

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES**

PENALTY ASSESSMENT: TV-171184

PENALTY AMOUNT: \$6,500

Urban Delivery Service LLC
301 South Webster Street
Seattle, WA 98108-4136

The Washington Utilities and Transportation Commission (Commission) believes that Urban Delivery Service LLC (Urban Delivery) has committed violations of Washington Administrative Code (WAC) 480-15-555 – Criminal Background Checks for Prospective Employees, and WAC 480-15-560 – Equipment Safety Requirements and WAC 480-15-570 – Driver Safety Requirements which adopt Title 49 Code of Federal Regulations (CFR) Part 391 – Qualification of Drivers, Part 395 – Hours of Service of Drivers, and Part 396 – Inspection, Repair and Maintenance.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In December 2017, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Urban Delivery and documented:

- **Three violations of WAC 480-15-555 – Criminal background checks for prospective employees.** Urban Delivery failed to conduct and keep evidence of criminal background checks on three employees: Daniel Johnson, Jakob Krober, and Courtney Taylor.
- **Fifty-nine violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Urban Delivery allowed four of its employees to drive on 59 occasions without having been medically examined and certified.
 - Derek Duryea drove twice: once each in July and November 2017.
 - Daniel Johnson drove six times: five times in October and once in November, 2017.
 - Courtney Taylor drove 13 times: twice in July, nine times in August, and twice in September, 2017.
 - Jakob Krober drove 38 times: 11 times in August, 19 times in September, and eight times in October, 2017.

- **Four violations of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Urban Delivery had no driver qualification files for its drivers Daniel Johnson, Derek Duryea, Courtney Taylor, and Jakob Krober.
- **One hundred twenty violations of Title 49 CFR Part 395.8(a)(1) – Failing to require driver to prepare a record of duty status using appropriate method.** Commission staff examined 120 records of duty status during a 30-day period and found that none of the records contained the data required by regulation.
- **Two violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Urban Delivery failed to keep required records on its two vehicles.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Household goods moving companies that hire workers without conducting required background checks, employ drivers not medically examined and certified, fail to keep track of drivers' hours, or fail to maintain driver and vehicle records place the traveling public as well as their own customers and their customers' belongings at risk. A fatigued driver, or one with an unknown medical history or qualifications, or a vehicle with an unknown maintenance history all present serious safety concerns. In addition, an employee with an unknown criminal history raises concerns about the security of the customer and the customer's belongings.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

Urban Delivery applied for a household goods moving permit in February 2016. In the company's application, owner Derek Duryea acknowledged his responsibility for understanding and complying with applicable state and federal regulations.

When the Commission granted temporary household goods moving authority to Urban Delivery in March 2016, staff advised the company in writing of its responsibility to attend the Commission's free household goods training offered quarterly and to complete criminal background checks on all potential employees. Staff included a copy of WAC 480-15 with its letter. To date, no one from Urban Delivery has attended the household goods training.

Staff believes that Urban Delivery has ignored its opportunity for technical assistance.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Urban Delivery was uncooperative and non-communicative throughout the entire scope of the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Staff is not aware of any steps taken by Urban Delivery to correct these violations.
6. **The number of violations.** In total, staff identified seven violation types with a total of 190 occurrences. This is a significant number of violations for a company the size of Urban Delivery.
7. **The number of customers affected.** The company traveled 45,000 miles and reported \$650,000 in gross revenue for 2016. A significant number of customers as well as members of the traveling public may have been affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Urban Delivery is likely to repeat these safety violations. However, the company was uncooperative with staff and appeared uninterested in coming into compliance with safety regulations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first safety investigation. The Commission penalized Urban Delivery in 2017 for failing to file its annual report and pay regulatory fees.
10. **The company's existing compliance program.** Mr. Duryea, the company owner, is responsible for the carrier's safety compliance program.
11. **The size of the company.** Urban Delivery is a small company with four drivers and two commercial vehicles.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Urban Delivery \$6,500 for violations of WAC 480-15-555 – Criminal Background Checks for

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

Prospective Employees, WAC 480-15-560 – Equipment Safety Requirements, and WAC 480-15-570 – Driver Safety Requirements, calculated as follows:

- Three violations of WAC 480-15-555 – Criminal background checks for prospective employees. These are violations of a fundamental Commission requirement for household good movers. The Commission assesses a penalty of \$100 for each occurrence, for a total of \$300.
- Fifty-nine violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. These are violations of a fundamental safety requirement. The Commission assesses a penalty of \$100 for each occurrence, for a total of \$5,900.
- Four violations of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed. As first-time violations, the Commission assesses a penalty of \$100 for one violation of this type.
- One hundred twenty violations of Title 49 CFR Part 395.8(a)(1) – Failing to require driver to prepare a record of duty status using appropriate method. As first-time violations, the Commission assesses a penalty of \$100 for one violation of this type.
- Two violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. As first-time violations, the Commission assesses a penalty of \$100 for one violation of this type.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective January 16, 2018.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-171184

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violation occurred and enclose \$_____ in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”