

# Administrative penalties for employment offences

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Employment offences commonly lead to an administrative penalty, yet employers with no practical experience of the National Labour Office's administrative offence proceedings do not always have a clear picture of how a penalty is determined and what principles apply. This article explores the main stages of a penalty and ways to challenge it.

Seeking information from the employer marks the start of administrative offence proceedings by the National Labour Office ("NLO"). It is important at this stage to communicate efficiently and cooperate by submitting any documents requested. The NLO will then make a decision based on the information presented in the case and on an assessment of circumstances.

Before a decision can be made, the NLO must assess whether it is at all possible to find an administrative offence in the employer's conduct. If an offence is found, then we must assess whether the NLO used statutory procedures in finding it. The concept of an administrative offence defined by [section 5\(1\) of the Administrative Liability Act<sup>1</sup>](#) requires the NLO to establish conduct, unlawfulness, and culpability.

Conduct can take the form of the employer's action or omission, it must be one that breaks a law or regulation (unlawfulness), and such unlawful conduct must be capable of being attributed to the employer (culpability). If any one of these criteria is absent and yet a penalty is imposed, the employer should challenge the NLO decision.

If all the criteria are present, the NLO may hold the employer administratively liable, always following the ["Advise First!" principle](#). The government agencies are applying this principle in their work, and it involves explaining requirements and correcting faults as well as imposing a warning, not a penalty. If the NLO activities lack indications that this principle has been followed, this may in fact form an independent basis for challenging the decision.

Where it is not possible to issue a warning or correct the faults, the NLO may impose an administrative penalty (fine). At this stage the NLO must also observe binding preconditions outlined by the [NLO guidance](#) on imposing an administrative penalty. Key aspects to consider include the following:

- The decision should evaluate considerations relating to the usefulness of a penalty and should justify the size of the fine, considering the nature and circumstances of the offence, the offender's attitude to it, and the offender's financial position.
- There are special conditions for evaluating each type of penalty (e.g. for failure to undertake an assessment of risks inherent in the work environment, or for failure to pay wages).
- An officer may derogate from the guidance only if the decision sets out special grounds for such derogation.

If the NLO breaches any of the binding preconditions, the employer may challenge the decision imposing an administrative penalty.

Administrative penalties for employment offences may vary from a warning to a fine of EUR 7,100. Outside

the [Labour Code](#) but equally restrictive is a ban on taking part in public procurement for certain offences<sup>2</sup> under [section 42\(7\) of the Public Procurement Act](#). This restriction is particularly important for construction companies, and meeting certain conditions may help lift the ban.

Employers are commonly punished for offences falling into two categories. The first category is unregistered employment – either workers have no employment contracts or their contracts contain unlawful defects. The other category is related to accidents and failure to comply with requirements for safety at work. It is important to note that the characteristics of each offence may influence the penalty process. For example, if an accident at work has taken place, the NLO may start administrative offence proceedings, issue an administrative instrument, and seek criminal proceedings at the same time.

In summary, an administrative penalty is not one to be imposed easily. Equivalent to lesser criminal proceedings, administrative offence proceedings have a sufficiently high threshold for proof. Failure to satisfy the burden of proof creates an opportunity to challenge the decision, yet the difficulty of launching a successful challenge depends on the characteristics of the offence. Employers facing administrative offence proceedings should consult their lawyers and monitor each stage to prevent an excessive and unjustified penalty being imposed.

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<sup>1</sup> An administrative offence is a person's unlawful, culpable conduct (act or omission) for which the law or binding municipal rules prescribe administrative liability.

<sup>2</sup> Offences involving the employment of persons without a work permit or a written contract of employment