

**34A-2-211 Notice of noncompliance to employer -- Enforcement power of division -- Penalty.**

- (1)
  - (a) In addition to the remedies specified in Section 34A-2-210, if the division has reason to believe that an employer is conducting business without securing the payment of benefits in a manner provided in Section 34A-2-201, the division may give that employer written notice of the noncompliance by certified mail to the last-known address of the employer.
  - (b) If the employer does not remedy the default within 15 days after the day on which the notice is delivered, the division may issue an order requiring the employer to appear before the division and show cause why the employer should not be ordered to comply with Section 34A-2-201.
  - (c) If the division finds that an employer has failed to provide for the payment of benefits in a manner provided in Section 34A-2-201, the division may require the employer to comply with Section 34A-2-201.
- (2)
  - (a) Notwithstanding Subsection (1), the division may impose a penalty against the employer under this Subsection (2):
    - (i) subject to Title 63G, Chapter 4, Administrative Procedures Act; and
    - (ii) if the division believes that an employer of one or more employees is conducting business without securing the payment of benefits in a manner provided in Section 34A-2-201.
  - (b) The penalty imposed under Subsection (2)(a) shall be the greater of:
    - (i) \$1,000; or
    - (ii) three times the amount of the premium the employer would have paid for workers' compensation insurance based on the rate filing of the Workers' Compensation Fund, during the period of noncompliance.
  - (c) For purposes of Subsection (2)(b)(ii):
    - (i) the premium is calculated by applying rates and rate multipliers to the payroll basis under Subsection (2)(c)(ii), using the highest rated employee class code applicable to the employer's operations; and
    - (ii) the payroll basis is 150% of the state's average weekly wage multiplied by the highest number of workers employed by the employer during the period of the employer's noncompliance multiplied by the number of weeks of the employer's noncompliance up to a maximum of 156 weeks.
- (3) A penalty imposed under Subsection (2) shall be:
  - (a) deposited in the Uninsured Employers' Fund created by Section 34A-2-704;
  - (b) used for the purposes of the Uninsured Employers' Fund specified in Section 34A-2-704; and
  - (c) collected by the Uninsured Employers' Fund administrator in accordance with Section 34A-2-704.
- (4)
  - (a) An employer who disputes a determination, imposition, or amount of a penalty imposed under Subsection (2) shall request a hearing before an administrative law judge within 30 days of the date of issuance of the administrative action imposing the penalty or the administrative action becomes a final order of the commission.
  - (b) An employer's request for a hearing under Subsection (4)(a) shall specify the facts and grounds that are the basis of the employer's objection to the determination, imposition, or amount of the penalty.
  - (c) An administrative law judge's decision under this Subsection (4) may be reviewed pursuant to Part 8, Adjudication.
- (5) An administrative action issued by the division under this section shall:

- (a) be in writing;
  - (b) be sent by certified mail to the last-known address of the employer;
  - (c) state the findings and administrative action of the division; and
  - (d) specify its effective date, which may be:
    - (i) immediate; or
    - (ii) at a later date.
- (6) A final order of the commission under this section, upon application by the commission made on or after the effective date of the order to a court of general jurisdiction in any county in this state, may be enforced by an order to comply:
- (a) entered ex parte; and
  - (b) without notice by the court.

Amended by Chapter 288, 2009 General Session