

UNDERSTANDING ADMINISTRATIVE PENALTIES: WHAT, WHY, WHEN AND HOW MUCH

WorkSafeBC prevention officers have a range of enforcement tools to ensure employers protect the health and safety of their workers, including orders, stop-work orders, stop-operations orders and administrative penalties, which are monetary fines. The focus of this article is the penalty process: when they are considered, how penalty amounts are calculated and what employers can do if they wish to appeal.

The primary purpose of a penalty is to motivate the employer who is receiving it—as well as other employers—to comply with the legislation and regulations that govern health and safety in workplaces.

The *Workers Compensation Act* (Act) sets out WorkSafeBC's mandate and authority, while both the Act and the Occupational Health and Safety Regulation (OHSR) contain legal requirements that

must be met at all workplaces under the jurisdiction of WorkSafeBC. Guidelines and policies are used to help interpret and apply the Act and OHSR.

Between 2013 and 2018, forestry employers in BC received 66 administrative penalties from WorkSafeBC, totalling \$893,619.67, not including recovery of any related claims-cost levies.

The most frequently cited violation was for WCA115(2)(e): An employer must provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace. This provision was cited in 19 instances.

The second most frequently cited violation—referenced seven times—was for OHS26.24, requiring that before a tree

is felled, all workers must be clear of the area within a two tree-length radius.

Penalty criteria

The criteria for imposing an administrative penalty are set out in WorkSafeBC's Prevention Policy Item D12-196-1. A penalty must be considered if an employer has committed a violation for which at least one of the following applies:

- The violation resulted in a high risk of serious injury, serious illness or death.
- The employer previously violated the same, or substantially similar, sections of the Act, usually within the last three years.
- The employer intentionally committed the violation.
- The employer violated Section 177 of the Act, obstructing the reporting of an injury, illness, death, or hazardous condition.

75%* of log truck drivers wear seatbelts.

What do your fellow drivers know that you don't?

BUCKLE UP.

LEARN MORE @ www.bcforestsafe.org/node/3279

(*self-reported in recent surveys of log truck drivers by the BCFSC.)



BC Forest Safety

Safety is **good** business



- The employer violated Section 186 of the Act, obstructing a WorkSafeBC officer's inspection or investigation.
- The employer violated a stop-work or stop-use order.
- WorkSafeBC considers that the circumstances warrant a penalty.

A "high risk" violation, as described in Prevention Policy Item D12-196-2, refers to one that involves a high risk of serious injury, serious illness, or death. Violations relating to certain circumstances are automatically considered high risk, and are therefore designated as such under the policy.

One of those circumstances is specific to forestry: hand falling or bucking without necessary precautions to protect workers from the tree that is being felled or bucked, or other affected trees. Examples of this include:

- failing to prepare a safe escape route before falling or bucking begins (OHSR section 26.24(2))
- failing to use proper falling procedures (OHSR section 26.24(5))
- failing to fall dangerous trees before performing work in the area

made hazardous by the dangerous tree (OHSR sections 26.11 and 26.26(4))

- brushing of standing trees where brushing can be avoided (OHSR section 26.24(5.1))
- working within a two tree-length radius of a tree being felled (OHSR section 26.24(1))

Once WorkSafeBC determines there is a basis for a penalty and that a penalty is an appropriate means of enforcement, a similar set of considerations will be applied to its calculation.

Penalty amounts

Penalty amount calculations follow a detailed set of rules described in Prevention Policy Item D12-196-6. This policy is designed to ensure that employers of a similar size generally receive similar penalty amounts in similar cases.

First, the employer's "penalty payroll" is established, which is the employer's assessable payroll for the calendar year preceding the year in which the initiating violation, or incident, giving rise to the penalty occurred.

Where an employer has multiple fixed locations or is divisionally registered with WorkSafeBC, the penalty payroll will be based on the lowest applicable amount where the violation occurred, as between the relevant fixed location, division, or classification unit of the employer. In these cases, such a penalty payroll calculation will only be made if the employer provides the necessary applicable payroll information and sufficient evidence that it has met specific health and safety-related criteria as set out in Prevention Policy Item D12-196-6.

The "basic amount" of a penalty will then be calculated at 0.5 per cent of the penalty payroll, with a minimum amount of \$1,250 and a maximum of half the statutory maximum, which is set out in the Act and is adjusted annually. In 2019, the statutory maximum amount is \$662,102.49.

A multiplier of two will be applied to the "basic amount" each time one of the following circumstances exists: (i) the violation giving rise to the penalty is found

(Continued to page 53)



Plan and schedule phase integration to reduce the risk of congestion in your operations.

WORK SAFE BC

Visit worksafebc.com/forestry

to be high risk; (ii) it was intentional; (iii) it involved obstruction of an officer (a violation of section 186 of the Act); (iv) it involved obstruction of reporting (a violation of section 177 of the Act); or (v) it involved breaching a stop-work or stop-use order.

If, for example, a penalty of \$1,250 is levied for a high-risk violation where the employer ignored a stop-work order, it

an employer has a record of three similar prior penalties, the basic penalty amount will be multiplied by 2x2x2, or eight.

Where there are at least two prior similar penalties and the employer's response to past violations has led WorkSafeBC to believe more motivation is required, the resulting amount may again be doubled. Lastly, if WorkSafeBC determines that the

be imposed up to the statutory maximum amount and are rarely imposed.

Once a penalty has been levied, the circumstances and amount are published online at worksafebc.com and in print in *WorkSafe Magazine*.

Appealing a penalty

The Employers' Advisers Office provides impartial advice on assessment, prevention, claims and compliance matters to all employers covered by WorkSafeBC.

If an employer, worker, union, or other directly affected party (such as a family member of a deceased worker) disagrees with a WorkSafeBC decision to impose an administrative penalty, they can request a review within 45 days of the penalty order that was issued. Reviews are conducted by the Review Division of WorkSafeBC.

The second level of appeal is conducted by the Workers' Compensation Appeal Tribunal (WCAT), an external, independent tribunal. Review Division decisions relating to an administrative penalty must be appealed to WCAT within 30 days.▲

Rodney Scollard is an Investigations Legal Officer in Legal Services at WorkSafeBC.

The primary purpose of a penalty is to motivate the employer who is receiving it—as well as other employers—to comply with the legislation and regulations that govern health and safety in workplaces.

will be multiplied by 2x2, for a penalty total of \$5,000.

In exceptional circumstances, the “basic amount” may at this point be increased or reduced by up to 30 per cent.

Next, WorkSafeBC determines whether the employer has received a “prior similar penalty,” the criteria for which are also set out in Prevention Policy Item D12-196-6. The “basic amount” for the penalty will be multiplied by 2n, where n is the number of prior similar penalties. For example, if

employer incurred any potential or actual financial benefit from committing the violation initiating the penalty, WorkSafeBC may make a reasonable estimate of such financial benefit and add it to the overall penalty amount calculation.

In some cases, WorkSafeBC may impose a discretionary penalty in excess of one calculated based on the employer's payroll if specific circumstances, as set out in Prevention Policy Item D12-196-6, warrant one. Discretionary penalties may

Advertisers' Index:

	Page #		Page #
A&A Trading Ltd.	4	North Island Communications	49
Armtec Canada Culvert	39	Pacific Logging Congress	49
BC Forest Safety Council	18	Petro-Canada/Coastal Mountain Fuels	12
Benwest Logging Ltd./Stafford Lake Logging Ltd.	23	Ponsse PLC	15
Brandt Tractor Ltd.	9 & 52	Ponting Contracting	44
Brutus Truck Bodies	48	Prolenc Manufacturing Inc.	33
CIBC Wood Gundy	48	Ritchie Bros. Auctioneers	32
Enex Fuels	40	Sibola Mountain Falling Ltd.	52
Finning	6 & 52	SMS Equipment	55
Ford Motor Company of Canada	21	Tilt Contracting Ltd.	39
Inland Group	2 & 52	TM Lask Enterprises Ltd.	52
Island Spring Ltd.	45	V.I. Equipment Ltd.	52
Johnstone's Benefits - TLA	25	Waratah Distribution	56
Johnstone's Benefits - ILA/NWLA	44	West Coast Tug & Barge	4
Langley Excavator Parts Exchange	52	Westerra Equipment - Doosan	11
Marine Link Transportation Ltd.	25	Westerra Equipment - Vermeer	24
Marsh Canada Limited	16	Woodland Equipment Ltd. - Eltec	22
New Line Hose & Fittings	45	Woodland Equipment Ltd. - Hyundai	35
Nexgen Hearing Industrial Division	52	WorkSafeBC	19