

Chapter: General and Administrative**Legislative authority:** Part 6***Prevention statement***

Preventing injuries is one of the most important responsibilities in the workplace. The Workers' Safety and Compensation Act (the 'Act') establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

Purpose

This policy outlines the board's approach to using administrative penalties to enforce compliance with the Act and regulations.

Definitions

board means the Workers' Safety and Compensation Board

employer means every association, corporation, individual, partnership, person, society or unincorporated organization or other body having in their service one or more workers in an industry and as further defined in section 77 of the Act

worker means a person who performs work or services for an employer under a contract of service or apprenticeship, written or oral, express or implied and as further defined in section 77 of the Act

Policy statement**1. General**

An administrative penalty is a monetary penalty issued by the board for non-compliance with the Act, regulations and orders or decisions of the board made under Part 3 of the Act. They are intended to encourage compliance and promote safe and healthy workplaces.

The Act imposes obligations on workers, employers and others to ensure healthy and safe workplaces are maintained. The Act also promotes and supports early and safe return to work for injured workers and sets out requirements and obligations for workers, employers, health care providers and others to achieve these goals. Failure to meet these requirements and obligations

can result in enforcement measures being taken by the board. Some of those enforcement measures are the imposition of additional administrative fees and interest, orders, including stop use or stop work orders, administrative penalties and prosecution.

The board chooses which compliance tool to use depending on the circumstances of each situation. The board recognizes that some contraventions result from a misunderstanding of the laws or rules or inadvertence or other mitigating circumstances. In general, to prevent and address such contraventions, the board's compliance framework involves educating people and providing guidance about their obligations before compliance tools such as administrative penalties and prosecution are used.

The prosecution of offences under the Act will be generally reserved for the most severe contraventions and failures to comply with the Act and regulations, including those that result in serious injuries or death.

2. When an administrative penalty can be issued

The board can impose an administrative penalty on a person if the board is of the opinion that the person has

- (a) contravened or failed to comply with a provision of the Act or the regulations; or
- (b) has not complied with an order or decision of the board made under Part 3 of the Act – Workplace Health and Safety.

The amount of the penalty cannot be more than \$250,000 for a contravention or failure to comply and, in the case of a continuing contravention or failure to comply, not more than \$15,000 for each day it continues.

An administrative penalty must be issued within one year of the last occurrence of the action or omission to which the administrative penalty relates.

3. When an administrative penalty is used as a compliance tool

Administrative penalties are usually used as a compliance tool in situations and circumstances including, but not limited to, the following:

- when the contravention or failure to comply could have or has resulted in a serious injury, illness or death of a worker or other person;
- when there is or was an imminent danger to life and health;
- when there have been repeated contraventions or failures to comply or a history of non-compliance;

- when the contravention or failure to comply was intentional or with wanton or reckless disregard;
- when there was an adverse impact on a worker or other person (injury or otherwise);
- when there was obstruction, fraud or misleading information; or
- when there was non-co-operation with the board.

4. Due diligence

An administrative penalty will not be imposed if a person establishes that they exercised due diligence to prevent the failure, non-compliance or conditions to which the penalty relates.

Due diligence is established when the evidence shows, on a balance of probabilities, that the person took all reasonable care and steps to comply. This involves consideration of what a reasonable person would have done in the circumstances.

5. Discretion to vary or reduce penalty amount

The board has the discretion, at any time, to vary, reduce or waive a penalty that has been imposed if the circumstances warrant, and on such other conditions as it considers appropriate.

6. How the amounts of administrative penalties are determined

In determining the amount of an administrative penalty, the board applies the following:

(a) Part 3 of the Act - Workplace Health and Safety

Subject to paragraph (d) discretionary penalties, for contraventions or non-compliance with Part 3 of the Act, or regulations under Part 3, or an order or decision of the board made under Part 3, the board calculates the amount of the administrative penalty by using the applicable base penalty amount in the table in subparagraph (i), and multiplying it by the number of applicable multiplier factors in subparagraph (ii).

(i) Base penalties

Base penalties for contraventions/non-compliance with Part 3 - Workplace Health and Safety, regulations under Part 3, or an order or decision of the board under Part 3

	1 st penalty	2 nd penalty**	3 rd or subsequent penalty**
*Employer/Owner/Prime Contractor/Supplier	\$2,500	\$5,000	\$10,000
*Supervisor	\$750	\$1,500	\$3,000

*Worker	\$250	\$500	\$1,000
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**includes self-employed person, depending on contravention/non-compliance to which penalty relates*

***penalties received in the past three years for the same or similar contravention/non-compliance*

(ii) *Multiplier factors*

For each of the following factors that are present, the base penalty is multiplied by two:

- (A) the contravention or non-compliance was a high-risk violation, considering the likelihood and severity of an injury or death occurring;
- (B) the contravention or non-compliance was intentional or with wanton or reckless disregard;
- (C) the contravention or non-compliance involved non-compliance with a stop use or stop work order;
- (D) a worker or other individual has been seriously injured or died as a result.

Example: An employer involved in logging operations asks their workers to clear an area of trees and provides them with faulty chain saws that have had their anti-kickback chain and chain brake removed or are broken. One of the workers sustains a serious injury to their leg after attempting to perform the work with the faulty equipment. The employer received an administrative penalty six months prior for failing to have chain brake on the equipment. A stop use order was issued by the board at that time in relation to the faulty chain saws and was still in effect.

The board issues an administrative penalty for contravention and calculates the penalty as follows:

Base for employer with second administrative penalty = \$5,000 (column 2nd penalty)

Multiplier factors (A) high risk violation x 2

(C) stop use order in effect x 2

(D) worker has been seriously injured x 2

Administrative penalty = \$5,000 x 2 x 2 x 2 = \$40,000

(b) Part 4 of the Act- Compensation- Division 7- Rehabilitation and Return to Work

Subject to paragraph (d) discretionary penalties, if an employer contravenes or fails to comply with the return to work or re-employment obligations set out in sections 117 or 118 of the Act, the board calculates the amount of the administrative penalty as follows:

Penalties for contravention or non-compliance with section 117 - return to work obligations or section 118 - re-employment obligations

<p>Failure to comply with employer's obligations to co-operate with return to work * (section 117)</p>	<p>An amount up to the loss of earnings benefits paid by the board to the worker during the period of non-cooperation</p>
<p>Failure to comply with employer's re-employment obligations ** (section 118)</p>	<p>An amount up to the worker's gross average earnings in the year prior to the work-related injury, not limited by maximum annual earnings, as determined by the board but subject to the maximum penalty amount</p>

**see related policies 4.1- 4.5*

***see related policies 4.6- 4.12- applies to employers subject to section 118 of the Act*

(c) Other specific contraventions or non-compliance

Subject to paragraph (d) discretionary penalties, if a person contravenes or fails to comply with the following provisions of the Act, the board calculates the amount of the administrative penalty as follows:

Penalties for other specific contraventions/non-compliance

	1 st penalty	2 nd penalty*	3 rd or subsequent penalty*
Employer failure to provide notice of injury or report worker's return to work (section 89)	\$1,000	\$2,000	\$4,000
Employer failure to comply with obligations to pay workers on date of injury, not deduct sick pay, reduce benefit entitlement (section 106) or not to require or permit contribution to indemnification of employer (section 202)	\$1,000	\$2,000	\$4,000
Employer failure to comply with notice to produce (section 149)	\$1,000	\$2,000	\$4,000
Failure to comply with notice to compel (section 191) or make records available (section 193)	\$1,000	\$2,000	\$4,000
Employer failure to provide emergency transportation (section 115)	\$1,000	\$2,000	\$4,000
Failure to post notices (section 198)	\$1,000	\$2,000	\$4,000
Knowingly obstruct, make a false statement to or mislead the board (section 170(2))	\$1,000	\$2,000	\$4,000
Health care provider failure to comply with obligations to provide health care reports to the board (section 113)	\$1,000	\$2,000	\$4,000
Discourage or attempt to prevent or discourage a worker or dependant of a deceased worker from applying for compensation, pursuing an application or receiving compensation under Part 4 of the Act (section 90)	\$5,000	\$10,000	\$20,000

**penalties received in the past three years for the same or similar contravention/non-compliance*

(d) Discretionary penalties

- (i) Notwithstanding paragraphs (a), (b), and (c), in cases where the circumstances warrant, reflecting the gravity of the circumstances, need to encourage compliance or safety of workers or the public, the board may impose a penalty in an amount it determines, which may be higher than the amounts determined in paragraphs (a), (b), and (c), up to the maximum penalty amount set in the Act. Such situations include, but are not limited to, the following:
- when the contravention or non-compliance is high risk in that there is or was a high risk of a serious incident, serious injury or illness or death;
 - when there was intention to commit the contravention or non-compliance or wanton or reckless disregard;
 - when a worker or other person has died or suffered a serious injury as a result;
 - when there are other aggravating factors such as multiple contraventions, repeated contraventions, or a long history of non-compliance;
 - in the case of a continuing contravention or failure to comply;
 - where otherwise determined appropriate in the circumstances by the board, on a case by case basis.
- (ii) Notwithstanding paragraphs (a), (b), and (c), where the calculation and determination of the amount of the penalty for a contravention or non-compliance is not covered elsewhere, the board may impose a penalty in an amount it determines, which may be lower or higher than the amounts determined in paragraphs (a), (b) and (c), up to the maximum penalty amount set in the Act.

7. How are penalties issued

To impose an administrative penalty on a person, the board issues a notice of administrative penalty setting out the following information:

- (a) a description of the contravention or failure to comply;
- (b) the amount of the penalty;
- (c) when and how the penalty must be paid; and
- (d) information about reconsiderations and appeals of administrative penalties.

Service of notice

The notice of an administrative penalty can be served on or sent to the person by:

- (a) mailing it to them by ordinary mail or prepaid courier to their last-known address;

- (b) personally serving it on them;
- (c) serving it by substituted service as authorized by the President of the board; or
- (d) transmitting it electronically.

A document that is sent by mail or electronic transmission is deemed to be received:

- (a) if sent by ordinary mail, seven days after the date on which it was mailed; or
- (b) if sent by electronic transmission, on the date of the transmission (if the document is transmitted at or before 4:00 p.m.), or on the next day, if the document is transmitted after 4:00 p.m.

8. Payment

Administrative penalties must be paid in full within 21 days after the date the person is served with the notice of the administrative penalty.

An administrative penalty that is imposed against an employer is an amount owing to the board at the time it is imposed and, if not paid within the time period required, will be added to the employer's assessment account.

An administrative penalty is an amount owing to the board at the time it is imposed and may be recovered by the board by way of set-off against any amount that is payable by the board to that person or as a debt due to the board, including registration of a certificate in the Supreme Court of Yukon which is enforceable as a judgment of the court.

9. Reconsideration and appeal

A person on whom an administrative penalty is imposed may request that the board reconsider the penalty. A request for reconsideration of an administrative penalty must be made within 21 days after the date the person is served with the notice of the administrative penalty.

A reconsideration decision of the board may be appealed to the Appeal Tribunal. An appeal must be made within 21 days after the date of the reconsideration decision.

Requests for reconsideration and appeals must be made in accordance with the Act and policy 6.1, Reconsiderations.

A request for reconsideration or appeal of an administrative penalty does not automatically stay or put the penalty "on hold". The board may, on written application by the person on whom an administrative penalty is imposed, stay all or any part of the administrative penalty on any conditions that the board determines, until the reconsidered decision has been made and any appeal to the Appeal Tribunal has been concluded. See policy 6.1, Reconsiderations.

The board's decision regarding the stay of the penalty is final and cannot be appealed to the Appeal Tribunal.

If there is an associated order issued under Part 3 of the Act-Workplace Health and Safety, a reconsideration or appeal of an administrative penalty does not stay the order, which must be complied with within the time periods set in the order.

10. No prosecution for same contravention

A person who pays an administrative penalty may not be charged with an offence respecting the contravention or failure to comply for which the administrative penalty was imposed, unless the contravention or failure to comply continues after the penalty is paid.

11. Publishing administrative penalties

The board may publish administrative penalties on its website. The publication may include details regarding the contravention including, but not limited to, the name of the person, the nature of the contravention or failure to comply, and the amount of the administrative penalty.

History

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