

From: [Cannon, Gary](#)
To: [Roland Franklin](#)
Cc: [Roberts, Keith](#)
Subject: FW: REsponse to inquiry about statutory authority to reduce assessments from maximum to minimum
Date: Tuesday, February 13, 2024 10:18:58 AM

Roland,

This is in response to your inquiry about the statutory authority given the Commission to reduce the fines for coverage violations. The authority to assess fines and penalties comes from Section 42-5-40 and Section 42-3-105 of the State code. The Commission has discretion to open an investigation and issue a citation under Reg. 67-1402(C). When a compliance officer finds evidence that an employer is noncompliant with the coverage requirements, we assess the maximum amount that could theoretically be awarded if the Coverage and Compliance Division successfully proves all the elements necessary to assess the fine at a hearing before a Commissioner, which is "...one dollar for each employee at the time of the insurance becoming due, but not less than ten dollars nor more than one hundred dollars for each day of such refusal or neglect..."authorized by Section 42-5-40. This is the amount which may be awarded by a Commissioner in an open hearing pursuant to this Section. Section 42-3-105 authorizes the Commission to assess penalties at a "...minimum amount of the penalty assessed shall be seven hundred fifty dollars a year of noncompliance and the maximum amount of the penalty shall be one thousand dollars a year of noncompliance." The \$1,000 penalty assessed represents the maximum amount that could theoretically be awarded if the Coverage and Compliance Division successfully proves all the elements necessary to assess a penalty under Section 42-3-105.

The Compliance Division has the discretion to enter into a Compliance Agreement resolving the matter with the employer without the need of going to a hearing pursuant to Reg. 67-1402.

The Commission's job is not to collect the maximum amount of fines and penalties, but rather to enforce the requirement under Section 42-5-20 that "[e]very employer who accepts the provisions of [Title 42, S.C. Code of Laws] relative to the payment of compensation shall insure and keep insured his liability thereunder . . . "

It is in no way guaranteed that the Coverage and Compliance Division will be successfully in obtaining an award for the maximum amount of fines and penalties if each assessment were taken to a hearing. Seeking a hearing to have a Commissioner assess fines and penalties against a noncompliant employer is a last resort. Our goal is to get the employer to obtain coverage for their workers. Should the employer obtain coverage we reduce the assessment to the amount to the minimum amount as authorized by Section 42-3-105.

I trust this is the information you need. Please call me if you need more.

Gary M Cannon
Executive Director
SC Workers' Compensation Commission

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