



Administrative Monetary Penalties – Part IV of the *Canada Labour Code*

An Administrative Monetary Penalty is :

- A financial deterrent to non-compliance
- An additional tool to supplement other compliance and enforcement measures (e.g. education/awareness, assurance of voluntary compliance, payment order, direction, compliance order)
- Issued via a notice of violation (NoV)
 - Can include multiple penalties for multiple violations
- An alternative to prosecution



Requirements for an AMP

- A designated official ← ???
- Has reasonable grounds to believe that
- A person or department ← ???
- Committed a violation ← ???
- Where the AMP General Principle has been followed OR the violation falls under an Exception ← ???
- And where prosecution is not appropriate



What is a Violation?

- Violation = anything listed in Schedule 1 and 2 of *Administrative Monetary Penalties (Canada Labour Code) Regulations*:
 - Specific provisions of Part II and Part III of the Code, and its regulations
 - Direction or order issued under Part II or Part III of the Code
 - Designated order from the Canada Industrial Relations Board, or
 - Condition of an Excess Hours Ministerial Permit

Classification of Violations

Provisions of Part II and Part III of the Code are classified into categories in the Regulations

	PART II	PART III
A	administrative	administrative
B	low risk: minor injury or illness that requires medical attention	related to the calculation and payment of wages and other amounts
C	medium risk: serious injury or illness that prevents and employee from performing work duties	Related to hours of work, leave or other requirements, which could have an impact on financial security, or health and safety, of an individual or group of individuals.
D	high risk: serious injury or fatality	protection of minors, non-compliance with legal orders, and violation of excess hours permit conditions
E	Involves life threatening hazards or those that cause occupational disease. Involves injury or death.	N/A

Who Can Receive a Notice of Violation?

- **A person:**
 - Legal Person – e.g. incorporated employer
 - Natural Person – e.g. manager, director, sole proprietor, employee, or Minister (Part II)
 - Whether an individual and/or an employer would receive an AMP would be determined based on the evidence obtained during investigation or inspection.
 - AMP to employees will be rare (reckless or dangerous behavior endangering health, or non-compliance with a Direction or order from Canada Industrial Relations Board)
- **A department:**
 - Federal government department under Part II jurisdiction

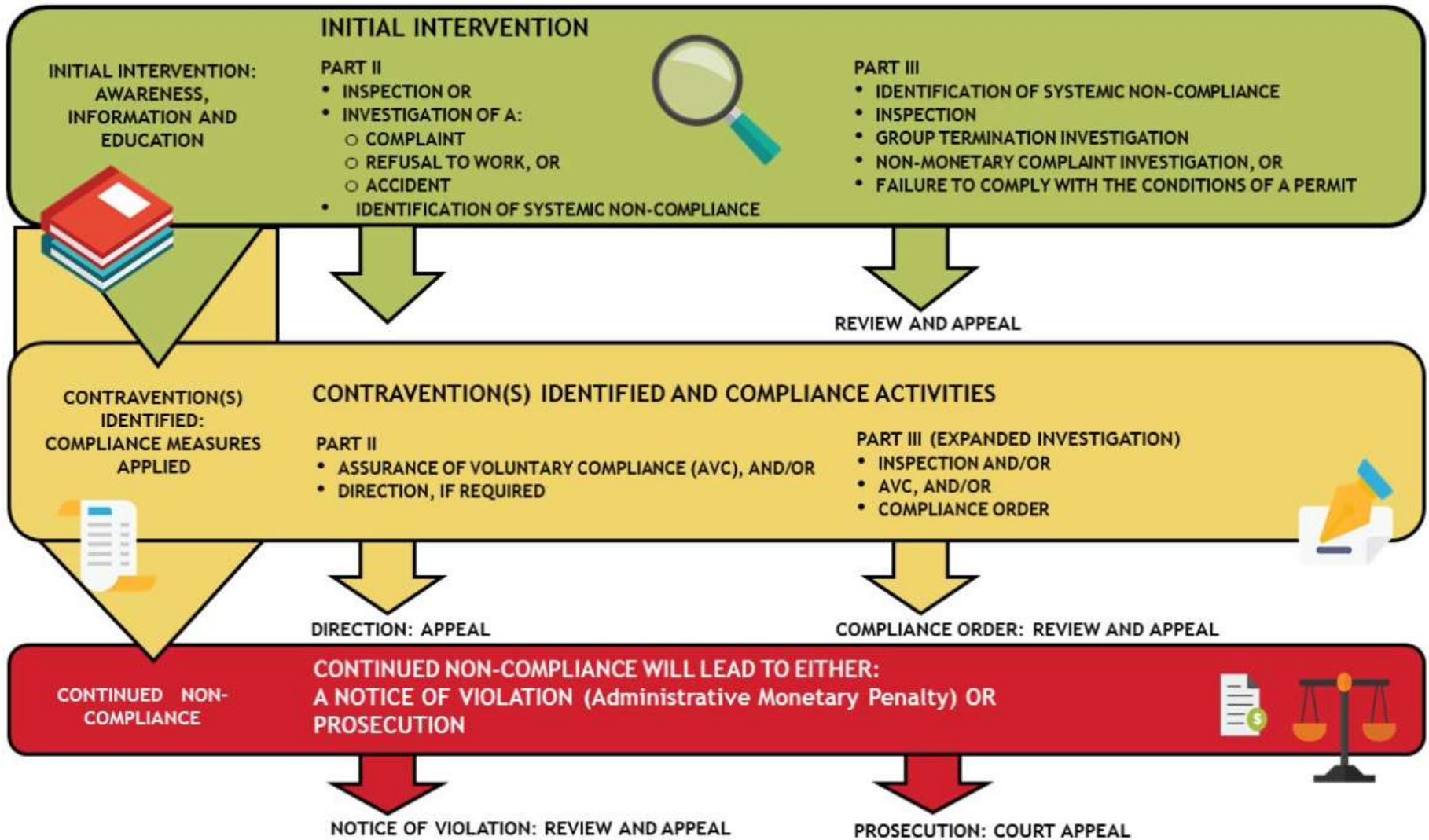


Who Can Issue a Notice of Violation? (Designated Official)

- AMPs cases will be developed by Labour Affairs Officers, Health and Safety Officers, Senior Investigators, and regulatory partners (Part II)
- Expert team will provide guidance and oversight
- Only Regional Directors (RD) and Director General of Regional Operations and Compliance (DG-ROC) are designated to issue an NoV:

RD	DG- ROC
<p>All with the exception of those issued by the DG-ROC.</p>	<p>For any of the following:</p> <ol style="list-style-type: none"> 1. Category D and E violations. 2. All AMPs by Exception- those that are issued earlier in the AMPs process, including at the same time as a Compliance Order or Direction. 3. AMPs for Repeat or Continuing Violations 4. For those instances where the RD feels that: <ul style="list-style-type: none"> ○ the AMP is significantly complex with multiple violations, or ○ there are broader implications for other regions and for consistency.

AMP Process- General Principle



Exceptions to the General Principle

- In **certain circumstances**, a Notice of Violation (NoV) may be issued immediately or without proceeding through the full General Principle in response to a particular violation.
- These AMPs by exception:
 - would follow an investigation of the contravention, as with all determinations of non-compliance, and
 - could be imposed immediately or at any point during the General Principle process, including **with** a compliance order or direction.
 - would only be issued after a determination that prosecution is not appropriate

Examples of Exceptions to the General Principle

Violations for:

- Obstruction or hindrance
- Failure to submit hazardous occurrence reports (part II)
- Specific leave provisions
- Employees Under the Age of 17
- Group termination
- Non-Compliance with an Order from the Canada Industrial Relations Board

Repeated/Continuing Non-Compliance

Repeat / Continued Non-Compliance within 5 years

- Repeat/continued non-compliance of the same designated provision within 5 years after:
 - an AVC/compliance order/direction
 - a previously-served NoV, injunction, or successful prosecution

- Violations that are committed or continued on more than one day are treated as separate violations

e.g. Employer appeared to comply with a Compliance Order, but later returns to non-compliance; NoV can be issued

e.g. Employer previously received NoV for overtime pay; new NoV can be issued if a new overtime pay violation is committed

How to Calculate an AMP – Base Amount

1. Identify violation

- Scheduled provision in AMP Regulations, and associated category (A-E)

2. Identify violator

Categories:

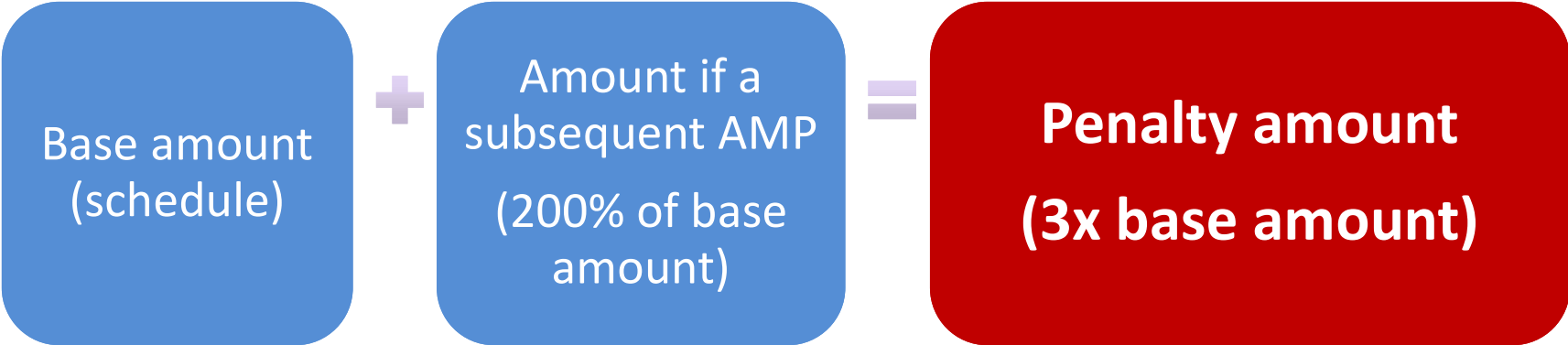
- Individual (e.g. Sole Proprietor, Director, Ministers)
- Micro business (<5 employees or \$30,000 gross annual revenue)
- Small business (< 100 employees or \$5M annual gross revenue – and not a microbusiness)
- Large business or federal government departments (and not a small business or microbusiness)

	Individual	Micro Business	Small Business	Large business or Department
A	\$200	\$250	\$500	\$2,000
B	\$500	\$750	\$1,500	\$6,000
C	\$1,000	\$1,500	\$3,000	\$12,000
D	\$2,000	\$3,500	\$7,000	\$25,000
E	\$4000	\$7,500	\$15,000	\$50,000

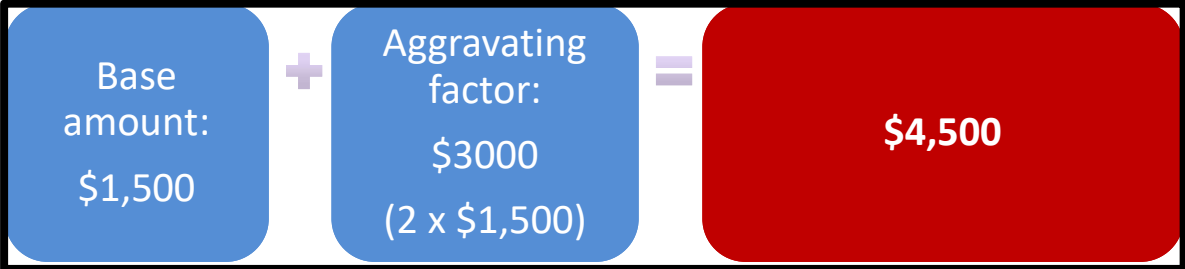
3. Use grid to determine base amount



How to Calculate an AMP – Subsequent



EXAMPLE:



Payment of an AMP

- Full AMP amount must be paid within 30 days of the Notice of Violation being served
- **Early payment:** penalty amount reduced by 50% if paid within 20 days. This option is only available in the cases of A, B and C type violations.
- Once AMP is paid, violation is deemed to have been committed.



Request for Review / Appeal

Review

- Any person or department served with a Notice of Violation (NoV) may request a review, in writing, within 30 days to the Head of Compliance and Enforcement
- Requests received more than 30 days after, may be allowed in exceptional circumstances

Review Unit

- AMPs Review Unit under Workplace Directorate will determine whether the Request for Review is treated as an administrative review or as an appeal

Process

- **If treated as a review:** the Review Unit will review the file and issue a Review Decision (which can be appealed to the CIRB)
- **If treated as an appeal:** the Request for Review is forwarded to CIRB as an appeal

Non-Payment of an AMP

- A violation is considered to be committed if the person or department doesn't pay the AMP, and
 - Review/appeal proceedings are not requested; *or*
 - Review/appeal decision(s) uphold or modify the AMP
- Unpaid AMPs will be sent to Canada Revenue Agency for collection



Public Naming

- Employers or departments who commit a B, C, D, and/or E violation will be publicly named on the Government of Canada website.
- Will be publicly named indefinitely until:
 - The AMP is paid; AND
 - The violation is corrected
- Will then remain published for an additional 2 years from the date of payment AND compliance (whichever is later)



Questions?

