

A Proposed
New System for
**Administrative
Penalties**
in Nova Scotia

Department of Labour and Advanced Education



At a glance

The province's goal is to make Nova Scotia the safest place to work in Canada. Nova Scotia's government, employers and employees each have a role to play in helping us achieve this, and we have to act.

Since January 2010, administrative penalties have been used by government as one of many tools to help promote and ensure workplace safety across the province. Some aspects of the program have been effective in ensuring occupational health and safety (OHS) laws are followed in our workplaces; however, we have also heard from employers and workers that some parts of the system need to be improved.

We heard the system was unfair and inconsistent, and at the same time, employers did not want to back away from ensuring safety in workplaces throughout the province.

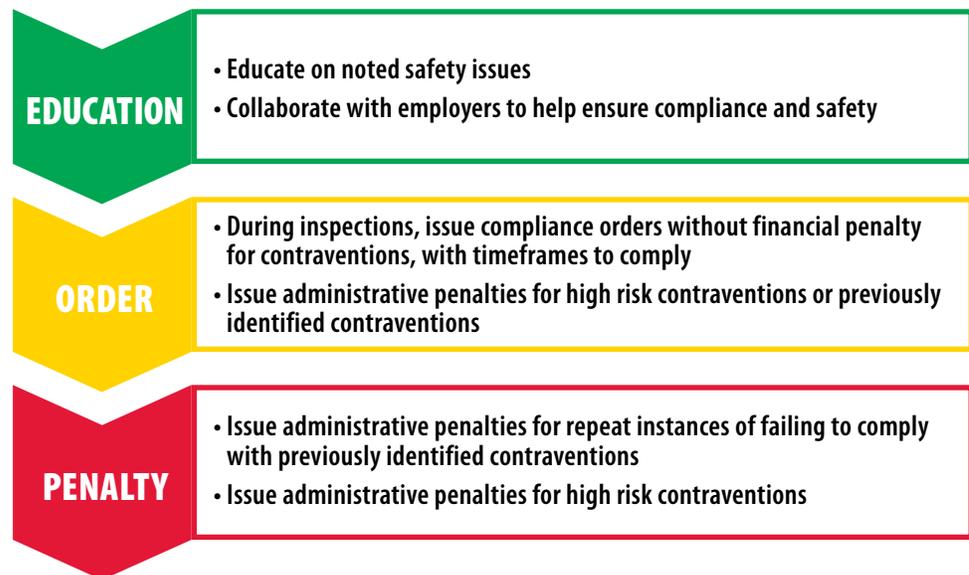
A discussion paper was released in February 2013 outlining the proposed direction of the new system. Employer and employee consultations were held to gather feedback on the new direction, with written responses and stakeholder workshops providing insight into what a new system should look like.

This next phase of the review will provide insight into the feedback government received from stakeholders and outline the key changes being proposed to the administrative penalties system.

Overview of proposed solution

The discussion paper released in February outlined the high level framework of the proposed system. It suggested the administrative penalties system be a graduated system with three levels – education, order, and penalty. This approach would also include a clear and consistent fine schedule and a streamlined appeal process to give clarity and predictability to stakeholders. This framework has guided the detailed development of the new proposed system.

An overview of the direction of the proposed system is shown below.



- **Graduated System** – Focus on educating stakeholders and enforcing the law through compliance orders before issuing administrative penalties.
- **Predictable System** – A structured fine schedule that outlines penalty amounts for contraventions and how penalties will escalate with repeat contraventions.
- **Simplified System** – A streamlined appeal process for compliance orders and administrative penalties managed by the Labour Board.

Key themes of feedback

Considerable stakeholder feedback has been gathered and reviewed to help develop a more consistent and thorough administrative penalties system. Key themes raised during the initial stakeholder consultation are summarized below:

- There was support for the graduated system, including:
 - Opportunities to educate and issue warnings and orders that will not result in penalties
 - The issuance of automatic penalties for serious contraventions, creating a list of contraventions that pose a serious risk to health or life of workers
 - The issuance of penalties for repeat contraventions
- Ensure administrative penalties are issued in a timely manner
- Clearly defined criteria and a fine schedule outlining the administrative penalty guidelines is important
- One appeal process would be ideal, ensuring those that hear appeals have the appropriate expertise and can conduct appeals in a timely manner
- Agreement that the updated process will reduce the number of appeals
- Revenue from administrative penalties should be used to fund workplace safety initiatives

Key changes to the new system

Through extensive discussions with employers, workers, labour, senior officials, internal management, regional directors, OHS officers, and other external stakeholders, draft changes to the *Occupational Health and Safety Act*, administrative penalties regulations, and guidelines for issuing administrative penalties are being proposed. These changes will create an improved system that provides clarity and consistency in decision making, while remaining focused on our continued efforts to ensure safety in workplaces throughout the province.

Some key changes to the new system include the following:

- **Putting education first** – Stakeholders felt that the administrative penalties process has shifted more towards punitive enforcement rather than the education of safe work practices. In the proposed system, education will come first. Not only will OHS officers be able to provide education on workplace safety during inspections, but government will update the tools available to citizens online so they have easier access to information when they need it. With education as the foundation of the proposed system, employers and workers will feel more comfortable seeking out OHS advice and working collaboratively with OHS officers.
- **Informed decision making** – Currently, administrative penalties are issued by a central administrator. In the proposed system, OHS officers (including the director) will hold the decision making power to issue administrative penalties. This will allow officers to better use their professional judgment when deciding whether a penalty should be issued.

- **Quality control and management** – To support the proposed changes to the draft administrative penalties regulations, changes to the OHS Act will allow the director to review and withdraw a compliance order and/or administrative penalty if they believe necessary. Not only will this provide checks and balances to the system, but it will allow further oversight and quality management of administrative penalties throughout the province.
- **Due diligence** – In addition to the director’s ability to review and withdraw a compliance order and/or administrative penalty, the draft regulations state that a penalty will not be imposed on a person if they are able to establish that they exercised all due diligence to prevent the contravention of the Act or a regulation made under the Act. This will ensure those who are not willing to comply with safe work practices are the ones who are being held accountable.
- **A clear and consistent system** – The design of the new system will be easier for stakeholders to understand and use and will be consistently applied across the province. Employers and employees will know what contraventions can result in a penalty, the associated penalty amounts, and that multiple contraventions will result in increased penalties.
- **Simplified appeal process** – Previously, appeals of compliance orders were treated separately from appeals of administrative penalties. The new system proposes that the two be combined to create a single, simplified route to appeal both compliance orders and administrative penalties directly to the Labour Board. Director-level appeals for orders will be eliminated with updated timeframes proposed for appealing both compliance orders and administrative penalties. This will streamline the appeal process to make it easier for stakeholders to understand and navigate. Additionally, any Labour Board member hearing appeals must have knowledge and experience in the matters of OHS as per the OHS Act, allowing for informed decision making for appeal hearings. Also, the Board will have the ability to decide on hearing appeals in a 1 or 3-member panel which will increase the speed and efficiency of hearing appeals and making decisions.

Issuing penalties in the new system

Nova Scotia has a variety of businesses in various industries whose line of work is inherently dangerous. While no two situations are alike, consistency is important when dealing with issuing administrative penalties. The goal of the new system is to proactively prevent high risk contraventions that would pose a serious risk to someone's health or life and also to deter repeat contraventions – two areas that we heard unanimous support for through the initial stakeholder consultation.

In the new system, OHS officers have the power to issue administrative penalties. Just as consistency is important to the proposed system, so is ensuring administrative penalties are issued appropriately in each situation. For this reason, officers have the discretion to issue an administrative penalty for any contravention of the Act or a regulation made under the Act. To assist them in ensuring administrative penalties are issued as fairly and consistently as possible, officers will be guided by policy established by the division. In accordance with policy, under the proposed system an officer shall consider issuing an administrative penalty to an employer, supervisor, or employee where, in the officer's opinion, there has been:

- A contravention of a section of the Act or a regulation made under the Act in the list titled "High Risk Sections of the OHS Regulations" that poses a serious risk to health or life;
- A contravention that requires a stop work order (SWO) that poses a serious risk to health or life;
- A second contravention of the same section of the Act or a regulation made under the Act; or
- A second contravention of a different section of the Act or a regulation made under the Act that demonstrates a non-commitment to the Internal Responsibility System (IRS).

Government heard repeatedly that administrative penalties should be issued for contraventions that could cause serious risk to health or life in the workplace. With this in mind, a list of sections of various regulations has been developed

and will be used by an officer, together with the definition of “serious risk to health or life,” to determine whether administrative penalties will be issued. Alternatively, if an officer issues a stop work order (SWO) for a contravention where there is a serious risk to health or life, an administrative penalty may be issued even if the contravention is not in the list titled “High Risk Sections of the OHS Regulations”.

Those contraventions that are not a serious risk to health or life but are still important to maintain a safety culture in workplaces may also be subject to administrative penalties. An administrative penalty may be issued if a person has contravened the same section of the Act or a regulation made under the Act at least once in the three years immediately before the contravention. Alternatively, if a person has contravened a different section of the Act or regulation at least once in the three years immediately before the contravention and, in the officer’s opinion the circumstances demonstrate a lack of commitment to the Internal Responsibility System, then they may be issued a penalty. Please refer to the draft guidelines for issuing administrative penalties for further details.

If a person receives a penalty for a contravention in one of the above noted circumstances, the penalty will be issued in accordance with the penalty schedule below. The penalty amount imposed on a person (i.e. first, second, or third and subsequent) will be determined by reviewing the penalties imposed on the person in the three years immediately before the contravention that resulted in a penalty.

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

After issuing a written order, an officer will have up to 14 days to issue an administrative penalty. In certain circumstances where determining a penalty is not possible within the 14 day period after a written order is issued (e.g. where further investigation is required), the director has the ability to notify a person that they are being considered for an administrative penalty at a later date.

In the OHS Act, the appeal timelines for an order will be extended from 21 days to 30 days from the date of the order. If it is determined that an administrative penalty will be issued for an order, a person will have 30 days from the date of the notice of administrative penalty to appeal both the order and penalty to the Labour Board, unless the order has already been appealed and a decision has been made by the Board. Please refer to the draft amendments to the OHS Act and administrative penalties regulations for further details.

Next steps – Public consultation

This discussion paper outlines the key changes to the administrative penalties system. You can find the draft amendments to the OHS Act, draft administrative penalties regulations, and draft guidelines for issuing administrative penalties online by following this link:

novascotia.ca/adminpenalties

All documents have been posted online to receive feedback and input from a broad range of stakeholders, interested parties, and citizens. You will be able to respond by e-mail or through written submissions.

The consultation process will last a total of 60 days and will end on September 26, 2013.

Make your views known

We want to hear from Nova Scotians, including stakeholders, employers, employees, citizens, and all other interested parties.

To make it easy for you to respond and comment, we are providing the following options to respond:

Through e-mail

LAEpolicy@gov.ns.ca

By providing a written submission to the following address:

Administrative Penalties Review

Department of Labour and Advanced Education

PO Box 697

5151 Terminal Road

Halifax, Nova Scotia

B3J 2T8