

Rule 45 Rules for Administrative Citations and Penalties

45.1000 Scope

These rules establish the procedure for issuing administrative citations, assessing penalties and requesting hearings concerning citations or penalties.

The commissioner or a representative of the commissioner may, after notice and an opportunity for a hearing, assess an administrative penalty against any person who violates the laws or rules relating to workers' compensation or compensation for occupational disease and against any person who fails to comply with any order issued by the commissioner or the workers' compensation division.

45.2000 Authority

These rules are adopted pursuant to:

- 45.2100** 21 V.S.A. Sections 688, 689, 692, 702, 704, 705, 708.
- 45.2200** 8 V.S.A. Chapter Section 4793(d) and Section 4803 (Adjusters, Workers' Compensation Adjusters).
- 45.2300** 3 V.S.A. Section 809 - 815.

45.3000 Issuance of Administrative Citation

- 45.3100** *The director of the workers' compensation division may issue an administrative citation to any person, including an employee, employer, attorney, insurer or any of their representatives, if the director determines, after investigation by the division, that the person has:*
 - 45.3110** *refused or neglected to comply with the provisions of the Workers' Compensation Act;*
 - 45.3120** *refused or neglected to comply with the rules promulgated pursuant to the Act;*
 - 45.3130** *refused or neglected to file in a complete and timely fashion any reports required by the Act or the rules;*
 - 45.3140** *refused or neglected to comply with any interim or final order issued by the Commissioner or a representative of the Commissioner; or,*
 - 45.3150** *willfully made a false statement or representation for the purpose of obtaining any benefit or payment for either her or himself or any other person.*

The administrative citation shall be served on the person by certified mail or personal service. Each citation shall be in writing and shall specifically describe the nature of the violation and include a reference to the particular section of the Act, rule or order alleged to have been violated. The citation shall also state the amount of the administrative penalty and the process for requesting a hearing.

- 45.3200** *The person alleged to have committed the violation shall have twenty days from the date of service to notify the director, in writing, of any intent to contest the citation and administrative penalty. If no notice of contest is filed the citation and penalty shall be deemed a final order of the commissioner.*
- 45.3300** *Administrative citations and penalties issued under these rules shall not limit the authority of the commissioner or a representative of the commissioner to issue orders or seek injunctive relief and penalties through the court system, or to take other appropriate enforcement action permitted by law.*
- 45.3400** *Whenever the commissioner or a representative of the commissioner has reason to believe that an employer has willfully made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, written notice and any supporting documentation shall be provided to the commissioner of Banking, Insurance and Securities with a request for hearing on the matter. The commissioner of Banking, Insurance and Securities may assess an administrative penalty not to exceed \$5000.00. See 21 V.S.A. Section 708(b).*

45.4000 Hearing on Citation and Proposed Penalty

45.4100 *A person who contests a citation and proposed penalty issued by the director, pursuant to 45.3000 of this rule shall be entitled to a hearing before the commissioner or designee within 45 days of filing the notice of contest. The 45 day time frame may be extended if the person requests, in writing, additional time to prepare for the hearing.*

45.4200 *The hearing notice sent to the person shall include the following information:*

45.4210 *A statement of the time, place, and nature of the hearing;*

45.4220 *A statement of the legal authority and jurisdiction under which the hearing is to be held;*

45.4230 *A reference to the sections of the statutes, rules or order(s) involved;*

45.4240 *A short and plain statement of the matters at issue.*

45.4300 *The commissioner may appoint a hearing officer to hear the evidence and prepare findings and recommend a decision. The procedures set forth in 3 V.S.A. Section 809 - 813 and Section 815 shall apply all hearings under these rules.*

45.4400 *The person may appear at the hearing with Counsel, present evidence and cross-examine witnesses.*

45.4500 *Evidence shall be admitted as provided in 3 V.S.A. Section 810.*

45.4600 *The hearing officer may compel, by subpoena, the attendance and testimony of witnesses and the production of books and record in accordance with 21 V.S.A. Section 603(a) and 3 V.S.A. Section 809a and 809b.*

45.4700 *Nothing in this section shall prohibit the informal disposition of a citation by stipulation, agreed settlement, consent order or default. Informal disposition may proceed with clear and simple documentation without complete adherence to this section.*

45.5000 *Administrative Penalty*

Penalties shall be assessed on a per violation basis and shall not exceed the following:

45.5100 *An employer who fails to comply with 21 V.S.A. Section 687 (providing workers' compensation insurance (or self insurance as permitted by law) shall be assessed a penalty of \$50.00 per day for every day that the employer neglected to insure workers' compensation liability prior to receiving notice from the commissioner or a representative of the commissioner, but not to exceed \$5,000.00. An employer who fails to comply with 21 V.S.A. Section 687 within 5 days of receipt of notice from the commissioner or representative shall be assessed a penalty of \$150.00 per day for every day after 5 days from receipt of notice. The commissioner may reduce the assessed penalty if the employer demonstrates:*

45.5110 *that failure to obtain or maintain insurance was inadvertent or the result of excusable neglect and was promptly corrected;*

45.5111 *that the penalty amount exceeds the amount of any premium expenditures that would have been paid if a policy was properly obtained or maintained; or*

45.5112 *the small size of the employer and the non hazardous nature of the employment presented minimal risk to employees*

45.5200 *A person who willfully makes a false statement or representation for the purpose of obtaining any benefit or payment either for her or himself or another shall be assessed a penalty of \$1,000.00. The commissioner may reduce the penalty if the person demonstrates:*

45.5210 *that the person has repaid or entered into an agreement to repay benefits or amounts received as a result of the false statement or representation; and*

45.5215 *that the benefit or payment to be gained was less than the amount of the penalty; or*

45.5220 *the person has agreed to forfeit any claim for additional workers' compensation benefits based on the alleged workplace injury. The commissioner shall not reduce the penalty if:*

45.5221.1.1 *the false statement or representation was made to establish compensability of the claim; or*

45.5221.1.2 *the false statement or representation involved falsifying medical records; or*

45.5221.1.3 *the false statement or representation was sworn testimony.*

45.5230 *The employee may forfeit only a portion of their workers' compensation benefits if:*

45.5231.1 *the employee has repaid or entered into an agreement to repay the benefit amount received as a result of the false statement or representation; or*

45.5231.2 *the benefit or payment to be gained was less than \$1,000.00; or*

45.5231.3 *benefit or payment to be gained was limited to only one benefit then the other workers' compensation benefits the employee was otherwise entitled to shall not be affected.*

In addition an employee who willfully makes a false statement or representation of a material fact for the purpose of obtaining workers' compensation shall forfeit all or a portion of her or his right to any workers' compensation.

45.5300 *An employer or workers' compensation insurance carrier which refuses or neglects to comply with an interim or final order of the Commissioner shall be assessed a penalty of \$500.00 per occurrence. An additional penalty of \$100.00 per day shall be assessed for each day the employer or worker's compensation carrier failed to comply after the date set for compliance. The total penalty shall not exceed \$5,000.00 per occurrence. The commissioner may reduce the penalty if the insurer demonstrates that noncompliance was the result of inadvertence or excusable neglect.*

45.5400 *An employer or workers' compensation insurance carrier which fails to ensure that any of its agents or subcontractors complies with the Act or rules of the Department or with an interim or final order of the Department shall be assessed a penalty of \$500.00 for a first offense. A first offense shall be defined as one instance of failing to comply with one act or one rule in one claim. The employer or a workers' compensation insurance carrier shall be assessed an additional penalty of \$500.00 for each additional instance of failing to comply but shall not be assessed a penalty in excess of \$5000.00. In addition, the agent or subcontractor of the employer or insurer who refuses or neglects to comply shall be assessed a penalty of \$50.00 for each instance of refusing or neglecting to comply with the Act, but shall not be assessed a penalty in excess of \$5000.00.*

45.5500 *An employer which refuses or neglects to submit a First Report of Injury within 72 hours of learning of an alleged injury, shall be assessed a penalty of \$100.00 for each violation.*

An employer which fails to submit any form required by law to be filed with the department shall be assessed a penalty of \$100.00 for each violation. Forms which are required to be filed with this department include, but are not limited to wage forms (Form 10, Form 10S, Form 25 and Form 25S) and compensation agreements (Form 21, Form 22, Form 23 and Form 24).

45.5510.1 *An employer which refuses or neglects to provide an employee a copy of the claimant's First Report Of Injury (Form 1) promptly, on or about the same time as filing a First Report Of Injury shall be assessed a penalty of \$50.00 for each violation.*

45.5600 *An employer or workers' compensation insurer which refuses or neglects to file any interim or final report required by 21 V.S.A. Section 701, 702, or 703 shall be assessed a penalty of \$100.00 for each violation.*

45.5700 *An employer or workers' compensation insurer which refuses or neglects to file any statistical report requested by the commissioner or designee pursuant to 21 V.S.A. Section 704 shall be assessed a penalty of \$1000.00. In addition, they shall be assessed an additional \$1,000.00 per occurrence.*

45.5800 *An employer which refuses or neglects to register with the department when commencing or ceasing business operations in the state as required by 21 V.S.A. § 705 shall be assessed a penalty of \$50.00.*

45.5900 *The penalty for any administrative or technical violation not otherwise noted in this section shall be fined \$500.00.*

45.6000 *Severability Clause*

In the event any part or provision of these rules is held to be illegal, this shall not have the effect of making void or illegal any of the other parts or provisions of these rules.

45.7000 *Effective Date*

Amended rule effective upon approval.