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Update 2018 – 1

**TO: HOLDERS OF THE *PREVENTION MANUAL***

This update of the *Prevention Manual* contains amendments implemented since update 2017 – 6.

- Policy D12-196-4, *Non-Exclusive Ways to Impose Financial Penalties*
- Policy D12-196-6, *OHS Penalty Amounts*
- Policy D12-196.1-1, *OHS Citations*
- Policy D24-73-1, *Claims Cost Levies*

A summary of the amendments is attached and the amended pages are included as part of this package.

These amended pages and the complete manual are available at  
<https://www.worksafebc.com/en/law-policy/occupational-health-safety/ohs-policies>

Ian Shaw  
Senior VP and General Counsel

Attachments

***PREVENTION MANUAL***  
**Transmittal Sheet for Update 2018 – 1**

<b>Check As Done</b>	<b>Remove Old Pages Numbered/Titled:</b>	<b>Insert New Pages Numbered/Titled:</b>
<input type="checkbox"/>	D12-196-4	Pages 1 and 2
<input type="checkbox"/>	D12-196-6	Pages 1 to 2 and 7 to 10
<input type="checkbox"/>	D12-196.1-1	Pages 1 to 2 and 5 to 6
<input type="checkbox"/>	D24-73-1	Pages 1 to 2

**RE: Non-Exclusive Ways to Impose Financial Penalties****ITEM: D12-196-4**

## **BACKGROUND**

### **1. Explanatory Notes**

This policy sets out the non-exclusive ways in which the Board may impose financial penalties if an employer does not comply with the occupational health and safety requirements in the *Act* and regulations.

### **2. The Act**

Section 73(1):

73 (1) If

- (a) an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and
- (b) the Board considers that this was due substantially to
  - (i) the gross negligence of an employer,
  - (ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or
  - (iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under Part 3 of this *Act*,

the Board may levy and collect from that employer as a contribution to the accident fund all or part of the amount of the compensation payable in respect of the injury, death or occupational disease, to a maximum of \$56,588.17.

Section 160(b):

If an employer fails, neglects or refuses to install or maintain first aid equipment or service required by regulation or order, the Board may do one or more of the following:

- (b) impose a special rate of assessment under Part 1 of this *Act*.

Section 196(1):

The Board may, by order, impose on an employer an administrative penalty under this section if the Board is satisfied on a balance of probabilities that

- (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,
- (b) the employer has not complied with this Part, the regulations or an applicable order, or
- (c) the employer's workplace or working conditions are not safe.

## **POLICY**

The Board has authority under the *Act* to:

1. impose an administrative penalty under section 196(1),
2. levy and collect a contribution from an employer under section 73(1), and
3. impose a special rate of assessment under section 160(b).

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<b>EFFECTIVE DATE:</b>	March 24, 2010
<b>AUTHORITY:</b>	
<b>CROSS REFERENCES:</b>	See also Assignment of Authority (Item D2-111-1), Criteria for Imposing OHS Penalties (Item D12-196-1), and Claim Cost Levies (Item D24-73-1)
<b>HISTORY:</b>	Housekeeping amendments to Background Section effective May 27, 2015 to reflect changes to the <i>Workers Compensation Act</i> .  This policy incorporates portions of, and replaces, Policy No. 1.4.2 " <i>Penalty Assessments and Levies</i> " of the former Prevention Division <i>Policy and Procedure Manual</i> .  Amended March 24, 2010 to delete the reference to the Vice-President, Prevention Division, make minor wording changes and add a cross-reference to Policy D2-111-1 which has been amended to address authority over claims cost levies.
<b>APPLICATION:</b>	

RE: OHS Penalty Amounts

ITEM: D12-196-6

## **BACKGROUND**

### **1. Explanatory Notes**

WorkSafeBC may impose an administrative penalty ("OHS Penalty") on an employer for failure to comply with Part 3 of the *Act* and the Regulation, and under certain other conditions. Policy D12-196-1 and related policies identify when WorkSafeBC will consider an OHS Penalty. Section 196(3) provides that WorkSafeBC must not impose an administrative penalty where the employer establishes that it exercised due diligence.

Section 196(2) sets out the maximum OHS Penalty, which is currently \$646,302.88. This maximum is adjusted under section 25.2 of the *Act* on January 1 of each year.

The *Act* does not specify how to calculate the amount of an OHS Penalty. This policy sets out how to calculate these amounts.

### **2. The Act**

Section 196(2):

An administrative penalty which is greater than \$646,302.88 must not be imposed under this section.

## **POLICY**

This policy determines the amounts of administrative penalties, referred to as OHS Penalties.

### **1. Payroll Used**

For the purposes of this policy, the *penalty payroll* will ordinarily be determined as set out in (a) below. Item (b) below identifies circumstances in which WorkSafeBC will use less than the total payroll of the employer to determine the *penalty payroll*. The *penalty payroll* is used in Item 2(a) below as part of the calculation to determine the *basic amount* of the penalty.

**(a) Penalty Payroll Calculation**

- (i) The *penalty payroll* is
  - (A) the assessable payroll for the full calendar year immediately preceding the year in which the incident giving rise to the penalty occurred; or
  - (B) WorkSafeBC's estimate of a value for the employer's assessable payroll for a full calendar year, based on the best information available at the time the penalty is imposed, if the preceding year's assessable payroll is:
    - (1) non-existent or unknown,
    - (2) not available due to the employer's use of a deposit account,
    - (3) based on less than a full calendar year, or
    - (4) a WorkSafeBC estimate of payroll.

The estimate must not be less than any estimate made previously by WorkSafeBC of the employer's assessable payroll for the calendar year. For certainty, any estimate cannot result in a penalty below the minimum amount.

**(b) Multiple Fixed Locations and Divisional Registration**

An employer may be divisionally registered (AP1-38-1), have one or more fixed locations or have one or more classification units (AP1-37-2). Divisions or classification units may themselves have multiple fixed locations.

Where a firm has more than one permanent location or is divisionally registered (AP1-38-1), WorkSafeBC will determine the penalty payroll based on the lowest applicable amount of the following where the violation occurred:

- (i) fixed location,
- (ii) division, or
- (iii) classification unit,

if the employer promptly provides:

## PRACTICE

### 1. Examples of Penalty Multipliers

The following are examples of the penalty payroll calculation from Item 2(a) and the application of multipliers from Item 2(b). This table is for reference only. All amounts will be calculated according to the Policy.

Penalty Payroll	Calculation from Item 2(a)	Number of applicable circumstances from Item 2(b)		
		One	Two	Three
Up to \$250,000	\$1,250	\$2,500	\$5,000	\$7,500
\$500,000	\$2,500	\$5,000	\$10,000	\$15,000
\$1,000,000	\$5,000	\$10,000	\$20,000	\$30,000
\$2,500,000	\$12,500	\$25,000	\$50,000	\$75,000
\$5,000,000	\$25,000	\$50,000	\$100,000	\$150,000
\$10,000,000	\$50,000	\$100,000	\$200,000	\$300,000
\$20,000,000	\$100,000	\$200,000	\$400,000	\$600,000
\$30,000,000	\$150,000	\$300,000	\$600,000	Stat Max
\$40,000,000	\$200,000	\$400,000	Stat Max	
\$50,000,000	\$250,000	\$500,000	Stat Max	
\$63,741,560 or more	\$323,151.44 (half statutory max)	Stat Max (\$646,302.88)		

### 2. Examples of Application of the Repeat Penalty Provisions

*Example 1: You are calculating the penalty to be imposed for a violation that occurred less than 14 days after another similar violation that also resulted in a penalty. The employer has no other prior penalties for the same violation.*

Calculate the *basic amount* of the penalty in accordance with Item 2 of this policy. After applying Item 3 of this policy, you determine that the current penalty is not a “repeat penalty”. The penalty will therefore be imposed based on the table amount with variation plus any amounts added under Item 5 of this policy.

*Example 2: You are calculating the penalty to be imposed for a violation that occurred less than 14 days after another similar violation that also resulted in a penalty. The employer has one other prior penalty for the same violation for which more than 14 days’ notice was given before the current violation.*

Calculate the *basic amount* of the penalty in accordance with Item 2 of this policy. After applying Item 3 of this policy, you determine that the current penalty is a “repeat penalty”. There are two prior similar penalties; however, only one meets the requirements to be considered as a “prior similar penalty”. Using Item 4, you determine that one prior similar penalty will result in the amount that you calculated for the penalty being multiplied by two.

*Example 3: You are calculating the penalty to be imposed for a violation. The employer has three other prior penalties for the same violation for which more than 14 days’ notice was given before the current violation.*

Calculate the *basic amount* of the penalty in accordance with Item 2 of this policy. After applying Item 3 of this policy, you determine that the current penalty is a “repeat penalty”. The three prior penalties each meet the requirements to be considered as a “prior similar penalty”. Using Item 4, the basic amount will be successively doubled (multiplied by two) for each of the three prior similar penalties, resulting in a penalty of eight times the basic amount. For example, if the basic amount were \$2,500, the resulting penalty would be \$20,000.



The following table provides examples of the repeat penalty calculations from item 4. The table is for reference only. All amounts will be calculated according to the Policy.

Penalty Payroll	Calculation from Item 2 with no multipliers and no variation	Number of prior similar penalties		
		One (2x)	Two (4x)	Three (8x)
Up to \$250,000	\$1,250	\$2,500	\$5,000	\$10,000
\$500,000	\$2,500	\$5,000	\$10,000	\$20,000
\$1,000,000	\$5,000	\$10,000	\$20,000	\$40,000
\$2,500,000	\$12,500	\$25,000	\$50,000	\$100,000
\$5,000,000	\$25,000	\$50,000	\$100,000	\$200,000
\$10,000,000	\$50,000	\$100,000	\$200,000	\$400,000
\$20,000,000	\$100,000	\$200,000	\$400,000	Stat Max
\$30,000,000	\$150,000	\$300,000	\$600,000	Stat Max
\$40,000,000	\$200,000	\$400,000	Stat Max	
\$50,000,000	\$250,000	\$500,000	Stat Max	
\$63,741,560 or more	\$323,151.44 (half statutory max)	Stat Max (\$646,302.88)		

**EFFECTIVE DATE:**

July 4, 2017

**AUTHORITY:**

s. 196(2), *Workers Compensation Act*

**CROSS REFERENCES:**

See also Criteria for Imposing OHS Penalties (Item D12-196-1), Transfer of OHS History (D12-196-3), OHS Penalties - Due Diligence (Item D12-196-10).

**HISTORY:**

On October 18, 2017, the application statement was revised to clarify that the July 4, 2017 amendments do not apply to violations occurring before March 1, 2016 which have resulted in administrative penalties. Violations occurring before March 1, 2016 will still be considered as part of an employer's compliance history for the purposes of determining a repeat penalty amount.

Amendments effective July 4, 2017 to provide clarification on how to calculate a repeat penalty.

Housekeeping amendment effective April 15, 2016 to provide additional practice information regarding calculation of repeat penalty amounts.

Amendments effective March 1, 2016 including changes to penalty amount calculations, discretionary penalties, cost savings and profits and repeat penalties.

Housekeeping changes effective September 15, 2010 to correct paragraph reference in item 4(4) and make formatting changes.

Effective January 2, 2010 a change was made to

- (a) Item 1 to correct a typographical error in the Category A penalty table, and
- (b) Item 4 so that an administrative penalty will be imposed as a "repeat penalty" where:
  - (i) it is for a violation that is the same as, or substantially similar to, a prior violation for which a penalty has been imposed;
  - (ii) the violations occurred within 3 years of one another; and
  - (iii) at least 14 days prior to the date of the violation giving rise to the repeat penalty, WorkSafeBC
    - (1) had imposed a penalty for the prior violation, or
    - (2) provided notice of a potential penalty for the prior violation.

The amendments made effective January 2, 2010 applied to all penalties where a penalty was imposed on or after the effective date of the changes. Transitional provisions applied to penalties within the appeal period, before Review Division or before WCAT on the effective date.

Transitional Provision for Repeat Penalty Calculation:

Penalties within the appeal period or under review or appeal on the effective date of the policy change will be subject to the policy in effect when originally imposed, with the additional requirement that a prior penalty will only be used to increase the amount of a repeat penalty, if at least 14 days prior to the date of the violation giving rise to the repeat penalty, WorkSafeBC

- (a) had imposed a penalty for the prior violation, or
- (b) provided notice of a potential penalty for the prior violation.

**RE: OHS Citations****ITEM: D12-196.1-1**

## **BACKGROUND**

### **1. Explanatory Notes**

Employers are required to comply with the *Act* and Regulation at all times. WorkSafeBC conducts inspections and writes orders, known as OHS Compliance Orders, to address any violations. An order requires an employer to take action as soon as possible. Compliance with orders is essential to ensure that workplaces are safe.

When there is failure to comply with an order, or to prepare or send a compliance report, WorkSafeBC will expend unnecessary resources. High levels of compliance with orders allow WorkSafeBC officers to have a greater impact on health and safety.

An OHS Citation is a tool to address non-compliance with an order or failure to prepare or send a compliance report. It is an administrative penalty imposed on an employer by WorkSafeBC under section 196.1 of the *Act* and under the Lower Maximum Administrative Penalties Regulation (OHS Citation Regulation). OHS Citations are limited to circumstances that are not high risk (as defined by Policy D12-196-2).

An OHS Citation is different from an administrative penalty imposed on an employer under section 196 of the *Act* (OHS Penalty). Policy D12-196-1 sets out the criteria for an OHS Penalty.

Under the OHS Citation Regulation, an OHS Citation is \$519.86 (half the maximum) for a first offence. For a subsequent violation within three years, the OHS Citation is \$1,039.72 (the maximum). Both amounts are adjusted annually pursuant to the consumer price index.

Prior to issuing an OHS Citation, WorkSafeBC will first warn an employer that further failure to comply with the order may result in an OHS Citation or OHS Penalty. If the employer then fails to comply following the warning, WorkSafeBC may issue an OHS Citation or OHS Penalty.

### **2. The Act and Regulations**

Section 196.1 of the *Act*:

- (1) The Board may, by order, impose on an employer an administrative penalty prescribed by a regulation of the Board, which penalty must not be more than \$1,039.72, if the Board is satisfied on a balance of probabilities that the employer has failed to comply with a provision of this Part, or the regulations, as specified by a regulation of the Board.

- (2) If an employer requests under section 96.2 a review of a decision made under subsection (1) of this section, the employer must
  - (a) post a copy of the request for review at the workplace to which the administrative penalty relates,
  - (b) provide a copy of the request for review to the joint committee or worker health and safety representative, as applicable, and
  - (c) if the workers at the workplace to which the administrative penalty relates are represented by a union, provide a copy of the request for review to the union.
- (3) An employer who has been ordered to pay an administrative penalty under this section must pay the amount of the penalty to the Board for deposit into the accident fund.
- (4) If an administrative penalty under this section is reduced or cancelled by a Board decision, or on a review requested under section 96.2, the Board must refund the required amount to the employer out of the accident fund.

Section 115(1)(b) of the *Act*:

Every employer must comply with... any applicable orders.

Section 194 of the *Act*:

- (1) An order may include a requirement for compliance reports in accordance with this section.
- (2) The employer or other person directed by an order under subsection (1) must prepare a compliance report that specifies
  - (a) what has been done to comply with the order, and
  - (b) if compliance has not been achieved at the time of the report, a plan of what will be done to comply and when compliance will be achieved.
- (3) If a compliance report includes a plan under subsection (2)(b), the employer or other person must also prepare a follow-up compliance report when compliance is achieved.

(These are referred to in the policy as *Non-Compliance Violations*).

Under the OHS Citation Regulation, an OHS Citation is \$519.86 (half the maximum) for a first offence. For a subsequent violation within three years, the OHS Citation is \$1,039.72 (the maximum). Both amounts are adjusted annually pursuant to the consumer price index.

In this policy,

*Inspection Cycle* means the time period that begins when WorkSafeBC first issues an order for a specific violation and ends with compliance with that order. Each order on an inspection report has its own *inspection cycle*.

*OHS Citation Warning* means a written warning that an OHS Citation may be issued for non-compliance with an order or failure to prepare or send a compliance report. This warning of an OHS Citation includes a warning that an OHS Penalty may be imposed but is not an OHS Penalty Warning Letter.

WorkSafeBC may impose an OHS Citation for a Non-Compliance Violation if all of the following requirements are met **on a specific Inspection Cycle**:

- (a) the Non-Compliance Violation is not in circumstances that are high risk;  
*Policy D12-196-2 sets out how to determine whether violations are high risk.*
- (b) the employer committed the Non-Compliance Violation after having received an OHS Citation Warning;
- (c) an OHS Penalty or OHS Penalty Warning Letter has not already been imposed for the same Non-Compliance Violation or underlying violation; and  
*OHS Penalties are discussed in Policy D12-196-1 (and related policies) and OHS Penalty Warning Letters are discussed in Policy D12-196-11.*
- (d) an OHS Citation for the statutory maximum has not already been imposed.

## **2. Time Frame for Issuing an OHS Citation**

When WorkSafeBC determines that an employer has failed to comply with a specific order and that an OHS Citation will be imposed, the OHS Citation will be imposed as soon as reasonably practicable, and ordinarily within 7 days.

### **3. Substitution**

An OHS Citation and an OHS Penalty cannot be substituted for each other, on review or appeal.

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<b>EFFECTIVE DATE:</b>	February 1, 2016
<b>AUTHORITY:</b>	s. 196.1, <i>Workers Compensation Act</i>
<b>CROSS REFERENCES:</b>	See also Criteria for Imposing OHS Penalties (D12-196-1), Transfer of OHS History (D12-196-3).
<b>HISTORY:</b>	Housekeeping amendments to correct typographical error regarding the amount of the statutory maximum effective March 1, 2016.
<b>APPLICATION:</b>	This policy applies to all violations specified in section 3 of the Lower Maximum Administrative Penalties Regulation, occurring on or after February 1, 2016.

**RE: Claims Cost Levies****ITEM: D24-73-1**

## **BACKGROUND**

### **1. Explanatory Notes**

Section 73 authorizes WorkSafeBC to charge claims costs to the employer in certain circumstances. The maximum amount WorkSafeBC may levy is adjusted annually in accordance with the Consumer Price Index under section 25 of the *Act*. Starting January 1, 2017, the maximum amount is \$56,588.17.

### **2. The Act**

Section 73:

- (1) If
  - (a) an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and
  - (b) the Board considers that this was due substantially to
    - (i) the gross negligence of an employer,
    - (ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or
    - (iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under Part 3 of this *Act*,

the Board may levy and collect from that employer as a contribution to the accident fund all or part of the amount of the compensation payable in respect of the injury, death or occupational disease, to a maximum of \$56,588.17.
- (2) The payment of an amount levied under subsection (1) may be enforced in the same manner as the payment of an assessment may be enforced.

## **POLICY**

This section may be applied if:

- (a) a worker dies, is seriously injured, or is disabled from occupational disease;
- (b) this is substantially due to
  - (i) the gross negligence of an employer,
  - (ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or
  - (iii) the failure of an employer to comply with the orders or directions of WorkSafeBC, or with the Occupational Health and Safety Regulation;
- (c) the grounds for an administrative penalty under Item D12-196-1 are met; and
- (d) the employer has failed to establish that the employer exercised due diligence.

WorkSafeBC has discretion as to the amount charged under section 73(1) up to the maximum amount. A decision to charge claim costs may include the cost of future amounts of compensation that may be incurred after the decision if those future costs result from matters currently under consideration by WorkSafeBC, the Review Division or the Workers' Compensation Appeal Tribunal.

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<b>EFFECTIVE DATE:</b>	March 1, 2016
<b>AUTHORITY:</b>	s. 73(1), <i>Workers Compensation Act</i>
<b>CROSS REFERENCES:</b>	See also Accident Reporting and Investigation (Item D10-172-1); Criteria for Imposing OHS Penalties (Item D12-196-1);
<b>HISTORY:</b>	<p>Changes effective March 1, 2016 to the criteria for a claims cost levy.</p> <p>Housekeeping changes effective September 15, 2010 to remove reference to D16-223-1, update maximum claims cost levy amount, replace Worker and Employer Services Division with the Board, delete practice reference and make formatting changes.</p> <p>Item developed to align prevention policy with section 73(1) of the <i>Workers Compensation Act</i> so that the Board's discretion as to the amount of the claim cost levy is not fettered, effective July 1, 2008. This change applied to all decisions, including appellate decisions, to charge claim costs on and after July 1, 2008.</p> <p>Consequential changes subsequently made to the policy statement to reflect the <i>Workers Compensation Amendment Act (No. 2)</i>, 2002, on</p>