

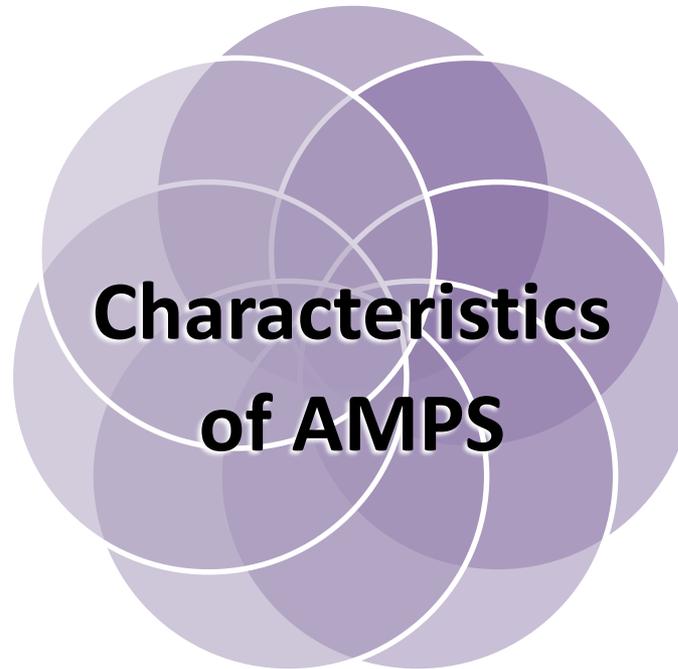
Proposed Administrative Monetary Penalty Regime (*Canada Labour Code, Part IV*)

Presentation to Canadian
Maritime Advisory
Council (CMAC)

**Additional tool in the
enforcement
continuum**

Deterrent ≠ punitive

**Absolute
liability: intent is
not required =
No defence of
due diligence**



**Does not generate
revenue for the
regulator**

**Burden of proof:
balance of
probabilities, lower
threshold than
criminal prosecution**

**Some discretion is
intended**



Legislative Framework

Once in force, the new Part IV of the Code will provide the legislative framework to establish an AMP system. This includes prescribing, **by regulation**, key details of the AMP system, such as:

- the designation of violations for which AMPs may be issued;
- the determination of the penalty amount payable for each violation; and
- the reduction of the penalty amount for reason of early payment;

The following matters will be established through **policy**:

- the procedure for issuing AMPs, including who may issue them and in which circumstances;
- the content of NoVs, including to whom they are to be sent; and
- the short-form description of violations.



Designation of Violations

- For the purposes of issuing AMPs, regulations made pursuant to Part IV of the Code would include schedules that designate as violations all provisions that specify legal obligations under Parts II and III of the Code, and their related regulations.
- The schedules would also prescribe the classification of each violation on a scale of A to E, based on the gravity of the conduct.
- Category “A” would be used for administrative or technical violations and category “E” would be used for violations that would likely cause death or severe injury (regardless if death or injury actually occurs).
- The categorization (A-E) of Part II and Part III violations would be stipulated in the Regulations.



Classification of Violations

	PART II	PART III
A	Related to administrative and technical provisions.	Related to administrative and technical provisions.
B	Related to low-risk hazards that may result in a minor injury or illness that requires medical treatment but that does not result in disabling injuries.	Related to the calculation and payment of wages.
C	Related to medium-risk hazards that may result in a serious injury or illness that prevents an employee from effectively performing their regular work duties.	Related to leave or other requirements, which could have an impact on financial security, or health and safety, of an individual or group of individuals.
D	Related to high-risk hazards that may result in serious injury or fatality.	Related to the minimum age of employment and protection of youth.
E	Involves immediate life-threatening hazards or hazards known to cause latent occupational disease. These hazards give the employee little to no opportunity to avoid or minimize severe injury or death or occupational disease.	N/A



Examples of Classifications of Violations

Type	Part II		Part III	
A	Related to administrative and technical provisions.	10.4(1)(b) (Hazardous Substances - Hazard Investigation) - Failure to notify the work place committee or the health and safety representative of the investigation and the name of the qualified person.	Related to administrative and technical provisions.	24(2) (Keeping of records) – Failure to keep a record for at least three years after work is performed by an employee.
B	Related to low-risk hazards that may result in a minor injury or illness that requires medical treatment but that does not result in disabling injuries.	9.40(g) (Sanitation) - Failure to ensure lunch rooms have non-combustible covered receptacles for the disposal of waste food or waste material.	Related to the calculation and payment of wages .	254(1) (Pay Statement) Failure to furnish the employee a pay statement.



Examples of Classifications of Violations (cont'd)

Type	Part II		Part III	
C	Related to medium-risk hazards that may result in a serious injury or illness that prevents an employee from effectively performing their regular work duties.	<p>14.20(1) (Materials Handling) - Failure to set out in writing instructions on the inspection, testing and maintenance of motorized or manual materials handling.</p> <p>13.9 (Tools and Machinery) - Failure to report defects in a tool or machine to the employer.</p>	Related to leave or other requirements, which could have an impact on financial security, or health and safety , of an individual or group of individuals.	<p>178(1) (Minimum Wage) – Failure to pay an employee minimum wage.</p> <p>205(1) (Reassignment and Job Modification) – Failure to grant a request for job modification or reassignment to a pregnant or nursing mother at risk when job modification or reassignment would have been reasonably practicable.</p>
D	Related to high-risk hazards that may result in serious injury or fatality.	<p>3.12(1) (Temporary Structures and Excavations) - Failure to mark the location of underground pipes, cables and conduits before excavation.</p> <p>16.3(1) (First Aid) - Failure to ensure there is a first aid attendant at a workplace in which six or more employees are working at any time.</p>	Related to the minimum age of employment and protection of youth .	10(1) (Employees Under Minimum Age) – Employing a person under a specified age in an occupation not permitted in the regulations.



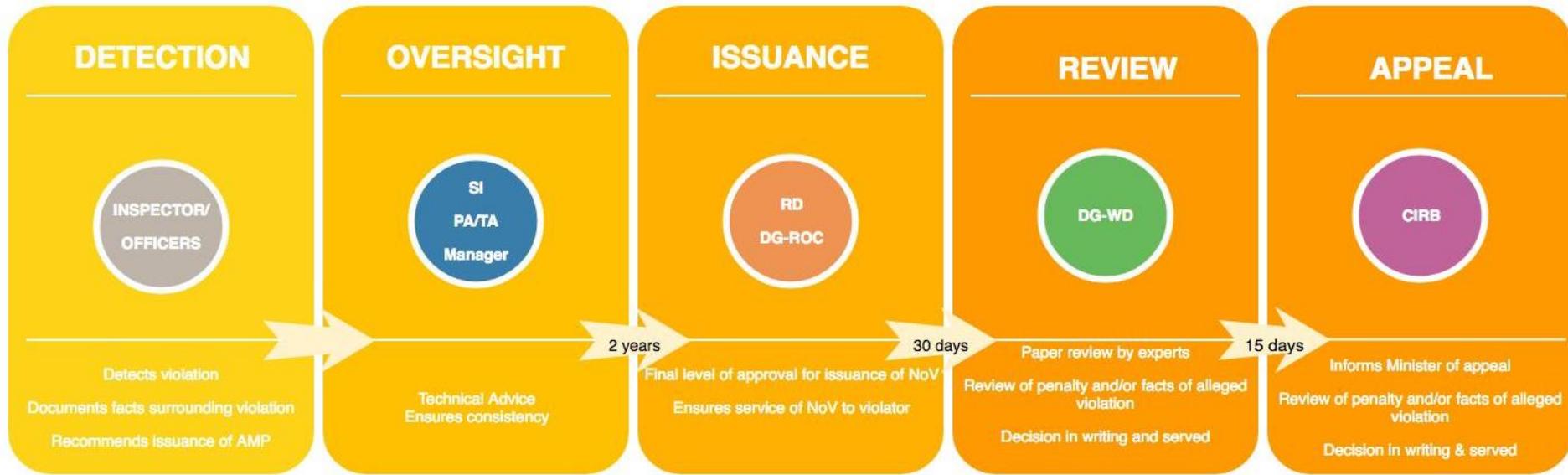
Examples of Classifications of Violations (cont'd)

Classification "E", Part II Only		
E	<p>Involves immediate life-threatening hazards or hazards known to cause latent occupational disease. These hazards give the employee little to no opportunity to avoid or minimize severe injury or death or occupational disease.</p>	<p>***The following examples are categories of provisions reflecting the most severe violations under Part II of the Code and their associated regulations (e.g. <i>Canada Occupational Health and Safety Regulations, Maritime Occupational Health and Safety Regulations, Aviation Occupational Health and Safety Regulations, etc.</i>). The schedules will list each provision and it's classification.</p> <p>(Temporary Structures and Excavations) - Failure to support the walls of a tunnel, excavation or trench more than 1.4 m deep by shoring and bracing.</p> <p>(Safety Materials Equipment Devices and Clothing) - Failure to provide a fall-protection system to applicable persons working from an unguarded structure or on a vehicle as prescribed (2.4 m).</p> <p>(Confined Space) - Failure to establish procedures for the entry, exit, and occupation of a confined space or class of confined spaces as prescribed.</p> <p>(Hazardous Substances – Asbestos) - Failure to ensure a qualified person takes into consideration types of asbestos, the condition of asbestos material, the friability of asbestos-containing material and the accessibility and likelihood of damage and release of asbestos-containing material and employee exposure.</p> <p>(Safe Occupancy of the Workplace – Combustible Dust) - Failure to ensure the atmosphere and surfaces are substantially free of combustible dust.</p>



How this works

Internal process



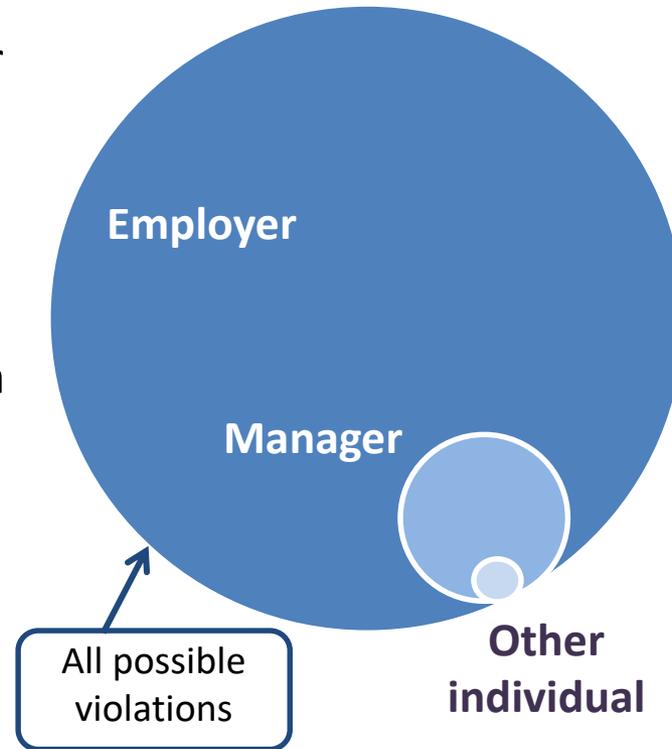
SI = Senior Investigator
PA = Program Advisor
TA = Technical Advisor
RD = Regional Director

DG ROC = Director General of Regional Operations and Compliance
DG WD = Director General of Workplace Directorate
CIRB = Canada Industrial Relations Board



Who will receive AMP?

- **Employers** (e.g. corporations or department)
- **Director or manager** if “directed, authorized, assented to, acquiesced or participated in the commission of the violation”.
- Exceptionally, **individuals** for cases of deliberate/reckless conduct that puts health and safety at risk



When AMPs could be issued

- As a principle, **enforcement continuum would be followed** before AMPing (e.g. after AVC and Directions), except in some cases.
- Procedural guidance will be developed relating to early issuance of AMPs. Guidance will indicate situations in which earlier issuance may be triggered.
- Some possible examples are:
 - In the case of severe violations, e.g. Category E violations (Part II) and Category D violations (Part III), and
 - In the case of repeat violations, e.g. Repeat C or D violation; and
 - In the case of repeat Directions or Orders (e.g. Payment Orders, Compliance Orders, CIRB Orders).



Base Amount – Calculation

1. Identify violation

- Schedules divided per part of the CLC/Regulations
- Find associated category for violation (A-E)

2. Identify violator

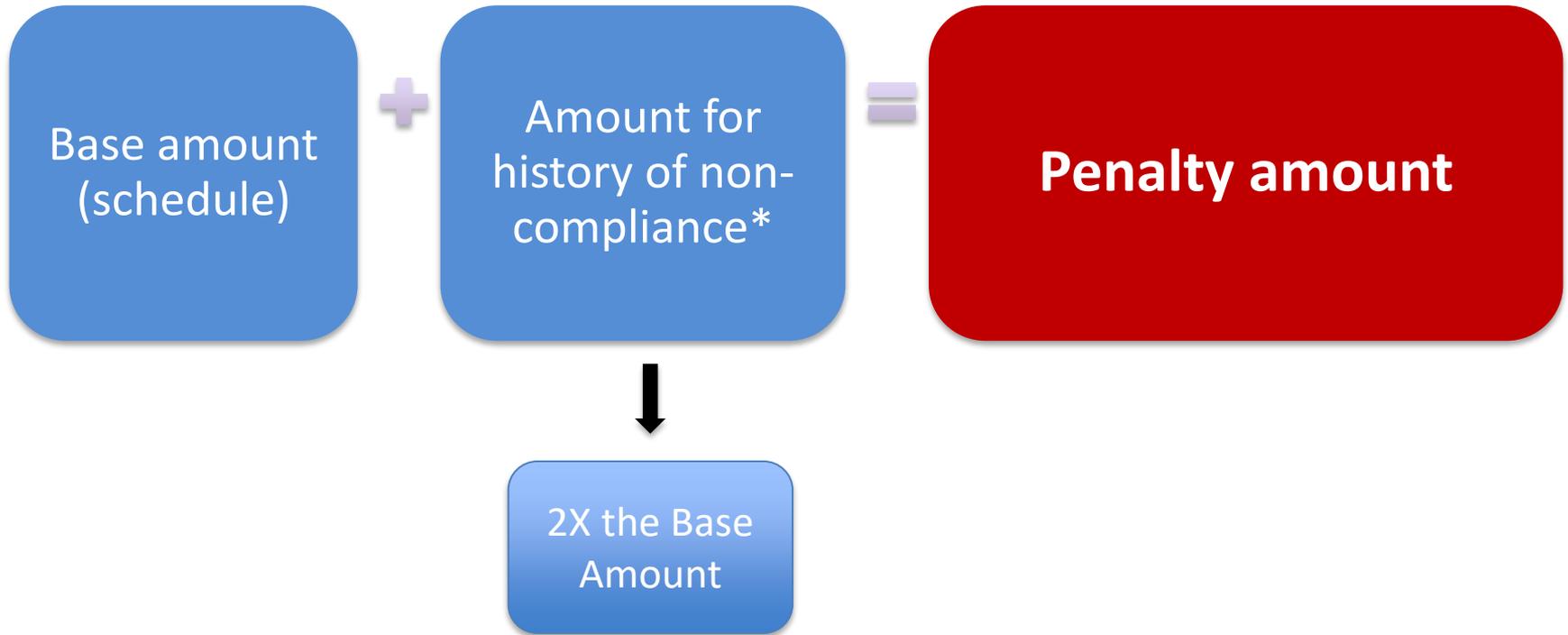
- Categories: individual, small business (< 100 employees or 5M\$ annual gross revenue) and), large business (≥ 100 employees)

3. Use grid to determine base amount

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



Penalty amount – Calculation

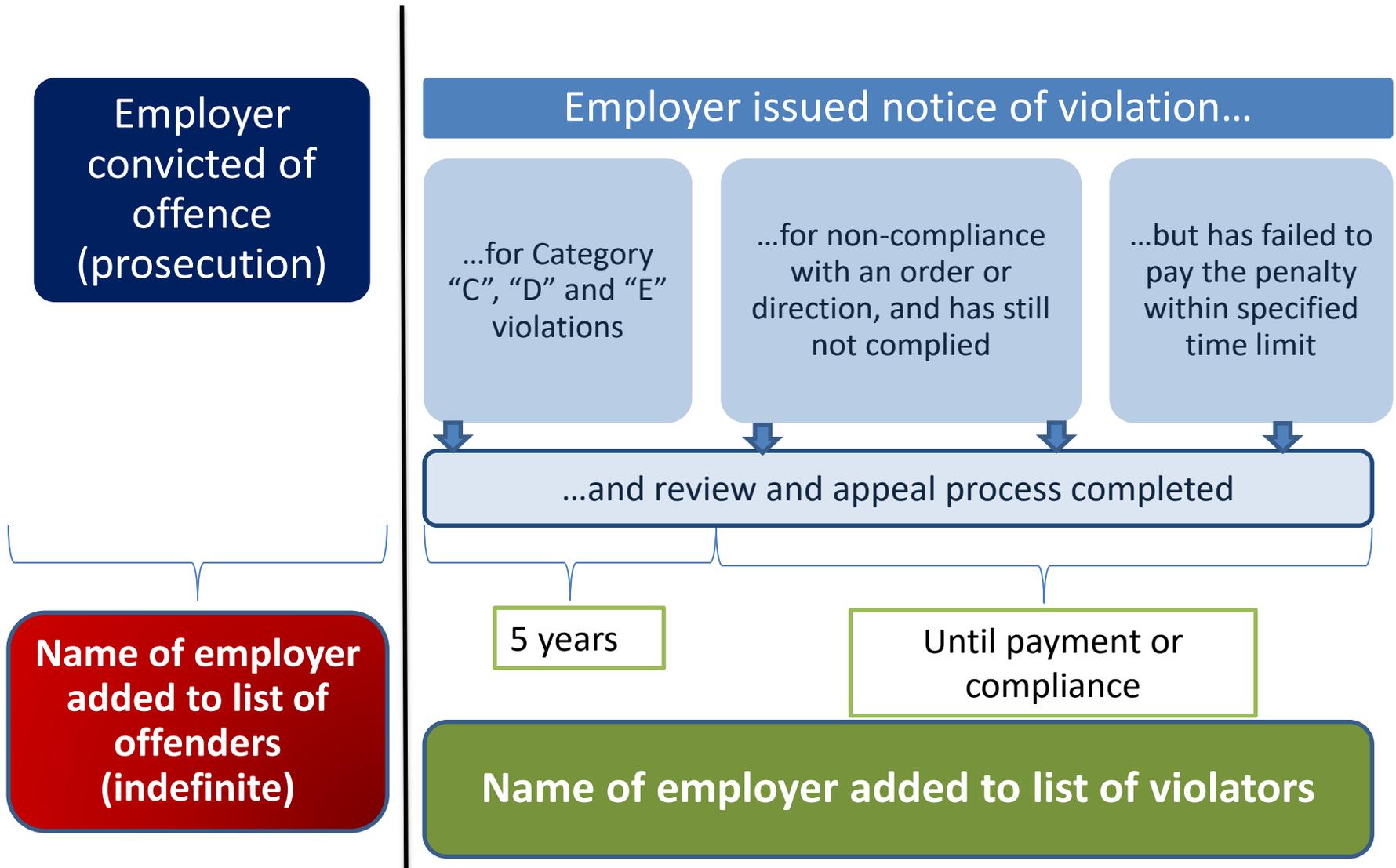


* History of non-compliance = Enforcement actions (AMP, injunction and conviction) in previous five years for provisions in the same Part (Part II or Part III) of the Code

Early payment: 50% rebate if AMP is paid within 15 business days of service; this option is available for violations of "A" to "C" category.



Naming of Offenders and Violators – Proposed Model



Current Status

- The first round of consultations began in October 2017.
- The second round of consultations was completed in February and a number of comments were received. While the proposed AMP model was well received, some adjustments were suggested, such as moving some wage-related provisions to category “C”.

Next Steps

- Part IV of the Code and the associated regulations are anticipated to come into force in June 2020.
- Regulatory drafting began in early April 2019, with draft regulations anticipated to be published in *Canada Gazette*, Part I, in June 2019. This publication represents another opportunity for all stakeholders to provide input on the draft regulations.
- Stakeholders will be given advance notice of the coming into force of the legislation and regulations, and educational and outreach materials will be available to employers and employees.
- Mechanisms to recover/collect unpaid penalties will also be established.



Overview of *Canada Labour Code*

Part II: Occupational Health and Safety	Part III: Labour Standards
<p>Purpose: prevent workplace-related accidents and injuries, including occupational diseases</p>	<p>Purpose: provide minimum conditions of employment for employees and a level playing field for employers</p>
<p>Application: private-sector employers and Crown corporations in federal jurisdiction, federal public service</p>	<p>Application: private-sector employers and Crown corporations in federal jurisdiction</p>
<p>Obligations for employers and employees (including OSH committees/representatives) to protect health and safety of employees and others in the workplace</p> <p>Three fundamental rights: right to know; right to participate; right to refuse</p> <p>Specific rules and requirements set under <i>Canadian Occupational Health and Safety Regulations</i> and industry-specific regulations</p>	<p>Current labour standards include:</p> <ul style="list-style-type: none"> • Hours of work (overtime, maximum hours of work, weekly day of rest); • Wages (minimum wage, reporting pay, equal wages, payment of wages); • Minimum age of employment; • Annual vacations; • General holidays; • Maternity-related reassignment • Leaves of absence (e.g., maternity, parental, compassionate care, bereavement, sickness); • Notice of individual and group termination of employment, severance pay; • Recourse for unjust dismissal, wage recovery.

Parliament recently passed legislation to strengthen and modernize the *Canada Labour Code's* compliance and enforcement provisions

- Among other initiatives related to the Code, Budget 2017 announced amendments to “ensure that hard-working Canadians can more easily recover wages owed to them by their employer” and that “employers who repeatedly offend will be punished”.
- The *Budget Implementation Act, 2017, No. 1* (Bill C-44), which received Royal Assent on June 22, 2017, brings changes to Part II and Part III of the Code and provides for a new Part IV (Administrative Monetary Penalties) to address issues such as:
 - high levels of recidivism;
 - lack of tools and incentives, short of prosecution, to deal with employers who refuse to voluntarily comply;
 - the need to modernize compliance and enforcement approaches and align with other jurisdictions and federal regulatory regimes.
- New measures are aimed at supplementing existing tools, such as assurances of voluntary compliance (AVCs), directions, payment orders, and prosecution.



New compliance and enforcement tools

Part II and Part III of the Code

- Administrative monetary penalties (AMPs) (new Part IV of the Code)
- Public naming of employers who have committed an offence or violation
- Transfer of adjudicative functions to the Canada Industrial Relations Board (CIRB)

Part III of the Code

- Compliance orders
- Recourse against reprisals
- Employer internal audits *
- Measures to improve the wage recovery process (e.g. administrative fees, extension of period covered by payment order) *
- Technical amendments (e.g. service of documents) *

Coming into force on dates to be specified by Order in Council:

- Several measures (*) came into force on April 1, 2019
- Regulations needed to implement AMPs, naming of violators/offenders

