

Council of Construction Associations
#138 - 5751 Cedarbridge Way, Richmond, B.C. V6X 2A8
Telephone (604) 241-7667
email: grant.e.mcmillan@gmail.com
Grant McMillan, President

COCA Update on WorkSafeBC Activities #528 March 7, 2012

The following column from COCA appeared in the JOC

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What to do when a WorkSafeBC penalty looms

The construction industry is extremely visible to the occupational health & safety (OH&S) officers of WorkSafeBC.

Our workplaces are easily seen from the road – and the bigger the workplace and company, the higher the profile.

The construction industry is also complex and specialized.

WorkSafeBC orders may sometimes be written because the WorkSafeBC officer may not have fully understood the activity and the safeguards that the construction company has in place.

An officer cannot be an expert in all aspects of construction.

It is therefore useful for both general and trade contractors to understand their rights of appeal from a WorkSafeBC order, which can lead to a penalty.

When you disagree with an order, your first option is to discuss it with the WorkSafeBC officer.

It is best to do this when you first review the officer's report.

For this reason, you need to ensure that you request a meeting with the officer, immediately after the inspection.

If you convince the officer that an order is not appropriate, then the order may not be written in the first place.

Always conduct the meeting on a professional and business-like basis. Deal with the specifics of the order. Describe how you are safeguarding your workplace.

Explain your OH&S program and your ongoing safety activities, such as toolbox talks.

If you are not satisfied with the result of this discussion, you can request a review or hearing with the officer's regional manager.

In this meeting, describe why the order is inappropriate and what result you seek. This is an informal level of appeal.

Before you meet with the regional manager, assemble your facts, including photographic or video evidence.

You may also wish to refer to the WorkSafeBC policy manual and relevant sections of the Workers' Compensation Act, etc.

The Employers' Adviser (EA) can help with this.

When you meet with the regional manager, maintain a professional approach. Stick to the facts and keep emotions under control.

You should try to meet quickly with the officer – and then, if necessary, with the regional manager.

If you are successful, the recommendation for penalty may never go forward.

However, if you are not successful, and the alleged breach of the regulation is significant, you may receive a letter from the WorkSafeBC advising that a penalty is being considered.

In this case, you will be asked to show cause why the penalty should not be imposed.

You should respond in writing.

This is the formal part of the appeal process.

How to Appeal – Step 1

You will have 90 days to appeal to the review division of WorkSafeBC.

You should consider a request for an oral hearing, if you believe this will be more effective in determining the facts. In particular, you should ask for a hearing if:

The situation is difficult to describe in writing;

You have photographic or video evidence;

You want to call in witnesses.

How to Appeal – Step 2

You only have the right of further appeal for an OH&S order that results in a financial penalty.

You will be advised, in writing, of the result of this first appeal.

If you are not satisfied with the decision at the first level, you have the right to appeal to the Workers' Compensation Appeal Tribunal.

You have 30 days from the date of the decision letter to start this appeal.

You have the right to get a copy of your OH&S file from WorkSafeBC, at no cost.

The Employer's Adviser is available to assist employers with making appeals. It is a good idea to seek their help.

The Employers' Adviser is a free service to employers – you already pay for it with your WorkSafeBC assessments.

The EA is located within the Ministry of Labour, not within WorkSafeBC, so it offers independent advice and assistance.

The advisor can be reached at their head office in Richmond, toll free within B.C. and Alberta, at 1-800-925-2233

Grant McMillan is the president of the Council of Construction Associations (COCA), which represents the interests of 16 construction associations in B.C. on WorkSafeBC matters. Grant is also a member of the Journal of Commerce Editorial Advisory Board.

The JOC article is available online at:

<http://www.joconl.com/article/id49082/--what-to-do-when-a-worksafebc-penalty-looms>