

Law and Policy Bulletin



Employers'
Advisers

A Bulletin by the Employers' Advisers Office, Ministry of Jobs, Tourism and Skills Training and Responsible for Labour, B.C. Government.
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Changes to Administrative Penalty Policies

February, 2016: WorkSafeBC's Board of Directors approved amendments to the OHS Penalty Policies. These new policies will be applied to all violations occurring on or after **March 1, 2016**.

Amended Policy: D12-196-1- Criteria for Imposing OHS Penalties

The main purpose of administrative penalties is to motivate the employer receiving the penalty and other employers to comply with the *Workers Compensation Act* and OHS Regulation.

Assuming due diligence is not proven by the employer¹, WorkSafeBC **must** consider a penalty when there is/are:

- A high risk violation
- Repeat violations or failure to comply within a reasonable time
- An intention to commit the violation
- A violation of s. 177 Claim Suppression; s. 186 Obstruction; or ss. 190-191 Violating Stop Work or Stop Use Order
- Circumstances warranting penalty consideration

If one or more of the above apply, WorkSafeBC must consider the **appropriateness** of a penalty, including:

- Potential for serious injury based on available evidence
- Likelihood that the penalty will motivate the employer or other employers, taking into account:
 - The extent to which the employer was aware, or should have been aware, of the hazard;
 - The extent to which the employer was aware, or should have been aware of the violation;
 - Compliance history;
 - Effectiveness of overall approach to health and safety;
 - Whether other enforcement tools are more appropriate; or
 - Any other relevant circumstances.

Amended Policy: D12-196-6 – Amount of Penalty

The penalty will be based on the employer's payroll. For firms with more than one permanent location, if the violation is location-specific and not representative of the employer's operations as a whole, payroll only at that location may be used to calculate the penalty.

1. Basic amount:
 - (a) 0.5% of payroll, with a minimum of \$1,250, and a maximum of half the statutory maximum; plus
 - (b) Multipliers - Amount in (a) X 2 for each that applies:
 - High risk violation
 - Intentional violation
 - S. 177 – Claims suppression violation
 - S. 186 – Obstruction violation
 - S. 190/191 - Breach of Stop Work/Use Order
 - (c) Variation factors: +/- 30% of (a + b). Variations will only be made in exceptional cases.

¹When WorkSafeBC is considering a penalty, a Request for Due Diligence and/or Multiple Location Information letter will be sent to the employer who will generally have 10 days within which to provide evidence of due diligence. For information and assistance with this process, please contact the Employers' Advisers Office.

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2. Repeat Penalties – Basic amount, which is the sum of (a) + (b) + (c), multiplied by 2 for one prior violation, and doubling for each additional similar penalty violation that occurred within the three years prior to the current violation. For example, where an employer has two prior violations, the basic penalty would be doubled (multiplied by two) for each prior similar penalty, resulting in a penalty of four times the basic amount. So, if the basic amount was \$2,000, two prior violations would see this amount multiplied by 4, for a total fine of \$8,000. WorkSafeBC also has discretion to double the entire amount up to the statutory maximum in cases where there are at least two prior similar penalties. In the example provided, the \$8,000 penalty could be multiplied by two, resulting in a \$16,000 fine.

The potential or actual savings or profit from non-compliance, and whether the scenario warrants a discretionary penalty up to the statutory maximum may also be considered in calculating the penalty owed.

Impact of the Changes:

For firms with payrolls of up to \$7 million, a basic penalty with one multiplier for high risk will be lower than under the prior policy scheme: $\$7 \text{ million} \times (0.5\% + 0.5\%, \text{ or } 1\%) = \$70,000$. Under the prior scheme, the amount for a high risk violation for that size payroll would have been \$75,000, which was the maximum non-discretionary penalty.

Under the current policy scheme, larger firms will be faced with a proportionately higher penalty, as policy allows payroll multiplied by 1% (basic penalty with one multiplier) up to the statutory maximum (currently \$628,034.57).

Firms with a poor compliance history may meet the statutory maximum quite quickly. A firm with a \$30,000,000 payroll and one repeat penalty within the prior three year period will reach the statutory maximum for a high risk violation: $\$30,000,000 \times 1\% \times 2 = \$600,000$.

For more information, please contact the Employers' Advisers Office.