



Labour and Advanced Education



Administrative Penalties

What you need to know about Nova Scotia's Occupational Health and Safety Administrative Penalties

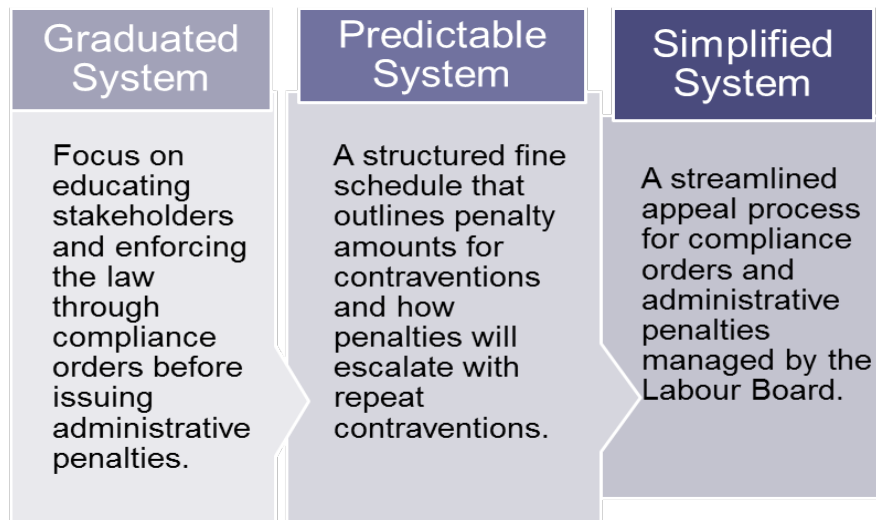


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Workplace Health and Safety is a Shared Responsibility

Nova Scotia's Department of Labour and Advanced Education Occupational Health and Safety division has the ability to issue penalties when violations of health and safety laws are found in workplaces. Initial legislation took effect in January 2010. During 2012 LAE embarked on a review of the system and process with numerous consultations from all pertinent stakeholders. Below you will find answers to questions on the legislation, the process and the new amendments that take effect October 1st, 2014.

Key highlights to system review



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.

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.

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.

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 compliance with health and safety laws.

Why now?

A discussion paper was released in February 2013 outlining the proposed direction of the new system. Employer and employee consultations were held to gather feedback on the new direction, with written responses and stakeholder workshops providing insight into what a new system should look like.

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

Yes. 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.

Who will assign the penalties?

An officer within the Occupational and Health Safety division will assign penalties based on established criteria as set out in the regulations.

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 and in compliance with, the occupational health and safety laws there will be no orders and thus no penalties.

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>

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

If a party believes that an order is not correct the first step would be to address that concern with the officer. Any order issued can be appealed to the Labour Board. The appeal form can be found at <http://novascotia.ca/lae/labourboard/docs/OHSNoticeofAppealForm.pdf>

How much will the penalties be?

Type of Workplace Party	Administrative Penalty		
	1 st	2 nd	3 rd and subsequent
Employer, contractor, constructor, supplier, provider of an occupational health or safety service, architect or professional engineer	\$500	\$1000	\$2000
Employee who has supervision responsibilities, owner or self-employed person	\$250	\$500	\$1000
Employee	\$100	\$200	\$500

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."

What if an employer or person cannot afford to pay a penalty?

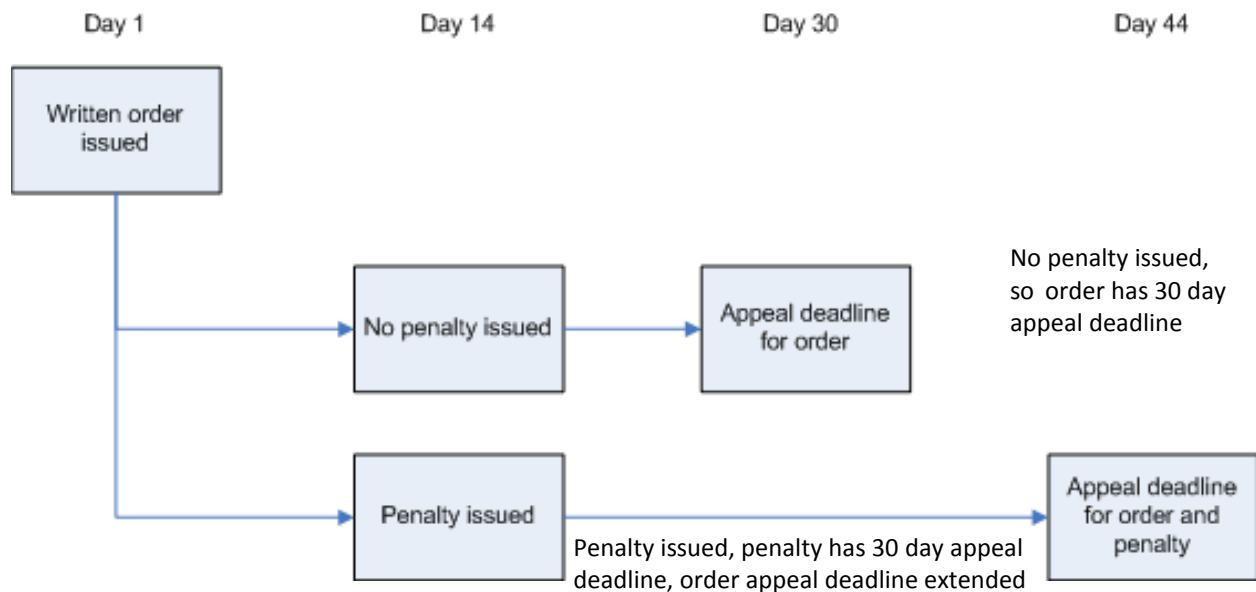
Generally, the person receiving a penalty will be given a reasonable time to comply with the penalty. After that the usual government debt collection procedures would commence.

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/>

How long will I have to wait to receive the Penalty?

Generally a penalty will be issued within 14 days of the order being issued. See below for penalty timeline.



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 30 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://www.gov.ns.ca/lae/labourboard/docs/OHSNoticeofAppealForm.pdf>

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>

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. Wouldn't this approach save time, money, provide safe work environments and would potentially achieve a positive buy-in from all sectors?

Under the new Graduated System a concerted effort will be placed on educating stakeholders and enforcing the law through compliance orders before issuing administrative penalties. 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.

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.

How is the decision made as to what companies are inspected?
Is there a means for recourse if a company/employee feels 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.

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.)

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.

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.

Where does the penalty money go?

All revenues generated by the administrative penalty system are directed to the Minister's Trust Fund for health and safety initiatives.