

Administrative Monetary Penalties for ESA Violations – Know The Law Of Your Province



How much you pay for an employment standards offence depends on where in Canada you commit it.

Getting hit with a fine isn't the only way wage, hours, vacation, holiday, leave and other employment standards offences can take money directly out of your organization's pocket. Seven jurisdictions also give government inspectors the power to issue administrative monetary penalties (AMPs) against companies and individuals who disobey employment laws. And many jurisdictions where AMPs don't currently exist are considering adopting them.

While typically lower than the maximum penalty that the employment standards law provides for, AMPs are harder to challenge and, in some cases, can be dished out on a daily basis for as long as an offence continues. The only good thing is that you generally can't be formally charged and prosecuted for the same offence for which you get the AMP.

AMP amounts and requirements differ by dramatically by jurisdiction. Here's a summary of the current rules in each part of Canada.

FEDERAL

- **AMP amount:** Baseline AMP calculated based on type of offence and who commits it (as illustrated by the table below); the baseline amount can then be multiplied if the violator committed a previous offence within the past 5 years, depending on the type of offence that was:

Federal AMP Baseline Amounts

| Type of Offence | Description | Individual | Small Business | Large Business or Department |
|-----------------|---|------------|----------------|------------------------------|
| A | Administrative or technical | \$200 | \$500 | \$5,000 |
| B | Related to calculation + payment of wages | \$500 | \$1,500 | \$6,000 |

| | | | | |
|---|--|---------|---------|----------|
| C | Related to leave or other requirements which could have an impact on financial security or health and safety | \$1,000 | \$3,000 | \$12,000 |
| D | Related to the employment + protection of employees under age 17 | \$2,000 | \$7,000 | \$25,000 |

- Corporate officers and directors and others who “directed, authorized, assented, acquiesced in or participated in” violation may be personally liable for AMP
- MOL can publish notice listing company name, AMP amount and offences committed (*Canada Labour Code AMPs Regs*)

ALBERTA

AMP amount: Depends on part of *Employment Standards Code* violated and whether the offender has committed any previous ESC offences within past 2 years (*ESC Regs.*, Schedule 2):

Alberta AMP Minimum Amounts (subject to maximum \$10,000 per offence)

Violation Level (Part of ESC Violated)

Level 1:

- Payment of Earnings
- Employment Records
- Hours of Work
- Minimum Wage
- Overtime
- Holidays & Holiday Pay
- Vacations & Vacation Pay
- Unpaid Leave (except Domestic Violence/Bereavement/Personal & Family Responsibility/Citizenship Ceremony)
- Disobeying inspector’s order

First Offence – \$500

Second Offence – \$1000

Third or Subsequent Offence – \$2000

Level 2:

- Leave for Domestic Violence/Bereavement/Personal & Family Responsibility/Citizenship Ceremony
- Violating rules for employees under age 18
- Critical Illness Leave

First Offence – \$1000

Second Offence – \$2000

Third or Subsequent Offence – \$4000

Level 3:

- Group termination violations

- Failing to pay earnings or other employee entitlements
- Requiring work beyond maximum permitted hours
- Retaliating against employees
- Taking a premium payment to hire an employee
- Variance or exemption violations
- Obstructing, not assisting employment standards officer

First Offence – \$1500

Second Offence – \$3000

Third or Subsequent Offence – \$6000

*AMP amount subject to cap of \$10,000 per offence (*ESC, Sec. 123.1(4)*)

*Person who pays AMP can't be prosecuted for same violation (*ESC, Sec. 123.1(4)*)

BRITISH COLUMBIA

- **AMP amount:** \$500 for first offence, \$2,500 for second offence within 3 years, \$10,000 for third or subsequent offence within 3 years (*ESA Regs., Sec. 29*)
- Person who gets AMP can't be prosecuted for same offence (*ESA Regs., Sec. 29(4)*)
- Government may publish name and other information about employers who get an AMP (*ESA, Sec. 101(2)*)

MANITOBA

AMP amount: \$500 or \$1,000 depending on part of ESC violated (*ESC Regs., Schedule*)
Manitoba AMP Amounts (subject to maximum \$10,000 total per notice)

\$500 AMP Offences

- Minimum wage
- Banked time
- Holiday pay
- Vacation and vacation pay
- Work breaks
- 24-hour rest period
- Overtime
- Maternity, parental, compassionate care, bereavement, health or family leave
- Termination notice
- Group termination
- Equal pay to men and women for same work
- Requiring employee to work on a Sunday
- Failing to pay wages within required 10-day period
- Retaliating against employee
- Not providing pay statement
- Record keeping
- Unlawful deductions from pay
- Failing to post notice of ESC information
- Requiring employee to purchase union
- Failing to provide required transportation

\$1,000 AMP Offences

- Employing person under age 13
- Employing person under age 16 without work readiness certificate
- Hours restrictions for employees under age 16

- Letting employee under age 18 work alone or in forbidden industries or occupations

NEW BRUNSWICK

AMP amount (over 5-year period):

- \$150 for first offence
- \$300 for second offence
- \$450 for third offence
- \$600 for fourth offence
- \$750 for fifth offence
- \$900 for sixth and subsequent offence (*ESA General Regs.*, Sec. 11.2(4))

NEWFOUNDLAND

Doesn't impose AMPs for labour standards violations

NORTHWEST TERRITORIES & NUNAVUT

Doesn't impose AMPs for employment standards violations

NOVA SCOTIA

Doesn't impose AMPs for labour standards violations

ONTARIO

- **AMP amount:** Depends on part of ESA violated (*ESA, Penalties & Reciprocal Enforcement Regs.*, Sec. 1)

Ontario AMP Amounts

| ESA Offence(s) | AMP Amount | | |
|---|--------------------------------------|--------------------------------------|--|
| | First Offence | Second Offence* | Third or Subsequent Offence* |
| Not posting ESA poster | | | |
| Not keeping and making available required records | \$250 | \$500 | \$1,000 |
| All other ESA offences | \$250 | \$500 | \$1,000 |
| All other ESA offences that affect more than 1 employee | \$250 x number of employees affected | \$500 x number of employees affected | \$1,000 x number of employees affected |

* Within a 3-year period

- No cap on total AMP amount per notice of AMP
- Person who gets AMP may be prosecuted for same offence (*ESA*, 113(7))
- MOL may publish offender's name, date and description of violation and penalty amount (*ESA*, Sec. 113(6.2))

PRINCE EDWARD ISLAND

Doesn't impose AMPs for employment standards violations

QUÉBEC

Doesn't impose AMPs for labour standards violations

SASKATCHEWAN

Doesn't impose AMPs for labour standards violations

YUKON

- **AMP amount:** \$500 per offence (*ESA*, Sec. 84(1))
- Multiple incidents of same offence treated as a single offence warranting just the one \$500 penalty (*ESA*, Sec. 84(2))
- Person who gets AMP can't be prosecuted for same offence (*ESA*, Sec. 84(1))