

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-180132

PENALTY AMOUNT: \$8,300

Keiko Martinez
d/b/a U-Relax Moving & Delivery Service
2504 NE 145th Street
Shoreline, WA 98155

The Washington Utilities and Transportation Commission (Commission) believes that Keiko Martinez d/b/a U-Relax Moving & Delivery Service (U-Relax) has committed violations of Washington Administrative Code (WAC) 480-15-555 Criminal Background Checks for Prospective Employees; 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 – Qualifications 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 February 2018, Commission Motor Carrier Investigator Jason Sharp completed a routine safety investigation of U-Relax and documented the following violations:

- **77 violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** U-Relax allowed employees Efrain Martinez and Keiko Martinez to drive without a current medical certificate a total of 77 times during the 6 months preceding the safety investigation.
 - Efrain Martinez drove once each month in July, October, and November 2017, and eight times in January 2018.
 - Keiko Martinez drove 6 times in July, 17 times in August, 16 times in September, 15 times in October, 4 times in November, and 8 times in December 2017.
- **Two violations of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed.** The company failed to maintain driver qualification files for employees Efrain Martinez and Keiko Martinez.
- **Two violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** The carrier did not require drivers Keiko Martinez or Efrain Martinez to prepare records of duty using a log book, timesheet, or other approved device.

- **Two violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** The carrier failed to keep minimum records of inspection and maintenance for either of its two vehicles.
- **Two violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The carrier used two commercial motor vehicles that had not been periodically inspected.
- **Two violations of WAC 480-15-555 (Title 49 CFR Part 392.2) – Failing to acquire criminal background check of prospective employee.** The carrier failed to acquire criminal background checks on two prospective employees, Efrain Martinez and Gaudencio Martinez.

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. Companies that use drivers not medically examined and certified that fail to document their drivers' qualifications or hours of service, or that use vehicles not periodically inspected put the traveling public at risk. A fatigued or unqualified driver, or a driver with an undetected medical condition, or a vehicle with an undetected mechanical defect all present serious safety concerns.

Furthermore, moving companies that fail to conduct criminal background checks on prospective employees place customers and their belongings at risk.

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.

In its November 13, 2015 application for household goods moving authority, Keiko Martinez, owner of U-Relax, acknowledged the company's responsibility to understand and comply with applicable motor carrier safety rules.

On August 11, 2016, Keiko Martinez attended household goods training provided by Commission staff. Keiko Martinez acknowledged receiving training pertaining to motor carrier safety regulations.

The company knew or should have known about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.

4. **Whether the company was cooperative and responsive.** U-Relax was cooperative and responsive throughout the entire scope of the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Upon notice of violations, U-Relax took immediate action to correct them and come into compliance.
6. **The number of violations.** In total staff identified 6 violation types and a total of 87 individual occurrences.
7. **The number of customers affected.** The company traveled 12,000 miles and reported \$134,345 in gross revenue for 2017. A significant number of customers, as well as members of the traveling public, were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if U-Relax is likely to repeat these safety violations. However, the company was cooperative and responsive to staff and has already taken the appropriate steps to correct the safety violations documented in staff's report.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first routine safety investigation. In 2016, the Commission penalized the company \$250 for failing to furnish a timely annual report. The company has no other history of violations or penalties with the commission.
10. **The company's existing compliance program.** U-Relax does not have a formal compliance program.
11. **The size of the company.** U-Relax is a small company with two drivers and two 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 U-Relax \$8,300 for violations of WAC 480-15-555 Criminal Background Checks for Prospective Employees, WAC 480-15-560 Equipment Safety Requirements, and WAC 480-15-570, Driver Safety Requirements, calculated as follows:

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

- 77 violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$7,700.
- Two 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 occurrence of this violation type.
- Two violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status. As first-time violations, the Commission assesses a penalty of \$100 for one occurrence of this violation 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 occurrence of this violation type.
- Two violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected. As first-time violations, the Commission assesses a penalty of \$100 for one occurrence of this violation type.
- Two violations of WAC 480-15-555 (Title 49 CFR Part 392.2) – Failing to acquire criminal background check for prospective employees. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$200.

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 submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250.

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 February 27, 2018.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-180132

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 violations occurred and enclose \$_____ in payment of the penalty.

[] 2. **Contest the violation(s).** I believe that the alleged violation(s) 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 violations, 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.”