

Administrative penalties

What are administrative penalties?

Administrative penalties are fines for health and safety violations. Their main purpose is to motivate the employer receiving the penalty — and other employers — to comply with the *Workers Compensation Act* and the Occupational Health and Safety Regulation.

When does WorkSafeBC consider an administrative penalty?

When an employer:

- Commits a violation resulting in high risk of serious injury, serious illness, or death
- Violates the same section of the Act or the Regulation on more than one occasion
- Violates different sections of the Act or the Regulation on more than one occasion, where the number of violations indicates a general lack of commitment to compliance
- Fails to comply with a previous order within a reasonable time
- Knowingly or with reckless disregard* violates one or more sections of the Act or the Regulation

Additional factors and relevant circumstances are weighed when WorkSafeBC decides whether to propose or levy a penalty. They include:

- The potential seriousness and likelihood of an injury or illness
- The number of people who might have been at risk
- The employer's record of compliance and if the employer has otherwise exercised due diligence to prevent the conditions to which the penalty relates
- If the employer has an effective, overall program for compliance
- If the non-compliance resulted from the independent action of workers who had been properly instructed, trained and supervised

How does WorkSafeBC determine penalty amounts?

In part, the size of the employer (larger payrolls are assessed higher penalties) and seriousness of the violations determine the amount of the penalty. In certain circumstances, claim costs may also be applied to the penalty. In extraordinary circumstances, WorkSafeBC has the ability to go beyond prescribed limits and increase the penalty amount. By law, there is a maximum penalty amount. In 2009, WorkSafeBC could penalize up to \$565,329.86.

Can an employer appeal a penalty decision?

Yes. There are two levels of appeal. The first level is internal, involving a review by a Review Officer in the Review Division. The time limit for requesting a review is within 90 days of when the decision was made. The second level of appeal is to the independent Workers' Compensation Appeal Tribunal (WCAT). A decision by the Review Division may be appealed to WCAT within 30 days.

Does WorkSafeBC ever prosecute violators of the Act or Regulation?

WorkSafeBC can refer cases to Crown Counsel to consider for prosecution. Prosecutions are infrequent, however, because significant financial penalties may be imposed under the Act to address serious non-compliance issues.

Where there is evidence of such misconduct, the Crown may consider it in the public interest to pursue formal charges rather than administrative remedies.

How have prosecutions and penalties changed since 2000?

From 1995 to 2000, WorkSafeBC referred 28 cases to the Crown to consider for prosecution. Of these 21 resulted in convictions and 7 in acquittals or stays of charges. The total amount of fines imposed from the prosecutions in this period was \$534,500. The highest fine imposed was \$85,000 and one case resulted in imprisonment for 45 days.

Prior to October 1999, WorkSafeBC could impose a maximum penalty of \$30,000. In October 1999, amendments to the Act under Bill 14 came into effect increasing the maximum penalty amount to \$500,000.

Since 1999, WorkSafeBC has imposed 1,644 administrative penalties totaling over \$23.6 million. There have been 17 penalties imposed of over more than \$100,000 – the largest being \$297,120. WorkSafeBC can still, and does, refer cases to the Crown to consider for prosecution.

Are administrative penalties the only remedy to motivate compliance?

If unsafe work or other non-compliance is observed, a WorkSafeBC officer may do the following:

- Write orders to the employer or worker requiring the employer to comply with the Act or Regulation
- Order stoppage of any unsafe equipment, machinery or work process
- When there is immediate danger to workers, issue a stop work order until all unsafe equipment or work processes are corrected
- Require an employer to submit a report describing how they will comply with the orders
- Cancel or suspend blasting or first aid certificates if conditions or terms of the certificate have been breached
- Impose a fine (also called an administrative penalty) for a serious breach of health and safety legislation
- In extreme cases, an officer may gather evidence for prosecution by the Crown under the Act

**Reckless disregard includes where a violation results from ignorance of the Act or regulations due to a refusal to read them or take other steps to find out an employer's obligations; or WorkSafeBC considers that the circumstances may warrant an administrative penalty*