

Workplace health and safety
-it's a *shared* responsibility

Administrative Penalties Regulations

Labour and Workforce Development

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Background

- Since it was amended in 1996, the Occupational Health and Safety Act provided authority for an administrative penalty system
- BC, NB, Manitoba and Yukon all have versions of administrative penalties for OHS violations

Why Administrative Penalties?

- Compliance remains a concern
- OHS officers issue over 4000 orders per year
- Encourage compliance; deter violations
- Administrative penalties do not involve the courts
- Administered within the Department
- Penalty amounts are appealed directly to the Occupational Health and Safety Appeal Panel

Regulation

- All workplace parties are subject to a penalty when a contravention has occurred and is identified by an officer.
- Penalty levels are associated with the role in the workplace - Employers are subject to higher penalties than employees and supervisors
- OHS Officers DO NOT issue Administrative Penalties (fines). They will continue to issue orders for non-compliant activities.

Role of the Administrator

- Under the new regulations, the Administrator reviews the information provided by an officer and decides if a penalty is warranted.
- The penalty amount can be increased or decreased based on the following criteria:
 - the efforts to prevent the contravention from occurring;
 - whether or not the person on whom the administrative penalty is imposed derives any economic benefit from the contravention;
 - the harm the contravention causes to any person;
 - previous compliance history

Penalties

| Party | Base Penalty | Potential Penalty Range |
|--|--------------|-------------------------|
| Employee | \$100 | \$0 - \$1000 |
| Supervisor, owner or self-employed person | \$250 | \$0 - \$2000 |
| Employer, contractor, constructor, supplier, provider of occupational health or safety service, architect or professional engineer | \$500 | \$0 - \$4000 |

“Supervisor” means a person who has charge of a workplace or authority over a worker.

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These penalties are for each contravention and will be issued based on a review and subsequent decision by the Administrator. The high range is based on factors that consider whether there was an injury and whether the person has been prosecuted or an Administrative Penalty has been issued in the previous 3 years.

Penalty Doubled for Previous Contravention

Section 7:

“The administrative penalty in Sections 5 and 6 is doubled for a contravention if either of the following has occurred during the 3 years immediately before the contravention:

- (a) The person on whom the administrative penalty is to be imposed has had an administrative penalty imposed on them for a previous contravention of the Act or regulations;*
- (b) The person on whom the administrative penalty is to be imposed has been convicted of an offence under Section 74 of the Act.”*

Note: The 3 years is NOT retroactive.

Failure to Pay an Administrative Penalty

- Unpaid penalties become a debt to the province
- SNSMR will initiate collection procedures. Options include:
 - garnishee wages
 - inability to register a motor vehicle or renew a driver's license, etc.
 - adverse effect re: business registration/renewal

Appeals - General

- Appropriateness of the order can be appealed
- Process is the same as noted in the Act
 - The order subject matter is appealed (within 14 days) to the Director, then (within 21 days) to the OHS Appeal Panel
- However, the Admin Penalty (fine) can be appealed directly to the OHS Appeal Panel (within 21 days); not to the Director of the OHS Division

Appeal of an Order – Posting Requirements

- **Employers:**

- Must post a copy of the appeal application in a prominent place in the workplace, and
- Must provide a copy of the appeal application to the JOHS Committee or Health & Safety Representative, if one exists

- **Employees and Supervisors:**

- Must provide a copy of the appeal application to the employer
- Employer must then post a copy of the appeal application and provide a copy to the JOHS Committee / H&S Rep.

Orders issued to Employees and Supervisors

- Employees and Supervisors are not currently required (by the OHS Act) to provide a copy of an Order they have received to their employer. *However...*
- In the interest of due diligence and the Internal Responsibility System, the OHS Division believes it is important for the employer to know of these violations so that appropriate action may be taken. *Therefore...*
- OHS Officers will provide a copy of Orders issued to employees and supervisors to the employer.

Role of the Appeal Panel

- All administrative penalty amounts can be appealed to the Appeal Panel
- The Appeal Panel can revoke, decrease or confirm a penalty. Can not increase penalty

Benefits

- Increased compliance with laws, which should reduce injuries and impact WCB premiums
- Demonstrates a commitment to deterrence
- Provides an incentive in workplaces to implement the Internal Responsibility System
- Only issued where there is a contravention
- Less administrative costs than SOTs (Officer, Court & Crown)
- Provides another enforcement tool to respond to violations
- Will help to deter the underground economy

How to help avoid administrative penalties?

- Follow OHS laws
- Understand and apply principles of due diligence
- Obtain training as required
- Ensure effective supervision
- Understand and carry out individual roles and responsibilities

For more information on the Administrative Penalties, please contact us at:

E-mail:
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Website:
<http://www.gov.ns.ca/lwd/healthandsafety/>

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This law came into effect on January 15, 2010. There is no grace period or phase-in to the legislation.