

1 determination by the hearing examiner the Board may adopt, modify or vacate the
2 report of the hearing examiner and notify the interested parties. The report of the
3 hearing examiner, and the report, decision, or determination of the Board upon review
4 shall be in writing and shall include findings of fact, conclusions of law, and the reasons
5 or bases for them, on all the material issues of fact, law, or discretion presented on the
6 record. The report, decision or determination of the Board upon review shall be final
7 unless further appeal is made to the courts under the provisions of Chapter 150B of the
8 General Statutes, as amended, entitled: '~~Judicial Review of Decisions of Certain~~
9 ~~Administrative Agencies.~~ Review.'"

10 Sec. 2. G.S. 95-138(a) reads as rewritten:

11 "(a) Any employer who willfully or repeatedly violates the requirements of this
12 Article, any standard, rule or order promulgated pursuant to this Article, or regulations
13 prescribed pursuant to this Article, may upon the recommendation of the Director to the
14 Commissioner be assessed by the Commissioner a civil penalty of not more than
15 seventy thousand dollars (\$70,000) and not less than five thousand dollars (\$5,000) for
16 each willful violation. Any employer who has received a citation for a serious violation
17 of the requirements of this Article or any standard, rule, or order promulgated under this
18 Article or of any regulation prescribed pursuant to this Article, shall be assessed by the
19 Commissioner a civil penalty of up to seven thousand dollars (\$7,000) for each ~~such~~
20 serious violation. If the violation is adjudged not to be of a serious nature, then the
21 employer may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for
22 each ~~such~~ nonserious violation. Any employer who fails to correct a violation for which
23 a citation has been issued under this Article within the period allowed for its correction
24 (which period shall not begin to run until the date of the final order of the Board in the
25 case of any appeal proceedings in this Article initiated by the employer in good faith
26 and not solely for the delay or avoidance of penalties), may be assessed a civil penalty
27 of not more than seven thousand dollars (\$7,000). ~~Such~~ The assessment shall be made
28 to apply to each day during which ~~such~~ the failure or violation continues. Any employer
29 who violates any of the posting requirements, as prescribed under the provision of this
30 Article, shall be assessed a civil penalty of not more than seven thousand dollars
31 (\$7,000) for ~~such~~ the violation. The Commissioner upon recommendation of the
32 Director, or the Board in case of an appeal, shall have authority to assess all civil
33 penalties provided by this Article, giving due consideration to the appropriateness of the
34 penalty with respect to the following factors:

- 35 (1) Size of the business of the employer being charged,
36 (2) The gravity of the violation,
37 (3) The good faith of the ~~employer~~ employer, and
38 (4) The record of previous ~~violations~~ violations within the previous three
39 years.

40 The Commissioner and the Board shall jointly adopt uniform standards which the
41 Commissioner, the Board, and the hearing examiner shall apply when considering the
42 four factors for determining appropriateness of the penalty. The report of the hearing
43 examiner and the report, decision, or determination of the Board on appeal shall specify

- 1 the standards applied in determining the reduction or affirmation of the penalty assessed
2 by the Commissioner."
3 Sec. 3. This act is effective upon ratification and applies to citations issued on
4 or after that date.