

2009/03/25-02**THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA****RESOLUTION OF THE BOARD OF DIRECTORS****RE: Prevention Policy 12-196-6
Administrative Penalties – Amount of Penalty****WHEREAS:**

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto (“*Act*”), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

Section 196 of the *Act* sets out the authority of the Workers' Compensation Board (“WCB”) to impose an administrative penalty on an employer;

AND WHEREAS:

Policy D12-196-6 sets out how the amount of an administrative penalty is determined;

AND WHEREAS:

Policy D12-196-6 does not clearly establish which year of assessable payroll is used to calculate an administrative penalty, nor how to determine assessable payroll in certain circumstances.

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The Policy statements in *Prevention Manual* Item D12-196-6 are approved as set out in Appendix A of this resolution, and apply to all decisions, including appellate decisions, to clarify which year of assessable payroll is used to calculate an administrative penalty, and to provide for using an estimate of payroll, where necessary, to calculate an administrative penalty;

2. The amendments made to the Policy statements in *Prevention Manual* Item D12-196-6 by this resolution are effective March 25, 2009;
3. This resolution constitutes a policy decision of the Board of Directors.

DATED at Richmond, British Columbia, March 25, 2009.

By the Workers' Compensation Board

**DR. ROSLYN KUNIN, CM, ICD.D
CHAIR, BOARD OF DIRECTORS**



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PREVENTION MANUAL**RE: Administrative Penalties –
Amount of Penalty****ITEM: D12-196-6****BACKGROUND****1. Explanatory Notes**

The Board is authorized to impose administrative penalties on employers for failure to comply with Part 3 of the *Act* and the regulations, and under certain other conditions. Section 196(3) provides that the Board must not impose an administrative penalty where the employer exercised due diligence. Section 196(2) provides that the Board must not impose an administrative penalty greater than \$500,000. Commencing January 1, 2004, this maximum is subject to adjustment under section 25.2 of the *Act* on January 1 of each year.

The *Act* does not specify the amount of an administrative penalty that may be imposed in particular situations.

2. The Act

Section 196(2):

An administrative penalty which is greater than \$500,000 must not be imposed under this section.

POLICY

Amounts of administrative penalties will be determined under this POLICY. No administrative penalty will be imposed where the employer exercised due diligence to prevent the failure, non-compliance or conditions to which the penalty relates.



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1. “Basic amount” of the penalty

(a) Tables for determining “basic amounts”

The following tables contain the guidelines used by the Board in determining the “basic amount” of an administrative penalty.

Category A Penalties - Serious injury or illness or death; or high risk of serious injury or illness or death; or non-compliance was wilful or with reckless disregard

Assessable Payroll Range (\$)	Penalty Amount (\$)
up to 500,000	2.5% of payroll, or 2,500, whichever is greater
500,001 – 1,000,000	12,500 + 2.25% of payroll over 500,000
1,000,001 – 1,500,000	23,750 + 2.0% of payroll over 1,000,000
1,500,001 – 2,000,000	33,750 + 1.75% of payroll over 1,500,000
2,000,001 – 2,500,000	42,500 + 1.5% of payroll over 2,000,000
2,500,001 – 3,000,000	50,000 + 1.25% of payroll over 2,500,000
3,000,001 – 3,500,000	56,250 + 1.0% of payroll over 3,000,000
3,500,001 – 4,000,000	61,250 + .75% of payroll over 3,500,000
4,000,001 – 4,500,000	65,000 + .5% of payroll over 4,000,000
4,500,001 – 5,000,000	67,500 + .25% of payroll over 4,500,000
over 5,000,000	68,250 + .125% of payroll over 5,000,000, or 75,000, whichever is less

Category B Penalties – Any other violations

Assessable Payroll Range (\$)	Penalty Amount (\$)
up to 500,000	1.0% of payroll, or 1,000, whichever is greater
500,001 – 1,000,000	5,000 + .36% of payroll over 500,000
1,000,001 – 1,500,000	6,800 + .32% of payroll over 1,000,000
1,500,001 – 2,000,000	8,400 + .28% of payroll over 1,500,000
2,000,001 – 2,500,000	9,800 + .24% of payroll over 2,000,000
2,500,001 – 3,000,000	11,000 +.2% of payroll over 2,500,000
3,000,001 – 3,500,001	12,000 +.16% of payroll over 3,000,000
3,500,001 – 4,000,000	12,800 +.12% of payroll over 3,500,000
4,000,001 – 4,500,000	13,400 +.08% of payroll over 4,000,000
4,500,001 – 5,000,000	13,800 +.04% of payroll over 4,500,000
over 5,000,000	14,000 +.02% of payroll over 5,000,000, or 15,000, whichever is less



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The “basic amount” of the administrative penalty will be determined on the basis of the employer’s assessable payroll for the **most recent full calendar year for which figures are available at the time the penalty is imposed full calendar year immediately preceding the year in which the incident giving rise to the penalty occurred. If the employer had no payroll in the preceding year, or if the preceding year’s assessable payroll is unknown, or based on less than a full calendar year or a Board estimate of payroll, the Board may, for the purpose of calculating the penalty, estimate a value for the employer’s assessable payroll for a full calendar year based on the best information available at the time the penalty is imposed. The estimate will not be less than any estimate made previously by the Board of the employer’s assessable payroll for the calendar year. An estimate will not result in no penalty or a penalty below the minimum amount set out in the tables.** The “payroll” for independent operators with Personal Optional Protection is the amount for which they have purchased coverage.

(b) Multi-site employers

Where a firm has more than one location, the Board may, in determining the “basic amount” of the penalty, use the assessable payroll at the location where the violation occurred, provided that:

- the violation has resulted from an occupational health and safety failure at that location rather than a general “program failure” on the part of the employer, and
- the employer provides the necessary payroll information for that location to the Board and cooperates in any audit that the Board considers necessary.

A “program failure” includes failure to:

- effectively communicate with all locations regarding health and safety concerns;
- provide adequate training to managers and others who implement site health and safety programs;
- make local management accountable for health and safety performance; and
- provide local management with sufficient resources for health and safety issues.



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(c) Variation factors

In each individual case, the “basic amount” of the penalty may be varied by up to 30%, having regard to the circumstances, including the following factors:

- (a) nature of the violation;
- (b) nature of the hazard created by the violation;
- (c) degree of actual risk created by the violation;
- (d) whether the employer knew about the situation giving rise to the violation;
- (e) the extent of the measures undertaken by the employer to comply;
- (f) the extent to which the behaviour of other workplace parties has contributed to the violation;
- (g) employer history;
- (h) whether the financial impact of the penalty would be unduly harsh in view of the employer’s size; and
- (i) any other factors relevant to the particular workplace.

2. Penalties up to \$250,000

With the approval of the President or delegate, the Board may impose an administrative penalty of up to \$250,000 where:

- (a) the employer has committed a high risk violation wilfully or with reckless disregard; and
- (b) a worker has died or suffered serious permanent impairment as a result.

3. Penalties up to the Statutory Maximum

With the approval of the President or delegate, the Board may impose an administrative penalty up to the statutory maximum where:

- (a) the employer has committed a high risk violation wilfully or with reckless disregard;



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- (b) multiple fatalities have occurred or a number of workers have suffered serious permanent impairment as a result of the violation; and
- (c) there is evidence of a systemic disregard by the employer for worker safety, such as a history of serious repeated non-compliance.

4. Repeat penalties

Where an administrative penalty is imposed within three years of a decision imposing an additional assessment or a prior administrative penalty for the same violation, the penalty will be calculated as a “repeat penalty”. This includes where, though a different section is cited, the violation is essentially the same.

“Repeat penalties” will be calculated as follows:

- (a) The “basic amount” for the current penalty, including any variation, will be calculated in accordance with 1. “**Basic amount of the penalty**” above.
- (b) The “basic amount” for the current penalty, including any variation, will then be increased as follows:

Number of additional assessments or prior penalties imposed during three years preceding penalty notice	Increase to “basic amount”
one	x2
two	x3
three	x6
four	x12
five	x24

5. Recovery of costs saved through non-compliance

The amount of any costs saved or profit made by the employer through committing the violation shall, as far as is known, be added to the penalty amount determined under 1, 2, 3, or 4 above and forms part of the administrative penalty.



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6. Statutory maximum

In no case will the Board impose an administrative penalty greater than the statutory maximum then in effect.

PRACTICE

For any relevant PRACTICE information, readers should consult the Guidelines available on the [WCB WorkSafeBC](#) website.

EFFECTIVE DATE:	October 29, 2003 March 25, 2009
AUTHORITY:	s. 196(2), <i>Workers Compensation Act</i>
CROSS REFERENCES:	See also Administrative Penalties – Criteria for Imposing (Item D12-196-1), Administrative Penalties – Prior Violations and Orders (D12-196-3), Administrative Penalties – Due Diligence (Item D12-196-10).
HISTORY:	This Item was originally developed to implement the <i>Workers Compensation (Occupational Health and Safety) Amendment Act, 1998</i> , effective May 1, 2000. Consequential changes were subsequently made throughout the Item to implement the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , on March 3, 2003. Effective July 1, 2003 a minor change was made at number four of the policy, to correct the reference of section 20.22 to section 20.11 of the <i>Occupational Health and Safety Regulation</i> . Effective October 29, 2003, an example referencing section 20.11 of the <i>Occupational Health and Safety Regulation</i> in the policy was deleted to reflect the repeal of that section. Effective March 25, 2009 a change was made to base the penalty calculation on the employer's assessable payroll for the full calendar year immediately preceding the year in which the incident that gave rise to the penalty occurred. Effective March 25, 2009 a change was made to allow the Board to estimate payroll in certain situations.
APPLICATION:	This policy applies to all decisions to impose administrative penalties on and after October 29, 2003. The amendments made effective March 25, 2009 apply to all decisions, including appellate decisions, made on or after the effective date of the changes.