



# Workers' Safety and Compensation Commission Northwest Territories and Nunavut

## Yellowknife

Centre Square Tower, 5th Floor  
5022 49 Street  
Box 8888  
Yellowknife, NT X1A 2R3  
Telephone: (867) 920-3888  
Toll-free: 1-800-661-0792  
Fax: (867) 873-4596  
Toll-free Fax: 1-866-277-3677

## Iqaluit

Qamutiq Building, 2nd Floor  
630 Queen Elizabeth II Way  
Box 669  
Iqaluit, NU X0A 0H0  
Telephone: (867) 979-8500  
Toll-free: 1-877-404-4407  
Fax: (867) 979-8501  
Toll-free Fax: 1-866-979-8501

## Inuvik

Blackstone Building  
87 Kingmingya Road  
Box 1188  
Inuvik, NT X0E 0T0  
Telephone: (867) 678-2311  
Fax: (867) 678-2302

## 24-HOUR INCIDENT REPORTING LINE

1-800-661-0792

[wscn.nt.ca](http://wscn.nt.ca)

[wscn.nu.ca](http://wscn.nu.ca)



WSCCNTNU

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# Introduction

From November 2016 to January 2017, the Workers' Safety and Compensation Commission (WSCC) consulted with stakeholders regarding a proposed system of ticketing for failing to comply with certain Occupational Health and Safety (OHS) legislation.

The review of the ticketing feedback identified some common threads. For example:

- concerns about the amounts of the fines;
- concerns that the amount of the fine did not appear to correspond to the seriousness of the offence; and
- concerns that the tickets predominantly targeted employers, with very few options for ticketing workers.

As a result of the substantial concerns expressed by stakeholders, the WSCC decided not to proceed with the proposed ticketing system at that time. Instead, the WSCC took a step back to review the concerns expressed and determine how best to address the points raised during the consultation process.

This document provides information to explain why the WSCC feels a ticketing process is important. It will explain which offences the WSCC believes should be included and why, and when ticketing would be used. This document also includes the proposed amount of fine, based on a review of the fines issued in other jurisdictions for the same or similar offence. The amount of fine listed does not include the Victim of Crime Surcharge, which is an additional 15% paid to a specific fund created by the Governments of the Northwest Territories and Nunavut. The fine itself is paid into the Workers' Protection Fund.

## Purpose of ticketing as an enforcement tool

The WSCC believes strongly in the Internal Responsibility System (IRS). Employers and workers have a responsibility to work together to ensure a safe workplace. A major part of the WSCC's mission is to promote workplace health and safety. One of our strategic priorities is to advance the safety culture, which we do through working with employers and workers to improve awareness of the IRS and to increase OHS education across the north. Collaboration and cooperation remain our focus; however, the WSCC's mandate also includes ensuring compliance with the *Safety Act* and *Occupational Health and Safety Regulations*.

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The ability to issue tickets would be a new enforcement tool available to safety officers to obtain better compliance with the occupational health and safety legislation. Currently, a safety officer who visits a worksite has limited options when observing a breach of the *Safety Act* or *Occupational Health and Safety Regulations*. The safety officer can only issue an immediate verbal direction, a written direction, or a Stop Work Order. Generally, these could be appealed to the chief safety officer, which adds time to the process. Even if the chief safety officer upheld a direction upon appeal, compliance is not always guaranteed. Getting and maintaining workplace compliance remains a problem in certain areas. The WSCC determined that something more was needed to reach and reform habitual re-offenders, or to emphasize the importance of complying with a repeatedly broken provision.

For example, if a safety officer is doing an inspection and notices a worker not wearing a hard hat, the safety officer could prepare a ticket for the failure of that worker to wear required personal protective equipment (PPE). The action has immediate consequences for the worker: he has to put his hard hat on **and** pay for not doing so. The ticket also serves as a deterrent: it educates the rest of the workers, supervisors, and employers at the site about the immediate effect of not complying with the *Occupational Health and Safety Regulations*.

A failure to comply with the *Safety Act* or *Occupational Health and Safety Regulations* is already an offence under that *Act*, and the WSCC does have the option of enforcement through prosecution in the Northwest Territories' Territorial Court or the Nunavut Court of Justice. However, that is a very slow, punitive, and complicated process. The process can also be very expensive for workers, employers, and the WSCC. That option is best used for incidents which result in death or serious injuries on the job. What is needed is another enforcement tool to achieve and sustain compliance before serious incidents occur. Ticketing serves that purpose, while also being straightforward and immediate response.

## **When would tickets be issued?**

The WSCC reviewed the *Occupational Health and Safety Regulations* and looked at directions issued in the period since those regulations came into force (2015 in the Northwest Territories and 2016 in Nunavut). Through that review, the WSCC identified high priority sections—sections that have had a high frequency of noncompliance, or sections with substantial public interest consequences. From those, the WSCC chose sections that are simple, straightforward, and where compliance or noncompliance is easily observable or determined. A summary of the offences that could result in a ticket is included below, along with the reason that offence is included on the list.

## Tickets for contravention of *Occupational Health and Safety Regulations* by a Worker

Section	Reason	Fine
<p>A worker shall, in respect of a work site, (a) use safeguards, safety equipment and personal protective equipment required by these regulations; and (b) follow safe work practices and procedures required by or developed under these regulations.</p> <p>(Section 13)</p>	<p>Inclusion of this provision allows the WSCC to issue tickets for a large number of regulation breaches, such as the failure to wear fall protection or the failure to wear a seat belt when necessary. If any of the provisions in the regulations requiring a worker to use safeguards or PPE are not complied with, section 13 has also been breached and a ticket can be issued.</p> <p>Failure to wear PPE or follow developed safe work practices are some of the most common breaches of the legislation.</p>	<p>\$250</p>
<p>A worker shall not start powered mobile equipment until the worker makes a complete visual inspection of the equipment and the surrounding area to ensure a worker is not endangered by the start-up of the equipment.</p> <p>(Section 163(2))</p>	<p>Failure to comply with this section has resulted in very serious consequences.</p>	<p>\$250</p>
<p>A worker shall not deactivate a lockout process, or remove a lockout device unless the worker is designated by the employer.</p> <p>(Section 147(10) and (11))</p>	<p>A seemingly minor requirement; however noncompliance can result in serious injury.</p>	<p>\$250</p>

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## Tickets for contravention of *Occupational Health and Safety Regulations* by an Employer

Section	Reason	Fine
An employer must comply with a direction issued by a safety officer. ( <i>Safety Act</i> 22(1)(b))	Failure to comply occurs frequently. The safety officers continue to work with employers after a direction has been issued; however, the instructions in the direction must be followed to ensure hazards are resolved and workers safety is ensured.	\$2,000

Alberta, Saskatchewan, Ontario, and New Brunswick are other jurisdictions that issue tickets for OHS infractions. In Alberta, the fines for workers range from \$100-200, with some listed at a maximum of \$500. In Saskatchewan, the fine for a worker is \$250; in Ontario, it is approximately \$200; and in New Brunswick, the fines are in the \$300-400 range. Tickets for employers range from a low of \$300 to a high of \$1000; however, those are for infractions other than noncompliance with a safety officer direction.

As discussed above, the WSCC's first priority is working with employers and workers to support a strong and effective IRS. Safety officers will continue to have the authority under the *Safety Act* to issue directions, and directions will continue to be the most frequently used tool to achieve compliance with the *Safety Act* and *Occupational Health and Safety Regulations*.

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The WSCC will turn to enforcement through ticketing only in certain circumstances. For example, if a safety officer is at a work site and sees a worker or employer's representative failing to comply with the legislation, the safety officer will take into account a number of factors, such as:

- Is this a repeat problem with this employer? For example, has a safety officer noticed this problem before and talked to the worker or employer about the safety issue?
- Is this a repeat problem generally for which the WSCC has been actively educating workers and employers?
- Does the behaviour endanger the worker, other workers, or the general public?
- What is the risk of injury?

Once a ticket is issued, it can be voluntarily paid or challenged as any other ticket through the Northwest Territories' Territorial Court or the Nunavut Court of Justice. A "not guilty" plea sends the ticket to trial. The safety officer will attend court to give evidence for the prosecution.

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## What do you think?

Your feedback is essential to this process. We have included sample questions on the following pages. If you have any questions please contact [lawfeedback@wscn.nt.ca](mailto:lawfeedback@wscn.nt.ca) or [lawfeedback@wscn.nu.ca](mailto:lawfeedback@wscn.nu.ca). You can direct any concerns or suggestions on this proposal to that address.

If you wish to communicate with us by mail or fax, please do so at:

**WSCC**  
**Box 8888**  
**Yellowknife, NT**  
**X1A 2R3**

**Fax: (867) 669-4489**

**Attention: General Counsel**



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3. Do you agree with the proposed offences listed above? If **not**, tell us which ones you think are not appropriate, and why.

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4. Are there other provisions in the *OHS Regulations* that we have not identified that should be subject to tickets? If so, what are they, and why?

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5. Do you have any concerns about the fine amounts?

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6. Do you have any other comments or suggestions?

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The WSCC may use this information for the administration of legislation under our authority, including the *Workers' Compensation Acts*, the *Safety Acts*, and/or the *Mine Health and Safety Acts*, and their associated *Regulations*, and to contact you in relation to the requirements under the relevant legislation. It is your responsibility when providing an email address to ensure reasonable safeguards are in place to protect the confidentiality and security of your personal information within your email account.

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WORKERS' SAFETY AND COMPENSATION COMMISSION  
NORTHWEST TERRITORIES AND NUNAVUT

## STAKEHOLDER ENGAGEMENT REQUEST



[wsc.nt.ca](http://wsc.nt.ca) 1.800.661.0792  
[wsc.nu.ca](http://wsc.nu.ca) 1.877.404.4407