

DISCUSSION PAPER

**Occupational
Health and Safety
Administrative
Penalties Review**

**Department of
Labour and Advanced
Education**

Enhancing Workplace Safety in Nova Scotia

Workplace safety is important for Nova Scotians. Over the past several years, we have seen many improvements in our workplace safety record; but there is still work to be done. The province has many tools and initiatives in place to keep Nova Scotians safe on the job. Administrative penalties are one of those tools; used to increase compliance with workplace safety laws and protect the safety of workers. Although administrative penalties have a place in reducing workplace incidents, it is now time to take a look at how to create a system that protects workers while balancing the need for employers to focus on operating their businesses.

The Administrative Penalty System

An administrative penalty is a fine imposed by government against an employer or individual for breaking workplace safety laws. Since the implementation of administrative penalties in 2010, we have received feedback from hundreds of Nova Scotians about the current administrative penalties process, and their ideas for improvement.

While many Nova Scotians support the concept of administrative penalties there have also been a number of identified issues. Those issues include the need for increased education, improved relationships, solutions for small businesses, and predictability within the system.

Time for Review

We want to make sure that administrative penalties are having the intended impact as we work together to improve safety for all Nova Scotians.

The penalties have been in place for 3 years, and it is now time to review and identify areas that could be strengthened. We've heard from those who oversee the administrative penalties system and those who are impacted by it. We've also collected feedback and information on what is working and what is not. This review will incorporate this information to ensure that the administrative penalties system is applied consistently, fairly and appropriately.

We Want to Hear From You

Before the administrative penalties process is revised, we want to hear additional feedback from Nova Scotians on the proposed approach. This discussion paper outlines possible solutions to issues identified by Nova Scotians. As you read, consider if you like the proposed solutions and if you think they will work.

Background – Administrative Penalties in Nova Scotia

Based on the successful implementation of administrative penalties in other provinces, the system was introduced in Nova Scotia as an additional tool to increase compliance with the Occupational Health and Safety Act and its regulations and better protect Nova Scotia’s workers.

Why do we have administrative penalties

Administrative penalties act as a deterrent, and are used to enforce rules and provide fines to those individuals who break workplace safety laws.

How administrative penalties are issued

The system was setup so that any violation of the Occupational Health and Safety Act and its regulations could result first in a compliance order and secondly in an administrative penalty. Within Nova Scotia, employers are periodically inspected by Occupational Health and Safety (OHS) officers. If officers find things that do not comply with OHS laws, they are able to issue a compliance order identifying the need for the employer to fix the issue. If a compliance order is issued, the employer may also receive an administrative penalty. Compliance with an order does not mean a penalty will not be given.

Issuing an administrative penalty

The officer who conducts the inspection and issues an order does not assign an administrative penalty. An Administrator at the Department of Labour and Advanced Education

(LAE) decides if an administrative penalty should be given. The Administrator will consider the guidelines for issuance of an administrative penalty as well as any compliance information that the person receiving the order may provide.

Who receives an administrative penalty

Any person working in a workplace who breaks OHS laws could potentially receive an administrative penalty. This includes employers, contractors, engineers, occupational health and safety professionals, supervisors and other employees.

The monetary value of the penalties

The penalty amount reflects the expected level of OHS responsibility of the person receiving the penalty and the person’s OHS history. Administrative penalties imposed on employers and supervisors (individuals who have supervision responsibilities) are larger than those imposed on employees. Initially, penalties will range from \$100 to \$500 and increase for repeated offences. Penalties are also higher for violations that result in injury or have the potential for injuries and are higher for individuals who have previously received administrative penalties. The Administrator will also take into account any efforts to prevent the violation from occurring, as well as any economic benefit that may have been derived as a result. The maximum penalty for an employee is \$500; a supervisor, \$1000; and an employer, \$2000. If a previous offence within three years has occurred, the penalty will double.

The number of administrative penalties issued each year

Currently, there are approximately 4000 - 6000 orders issued per year. On average, approximately 24% of those orders lead to an administrative penalty. Most recently, 95% of the administrative penalties were issued to employers, 2% were issued to supervisors and 3% were issued to employees. In the fiscal year 2011 – 2012 total fines assessed amounted to \$683,133 for a total of 996 penalties.

The table below shows the penalties issued since the administrative penalty system was introduced in 2010.

Fiscal Year <small>(April 1st –March 31st)</small>	# of Penalties Issued	Total Fine Amount
2009-2010 <small>(Introduced in Jan. 2010)</small>	61	\$37,000
2010-2011	1154	\$701,300
2011-2012	996	\$683,133
2012-2013 <small>(as of Dec 31)</small>	424	\$337,076

The appeal process

An administrative penalty can be appealed directly to the Labour Board. The Labour Board is an independent body, arms-length from government, responsible for making decisions on a range of employment and labour related matters.

Approximately 30% of administrative penalties are appealed to the Labour Board. In 2011 – 2012, there were 170 appeals. Since each appeal may collectively deal with several administrative penalties, the number of actual penalties appealed is higher.

What We've Heard

The province, in partnership with the Workers' Compensation Board, is nearing the completion of a new five-year Workplace Safety Strategy with the aim to make Nova Scotia the safest place to work in Canada. During consultations for this strategy, we found that many Nova Scotians recognize administrative penalties as a useful tool to support workplace safety. But, a number of issues were identified. In order to address these concerns, Government initiated a focused review on administrative penalties.

To date, considerable stakeholder feedback has been collected. Here is a summary of what we have heard:

- The province's focus has shifted from education to discipline and punishment
- Small businesses are struggling with the cost of administrative penalties
- Nova Scotians would like to see the revenue from administrative penalties used specifically for workplace safety
- Relationships between OHS officers and the province's employers and employees are being negatively impacted
- Paying these penalties may reduce the funds for businesses that are interested in improving workplace safety
- Businesses don't understand the criteria used to determine when an administrative penalty is issued
- Businesses find the appeal process to be complicated and lengthy
- Warnings are not always provided prior to the issuance of administrative penalties – people are surprised to receive them
- Some businesses don't understand the inspection process and schedule

Proposed Solutions – A New Model

Nova Scotia needs an administrative penalty system that helps keep workplaces safe while balancing the need for employers to focus on operating their businesses. Solutions need to be easy to understand, fair, flexible, and strict on those that simply choose not to follow the laws that impact people’s safety in the workplace.

A Graduated System

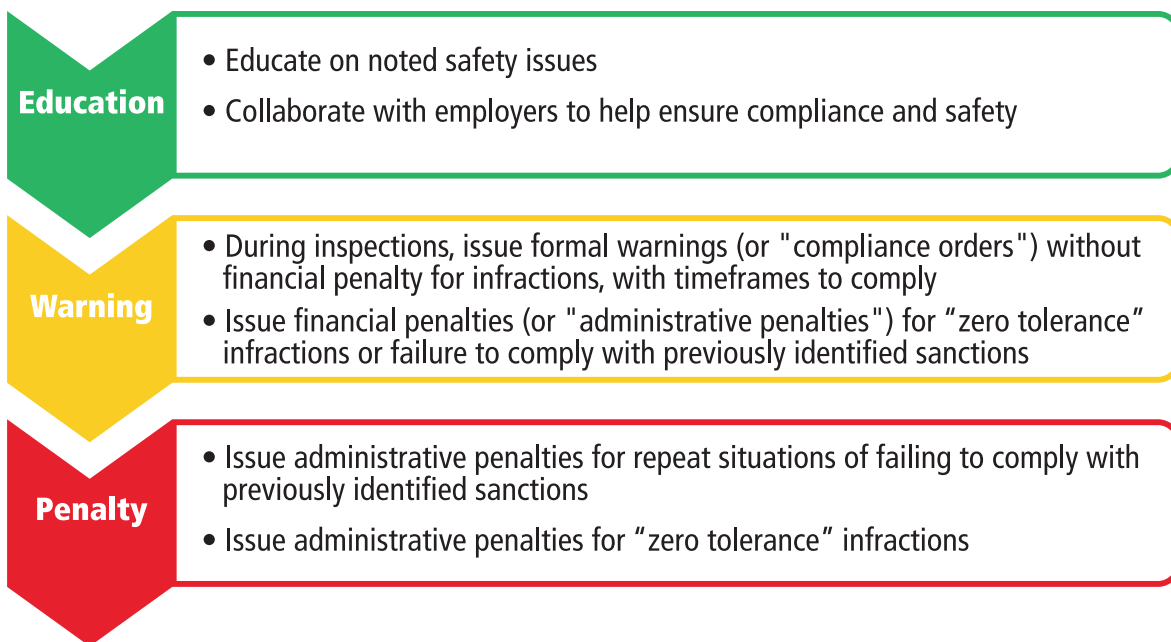
Something to think about - as you read through this section, think about whether a graduated system is right for Nova Scotia, how tolerant officers should be, and what infractions should be considered for “zero tolerance” offences.

We have heard that since the introduction of administrative penalties, there has been more focus on enforcement and the issuance of penalties than there has been on education. We’ve heard that this has caused some

businesses to no longer voluntarily contact the province out of fear of receiving a penalty when seeking advice on how best to make their workplaces safer.

Administrative penalties are an important tool to gain compliance with laws designed to promote workplace safety; however, administrative penalties cannot be the only tool used. In order to maximize safety in the workplace, education must play as big of a role as enforcement and administrative penalties. To this end, we are proposing the implementation of a graduated model for administrative penalties, which promotes workplace safety education prior to giving orders or administrative penalties. There will continue to be cases when education and warnings may not be a sufficient deterrent. Therefore, there is a need to identify specific, high risk situations that would result in automatic administrative penalties.

A Graduated System for Occupational Health and Safety and Administrative Penalties



The proposed model begins with education. We would like to work with businesses to ensure they understand the occupational health and safety requirements and what they can do to enhance their workplace safety procedures to better prepare them for future inspections. When visiting workplaces, officers can provide guidance and make note of issues that have been identified to employers, supervisors, and employees. While these issues may result in formal compliance orders, the only violations that could result in an administrative penalty are the ones that are severe enough to be on the “zero tolerance” list.

During follow-up visits to the workplace, violations will result in compliance orders. Administrative penalties could be issued for infractions that have previously been identified and not resolved. If repeat visits are required, and employers are not complying with the laws, violations will result in the issuance of administrative penalties. There will also always be the potential for an employer, supervisor, or employee to receive an administrative penalty if an OHS officer observes something that is on the “zero tolerance” list.

A Predictable System

Something to think about - as you read through this proposed solution, consider if you think it will work, which violations warrant higher fines, and what factors should be considered in determining fines.

We have heard that there is uncertainty surrounding whether an administrative penalty will be issued for a violation, when the penalty will be received, and the amount of the administrative penalty. We have also received feedback that businesses are receiving administrative penalties after the timeline to appeal the compliance order has expired.

To address these and related issues, we are proposing the development of a more structured, “schedule-based” administrative penalty process. This means that a fine schedule would be developed identifying the administrative penalty amounts associated with each violation. This would provide clarity on what situations would result in the issuance of administrative penalties.

This process would allow the administrative penalty to be given soon after the originating compliance order. This would remove the concerns and uncertainty businesses have about whether they will receive an administrative penalty and about how long it might take.

A Simplified System

Something to think about - as you read through this section, consider if you think this proposed solution will be an improvement, and what should be factored into a better appeals system.

Regardless of how the administrative penalty system is changed, there will always be situations where recipients of penalties and orders do not agree with them. Currently, compliance orders and subsequent administrative penalties are appealed through separate processes, with compliance orders first being appealed to the Director of the

Occupational Health and Safety Division and administrative penalties being appealed to the Labour Board. Government has received feedback from stakeholders that the current process is confusing – for example, it is difficult to understand what exactly should be appealed, how it should be appealed, and when appeals can be initiated. We are considering eliminating the current appeal process for compliance orders at the Director level and combining the appeal of both the compliance order and administrative penalty at the same time at the Labour Board. We believe this appeal system will be easier for employers to understand, easier to prepare for, and will ultimately provide employers more time to focus on their business.

Government wants to hear from you

We want to hear from you on the proposed solutions described within this discussion paper and welcome any additional comments that may be relevant to the issues discussed.

In addition to providing general feedback on the proposed solutions, there are some of the specific questions that we would like stakeholders to consider.

1. What do you think about the proposed solutions?
2. What do you think about the proposed graduated system? What infractions should be considered for “zero tolerance” offences?
3. What are your thoughts on the proposed penalty process/schedule? What factors should be considered for determining the amounts of fines?
4. What are your thoughts on the proposed appeals process?
5. What is the best approach to communicate and collaborate with you and industry to improve workplace safety?

Your feedback on this discussion paper is appreciated by 4:30 p.m., March 6, 2013.

Feedback may be submitted via:

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All feedback (submissions) received will be reviewed and evaluated before recommendations to the Minister for regulatory change are developed.

Please be advised that any information provided to the Department will be held in confidence and only disclosed in keeping with the provisions of the Nova Scotia Freedom of Information and Protection of Privacy Act.

Any questions pertaining to the collection, use, disclosure or correction of personal information may be directed to the departmental Information Access and Privacy Manager by email at LAEaccess@gov.ns.ca or phone at (902) 424-8472.