

Member's Quarterly

Fall 2026 Edition

Feature

An ounce of prevention may not be enough

Employers pay if employees don't comply with safety rules

Worker safety is of utmost importance in all workplaces and all provinces have legislation to ensure employers make worker safety a priority. That is the case even if employees have momentary lapses despite having completed safety training.

One example is a recent decision from the Manitoba Labour Board, *Above All Roofing & Exteriors Inc. and Manitoba (Director, Workplace Safety & Health)*, Re, dealing with an appeal of an administrative penalty.

In this decision, an improvement order was issued in April to the employer for failing to use fall protection systems contrary to section 14.6 of the *Workplace Safety and Health Regulation*, because an employee was seen on a residential roof above 3 meters without the use of fall protection systems. A stop work order and improvement order were then issued in July, because a worker was seen on a roof above 3 meters, not using fall protection equipment available at the site. An administrative penalty of \$2,500 was issued in August.

Despite these contraventions, the employer provided evidence of its history of commitment to safety. For example:

1. The employer has a Certificate of Recognition since 2010;
2. New employees are onboarded on fall protection;
3. Additional training is provided on the job site;
4. Toolbox talks, weekly safety training, and daily hazard assessments are done;
5. The employer engaged a safety consultant; and
6. There is a disciplinary policy for safety breaches.

The safety consultant added:

1. "All employees are trained by reviewing the legislation, how and when fall protection measures are to be used, and how to wear and connect all components of the necessary equipment"; and
2. "There is zero tolerance for employees who disregard fall protection measures. If someone is not tied off, they are suspended for the day, sent home and retrained the following day".

The employer's position was that while the *Workplace Safety and Health Act* requires an employer to comply "so far as is reasonably practicable", it did not mean 100% compliance at all times and it was unjust to receive an administrative penalty given their significant efforts. Counsel for the employer also highlighted that it was the employees' failure to use the equipment that was at issue and not because safety equipment was not available.

However, the Board has limited powers in revoking an administrative penalty, mainly if the penalty had not been issued in accordance with the *Workplace Safety and Health Act*. Under the *Workplace Safety and Health Act*, an administrative penalty can be issued:



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When the director determines that a person has failed to comply with a prescribed provision of this Act or the regulations, and the director is of the opinion that the failure involves, or is likely to involve, an imminent risk of serious physical or health injury to a worker or other person.

The officer concluded that there was a risk of serious injury should the worker fall, as the worker was working without being tied off. Because of this, the Board concluded that the administrative penalty was issued in accordance with the Workplace Safety and Health Act, so the penalty was confirmed.

While the Board commended the employer on its efforts to ensure its employees were trained and having progressive discipline for failing to perform work safely, the Board referred to *Spar Marathon Roofing Supplies, v. Workplace Safety And Health (Director)*, Case No. 84/18/WSH, which confirmed that section 4(1)(a) of the *Workplace Safety and Health Act*, which states, "Every employer shall in accordance with the objects and purposes of this Act ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his workers" is an absolute liability provision and due diligence is not an available defense. As such, the Board is unable to take the employer's efforts into consideration in determining whether to revoke the penalty.

Key Takeaway

The decision demonstrates that an ounce or even a pound of prevention through training may not be enough, as all it takes is a momentary lapse by one worker. Because of this, employers, their supervisors, and their employees need to be constantly vigilant at the worksite in ensuring that all employees are complying with safety legislation at all times. Otherwise, if any employee has a momentary lapse in compliance, the employer may be liable for administrative penalties despite significant efforts and diligence in ensuring worker safety.

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