



Labour and Advanced Education

Information about Administrative Penalties

Workplace health and safety is a shared responsibility.

What you need to know about Nova Scotia's occupational health and safety administrative penalties

On **January 15, 2010**, legislation took effect that gives Nova Scotia's Department of Labour and Advanced Education Occupational Health and Safety division the ability to issue penalties when violations of health and safety laws are found in workplaces. Read on to have your questions answered.

Q. What is the OHS Act and what rights do I have under the Act?

The Nova Scotia Occupational Health and Safety Act (OHS) is designed to improve workplace health and safety in the province. It provides for the promotion, coordination, administration and enforcement of occupational health and safety in Nova Scotia. The Act is based on a principle of internal responsibility.

Q. What is the Internal Responsibility System (IRS)?

IRS is the foundation of the Occupational Health and Safety Act. Under the IRS, since all "workplace parties" influence what a workplace is like, they must all share responsibility for making the workplace safer and healthier. The Act sets out the responsibilities and duties of all workplace parties.

Q. What is meant by "workplace parties"?

Workplace parties include employers, contractors, constructors, employees and the self-employed, as well as owners, suppliers, architects, engineers and Occupational Health and Safety consultants. All of these groups must comply with the regulations under the OHS Act or an order may be issued. If an order is issued, it could result in a penalty.

Q. Why were the penalties introduced?

Workplace health and safety is a shared responsibility among organizations, the people who work for them and the government, which regulates occupational health and safety. Unfortunately, statistics show that OHS non-compliance remains a concern in a vast majority of industry sectors throughout Nova Scotia. The Administrative Penalties Regulations is another tool available to the OHS Division to encourage voluntary compliance with health and safety laws.

Q: Why now?

The implementation of this system is timely. Nova Scotia continues to have an unacceptable number of serious accidents and fatalities in the workplace, many of which could have been prevented by compliance with existing laws. We need to take initiatives to reduce the number of accidents and their personal and financial impacts.

Q: Who will assign the penalties?

An Administrator within the Occupational Health and Safety division will assign penalties based on a review of the Order(s) issued by the OHS officer after identifying a contravention.

Q: Will employees be penalized?

Organizations and the people who work for them, including employees, contractors, subcontractors and so on (see "workplace parties" definition above), are named in the Occupational Health and Safety Act and can be issued an order. If an order is issued, it could result in a penalty. If people are following the, and are in compliance with, the occupational health and safety laws there will be no Orders and thus no penalties.

Q: What types of offences are subject to the monetary fine?

Any violations of the Occupational Health and Safety Act and its regulations could result in an Order and subsequently a penalty. For your information, the OHS regulations are available at <http://gov.ns.ca/lae/healthandsafety/pubs.asp>

Q: If I receive an order from an officer and I comply with that order, will I still receive a penalty?

A penalty is issued for a violation that results in an order. Compliance with the order is expected and does not prevent the issuance of a penalty.

Q. If I don't agree with an order what can I do?

Any order issued can be appealed to the Director of the Occupational Health and Safety Division at the Department of Labour and Advanced Education. The appeal form can be found at http://gov.ns.ca/lae/healthandsafety/docs/101_Appeal_to_Director.pdf

Q: How much will the penalties be?

Penalties imposed on individuals who have control over a workplace such as employers and supervisors will be larger than those imposed on employees. Penalties initially range from \$100 to \$500 and will increase if it is a repeated offence. Penalties are also higher if there is an injury involved or potential for injury. The Administrator will also take into account if any efforts were taken to ensure that contravention of the laws would not occur and/or if any economic benefit was derived from the violation. The maximum penalty for an employee is \$500; a supervisor is \$1000; and an employer is \$2000. If a previous offence has occurred within three years, the fines will double. (The 3-year factor will relate to orders issued after Jan. 15, 2010).

Q. What is meant by the term "supervisor"?

The Occupational Health and Safety division defines supervisor as "A person who has charge of a workplace or authority over a worker."

Q: What if an employer or person cannot afford to pay the penalty?

Generally, the person receiving a penalty will be given a reasonable time to comply with the penalty. After that the usual government debt collection procedures would commence.

Q. How is blame determined? For example, if an employer or contractor has taken steps to ensure compliance, asks for a hazard assessment from a subcontractor, conducts weekly inspections, does weekly tool box talks, and generally supervises the project, does the penalty go to the general contractor, the subcontractor or both?

If a general contractor employing subcontractors believes he/she has taken reasonable measures to ensure compliance by the subcontractors, he/she needs to make that information available to the officer. Doing so helps ensure the officer issues the order to the right person, and that the Administrator has the necessary information in determining if an administrative penalty is warranted.

The officer who conducts the inspection does not assign the administrative penalty. An Administrator will be responsible for reviewing all orders and assigning all administrative penalties.

Before assigning administrative penalties, the Administrator will consider the order, the guidelines that have been prepared for the issuance of the administrative penalty as well as any information that the person receiving the order may provide.

Q. What action can be taken when a person believes the order should not have been issued?

As a general practice an officer would select an order from a number of enforcement tools available. If a party believes that an order is not correct the first step would be to address that concern with the officer. If the order is issued and the substance of the order and its appropriateness is still in question, it can be appealed to the Executive Director. The appeal of the technical content of an order would be addressed first, before any administrative penalty would be considered. If this is not resolved satisfactorily, it can be taken to the Labour Board.

Q. What is the Labour Board?

The Labour Board is an independent and arms-length body who, among other matters, hears appeals of decisions made or orders issued by staff of the OHS Division. The OHS staff and the OHS Division do not influence the Board's decision making process other than making representations at the appeal hearing as would any party with standing. Additional information regarding the Labour Board is available at <http://gov.ns.ca/lae/labourboard/>

Q. How does the appeal process work?

The appeal process for administrative penalties has been made as straight-forward as possible while ensuring that all the parties with an interest in the outcome have an opportunity to participate. If a person assigned a penalty does not agree with it, they can file a notice of appeal with the Labour Board of the Department of Labour and Advanced Education no later than 21 days after the person is served with a notice of an administrative penalty. The penalty will be suspended until the appeal process has been completed. The form can be found at <http://gov.ns.ca/lae/labourboard/documents/OHSNoticeofAppealForm.pdf>

Q. How does the OHS Division focus its inspections across all industry sectors in the province?

The OHS Division focuses its inspections based on criteria such as complaints, injuries, and industry sector experience. The information is available on an annual basis. Visit <http://gov.ns.ca/lae/healthandsafety/pubs.asp#anreport>

Q. Training for officers should require that they promote quick resolution rather than writing orders especially with companies willing to co-operate in this type of pro-active safety approach. This would save time, money, provide safe work environments and would potentially achieve a positive buy-in from all sectors.

Officers are provided with training relative to their job and the administration of the laws for which they are responsible. Officers have a tool kit of enforcement tools that can be used. They are trained to use the most appropriate tool given the information they are considering. The first line of protection in workplace health and safety lies with the parties in the workplace. When a workplace health and safety system is operating effectively, issues should be identified and addressed in a timely fashion, within the workplace without the involvement of the officer.

Q. Why was there no consultation on this regulation?

Unlike other OHS regulations introduced throughout previous years, the Administrative Penalties Regulations require workplace parties to do nothing new. They merely create the ability for penalties to be issued if parties are not following the laws that are already in place, some more than 1 or 2 decades

Q. The phrase "had the potential to result in injury" is open to huge interpretation and may reduce cooperation between contractors and regulators.

There have been guidelines established around what "injury or potential for injury" will mean. As always, the Administrator who assigns an administrative penalty will review any information that is provided by the officer or the person receiving the order before making a decision as to whether a penalty should be assigned. Information, and examples, relative to the three factors to be considered by the Administrator in terms of increasing or decreasing the base penalty amount, can be viewed at:

<http://www.gov.ns.ca/lae/healthandsafety/documents/APGuidelines-Oct192011.pdf>

Q. Adjusting the penalty up or down might sound good in the idealistic world, but might not work that well in practice.

Under authority of the Administrative Penalties Regulations, the Administrator may increase or decrease the base penalty amount following considering of three relevant factors, as outlined in the Guideline document referenced above. The ability to increase and decrease a base penalty amount is not unique to Nova Scotia. The legislation respects that there will be occasions when, depending on the circumstances, a change to the base amount will be appropriate.

Q. The appeal process seems complicated which could also impact whether or not a penalty gets adjusted.

The appeal process has been as made as straight-forward as possible while ensuring that all the parties with an interest in the outcome have an opportunity to participate. The best defense to reduce any risk of receiving an administrative penalty is a robust health and safety regime that ensures the minimum requirements of the provincial laws are being complied with in the workplace.

Q. Depending on the frequency of visits, some companies may have multiple inspections in a year; therefore, using a 3 year period would seem highly excessive for a doubling of the fines.

Inspections are scheduled based on standard criteria, such as complaints, injuries, and industry sector experience. Multiple inspections in a short time period would be triggered by the same criteria. Part of the process of introducing the Administrative Penalty Regulations was a commitment to review its operation on an ongoing basis. If changes to the Administrative Penalty Regulation are necessary, they will be undertaken. It is also important to note that there are other tools available to the OHS staff in addition to orders and the choice of the tool still remains with the officer in the field. The intent of this regulation is to help make workplaces safer.

Q. How is the decision made as to what companies are inspected? Is there means for recourse if a company / employee feel they are being unduly targeted?

The majority of inspection activity of OHS Division staff is complaint-driven. Our additional inspection activity is driven by a targeting process that identifies industries and firms with higher than average accident experience and the investigation of specific incidents which occur in workplaces. Workplace health and safety performance predicts to some extent inspection frequency. In terms of the concern over inspection, if a firm believes they are being excessively inspected there is a process in place for complaints against staff of the OHS Division. Where a firm believes they are being subjected to excessive fines there is an established appeal process where an administrative penalty has been assigned.

Q. The OHS law says that if an employer receives an order from a safety officer, the employer must post a copy of it in a prominent place at the workplace, and also provide a copy to the Joint Occupation Health and Safety (DOHS) Committee or Health and Safety Representative. If an employee or a supervisor receives an order, does it have to be posted in the workplace or a copy provided to the JOHS Committee or Health and Safety Representative?

It is correct that the employer must do the things specified in the question. However, there is no similar requirement of employees and supervisors unless the employee (or supervisor) appeals the Order, in which case the Act requires the Order and the appeal documentation be posted in the workplace. Orders are public documents, however, and the employer can obtain a copy from the OHS Division, and in all likelihood will be provided a copy by the safety officer. The report document, however, is not a public document. (Note: The orders are printed on yellow paper, and the reports are printed on green paper.)

Q. If an employer that receives an order decides to appeal it, is a copy of the Appeal Application required to be posted at the workplace?

Yes. The employer is also required to provide a copy of the Appeal Application to the JOHS Committee or Health and Safety Representative.

Q. If an employee or supervisor who receives an order decides to appeal it, is a copy of the Appeal Application required to be posted at the workplace?

The employee or supervisor that receives an order and decides to appeal it must provide a copy of the Appeal Application to the employer. Upon receipt of the Appeal Application, the employer must post a copy of it in the workplace and provide a copy to the JOHS Committee or Health and Safety Representative.

Q. Where does the penalty money go?

All revenues generated by the administrative penalty system are placed in the consolidated fund of the province.

Q. Will previous penalties, prior to implementing this program, be taken into account when assigning penalties?

The three years of history will begin from January 15, 2010 going forward. Prosecutions prior to this date will not be considered in assigning a penalty.

Q. Can the owner of a company deduct any fines they receive as a result of the employee not working in a safe manner if the employee has proper training, signed off on the company rules and has had a safety orientation?

There is no provision in the OHS Act or regulations to permit this action by an employer. This is an issue of the employment relationship and could only occur where it can be done without violating any existing collective agreement or the Labour Standards Code. You may want to review any existing collective agreement, employment agreement or contact the Labour Standards Division at 902.424.4311 (Halifax) or 1.888.315.0110 (toll free) for more information.

Q. If a person is fined as a supervisor, can they be also fined as an employee?

If a person receives an administrative penalty in their capacity as a supervisor, they will not receive a second penalty as an employee for the same contravention. It would be one or the other, depending on whether the person was or was not a supervisor when the contravention occurred, as noted by the officer.

Q. If the employee refused to pay a fine, is the employer responsible for paying it?

The person to whom the administrative penalty is issued is responsible for payment. If that person refuses to pay, collection procedures will be initiated against the person named on the penalty notice. Collection options may include garnishee of wages, the inability to renew a driver's license, or the inability to obtain (or renew) a vehicle registration.

For more information, please call 902-424-5400 or toll free 1-800-952-2687

(1-800)9LABOUR) or visit us on the web at

<http://www.gov.ns.ca/lae/healthandsafety/>