

# Penalties For Workplace Accidents And Fatalities In Saskatchewan: The Landscape Has Changed



The Saskatchewan Employment Act, SS 201, c S-15.1 (the “SEA”) was passed by the provincial legislature and brought into force at the end of April, 2014. The passage of the SEA resulted in the consolidation of several pieces of labour and employment legislation that had previously existed as stand alone legislation. One of the Acts brought under the SEA was the *Occupation Health and Safety Act*, SS 1993, c 0-1.1 (the “OHSA”).

Under the SEA, the provincial government made significant changes to the penalty regime for occupational health and safety offences, particularly in the realm of offences leading to serious injury or death to a worker.

Under the OHSA, both individuals and corporations could be liable on summary conviction for maximum fine of \$300,000. Under the SEA, these maximum fines for a serious accident or fatality were increased to \$500,000 for individual employers and \$1,500,000 for corporations – making them the highest maximum fine of any province. Moreover, when combined with Saskatchewan’s victim fine surcharge of 40%, a company’s exposure for a serious injury or fatality has moved from \$420,000 to \$2,100,000.

The objective of the provincial government in raising the fines was to create a “stronger deterrent to those who would disregard the provisions of the SEA and place workers in harm’s way.”

There are a number of factors that the court takes into consideration in determining the appropriate fine to impose. Even with the new maximum penalties, these factors will still be considered when determining the quantum of the penalty to be imposed. The factors include:

**Nature of the Victim** – Whether the worker that was injured was young, inexperienced or untrained.

**Nature of the Employer** – The size of the business, including the number of employees, the number of physical locations, its organizational sophistication and the extent of its activity in the industry or community.

**Negligence of the Employer** – The degree of risk and the extent of danger posed to the

employee and whether it should have been reasonably foreseeable to the employer.

**Economic Impact on the Employer** – The ability of the employer to pay the fine and the potential impact the fine will have on the employer's business.

**Employer's Safety Record** – The number of breaches or convictions under occupational health safety legislation, as well as, whether the breach was an isolated incident or continued over time.

**Employer's Response** – Whether the employer undertook the necessary measures after the accident in order to prevent a re-occurrence of the accident.

**Employer's Remorse** – Whether the employer made reparations to the victim or his or her family, provided counseling services to workers affected by the accident or promptly admitted responsibility.

The following are examples of fines ordered by the court under the prior legislation, where the maximum fine for a serious injury or fatality was \$300,000.

In one case at the lower end of the quantum, an employee was killed in 2013, when he was clearing a drill pad with a crawler tractor at an exploration site on Cree Lake when the tractor fell through the ice. D.J. Drilling subsequently pled guilty to one count of failing to ensure that all work at the place of employment was sufficiently and competently supervised and fined \$46,000.

Factors that were considered in determining the fine included: the size of the company (80 employees), its profitability and its private nature.

As an example of a fine at the maximum quantum, in 2013, PotashCorp pled guilty when a worker died when his vehicle went over a ledge. Prior to this incident, two other workers had a wheel go over the same ledge and it appeared as though PotashCorp had not taken any corrective action. PotashCorp was fined the maximum of \$300,000 plus a \$120,000 victim fine surcharge.

Other factors that led to PotashCorp being given the maximum fine included: the size of the company and its public nature.

The PotashCorp decision is similar to another case involving similar sized corporation in 2012. An employee was inside a hoist well when a component fell from a load being lifted by an overhead crane and struck him on the head, which led to the employee's death. The company pled guilty to the worker's fatality and was fined the maximum of \$300,000 plus a \$120,000 victim fine surcharge.

Factors that led to the company being given the maximum fine included: the size of the company, its public nature and a similar incident that had happened a few years earlier.

There have been no decided cases under the new penalty regime. Although the court maintains discretion in determining the amount of the fine, taking into account numerous factors described above, the fact that the maximum penalty has increased fivefold is likely to shift the penalties to higher levels across the board.

It won't be until the initial cases are decided by Saskatchewan courts that we will see where the Court is going to place particular cases along the penalty continuum. However, one thing is certain, with the new maximum fine provisions, the penalty landscape has fundamentally changed.

Article by Heather MacMillan-Brown