

Guidelines for the Administrator in calculating the Administrative Penalty

The following is a model for reducing or increasing the penalty based on three factors listed in Section 6 of the Administrative Penalties Regulations.

Step 1: Determine the gravity value of each criteria in relation to the contravention for which the penalty is being levied.

1. Efforts to prevent the contravention from occurring

The efforts put forth by the workplace party **must be related to the contravention that is under review**. For example, if an Employer was issued an order because a guard was missing from a table saw, the penalty amount may be decreased, depending on the circumstance under review, if other machinery at the workplace has the appropriate safeguarding. In this scenario, there could be a clear and direct relationship between the contravention and the efforts put forth by the Employer. However, the fact that the Employer may be in compliance with non related legislation (i.e. First Aid, WHMIS) would NOT, by itself, warrant a decrease in the penalty amount, as this compliance is unrelated to the contravention that resulted in the order.

Efforts made after the issuance of an order will NOT be taken into consideration as this does not demonstrate a proactive approach to workplace health and safety.

Please see the following page for examples of efforts put forth by the different workplace parties.

NOTE: The examples below provided in each of the three (3) classes are not meant to be all-inclusive.

| a. The person made considerable efforts to prevent the violation from occurring. | | |
|---|--|--|
| Employer Class | Supervisor Class | Employee Class |
| <p>Inspection report, Order, File Activities, Compliance Notices and/or any submitted information show evidence of the following:</p> <ul style="list-style-type: none"> • Availability of equipment, machines, and materials which are provided and maintained • Evidence that information, instruction, training, supervision and facilities were provided or available • Evidence that the employees were made familiar with health or safety hazards at the workplace • Evidence that the employees are familiar with the proper use of all devices, equipment and clothing required for their protection • Evidence of policies and procedures related to preventing the contravention were in place and communicated • Evidence of a corrective action/ performance management system or contract measures used to correct non-compliant behaviour | <p>Inspection report, Order, File Activities, Compliance Notices and/or any submitted information show evidence of the following:</p> <ul style="list-style-type: none"> • Evidence that a supervisor acted upon any hazards reported by employee(s) and reported hazards to the employer • Evidence that an owner made information available to persons at a workplace • Evidence that a supervisor, self-employed person, or owner co-operated with other workplace parties to address workplace concerns • Evidence that a supervisor, self-employer person, or owner followed policies and procedures and any training that was provided • Evidence of a corrective action/ performance management system or contract measures used to correct non-compliant behaviour | <p>Inspection report, Order, File Activities, Compliance Notices and/or any submitted information show evidence of the following:</p> <ul style="list-style-type: none"> • Evidence that an employee used/wore protective devices, equipment or clothing required (i.e. hard hat) • Evidence that an employee co-operated with other workplace parties to address workplace concerns • Evidence that an employee reported hazard(s) to a supervisor • Evidence that an employee followed policies and procedures and any training that was provided |
| b. The person made some effort to prevent the violation but was lacking in certain areas. | | |
| Employer Class | Supervisor Class | Employee Class |
| <p>Inspection report, Orders, File Activities, Compliance Notices and submitted information have evidence of some compliance efforts (Per 1a).</p> | <p>Inspection report, Orders, File Activities, Compliance Notices and submitted information have evidence of some compliance efforts (Per 1a).</p> | <p>Inspection report, Orders, File Activities, Compliance Notices and submitted information have evidence of some compliance efforts (Per 1a).</p> |
| c. The person did little or nothing to prevent the violation from occurring. | | |
| Employer Class | Supervisor Class | Employee Class |
| <p>Inspection report, Orders, File Activities, Compliance Notices and submitted information show no evidence take the prevent the violation from occurring (Per 1a).</p> | <p>Inspection report, Orders, File Activities, Compliance Notices and submitted information show no evidence take the prevent the violation from occurring (Per 1a).</p> | <p>Inspection report, Orders, File Activities, Compliance Notices and submitted information show no evidence take the prevent the violation from occurring (Per 1a).</p> |

2. Whether or not the person on whom the administrative penalty is imposed derives any economic benefit from the contravention

Upon review of the inspection report, order, file activities, compliance notices, etc., it was determined that:

- a. There was no identified economic benefit from the contravention.
 - i. The Administrator could not identify any economic benefit for the person based on a review of the documents available.
- b. The person derived economic benefit from the contravention. If it is identified that the workplace party profited from the contravention, the penalty amount may be increased.

Examples where a workplace party could derive economic benefit include:

- i. Required training was not provided
- ii. Required PPE was not provided
- iii. Failure to inspect or maintain equipment
- iv. Failure to ensure adequate resources (human or equipment) to complete work
- v. Failure to provide supervision
- vi. Evidence that work was completed in a shorter time period and/or at a lower standard of safety by not providing required equipment

The cost to come into compliance with an order is not a factor for consideration for determining “economic benefit”.

3. The harm the contravention causes to any person

Upon review of the inspection report, order, file activities, compliance notices, etc., it was determined that:

- a. There was no actual harm as a result of the contravention.
- b. The actual harm resulting from the contravention was minor property damage or a personal injury or health effect that required no more than first aid.
- c. The actual harm from the contravention resulted in significant property damage or bodily injury to one or more persons as defined in Step 1 (see the following list):
 - i. Loss of a substantial amount of blood
 - ii. Fracture of a leg or arm
 - iii. Amputation of a leg, arm, hand or foot
 - iv. Burns to a major part of the body
 - v. Loss of sight in an eye
 - vi. Any injury that places life in jeopardy

| Factor | Description | Gravity Value* | History |
|--------|---|----------------|--|
| 1 | Efforts to prevent the contravention from occurring | 0 | The person made considerable efforts to prevent the violation from occurring. |
| | | 1 | The person made some effort to prevent the violation but was lacking in some areas. |
| | | 2 | The person did little or nothing to prevent the violation from occurring. |
| 2 | Any economic benefit from the contravention | 1 | There was no identified economic benefit from the contravention. |
| | | 2 | The person derived some economic benefit from the contravention. |
| 3 | Harm the contravention causes to any person | 0 | There has been no actual harm as a result of the contravention. |
| | | 1 | The actual harm resulting from the contravention was minor property damage or a personal injury or health effect that required no more than first aid. |
| | | 2 | The actual harm from the contravention resulted in significant property damage or bodily injury to one or more persons as defined in Step 1. |

** The gravity value is a score on a scale of 0-2 assigned to a particular factor, where 0 indicates a degree of lesser serious, and 2 indicates a degree of very serious.*

Step 2: Add the values for each factor and determine the adjustment required from the list below.

Gravity Value of 6 = Base Value*2

Gravity Value of 5 = Base Value*1.5

Gravity Value of 4 = Base Value*1.25

Gravity Value of 3 = No adjustment

Gravity Value of 2 = Base Value/1.25

Gravity Value of 1 = Base Value/1.5

Penalty Amounts

| With Injury | (1) /1.5 | (2) /1.25 | (3) Base | (4) X1.25 | (5) X1.5 | (6) X2 |
|--------------------|---------------------|----------------------|---------------------|----------------------|---------------------|-------------------|
| Employer | \$ 666.67 | \$ 800.00 | \$1,000.00 | \$ 1,250.00 | \$ 1,500.00 | \$ 2,000.00 |
| Supervisor | \$ 333.33 | \$ 400.00 | \$500.00 | \$ 625.00 | \$ 750.00 | \$ 1,000.00 |
| Employee | \$ 133.33 | \$ 160.00 | \$ 200.00 | \$ 250.00 | \$ 300.00 | \$ 400.00 |
| NO Injury | (1) /1.5 | (2) /1.25 | (3) Base | (4) X1.25 | (5) X1.5 | (6) X2 |
| Employer | \$ 333.33 | \$ 400.00 | \$500.00 | \$ 625.00 | \$ 750.00 | \$ 1,000.00 |
| Supervisor | \$ 166.67 | \$ 200.00 | \$ 250.00 | \$ 312.50 | \$ 375.00 | \$ 500.00 |
| Employee | \$ 66.67 | \$ 80.00 | \$ 100.00 | \$ 125.00 | \$ 150.00 | \$ 200.00 |

EXAMPLES OF PENALTY ADJUSTMENTS

| EMPLOYER | SUPERVISOR | EMPLOYEE |
|--|--|--|
| <p>Example #1 Base Amount for with Injury = \$1000 1. Effort = 1 2. Economic Benefit = 1 3. Harm = 2 Total Amount = 4 Adjustment to base amount = X1.25% Adjusted administrative penalty = \$1250</p> | <p>Example #1** Base Amount with Injury = \$500 1. Effort = 1 2. Economic Benefit = 1 3. Harm = 1 Total Amount = 3 Adjustment to base amount = None Adjusted administrative penalty = \$500</p> | <p>Example #1 Base Amount with Injury = \$200 1. Effort = 2 2. Economic Benefit = 2 3. Harm = 2 Total Amount = 6 Adjustment to base amount = X2 Adjusted administrative penalty = \$400</p> |
| <p>Example #2* Base Amount for with Injury = \$1000 1. Effort = 0 2. Economic Benefit = 1 3. Harm = 0 Total Amount = 1 Adjustment to base amount = /1.5 Adjusted administrative penalty = \$666.67</p> | <p>Example #2 Base Amount without Injury = \$250 1. Effort = 2 2. Economic Benefit = 1 3. Harm = 2 Total Amount = 5 Adjustment to base amount = x1.5 Adjusted administrative penalty = \$375</p> | <p>Example #2 Base Amount without Injury = \$100 1. Effort = 0 2. Economic Benefit = 1 3. Harm = 1 Total Amount = 2 Adjustment to base amount = /1.25 Adjusted administrative penalty = \$80</p> |

* For a contravention involving actual injury, the lowest penalty assigned would be \$666.67 for an employer. For contraventions involving major injuries, the lowest penalty that would be assigned is \$800 for an employer. Although the penalty may be doubled initially for the injury (to ensure that the penalty goes into a higher base amount for the Administrator review, the penalty can be lowered when it is evaluated against the other two criteria - if injury still occurred that was outside of the employer's control)

** If the person receives a 1 for each of the criteria, there is no adjustment to the base amount.