

Workwise

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Legislative Update: A Primer on the Recent Changes to Alberta's Occupational Health and Safety Act

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The ***Protections and Compliance Statute Amendment Act***, which received royal assent in December, 2012 has resulted in a number of changes to Alberta's *Occupational Health and Safety Act*. This article highlights two key developments that stem from these amendments: changes relating the designation of a prime contractor, and the introduction of administrative penalties, a new enforcement mechanism under the *Act*.

Changes in Prime Contractor Obligations

Section 3(1) of the *Occupational Health and Safety Act* has been amended and it now requires that every work site have a prime contractor if there are two or more employers involved in work at that site. Under the previous wording of this section, a prime contractor only had to be designated when two or more employers were involved in work at the site *at the same time*. The objective of the amendment is to prevent companies from scheduling work in a way that allows them to avoid prime contractor obligations, as well as resolve the previous ambiguity surrounding when it was necessary to designate a prime contractor.

Administrative Penalties 101

Although not in force until proclamation, the introduction of administrative penalties as a new enforcement mechanism to ensure compliance with the OHS *Act*, *Regulation* and *Code* represents a significant change to the OHS landscape in Alberta. Field Law has prepared this primer to explain how administrative penalties will work and whom they will affect when they come into force.

What Are Administrative Penalties?

Administrative penalties are financial penalties that may be levied against a "regulated person," which is defined in the legislation as all of the following:

- Contractor
- Employer
- prime contractor
- supplier
- worker.

Given the expansive definition of "regulated person," most parties present at a work site could be subject to an administrative penalty.

What Purpose Will Administrative Penalties Serve?

Administrative penalties are a "middle ground" between a compliance order and formal charges prosecuted in accordance with the *Act*. They allow for an additional, and arguably more efficient, enforcement mechanism through which to address non-compliance with the *Act*, *Regulation* and *Code*.

When Can an Administrative Penalty Be Levied?

An OHS officer may levy an administrative penalty if he or she believes that a regulated person has contravened a provision of the OHS *Act*, *Regulations*, or *Code* or has failed to comply with an order under the *Act*, *Regulations* or *Code*. As such, administrative penalties can be used to address non-compliance in a wide array of circumstances.

What Do Administrative Penalties Cost?

The maximum amount of an administrative penalty is \$10,000.00. However, if the regulated person continues to be non-compliant despite the penalty, the penalty can be levied *per day* during the entire period of non-compliance. In other words, the \$10,000.00 maximum is a “per day” maximum, and therefore the total amount of the penalty can exceed this amount where the non-compliance continues for more than one day.

If the Administrative Penalty is Paid, Can a Regulated Person Still Be Prosecuted under the Act?

No. Provided that the administrative penalty is paid, a regulated person cannot also be charged for the same contravention.

Is There a Limitation Period for Administrative Penalties?

An administrative penalty may be levied for a period two years from the day the alleged contravention of the *Act, Regulations* or *Code* occurred.

Can the Decision to Levy an Administrative Penalty be Appealed?

Yes. Appeals relating to administrative penalties will be heard by the OHS Council.

Field Law's OHS Group welcomes questions about how these changes to the *Occupational Health and Safety Act* effect your company's workplace and operations.

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