

Civil Penalty Cap – Workers’ Compensation Insurers, Self-insured Employers, and Service Companies HB 2087-1

When an insurer, self-insured employer, or service company does not pay workers’ compensation benefits or process claims in a timely or accurate manner, DCBS has a number of available ways to motivate improved behavior. Examples include developing corrective plans or suspending or revoking the ability to participate in Oregon’s workers’ compensation system. The division may also issue civil penalties to compel improvements. These penalties are capped at amounts established in 1975: \$2,000 per violation and \$10,000 in a three month period, or approximately \$40,000 per year.

The performance of some insurers in important areas such as benefit payments has not improved and in some cases has worsened over the past few audit cycles. Several private insurance companies have repeatedly reached the maximum amount of allowed civil penalties. This may indicate that some insurers absorb the penalties as a cost of doing business instead of making necessary investments to improve performance. Absent a robust civil penalty to motivate improved behavior, the next regulatory tool available is to suspend or revoke an insurer’s ability to do business in Oregon. However, removing carriers from the state’s workers’ compensation insurance market could lead to negative effects for the system, such as limiting employers’ choices for coverage.

HB 2087 with -1 amendments does three things: 1) separates the department’s civil penalty authority into three categories with separate caps; 2) increases the total cap and the per violation amounts for insurers, self-insured employers, and service companies who fail to pay assessments or comply with the law; and 3) changes the cap to a calendar year basis, instead of a three-month rolling period. The cap increase is to a level reflecting inflation since 1975.

	Single Violation	Aggregate
Current penalty (all areas)	\$2,000	\$10,000/three month period
HB 2087 - employer or insurer inducement not to file	No Change	\$40,000/calendar year
HB 2087 - employer or MCO violates laws or rules		
HB 2087 with -1 amendment - insurer, self-insured employer, or service company violates laws or rules or fails to pay assessments	\$4,000	\$180,000/calendar year

The Management-Labor Advisory Committee supports this bill with the -1 amendments.