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Administrative Penalties

Administrative Penalties Guideline 📄

Effective January 1, 2018, the Superintendent of Financial Services (Superintendent) has the authority to impose administrative penalties in the pension sector for contraventions under the Pension Benefits Act (PBA) and regulations made under the PBA.

An administrative penalty is a monetary penalty the Superintendent can impose, instead of a court, for contraventions of certain provisions under the PBA and regulations. It is not the same as a fine, which requires a pleading or finding of guilt. Unlike charges laid under law, there is no criminal or quasi-criminal element when administrative penalties are imposed. Administrative penalties are intended to promote compliance rather than be a punishment for wrongful activity.

The introduction of administrative penalties does not create new or higher compliance requirements. Instead, it expands the enforcement options available to the Financial Services Commission of Ontario (FSCO) to regulate pension plans in Ontario.

There are two categories of administrative penalties:

- General administrative penalties apply to contraventions prescribed in Schedule 1 of the administrative penalties regulation (Regulation 365/17). General administrative penalties can also apply to failures to comply with requirements imposed by order or obligations assumed by way of undertaking.

- Summary administrative penalties apply to late regulatory filings, which have set daily penalties for each of the contraventions prescribed in Schedule 2 of the administrative penalties regulation.

Both categories are subject to the same maximum penalty amounts: up to a maximum of $10,000 for a contravention or failure to comply by an individual, or up to $25,000 in the case of a person other than an "individual" (such as a corporation).

Administrative penalties can be imposed on their own or in conjunction with other regulatory measures under the PBA. The Superintendent has the discretion to decide what action to take if there is an alleged contravention of the PBA and regulations, as well as which regulatory measures to pursue.

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The general process to follow when the Superintendent imposes an administrative penalty is set out in the **Administrative Penalties Guideline** 📄. Those who are responsible for the administration of the pension plan/pension fund and locked-in accounts, should familiarize themselves with the provisions that may be subject to administrative penalties under Schedules 1 and 2 of the administrative penalties regulation.

Plan administrators and their agents should also note the following:

- an administrative penalty cannot be paid from the pension fund;

- there is a 15 day time limit to request a hearing before the Financial Services Tribunal upon receipt of a notice of intended decision (NOID) for a general administrative penalty;

- there is a 15 day time limit to make a written submission to the Superintendent as to why a summary administrative penalty should not be imposed;

- if the Superintendent issues an order to impose a summary administrative penalty, there is 15 day time limit to appeal the Superintendent's order before the Financial Services Tribunal; and

- details of administrative penalties that are imposed will be publically reported on FSCO's website.

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