

# Policy Engagement

## New Administrative Penalties—*Workers' Safety and Compensation Act*

### What's this about?

Workplace health and safety is a shared responsibility. Administrative penalties are one of the tools used to encourage compliance with workplace health and safety laws. The Workers' Safety and Compensation Board (the 'board') is modernizing its administrative penalty framework. By sharing input, you'll help build a fair, consistent and effective system for administrative penalties and guide the future of workplace safety and prevention.

The *Workers' Safety and Compensation Act* (the 'Act') came into effect July 1, 2022 expanding the board's enforcement measures. The Act gives the board authority to issue a monetary penalty—known as an "administrative penalty" to anyone who contravenes or fails to comply with the Act, its regulations, an order or a decision of the board. Previously, administrative penalties were permitted in relation to health and safety compliance and in other limited circumstances at much lower amounts. The administrative penalty framework now requires updating to align with the broader powers set out in the Act. A modernized framework will clarify when penalties should be issued and how penalty amounts will be calculated.

The Act sets out responsibilities for workers, employers, service providers and others to help maintain safe and healthy workplaces and support early and safe return to work for injured workers. When these responsibilities are not met the board may take enforcement action. This can include additional fees and charges, suspension or termination of benefits, safety officer orders (such as stop work and stop use orders), administrative penalties or prosecution.

Administrative penalties are used by regulatory bodies to discourage unlawful behavior and encourage compliance with laws and regulations. Their primary goal is to prevent non-compliance and promote safe and healthy workplaces. During the recent Act

modernization, Yukoners engaged with the board to influence the future of workplace safety in the Yukon for years to come. Through this, the board heard support to update the administrative penalty framework as a means to encourage compliance and improve workplace safety.

The 'What we Heard' report for the Act modernization can be found at <https://www.wcb.yk.ca/web-0065/web-0069>.

Administrative penalties are not imposed if an employer, owner, worker, or other individual can show that they exercised due diligence—that is, they took all reasonable steps to protect workers and others from harm or to prevent the violation from occurring.

Although there are existing policies and established procedures for administrative penalties within the board's Workplace Health and Safety branch, the board does not currently have a cohesive framework or general policy that governs the use of administrative penalties overall.

Under the previous legislation, the maximum administrative penalty was up to \$5,000 for a first offence, with an additional \$500 penalty for each day the offence continued. For a second offence, the maximum penalty increased up to \$10,000, plus \$1,000 for each additional day the offence continued. Under the new Act, the maximum penalty has increased significantly to \$250,000, with up to \$15,000 for each additional day the offence continues.

A worker or employer or other person has the right to request that the board reconsider an administrative penalty through the board's internal appeal process. If they are not satisfied with the decision, they may appeal the reconsideration decision to the independent Appeal Tribunal.

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### New administrative penalty framework

The new framework may involve creating one or more new policies as well as board procedures. It may also require updates to several existing policies and processes that currently address administrative penalties in specific circumstances. These policies are:

- Policy 4.5 Duty to cooperate- part 4 of 4 Penalties for non-cooperation
- Policy 4.6 Employer's obligation to re-employ
- Policy 4.9 Compliance with re-employment obligation
- Policy 4.10 Re-employment penalties and payments
- Policy 4.11 Termination after re-employment
- Policy 7.8 Employer's notice of injury

These policies are all posted online at [wcb.yk.ca/policies](http://wcb.yk.ca/policies).

Penalties for certain violations related to compensation duties—such as failure of an employer to report an injury, comply with re-employment obligations, or co-operate with return to work requirements are set out in the policies listed above.

The current base amounts used to issue penalties for violations of workplace health and safety laws and regulations are set out in *Table 1*.

A new framework and set of policies under the new Act may propose new or revised base penalties, set penalties for certain violations and updated escalation processes for repeat offenders and other aggravating factors.

Examples of potential ranges for increased base penalties, set penalties and escalating factors are provided in *Table 2*.

### What we heard report

After policy engagement is complete, a “What we Heard” report will be prepared. Taking into consideration the feedback received and the research conducted, a framework will be developed.

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### Stakeholder policy questions

The board is committed to developing a structured administrative penalty framework that is transparent, consistent, scalable and responsive to varying circumstances, including base penalties, graduated increases for repeat violations, adjustments based on aggravating factors and some defined penalties for specific types of violations.

#### 1. When to use the administrative penalty tool

- a) What are the benefits and risks of using administrative penalties as an enforcement tool?
- b) When should administrative penalties be used as an enforcement tool?

#### 2. Refining base penalties and adjustments

- a) What are your thoughts on adjusting base penalties based on aggravating factors such as the nature of the violation, whether the violation was intentional, the level of risk of harm involved, or if a serious injury or death occurred? (*Table 1*)

For example: base penalty x 2 if a serious injury/fatality resulted due to a violation.

- b) What are your thoughts on the proposed range of base penalty amounts? (*Table 2*)
- c) What are your thoughts about a base penalty system that increases based on the number of previous administrative penalties issued for the same or similar violation? (*Table 2*)

- d) Are there other factors that the board should consider when adjusting penalties?

#### 3. Set penalty amounts for certain types of violations

What are your thoughts about establishing set amounts for certain types of violations? See examples in *Table 3*.

#### 4. Discretionary category

What are your thoughts on creating a discretionary category for particularly serious violations, where higher penalties are justified in the circumstances?

For example: a workplace fatality.

#### 5. Alternative sanctions and penalty reductions

What are your thoughts on allowing persons the opportunity to reduce the penalty or receive alternative sanctions if they take certain actions—such as co-operating with the board, paying within a specific timeframe, providing safety training, or implementing safety programs or other initiatives?

#### 6. Other comments

Do you have any additional comments or suggestions regarding the development of a new framework and policies for administrative penalties?

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**Table 1**

| Current Base Penalty Amounts for violations under Part 3 – Health and Safety  |                      |                                       |  |
|---|----------------------|---------------------------------------|--|
| Workplace party   | Base penalty amounts | Minimum additional amount (base-50%)* | Maximum additional amount (base+50%, x1.75)* |
| Employer  | \$2,500              | \$1,250                               | \$6,563                                      |
| Supervisor  | \$750                | \$375                                 | \$1969                                       |
| Worker  | \$150                | \$75                                  | \$394  |
| <p>* Minimum and maximum penalty amounts may be increased or reduced as result of certain factors including: the number of prior violations, effort/neglect to prevent the situation, harm caused and, for workers only - experience/training.</p> <p>A multiplier is applied to the penalty amount for repeat violations as follows:<br/>           2<sup>nd</sup> violation – 1.25<br/>           3<sup>rd</sup> violation – 1.5<br/>           4<sup>th</sup> violation – 1.75</p> |                      |                                       |  |

**Table 2**

| Potential range for base penalties for violations under Part 3 – Workplace Health and Safety and Regulations |                           |                          |                            |
|--|---------------------------|--------------------------|----------------------------|
| Workplace party  | 1 <sup>st</sup> penalty * | 2 <sup>nd</sup> penalty* | 3 <sup>rd</sup> + penalty* |
| Employer/Owner   | \$2,500-\$5,000           | \$5,000-10,000           | \$10,000-20,000            |
| Supervisor   | \$750-\$1,500             | \$1,500-\$3,000          | \$3,000-\$6,000            |
| Worker   | \$250-\$500               | \$500-\$1,000            | \$2,000-\$4,000            |
| * penalty refers to an administrative penalty received in the past 5 years for the same or similar offence   |                           |                          |                            |

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Table 3

| <b>Administrative Penalties</b><br><b>Common violations where penalties could be set amounts and comparison to other jurisdictions in Canada</b> |  |   |   |   |
|--|--|---|---|---|
|  | <b>Yukon proposed ranges</b>   | <b>Jurisdiction** with similar penalty amounts</b>  | <b>Jurisdiction** with highest penalty amount</b>   | <b>Jurisdiction** with lowest penalty amount</b>  |
| <b>Employer failure to provide notice of injury under section 89</b>   | 1 <sup>st</sup> \$500<br>2 <sup>nd</sup> \$1,000<br>3 <sup>rd</sup> \$2,000                            | Nova Scotia<br>1 <sup>st</sup> \$500<br>2 <sup>nd</sup> \$2,000<br>3 <sup>rd</sup> + \$10,000 | New Brunswick<br>1 <sup>st</sup> \$500<br>2 <sup>nd</sup> \$2,000<br>3 <sup>rd</sup> + up to \$10,000 | NWT/NU<br>1/2 \$250<br>3/4 \$500<br>5+ \$1,000  |
| <b>Failure to comply with notice to produce under section 149 or notice to compel under section 191</b>  | 1 <sup>st</sup> \$500-\$1,000<br>2 <sup>nd</sup> \$1,000-\$2,000<br>3 <sup>rd</sup> \$2,000-\$4,000    | Manitoba<br>1 <sup>st</sup> \$500<br>2 <sup>nd</sup> \$2,500<br>3 <sup>rd</sup> + \$5,000     | New Brunswick<br>1 <sup>st</sup> \$500<br>2 <sup>nd</sup> \$2,000<br>3 <sup>rd</sup> + up to \$10,000 | NWT/NU<br>1/2 \$250<br>3/4 \$500<br>5+ \$1,000  |
| <b>Coercion not to file a claim under section 90</b>   | 1 <sup>st</sup> \$5,000-\$7500<br>2 <sup>nd</sup> \$7,500<br>3 <sup>rd</sup> \$10,000                  | Manitoba<br>1 <sup>st</sup> \$4,000<br>2 <sup>nd</sup> \$5,000<br>3 <sup>rd</sup> +\$6,000    | Alberta<br>up to \$25,000   | Nova Scotia<br>1 <sup>st</sup> \$2,000<br>2 <sup>nd</sup> \$10,000                        |
| <b>Obstruction, providing false or misleading information to the board under section 170(2)</b>  | 1 <sup>st</sup> \$1,000-\$2,000<br>2 <sup>nd</sup> \$2,000-\$4,000<br>3 <sup>rd</sup> \$5,000-\$10,000 | Manitoba<br>1 <sup>st</sup> \$500<br>2 <sup>nd</sup> \$2,500<br>3 <sup>rd</sup> + \$5,000     | Alberta<br>up to \$25,000   | Manitoba<br>1 <sup>st</sup> \$500<br>2 <sup>nd</sup> \$2,500<br>3 <sup>rd</sup> + \$5,000 |

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## New Administrative Penalties—*Workers' Safety and Compensation Act*

Table 3 (continued)

| <b>Administrative Penalties</b><br><b>Common violations where penalties could be set amounts and comparison to other jurisdictions in Canada</b>   |   |  |   |  |
|--|---|--|---|--|
|  | <b>Yukon proposed penalty amount</b>  | <b>Jurisdiction** with similar penalty amounts</b>                                     | <b>Jurisdiction** with highest penalty amount</b> | <b>Jurisdiction** with lowest penalty amount</b>                   |
| <b>Breach of employer's re-employment obligations (section 118 of the Act)</b><br><br><b>Policy 4.9: Compliance with Re-Employment Obligation</b><br><br><b>(re-employment obligations for employers)</b>                              | Administrative penalty on the employer up to the amount of the loss of earnings benefits paid by the board to the worker during the period of non-cooperation. See Policy 4.9<br>Compliance with Re-Employment Obligation for further details.<br>(Current process) | AB, NB, NFLD, ON, PEI, BC, NS<br>up to net average earnings of the worker for the year | N/A   | N/A  |
| <b>Breach of employer's obligations to co-operate with return to work (section 117 of the Act)</b><br><br><b>Policy 4.5: Duty to Cooperate</b><br><br><b>(employer's obligations to cooperate in return to work of injured worker)</b> | Administrative penalty on the employer up to the amount of the loss of earnings benefits paid by the board to the worker during the period of non-cooperation. See Policy 4.5 Duty to Cooperate for further details.<br>(Current process)                           | AB, NB, NFLD, ON, PEI<br>up to net average earnings of the worker for the year         | N/A   | Nova Scotia<br>1 <sup>st</sup> \$2,000<br>2 <sup>nd</sup> \$10,000 |