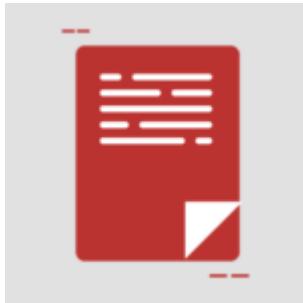


# Ontario Companies Now Face Risk of Administrative Monetary Penalties for OHS Violations



Ontario has just raised the stakes of complying with Occupational Health and Safety (OHS) laws. Brand new *Working for Workers Seven* legislation gives Ministry of Labour (MOL) officials authority to issue what are called [administrative monetary penalties for OHS violations](#).

While OHS fines and penalties are nothing new, the big difference is that AMPs can be imposed without formal charges or a conviction. Here's a quick briefing of what OHS coordinators need to know about the new AMPs law.

## How AMPs Work

AMPs are like traffic tickets that MOL officials can hand out while inspecting a workplace. They're designed to make OHS enforcement faster and more efficient by making it possible to hit companies that don't comply with OHS laws in the wallet without initiating an actual prosecution. Ontario is now the eighth jurisdiction where AMPs can be issued for OHS violations—the others are Alberta, British Columbia, the Federal jurisdiction, Manitoba, New Brunswick, Nova Scotia, and Yukon.

AMPs are an alternative to fines that require

a court conviction—either via trial or a guilty plea. Although the maximum amounts haven’t yet been set, as in most other jurisdictions, AMPs in Ontario are expected to be well below the maximum OHS fine amount a defendant could receive upon being convicted of the offence. According to the MOL, AMPs are designed to promote compliance rather than punish violations. Thus, companies that pay AMPs can’t be prosecuted for the same offence, unless they commit it after paying the AMP.

But there’s more at stake than money. The MOL will probably publish the names of companies that receive AMPs the way it does with OHS fines. In addition to the public relations damage, paying an AMP might bite you in the behind if you’re involved in future violations. That’s because AMPs count against a company’s compliance record just the way being convicted of an OHS offence does. Thus, having a history of AMPs makes companies more likely to receive higher AMPs and/or prosecution and high fines for any subsequent violations they commit.

**Bottom Line:** OHS coordinators might want to urge their companies to appeal any AMPs they receive, even if the penalty amount is small. But you must act fast. You have only 15 days to appeal an AMP, as opposed to 30 days to appeal an OHS order.

### Other Things You Need to Know About the New AMPs System

Although it hasn’t yet determined the maximum amount and range of AMPs, the MOL has issued regulations filling in important details about how the new system will work.

**Who Can Receive an AMP:** AMPs can be issued against any “person” that has duties under the *OHS Act* and regulations, including employers, contractors, supervisors, workers, owners, and suppliers. That includes corporate directors and officers that commit, authorize, or permit OHS violations.

**Grounds for AMPs:** MOL inspectors can issue AMPs for contraventions or failure to comply with the Act, regulations, or the order of an MOL inspector or Director.

**AMP Notice Requirements:** MOL inspectors must provide a written notice of the AMP that lists:

- The nature of the contravention or failure to comply.
- The penalty amount.
- The name of the person on whom the notice is being served.
- The date and time by which the AMP must be paid.
- The right to request a review of the AMP.

**Service of Notice:** Notice is deemed to be properly served if it's:

- Delivered personally.
- Sent by mail.
- Sent or delivered by another method, if the sender can prove receipt.

**Deadline to Pay:** Absent an appeal, the person who receives the AMP must pay it:

- If the AMP relates to an inspector's order, within 30 days after the appeal period expires.
- In all other cases, within 45 days after the day the notice of AMP was served.

If the recipient requests a review, the deadline to pay the AMP becomes 30 days after the Board makes a decision on the appeal.

**Statute of Limitations:** Inspectors aren't allowed to issue a notice of AMP for a contravention that first came to their knowledge more than a year ago.

# Takeaway

Based on the experiences of other provinces, AMPs will have a significant impact on OHS enforcement and compliance in Ontario. MOL inspectors will likely hand out AMPs more frequently than they did OHS fines that had to be imposed via court order. As a result, MOL inspections will become riskier and more employers will have to shell out money for OHS violations, albeit in smaller amounts. The risks will be even more significant if the MOL takes a page out of British Columbia's book and sets maximum AMPs in the six-figure range.

The other big question is whether due diligence will be a defence against AMPs. Explanation: A company that's charged with an OHS violation can avoid conviction by showing that it exercised "due diligence," that is, took all reasonable steps to prevent the violation and comply with the law. But AMPs can be imposed without a conviction. So, it's unclear whether companies will be able to avoid paying the AMP by demonstrating due diligence to prevent the violation for which the AMP was issued.