

Effective 5/13/2014

63G-12-306 Penalties.

- (1) As used in this section:
 - (a) "Applicable license" means a license issued under:
 - (i) Title 32B, Alcoholic Beverage Control Act;
 - (ii) Title 58, Occupations and Professions; or
 - (iii) Title 61, Securities Division - Real Estate Division.
 - (b) "First violation" means the first time the department imposes a penalty under this section, regardless of the number of individuals the private employer hired in violation of Subsection 63G-12-301(1).
 - (c) "Second violation" means the second time the department imposes a penalty under this section, regardless of the number of individuals the private employer hired in violation of Subsection 63G-12-301(1).
 - (d) "Third or subsequent violation" means a violation of Subsection 63G-12-301(1) committed after a second violation.
- (2)
 - (a) On or after the program start date, a private employer who violates Subsection 63G-12-301(1) is subject to a penalty provided in this section under an action brought by the department in accordance with Section 63G-12-305.
 - (b) For a first violation of Subsection 63G-12-301(1), the department shall impose a civil penalty on the private employer not to exceed \$100 for each individual employed by the private employer during the time period specified in the notice of agency action who is an unauthorized alien who does not hold a valid permit.
 - (c) For a second violation of Subsection 63G-12-301(1), the department shall impose a civil penalty on the private employer not to exceed \$500 for each individual employed by the private employer during the time period specified in the notice of agency action who is an unauthorized alien who does not hold a valid permit.
 - (d) For a third or subsequent violation of Subsection 63G-12-301(1), the department shall:
 - (i) order the revocation of the one or more applicable licenses that are issued to an owner, officer, director, manager, or other individual in a similar position for the private employer for a period not to exceed one year; or
 - (ii) if no individual described in Subsection (2)(d)(i) holds an applicable license, impose a civil penalty on the private employer not to exceed \$10,000.
- (3)
 - (a) If the department finds a third or subsequent violation, the department shall notify the Department of Commerce and the Department of Alcoholic Beverage Control once the department's order:
 - (i) is not appealed, and the time to appeal has expired; or
 - (ii) is appealed, and is affirmed, in whole or in part on appeal.
 - (b) The notice required under Subsection (3)(a) shall state:
 - (i) that the department has found a third or subsequent violation;
 - (ii) that any applicable license held by an individual described in Subsection (2)(d)(i) is to be revoked; and
 - (iii) the time period for the revocation, not to exceed one year.
 - (c) The department shall base its determination of the length of revocation under this section on evidence or information submitted to the department during the action under which a third or subsequent violation is found, and shall consider the following factors, if relevant:

- (i) the number of unauthorized aliens who do not hold a permit that are employed by the private employer;
 - (ii) prior misconduct by the private employer;
 - (iii) the degree of harm resulting from the violation;
 - (iv) whether the private employer made good faith efforts to comply with any applicable requirements;
 - (v) the duration of the violation;
 - (vi) the role of the individuals described in Subsection (2)(d)(i) in the violation; and
 - (vii) any other factor the department considers appropriate.
- (4) Within 10 business days of receipt of notice under Subsection (3), the Department of Commerce and the Department of Alcoholic Beverage Control shall:
- (a)
 - (i) if the Department of Commerce or Alcoholic Beverage Control Commission has issued an applicable license to an individual described in Subsection (2)(d)(i), notwithstanding any other law, revoke the applicable license; and
 - (ii) notify the department that the applicable license is revoked; or
 - (b) if the Department of Commerce or Alcoholic Beverage Control Commission has not issued an applicable license to an individual described in Subsection (2)(d)(i), notify the department that an applicable license has not been issued to an individual described in Subsection (2)(d)(i).
- (5) If an individual described in Subsection (2)(d)(i) is licensed to practice law in the state and the department finds a third or subsequent violation of Subsection 63G-12-301(1), the department shall notify the Utah State Bar of the third and subsequent violation.

Amended by Chapter 189, 2014 General Session