



October 10, 2012

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**VIA EMAIL**

OHS Policy Consultation  
Policy and Regulation Division  
WorkSafe BC  
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Dear OHS Policy Committee

**Re: OHS Warning Letters – Policy D12-196-11**

The BC Building Trades appreciates the opportunity to provide input respecting proposed policy changes to warning letters under the *Occupational Health and Safety Regulations*.

As you are aware, the BC Building Trades Council represents trades workers throughout BC and the Yukon. Our members include unionized construction labourers, ironworkers, electricians, roofers, plasterers, cement masons, sheet metal fabricators, bricklayers, insulators, and many others in building and construction. There are 40,000 skilled unionized construction trades workers throughout British Columbia and the Yukon.

**The Worker Representatives on the Policy Practices Consultative Committee have agreed to the policy changes proposed by the Board with respect to OHS warning letters. Our council is in full agreement with our representatives on the committee.**

The purpose of a warning letter under the OHS regulations is to warn an employer that an administrative penalty could be forthcoming for similar violations of the OHS provisions of the *Workers' Compensation Act* or the *Occupational Health and Safety Regulations*.

Under the current policy regime there are four problems. First, the current policy does not provide much-needed guidance regarding the appropriateness of a warning letter. Secondly, the existing policy treats violations subsequent to a warning letter differently than those following an order or penalty. More precisely, the current policy provides for a reasonable time to comply with the warning letter. In some cases this policy has led to enforcement action being stymied for a certain period after the warning letter is issued. Yet there is not provision in policy for a similar

delay following an order or penalty. Thirdly, the existing policy does not address the matter of multiple warning letters; that is, no specific guidance is provided with respect to the issuance of more than one warning letter. And finally, the current policy requires the Board send a copy of the warning letter to a joint committee or worker representative, but the Board does not possess this information.

In order to address the aforementioned shortcomings, the Board is proposing to change the current policy.

To begin with the Board will clarify the criteria to issue an OHS warning letter. Among other things, these changes replace the reference to the nine subsequent factors in D12-196-11 with specific factors for guidance regarding whether a warning letter would be appropriate in the circumstances.

Secondly, the proposed changes deal with violations following a warning letter the same as those following orders or penalties. That is to say, the proposed changes ensure that a warning letter will not limit the Board's ability to pursue action for subsequent violations. Moreover, they clarify that the warning letter policy has no impact on any other enforcement methods.

Thirdly, the Board's proposal will confirm that it will not ordinarily issue a warning letter to an employer after a prior warning letter, penalty, or prosecution for the same violation. However, the proposed change does not rule out issuing more than one warning letter in circumstances when the Board considers that it will be sufficient to motivate compliance.

Lastly, the Board's proposed changes will remove the requirement to mail a warning letter to the joint committee or worker representative. These parties, however, will continue to receive a copy of the warning letter in the inspection report by way of the employer.

The BC Building Trades believe these proposed changes will improve policy clarity, consistency, and guidance regarding the issuance of warning letters pursuant to the *Occupational Health and Safety Regulations*.

Sincerely



Merrill J. O'Donnell, M.A., LL. B.  
Workers' Advocate

pc: BC Building Trades Affiliates