thereof, that remains unpaid after thirty (30) days from the date of receipt by the employer, shall be added to the balance due.
 - (b) A delinquent fee of ten percent (10%) of the unpaid penalty, or portion thereof, that remains unpaid after sixty (60) days from the date of receipt by the employer, shall be added to the balance due.
 - (c) A delinquent fee of ten percent (10%) of the unpaid penalty, or portion thereof, that remains unpaid after ninety (90) days from the date of receipt by the employer, shall be added to the balance due.

- (d) The total delinquent fee shall not exceed thirty percent (30%) of the original penalty assessment.
 - (e) The delinquent fee shall be considered part of the total assessment against the employer and shall be collectible in the same manner as the penalty.
- (8) Administrative Fee.
- (a) Any payment instrument that is returned by a financial institution due to insufficient funds or the issuance of a stop payment order shall have a thirty dollar (\$30.00) administrative fee added to the balance due.
 - (b) The administrative fee shall be considered part of the total assessment against the employer and shall be collected in the same manner as the penalty.
 - (c) A certified letter requesting payment in-full for the total unpaid balance including the original penalty amount, the administrative fee and any accrued interest and delinquent fees shall be sent to the employer with a return receipt request.
- (9) Payments.
- (a) All payments shall first be applied to the unpaid penalty.
 - (b) Payments made to an account that include interest and delinquent fees:
 - 1. If the payment amount is equal to the unpaid penalty, the full payment shall be applied to the unpaid penalty.
 - 2. If the payment amount is greater than the unpaid penalty, the payment shall first be applied to the unpaid penalty and the excess amount shall be applied to the interest and delinquent fee balance due.
 - 3. If the payment amount is less than the original penalty, the full amount of the payment shall be applied to the original penalty.
 - (c) If the payment amount is insufficient, the employer shall be notified of the outstanding balance due.

Authority: T.C.A. §§ 4-3-1411, 47-29-102, 50-3-107, 50-3-201, 50-3-402 through 50-3-408 and 67-01-801(a)(1).

The proposed rules set out herein were properly filed in the Department of State on the 20th day of February, 2007, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of June, 2007. (FS 02-24-07, DBID 2383)