

BOARD OF DIRECTORS
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March 2003

Update 2003 – 2

TO: HOLDERS OF THE *PREVENTION MANUAL*

This update of the *Prevention Manual* contains amendments to the *Manual* approved by the Board of Directors since update 2003 – 1.

The update consists of policy amendments arising from the *Workers Compensation Amendment Act (No. 2), 2002* (“Bill 63”), which amended the *Workers Compensation Act* effective March 3, 2003. The policy amendments include the following:

- amendments relating to the Board’s authority to change its previous decisions;
- amendments relating to the Board’s obligation in decision-making to apply a policy of the Board of Directors that is applicable to the case before it;
- amendments to reflect the removal of certain formal statutory process requirements for levying administrative penalties;
- amendments regarding deferral of collection proceedings for administrative penalties while an application for stay of proceedings is under consideration by the Chief Review Officer; and
- various consequential amendments to further implement Bill 63 and the policy amendments noted above.

A list of amendments has been included as part of the package.

If you have any questions regarding this update or the *Prevention Manual*, please call the Publications and Video Distribution at 1-866-271-4879.

DOUGLAS ENNS
Chair, Board of Directors

Attachments

SUMMARY OF AMENDMENTS – Update 2003 – 2

- Preface
- Organization of this Manual
- Table of Contents

Amendments relating to the Board's authority to change its previous decisions and orders, as follows:

- changes to the POLICY statement in Item D2-113-1, Varying or Cancelling Previous Decisions or Orders.

Amendments relating to the obligation of the Board in decision-making to apply a policy of the Board of Directors that is applicable to the case before it, as follows:

- new Item D1-107-1, Application of the *Act* and Policies.

Amendments to reflect the removal of certain formal statutory process requirements for levying administrative penalties:

- deletion of Item D12-196-4, Administrative Penalties – Process for Imposing; and
- deletion of Item D12-196-5, Administrative Penalties – Decision.

Amendments regarding deferral of collection proceedings for administrative penalties while an application for stay of proceedings is under consideration by the Chief Review Officer:

- new Item D12-196-7, Administrative Penalties – Payment of Penalty.

Various consequential amendments, as follows:

D2-111-1	Assignment of Board Authority
D12-187-1	Orders – General Authority
D12-196-1	Administrative Penalties – Criteria for Imposing
D12-196-6	Administrative Penalties – Amount of Penalty
D12-196-8	Administrative Penalties – Payment of Interest on Successful Appeal
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D12-196-11	Administrative Penalties – Warning Letters
D12-197-1	Administrative Penalties – Reviews and Penalties (Deleted)
Division 13	Reviews (Deleted)
D13-199-1	Reviews – Reviewable Decisions (Deleted)
D13-201-1	Reviews – Procedures for Applying (Deleted)
D13-202-1	Reviews – Reviewing Officers (Deleted)
D13-204-1	Reviews – Notice of a Review (Deleted)
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Division 14	Appeals (Deleted)
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PREVENTION MANUAL

Instructions for Update #2 – (March 2003)

Check As Done	Remove Old Pages Numbered/Titled:	Insert New Pages Numbered/Titled:
<input type="checkbox"/>	Preface	Preface
<input type="checkbox"/>	Organization of this Manual	Organization of this Manual
<input type="checkbox"/>	Table of Contents iv thru xiii	i thru x
<input type="checkbox"/>	Division 1 – Interpretation and Purposes no old pages	D1-107-1 Application of the <i>Act</i> and Policies
<input type="checkbox"/>	Division 2 - Board Mandate D2-111-1 Assignment of Board Authority	D2-111-1 Assignment of Board Authority
<input type="checkbox"/>	D2-113-1 Reconsideration of Decisions	D2-113-1 Varying or Cancelling Previous Decisions or Orders
<input type="checkbox"/>	Division 12 – Enforcement D12-187-1 Orders – General Authority	D12-187-1 Orders – General Authority
<input type="checkbox"/>	D12-196-1 Administrative Penalties – Criteria for Imposing	D12-196-1 Administrative Penalties – Criteria for Imposing
<input type="checkbox"/>	D12-196-4 Administrative Penalties – Process for Imposing (policy deleted)	no new pages
<input type="checkbox"/>	D12-196-5 Administrative Penalties – Decision (policy deleted)	no new pages
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<input type="checkbox"/>	D12-196-9 Administrative Penalties – Prosecution Following Penalty	D12-196-9 Administrative Penalties – Prosecution Following Penalty

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<input type="checkbox"/>	Title Page	Title Page
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PREFACE

Section 82 of the *Workers Compensation Act* provides that the Governors of the Workers' Compensation Board shall approve and superintend the policies of the Board, including policies with respect to compensation, assessment, rehabilitation and occupational safety and health (or prevention). It also requires the Governors to enact bylaws with respect to the manner in which their policies shall be published. The powers, duties and functions of the Governors are currently being discharged by a Panel of Administrators.

Published policy of the Governors now consists of:

- the *Assessment Policy Manual*;
- the *Classification and Rate List*;
- the *Prevention Division Policy and Procedure Manual*;¹
- the policy statements in the *Prevention Manual*;
- the *Rehabilitation Services and Claims Manual*;
- the *Workers' Compensation Reporter – Decisions No. 1 – 423*;²

as well as amendments to the policy manuals, any new or replacement manuals issued by the Governors or Panel, any documents published by the Workers' Compensation Board that are adopted by the Governors or Panel as published policy of the Governors, and all decisions of the Governors or Panel declared to be policy decisions.

The *Manual* in which this preface appears contains current Board policy with respect to prevention matters. It is used by Board staff in carrying out their responsibilities under the *Workers Compensation Act*. As new policy is developed and approved in this area, the *Manual* will be updated by issuing replacement pages.

¹ The policies in the *Prevention Division Policy and Procedure Manual* are gradually being consolidated into the *Prevention Manual*, as appropriate, and “retired”.

² Decisions No. 1 – 423 are gradually being consolidated into the policy manuals, as appropriate, and “retired”. An explanation of “retirement” and an index of “retired” Decisions are found in APPENDIX 1 to this *Manual*.

ORGANIZATION OF THIS MANUAL

This *Manual* sets out the policies and practices that relate to the Board's Prevention mandate.

The *Manual* is divided into two parts:

Policies and Practices applying to the occupational health and safety provisions of the *Workers Compensation Act*

Policies and Practices applying to provisions of the occupational health and safety regulations

The *Manual* consists of a number of "Items" that relate to particular provisions. An explanation of how the Items are organized is found on the following page.

The Background section for various Items reproduces relevant excerpts from the *Workers Compensation Act* or the Board's occupational health and safety regulations.

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PREVENTION MANUAL

RE: _____ **ITEM:** _____

BACKGROUND

This section reproduces the relevant provision(s) of the *Act* or the regulations, preceded by a brief explanatory note.

POLICY

This section sets out the Board's Policy statement. The Policy is approved or amended only by the Panel of Administrators after appropriate consultation.

PRACTICE

This section sets out the Board's Practice to implement the Policy. The Practice is approved or amended by the President/CEO, or delegate, after appropriate consultation.

This information relates to the POLICY section of each item only, unless otherwise indicated.

EFFECTIVE DATE:

AUTHORITY:

CROSS REFERENCES:

HISTORY:

APPLICATION:

This identifies the subject matter.

This number cross-references the Division and the section of Part 3 of the *Act* (using the prefix "D") or the section of the applicable regulations (using the prefix "R"). Items relating to Part 1 of the *Act* have been assigned the prefix D24.

This is the effective date of the Policy.

This is the statutory or regulatory authority for the Policy.

This documents the changes in each Item of this *Manual* since the Item was first approved.

This clarifies, where necessary, the categories of cases to which a changed Policy applies as of the effective date. (There is no APPLICATION DATE for many of the Items relating to the *Act*. The Policies for those Items reflect the changes to the *Workers Compensation Act* that came into force on October 1, 1999, which is also the effective date of the Policies.)

This identifies other relevant Items in the *Manual*, or other provisions of the *Act* or the regulations. This information is only inserted for the assistance of the reader. It should not be considered exhaustive.

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APPENDICES

APPENDIX 1

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RE: Application of the Act and Policies

ITEM: D1-107-1

BACKGROUND

1. Explanatory Notes

Decision-making at the Workers' Compensation Board is governed by the *Workers Compensation Act*.

Section 82(1)(a) of the *Act* authorizes the Board of Directors to set and revise the Board's policies. These policies are of broad general application and provide further direction to Board officers in dealing with individual matters.

Section 99(2) of the *Act* requires the Board to make decisions based upon the merits and justice of the case, but in so doing to apply a policy of the Board of Directors that is applicable in the case.

The purpose of the POLICY in this Item is to provide direction regarding the interaction between the application of the *Act* and the policies made under the *Act* and the consideration of the individual circumstances of the case.

The POLICY does not comment on documents issued under the authority of the President/Chief Executive Officer of the Board. That is a matter for the President/CEO to address.

2. The Act

Section 82(1)(a):

The board of directors must ... set and revise as necessary the policies of the board of directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety

Section 99(2):

The Board must make its decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in the case.

POLICY

In making decisions, Board officers must take into consideration:

1. the relevant provision or provisions of the *Act*;
2. the relevant policy or policies in this *Manual*; and
3. all facts and circumstances relevant to the case.

By applying the relevant provisions of the *Act* and the relevant policies, Board officers ensure that:

1. similar cases are adjudicated in a similar manner;
2. each participant in the system is treated fairly; and
3. the decision-making process is consistent and reliable.

Section 99(2) of the *Act* provides that:

The Board must make its decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in the case.

In making decisions, Board officers must take into account all relevant facts and circumstances relating to the case before them. This is required, among other reasons, in order to comply with section 99(2) of the *Act*. In doing so, Board officers must consider the relevant provisions of the *Act*. If there are specific directions in the *Act* that are relevant to those facts and circumstances, Board officers are legally bound to follow them.

Board officers also must apply a policy of the Board of Directors that is applicable to the case before them. Each policy creates a framework that assists and directs Board officers in their decision-making role when certain facts and circumstances come before them. If such facts and circumstances arise and there is an applicable policy, the policy must be followed.

All substantive and associated practice components in the policies in this *Manual* are applicable under section 99(2) of the *Act* and must be followed in decision-making. The term “associated practice components” for this purpose refers to the steps outlined in the policies that must be taken to determine the substance of decisions. Without these steps being taken, the substantive decision required by the *Act* and policies could not be made.

References to business processes that appear in policies are only applicable under section 99(2) of the *Act* in decision-making to the extent that they are necessary to comply with the rules of natural justice and procedural fairness. The term “business processes” for this purpose refers to the manner in which the Board conducts its operations. These business processes are not intrinsic to the substantive decisions required by the *Act* and the policies.

If a policy requires the Board to notify an employer, worker, or other workplace party before making a decision or taking an action, the Board is required to notify the party if practicable. "If practicable" for this purpose means that the Board will take all reasonable steps to notify, or communicate with, the party.

This Item is not intended to comment on the application of practice directives, guidelines and other documents issued under the authority of the President/Chief Executive Officer of the Board. The application of those documents is a matter for the President/CEO to address.

PRACTICE

For any relevant PRACTICE information, readers should consult the Prevention Division's Guidelines available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	ss. 82(1)(a) and 99(2), <i>Workers Compensation Act</i>
CROSS REFERENCES:	
HISTORY:	
APPLICATION:	This policy applies to decisions on or after March 3, 2003.

RE: Assignment of Board Authority

ITEM: D2-111-1

BACKGROUND

1. Explanatory Notes

Section 111 sets out the Board's functions, duties and powers in matters relating to occupational health and safety. The "Board" for this purpose is the corporation known as the Workers' Compensation Board. It is necessary to determine what persons should exercise the Board's authority in various areas or provide a mechanism for making that determination. The Board of Directors does this through policy-making under section 82 of the *Act*. Section 113 sets out the Board's privative clause with respect to the exercise of its authority under Part 3.

2. The Act

Section 82(1):

The board of directors must

- (a) set and revise as necessary the policies of the board of directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety, and
- (b) set and supervise the direction of the Board.

Section 111(1):

In accordance with the purposes of this Part, the Board has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.

Section 111(2):

In carrying out its mandate, the Board has the following functions, duties and powers:

- (a) to exercise its authority to make regulations to establish standards and requirements for the protection of the health and safety of workers and the occupational environment in which they work;

- (b) to undertake inspections, investigations and inquiries on matters of occupational health and safety and occupational environment;
- (c) to provide services to assist joint committees, worker health and safety representatives, employers and workers in maintaining reasonable standards for occupational health and safety and occupational environment;
- (d) to ensure that persons concerned with the purposes of this Part are provided with information and advice relating to its administration and to occupational health and safety and occupational environment generally;
- (e) to encourage, develop and conduct or participate in conducting programs for promoting occupational health and safety and for improving the qualifications of persons concerned with occupational health and safety and occupational environment;
- (f) to promote public awareness of matters related to occupational health and safety and occupational environment;
- (g) to prepare and maintain statistics relating to occupational health and safety and occupational environment, either by itself or in conjunction with any other agency;
- (h) to undertake or support research and the publication of research on matters relating to its responsibilities under this Act;
- (i) to establish programs of grants and awards in relation to its responsibilities under this Act;
- (j) to provide assistance to persons concerned with occupational health and safety and occupational environment;
- (k) to cooperate and enter into arrangements and agreements with governments and other agencies and persons on matters relating to its responsibilities under this Part;
- (l) to make recommendations to the minister respecting amendments to this Act, the regulations under this Part or Part 1 of this Act, or other legislation that affects occupational health and safety or occupational environment;

- (m) to inquire into and report to the minister on any matter referred to it by the minister, within the time specified by the minister;
- (n) to fulfill its mandate under this Part in a financially responsible manner;
- (o) to do other things in relation to occupational health and safety or occupational environment that the minister or Lieutenant Governor in Council may direct.

Section 113(1):

Subject to sections 239 and 240, the Board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined under this Part, and the action or decision of the Board is final and conclusive and is not open to question or review in any court.

POLICY

The Board of Directors will exercise the following powers and responsibilities as set out in Part 3:

- make recommendations to the minister under section 111(2)(l);
- make inquiries into matters referred by the minister under section 111(2)(m);
- comply with directions of the Lieutenant Governor in Council under section 111(2)(o);
- enter into formal agreements and arrangements with other agencies and governments covered by section 114(2);
- make and amend Board regulations;
- grant exemptions from the application of Part 3 under section 106; and
- approve policies under Part 3 (section 82).

The President/Chief Executive Officer (CEO) has the authority to exercise the remaining powers and responsibilities described in Part 3. The President/CEO also has the authority to assign these powers and responsibilities to divisions, departments, categories of officers or individual officers of the Workers' Compensation Board. President/CEO assignments will state whether the

assignee has the authority to further assign the power or responsibility or whether it must be exercised personally.

The powers and responsibilities described in Part 3 will be carried out primarily by the Board's Prevention Division and must be exercised in accordance with the policies of the Board of Directors.

The authority to approve prosecutions under section 214(2) is assigned by the Board of Directors directly to the President/CEO and may not be delegated by the President/CEO without approval of the Board of Directors.

PRACTICE

The assignments of the President/CEO will be in writing and publicly available.

EFFECTIVE DATE:	February 11, 2003
AUTHORITY:	ss. 82, 111, and 113(1), <i>Workers Compensation Act</i>
CROSS REFERENCES:	
HISTORY:	Item developed to implement the <i>Workers Compensation (Occupational Health and Safety) Amendment Act, 1998</i> , effective October 1, 1999. References to Panel of Administrators replaced by references to Board of Directors, on February 11, 2003, to reflect the <i>Workers Compensation Amendment Act, 2002</i> . Consequential changes subsequently made to restatement of section 113(1) to implement the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , on March 3, 2003.
APPLICATION:	

**RE: Varying or Cancelling Previous
Decisions or Orders**

ITEM: D2-113-1

BACKGROUND

1. Explanatory Notes

Section 113(2) sets out the Board's authority to make a new decision or order to vary or cancel a previous decision or order made under Part 3. It is necessary to set out the grounds on which the Board will exercise that authority.

A subsidiary issue relates to the requirements for providing notice and posting that must be observed when the Board makes a new decision or order under section 113(2) to vary or cancel an order. In these cases, it must give notice to the employer or other person in relation to whom the order was made. If the person given notice was required by or under Part 3 to post a copy of the original order or to provide copies of it to a joint committee, worker representative or union, the person must post and provide copies of the notice in accordance with the same requirements under section 189. The general posting requirements in section 154 will apply where posting of the varying or cancelling of an order is required.

2. The Act

Section 113(2) to (2.3):

113(2) Despite subsection (1), but subject to subsection (2.1) and sections 189(1) and 190(4), the Board may at any time, on its own initiative, make a new decision or order varying or cancelling a previous decision or order of the Board or of any officer or employee of the Board respecting any matter that is within the jurisdiction of the Board under this Part.

113(2.1) The Board may not make a decision or an order under subsection (2) if

- (a) a review has been requested under section 96.2 in respect of the previous decision or order, or
- (b) an appeal has been filed under section 240 in respect of the previous decision or order.

113(2.2) Despite subsection (1), the Board may review a decision or order made by the Board or by an officer or employee of the Board under this Part but only as specifically provided in sections 96.2 to 96.5.

113(2.3) Despite subsection (1), the Board may at any time set aside any decision or order made by it or by an officer or employee of the Board under this Part if that decision or order resulted from fraud or misrepresentation of the facts or circumstances upon which the decision or order was based.

Section 189:

- (1) If the Board varies or cancels an order, it must give notice to the employer or other person in relation to whom the order was made.
- (2) If the person given notice under subsection (1) was required by or under this Part to post a copy of the original order or to provide copies of it to a joint committee, worker representative or union, the person must post and provide copies of the notice in accordance with the same requirements.

POLICY

This policy addresses the Board's authority, on its own initiative, to make new decisions or orders varying or cancelling previous decisions or orders under section 113(2) of the *Act*.

(a) "On Its Own Initiative"

It is significant that section 113(2) only authorizes the Board to make a new decision or order varying or cancelling a previous decision or order under Part 3 "on its own initiative". This is to be contrasted with the Board's authority to reopen a matter under Part 1 "on its own initiative, or on application" under section 96(2) of the *Act*. It is also to be contrasted with section 96.5 and section 256, which authorize a review officer and the Appeal Tribunal, respectively, to reconsider decisions on application in certain circumstances.

The use of the words "on its own initiative" in section 113(2), with no mention of "on application", and the availability of a review mechanism under sections 96.2 to 96.5, indicate that the Board is not intended to set up a formal application process under section 113(2) to resolve disputes that parties may have with decisions or orders.

Rather, the Board's authority to vary or cancel is intended to provide a quality assurance mechanism for the Board. The Board is given an opportunity to correct, on its own initiative, any errors it may have made.

This does not, of course, preclude the Board from making a new decision or order varying or cancelling a previous decision or order on the basis of information that may be brought forward by an employer or other party to a decision or order.

(b) Grounds

The Board may make a new decision or order varying or cancelling a previous decision or order if there are grounds showing either an error of law or policy, or significant new evidence, and the Board determines that either of these grounds require that the previous decision or order be varied or cancelled.

(c) General Exercise of Authority

In considering whether to make a new decision that varies or cancels a previous decision or order, the Board will take into account the length of time that has elapsed since the decision or order was made. A delay since the previous decision or order was made, in the absence of a reasonable explanation for the delay, is a ground for the Board not to exercise its power to vary or cancel the previous decision or order without considering the merits of the previous decision or order.

Before varying or cancelling a decision or order, the Board will advise any person that may be affected by a new decision and provide an opportunity for these individuals to make comments.

(d) Authority to Vary or Cancel Reviews and Appeals

The *Act* gives the Board the authority to make final decisions on the matter before it. It also provides rights of review and appeal, but these are subject to time limits. The *Act* shows a general intention as to how disputes concerning decisions or orders should be resolved, and that there be finality in decision-making. This intention must be considered when deciding whether to exercise the discretion provided by section 113(2) to make a new decision varying or cancelling previous decisions or orders.

Subject to grounds being established as set out in (b) above, the Board may make a new decision varying or cancelling a decision or order under section 113(2) on which an available review or appeal was not commenced within the time allowed.

The Board will not, however, make a new decision or order under section 113(2) where the merits of the previous decision have been the subject of a decision on a review by the Review Division or an appeal by the Appeal Tribunal except in accordance with the decision by the Review Division or Appeal Tribunal.

Nor will the Board normally make a new decision or order under section 113(2) where:

- there is a right to a review of the previous decision or order or a right of appeal to the Appeal Tribunal; or
- the previous decision or order is being considered, or will be considered, for the purpose of considering an administrative penalty or similar levy.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	s.113, <i>Workers Compensation Act</i>
CROSS REFERENCES:	See also Posting of Information – Requirements (Item D7-154-1)
HISTORY:	Item developed to implement the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , effective March 3, 2003.
APPLICATION:	

**RE: Orders –
General Authority**

ITEM: D12-187-1

BACKGROUND

1. Explanatory Notes

Section 187(1) provides a broad general authority for the Board to make orders for carrying out matters and things regulated, controlled or required by Part 3 or the regulations. This includes authority to make orders in a variety of specific situations set out in section 187(2).

Powers to make orders are also found in other sections of the *Act*.

2. The Act

Section 187:

- (1) The Board may make orders for the carrying out of any matter or thing regulated, controlled or required by this Part or the regulations, and may require that the order be carried out immediately or within the time specified in the order.
- (2) Without limiting subsection (1), the authority under that subsection includes authority to make orders as follows:
 - (a) establishing standards that must be met and means and requirements that must be adopted in any work or workplace for the prevention of work related accidents, injuries and illnesses;
 - (b) requiring a person to take measures to ensure compliance with this Act and the regulations or specifying measures that a person must take in order to ensure compliance with this Act and the regulations;
 - (c) requiring an employer to provide in accordance with the order a medical monitoring program as referred to in section 161;
 - (d) requiring an employer, at the employer's expense, to obtain test or assessment results respecting any thing or procedure in or about a workplace, in accordance with any requirements specified by the

- Board, and to provide that information to the Board;
- (e) requiring an employer to install and maintain first aid equipment and service in accordance with the order;
 - (f) requiring a person to post or attach a copy of the order, or other information, as directed by the order or by an officer;
 - (g) establishing requirements respecting the form and use of reports, certificates, declarations and other records that may be authorized or required under this Part;
 - (h) doing anything that is contemplated by this Part to be done by order;
 - (i) doing any other thing that the Board considers necessary for the prevention of work related accidents, injuries and illnesses.
- (3) The authority to make orders under this section does not limit and is not limited by the authority to make orders under another provision of this Part.

POLICY

Employers and other persons covered by the *Act* have an obligation to comply with the *Act* and regulations. It is not sufficient simply to obey orders of the Board's officers after a violation, injury or disease has occurred.

Where violations of the *Act* or regulations are found, orders will be issued to the persons responsible for the failure to comply.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE:

October 1, 1999

AUTHORITY:

s.187, *Workers Compensation Act*

CROSS REFERENCES:

HISTORY:

Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. Consequential changes subsequently made to the restatement of section 187 to reflect the *Workers Compensation Amendment Act, 2002* and to the Explanatory Notes and the cross-references to reflect the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003.

APPLICATION:

**RE: Administrative Penalties –
Criteria for Imposing**

ITEM: D12-196-1

BACKGROUND

1. Explanatory Notes

Section 196(1) sets out the criteria for imposing an administrative penalty.

An administrative penalty must not be imposed if the employer exercised “due diligence” to prevent the failure, non-compliance or conditions to which the penalty relates. Item D12-196-10 sets out more information with respect to “due diligence”.

2. The Act

Section 196(1):

The Board may, by order, impose an administrative penalty on an employer under this section if it considers that

- (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,
- (b) the employer has not complied with this Part, the regulations or an applicable order, or
- (c) the employer’s workplace or working conditions are not safe.

POLICY

The main purpose of administrative penalties and similar levies is to motivate the employer receiving the penalty and other employers to comply with the *Act* and regulations.

The Board will consider imposing an administrative penalty when:

- an employer is found to have committed a violation resulting in high risk of serious injury, serious illness or death;

- an employer is found in violation of the same section of Part 3 or the regulations on more than one occasion;
- an employer is found in violation of different sections of Part 3 or the regulations on more than one occasion, where the number of violations indicates a general lack of commitment to compliance;
- an employer has failed to comply with a previous order within a reasonable time;
- an employer knowingly or with reckless disregard violates one or more sections of Part 3 or the regulations. Reckless disregard includes where a violation results from ignorance of the *Act* or regulations due to a refusal to read them or take other steps to find out an employer's obligations; or
- the Board considers that the circumstances may warrant an administrative penalty.

If violations or other circumstances requiring consideration of a penalty have occurred, the following additional factors will also be considered in deciding whether to propose or to levy the penalty:

- whether the employer has an effective, overall program for complying with the *Act* and the regulations;
- whether the employer has otherwise exercised due diligence to prevent the failure, non-compliance or conditions to which the penalty relates;
- whether the violations or other circumstances have resulted from the independent action of workers who have been properly instructed, trained and supervised;
- the potential seriousness of the injury or illness that might have occurred, the number of people who might have been at risk and the likelihood of the injury or illness occurring;
- the past compliance history of the employer, including the nature, number and frequency of violations, and the occurrence of repeat violations;
- the extent to which the employer was aware or should have been aware of the hazard or that the *Act* or regulations were being violated;
- the need to provide an incentive for the employer to comply;

- whether an alternative means of enforcing the regulations would be more effective; and
- other relevant circumstances.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE:	October 1, 1999
AUTHORITY:	s.196(1), <i>Workers Compensation Act</i>
CROSS REFERENCES:	See also Administrative Penalties – High Risk Violations (Item D12-196-2), Prior Violations and Orders (Item D12-196-3), Due Diligence (Item D12-196-10 and s. 196(6) of the <i>Workers Compensation Act</i>)
HISTORY:	Item developed to implement the <i>Workers Compensation (Occupational Health and Safety) Amendment Act, 1998</i> , effective October 1, 1999. Consequential changes subsequently made to the restatement of section 196 to reflect the <i>Workers Compensation Amendment Act, 2002</i> and to the Explanatory Notes, the restatement of section 196 and the cross-references to reflect the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , on March 3, 2003.
APPLICATION:	

**RE: Administrative Penalties –
Amount of Penalty**

ITEM: D12-196-6

BACKGROUND

1. Explanatory Notes

The Board is authorized to impose administrative penalties on employers for failure to comply with Part 3 of the *Act* and the regulations, and under certain other conditions. Section 196(3) provides that the Board must not impose an administrative penalty where the employer exercised due diligence. Section 196(2) provides that the Board must not impose an administrative penalty greater than \$500,000. Commencing January 1, 2004, this maximum is subject to adjustment under section 25.2 of the *Act* on January 1 of each year.

The *Act* does not specify the amount of an administrative penalty that may be imposed in particular situations.

2. The Act

Section 196(2):

An administrative penalty which is greater than \$500,000 must not be imposed under this section.

POLICY

Amounts of administrative penalties will be determined under this POLICY. No administrative penalty will be imposed where the employer exercised due diligence to prevent the failure, non-compliance or conditions to which the penalty relates.

1. “Basic amount” of the penalty

(a) Tables for determining “basic amounts”

The following tables contain the guidelines used by the Board in determining the “basic amount” of an administrative penalty.

Category A Penalties - Serious injury or illness or death; or high risk of serious injury or illness or death; or non-compliance was wilful or with reckless disregard

Assessable Payroll Range (\$)	Penalty Amount (\$)
up to 500,000	2.5% of payroll, or 2,500, whichever is greater
500,001 – 1,000,000	12,500 + 2.25% of payroll over 500,000
1,000,001 – 1,500,000	23,750 + 2.0% of payroll over 1,000,000
1,500,001 – 2,000,000	33,750 + 1.75% of payroll over 1,500,000
2,000,001 – 2,500,000	42,500 + 1.5% of payroll over 2,000,000
2,500,001 – 3,000,000	50,000 + 1.25% of payroll over 2,500,000
3,000,001 – 3,500,001	56,250 + 1.0% of payroll over 3,000,000
3,500,001 – 4,000,000	61,250 + .75% of payroll over 3,500,000
4,000,001 – 4,500,000	65,000 + .5% of payroll over 4,000,000
4,500,001 – 5,000,000	67,500 + .25% of payroll over 4,500,000
over 5,000,000	68,250 + .125% of payroll over 5,000,000, or 75,000, whichever is less

Category B Penalties – Any other violations

Assessable Payroll Range (\$)	Penalty Amount (\$)
up to 500,000	1.0% of payroll, or 1,000, whichever is greater
500,001 – 1,000,000	5,000 + .36% of payroll over 500,000
1,000,001 – 1,500,000	6,800 + .32% of payroll over 1,000,000
1,500,001 – 2,000,000	8,400 + .28% of payroll over 1,500,000
2,000,001 – 2,500,000	9,800 + .24% of payroll over 2,000,000
2,500,001 – 3,000,000	11,000 +.2% of payroll over 2,500,000
3,000,001 – 3,500,001	12,000 +.16% of payroll over 3,000,000
3,500,001 – 4,000,000	12,800 +.12% of payroll over 3,500,000
4,000,001 – 4,500,000	13,400 +.08% of payroll over 4,000,000
4,500,001 – 5,000,000	13,800 +.04% of payroll over 4,500,000
over 5,000,000	14,000 +.02% of payroll over 5,000,000, or 15,000, whichever is less

The “basic amount” of the administrative penalty will be determined on the basis of the employer’s assessable payroll for the most recent full calendar year for which figures are available at the time the penalty is imposed. The “payroll” for independent operators with Personal Optional Protection is the amount for which they have purchased coverage.

(b) Multi-site employers

Where a firm has more than one location, the Board may, in determining the “basic amount” of the penalty, use the assessable payroll at the location where the violation occurred, provided that:

- the violation has resulted from an occupational health and safety failure at that location rather than a general “program failure” on the part of the employer, and
- the employer provides the necessary payroll information for that location to the Board and cooperates in any audit that the Board considers necessary.

A “program failure” includes failure to:

- effectively communicate with all locations regarding health and safety concerns;
- provide adequate training to managers and others who implement site health and safety programs;
- make local management accountable for health and safety performance; and
- provide local management with sufficient resources for health and safety issues.

(c) Variation factors

In each individual case, the “basic amount” of the penalty may be varied by up to 30%, having regard to the circumstances, including the following factors:

- (a) nature of the violation;
- (b) nature of the hazard created by the violation;
- (c) degree of actual risk created by the violation;
- (d) whether the employer knew about the situation giving rise to the violation;
- (e) the extent of the measures undertaken by the employer to comply;
- (f) the extent to which the behaviour of other workplace parties has contributed to the violation;

- (g) employer history;
- (h) whether the financial impact of the penalty would be unduly harsh in view of the employer's size; and
- (i) any other factors relevant to the particular workplace.

2. Penalties up to \$250,000

With the approval of the President or delegate, the Board may impose an administrative penalty of up to \$250,000 where:

- (a) the employer has committed a high risk violation wilfully or with reckless disregard; and
- (b) a worker has died or suffered serious permanent impairment as a result.

3. Penalties up to the Statutory Maximum

With the approval of the President or delegate, the Board may impose an administrative penalty up to the statutory maximum where:

- (a) the employer has committed a high risk violation wilfully or with reckless disregard;
- (b) multiple fatalities have occurred or a number of workers have suffered serious permanent impairment as a result of the violation; and
- (c) there is evidence of a systemic disregard by the employer for worker safety, such as a history of serious repeated non-compliance.

4. Repeat penalties

Where an administrative penalty is imposed within three years of a decision imposing an additional assessment or a prior administrative penalty for the same violation, the penalty will be calculated as a "repeat penalty". This includes where, though a different section is cited, the violation is essentially the same, for example, citations of sections 8.11 and 20.22 of the *OHS Regulation* for failure to use safety headgear.

"Repeat penalties" will be calculated as follows:

- (a) The "basic amount" for the current penalty, including any variation, will be calculated in accordance with 1. "**Basic amount of the penalty**" above.
- (b) The "basic amount" for the current penalty, including any variation, will then be increased as follows:

Number of additional assessments or prior penalties imposed during three years preceding penalty notice	Increase to “basic amount”
one	x2
two	x3
three	x6
four	x12
five	x24

5. Recovery of costs saved through non-compliance

The amount of any costs saved or profit made by the employer through committing the violation shall, as far as is known, be added to the penalty amount determined under 1, 2, 3, or 4 above and forms part of the administrative penalty.

6. Statutory maximum

In no case will the Board impose an administrative penalty greater than the statutory maximum then in effect.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	s. 196(2), <i>Workers Compensation Act</i>
CROSS REFERENCES:	See also Administrative Penalties – Criteria for Imposing (Item D12-196-1), Administrative Penalties – Prior Violations and Orders (D12-196-3), Administrative Penalties – Due Diligence (Item D12-196-10).
HISTORY:	Item developed to implement the <i>Workers Compensation (Occupational Health and Safety) Amendment Act, 1998</i> , effective May 1, 2000. Consequential changes subsequently made throughout Item to implement the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , on March 3, 2003.
APPLICATION:	This policy applies to all decisions to impose administrative penalties on and after March 3, 2003.

**RE: Administrative Penalties –
Payment of Penalty**

ITEM: D12-196-7

BACKGROUND

1. Explanatory Notes

The administrative penalty is to be paid into the accident fund.

2. The Act

Section 196(5):

An employer who has been ordered to pay an administrative penalty under this section must pay the amount of the penalty to the Board for deposit into the accident fund.

POLICY

If an employer has applied to the Chief Review Officer for a stay under section 96.2(5), collection of the administrative penalty by assessment or court proceedings under section 223 will be deferred until the Chief Review Officer has decided the application.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: s. 196(5), *Workers Compensation Act*
CROSS REFERENCES: ss. 96.2(5), 223(1), *Workers Compensation Act*
HISTORY: Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. Consequential changes subsequently made to the statement of the Act and to the POLICY statement to reflect the *Workers Compensation Amendment Act (No. 2) 2002*, effective March 3, 2003.

APPLICATION:

**RE: Administrative Penalties –
Payment of Interest on Successful Appeal**

ITEM: D12-196-8

BACKGROUND

1. Explanatory Notes

Section 196(6) requires the payment of interest where an administrative penalty is reduced or cancelled on appeal.

2. The Act

Section 196(6):

If an administrative penalty under this section is reduced or cancelled by a Board decision, on a review under section 96.2 or on an appeal to the appeal tribunal under Part 4, the Board must

- (a) refund the required amount to the employer out of the accident fund, and
- (b) pay interest on that amount calculated in accordance with the policies of the board of directors.

POLICY

The policies governing the payment of interest are set out in policy in Item AP1-39-2 of the *Assessment Manual*.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: s.196(6), *Workers Compensation Act*
CROSS REFERENCES:

PREVENTION MANUAL

HISTORY:

Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. Consequential changes subsequently made to the Explanatory Notes and to the restatement of section 196(6) to reflect the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003.

APPLICATION:

**RE: Administrative Penalties –
Prosecution Following Penalty**

ITEM: D12-196-9

BACKGROUND

1. Explanatory Notes

An employer may either be required to pay an administrative penalty in respect of a violation or prosecuted under the *Act* for the violation, but not both.

2. The Act

Section 196(7):

If an administrative penalty is imposed on an employer under this section, the employer must not be prosecuted under this Act in respect of the same facts and circumstances upon which the Board based the administrative penalty.

POLICY

Once a prosecution under the *Act* has been commenced against an employer in respect of a violation, the Board will not impose an administrative penalty. A prosecution is “commenced” for this purpose, when an information is laid pursuant to the *Offence Act*.

An administrative penalty will not be imposed even if the prosecution does not proceed or is unsuccessful.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: s.196(7), *Workers Compensation Act*
CROSS REFERENCES:
HISTORY: Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998* effective October 1, 1999. Consequential changes subsequently made throughout the Item to reflect the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003.

APPLICATION:

**RE: Administrative Penalties –
Due Diligence**

ITEM: D12-196-10

BACKGROUND

1. Explanatory Notes

The Board is authorized to impose administrative penalties on employers for failure to comply with Part 3 of the *Act* and the regulations, and under certain other conditions. Section 196(3) provides that an administrative penalty must not be imposed under this section if the employer exercised due diligence to prevent the failure, non-compliance or conditions to which the penalty relates.

2. The Act

Section 196(3):

An administrative penalty must not be imposed under this section if an employer exercised due diligence to prevent the circumstances described in subsection (1).

POLICY

The Board will consider that the employer exercised due diligence if the evidence shows on a balance of probabilities that the employer took all reasonable care. This involves consideration of what a reasonable person would have done in the circumstances. Due diligence will be found if the employer reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if the employer took all reasonable steps to avoid the particular event.

In determining whether the employer has exercised due diligence under section 196(3), all the circumstances of the case must be considered.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	s. 196(3), <i>Workers Compensation Act</i> . “Due diligence” is defined at common law by the courts. The standard set out in the POLICY section reflects the leading Supreme Court of Canada case - R. v. Sault Ste. Marie [1978] 85 DLR (3 rd) 161. The requirements of the “due diligence” defence are open to re-interpretation by the courts. They may, therefore, be changed in future. Were this to happen, changes would be required to the Board’s POLICY as well.
CROSS REFERENCES:	See also General Duties – Workers (Item D3-116-1), Supervisors (Item D3-117-1), Multiple-Employer Workplaces (Item D3-118-1), Owners (Item D3-119-1), Suppliers (Item D3-120-1), Directors and Officers of a Corporation (Item D3-121-1), Overlapping Obligations (D3-123/124-1); Administrative Penalties - Criteria for Imposing (Item D12-196-1)
HISTORY:	Item developed to implement the <i>Workers Compensation (Occupational Health and Safety) Amendment Act, 1998</i> , effective October 1, 1999. Consequential changes subsequently made to various parts of the Item to reflect the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , on March 3, 2003.
APPLICATION:	This policy applies to all decisions to impose administrative penalties on and after March 3, 2003.

**RE: Administrative Penalties –
Warning Letters**

ITEM: D12-196-11

BACKGROUND

1. Explanatory Notes

As an alternative to proceeding with an administrative penalty, the Board may decide to send the employer a letter warning that an administrative penalty will be considered if further violations of the *Act* or regulations occur.

There is no specific reference to “warning letters” in the *Act*. However, section 196(1) does not require the Board to impose an administrative penalty in every case where the criteria have been met. The Board may choose not to impose a penalty. Implicit in the authority to make that decision is the authority to warn the employer that, under certain conditions, an administrative penalty may be levied in the future. As well, the Board has the mandate under section 111 to be concerned with the maintenance of reasonable health and safety standards and to ensure that information in this respect is provided to persons concerned with the administration of Part 3.

2. The Act

Section 196(1):

The Board may, by order, impose an administrative penalty on an employer under this section if it considers that

- (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,
- (b) the employer has not complied with this Part, the regulations or an applicable order, or
- (c) the employer’s workplace or working conditions are not safe.

Section 111(1):

In accordance with the purposes of this Part, the Board has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.

Section 111(2)(d):

In carrying out its mandate, the Board has the following functions, duties and powers:

-
- (d) to ensure that persons concerned with the purposes of this Part are provided with information and advice relating to its administration and to occupational health and safety and occupational environment generally

POLICY

Where violations have occurred that provide grounds for proposing an administrative penalty, it may be concluded that a penalty is not warranted at that time to motivate the employer to comply. The Board may then send a warning letter to the senior management of the employer, advising that a penalty will be considered if the violations are repeated.

The Board will, where practicable, send a copy of the letter to the joint committee or worker health and safety representative at the workplace, as applicable, and the union if the workers at the workplace are represented by the union.

When a follow-up inspection reveals continued or repeat violations after there has been a reasonable time to comply with the warning letter, the Board will normally issue repeat orders and consider an administrative penalty or prosecution.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: ss.196(1), 111(1) and 111(2)(d), *Workers Compensation Act*
CROSS REFERENCES: See also Administrative Penalties – Criteria for Imposing (Item D12-196-1)
HISTORY: Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. Consequential changes subsequently made to various parts of the Item to reflect the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003.

APPLICATION:

DIVISION 13

REVIEWS

This Division was repealed effective March 3, 2003.

DIVISION 14

APPEALS

This Division was repealed effective March 3, 2003.

**RE: Imposition of Levies –
Independent Operators**

ITEM: D24-2-1

BACKGROUND

1. Explanatory Notes

In directing that Part 1 applies to independent operators, the Board may specify the applicable health and safety obligations.

2. The Act

Section 2(2):

The Board may direct that this Part [i.e., Part 1] applies on the terms specified in the Board's direction

- (a) to an independent operator who is neither an employer nor a worker as though the independent operator was a worker

POLICY

If an independent operator to whom Part 1 applies under section 2(2) violates the occupational health and safety obligations set out in the Board's direction, the Board may levy an administrative penalty against the independent operator.

Where appropriate, the Board will apply the policies and practices set out in the following Items to an administrative penalty levied against an independent operator to whom Part 1 applies under Section 2(2):

- D12-196-1, -2, -3, -6;
- D12-196-8;
- D12-196-10, -11; and
- D16-223-1.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: s. 2(2), *Workers Compensation Act*
CROSS REFERENCES:
HISTORY: Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. Consequential changes subsequently made to the policy statement to reflect the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003.

APPLICATION:

**RE: Imposition of Levies –
Charging of Claim Costs**

ITEM: D24-73-1

BACKGROUND

1. Explanatory Notes

Section 73 authorizes the Board to charge claims costs to the employer in certain circumstances. The maximum of \$40,000 is adjusted in accordance with the Consumer Price Index under section 25 of the *Act*.

2. The Act

Section 73:

(1) If

- (a) an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and
- (b) the Board considers that this was due substantially to
 - (i) the gross negligence of an employer,
 - (ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or
 - (iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under Part 3 of this Act,

the Board may levy and collect from that employer as a contribution to the accident fund all or part of the amount of the compensation payable in respect of the injury, death or occupational disease, to a maximum of \$40 000.

- (2) The payment of an amount levied under subsection (1) may be enforced in the same manner as the payment of an assessment may be enforced.

POLICY

This section may be applied if:

- the grounds for an administrative penalty under Item D12-196-1 are met; and
- a serious injury or disablement from occupational disease, or a death, results from a violation of the regulations.

A claim may be reopened at any time in the future and further costs may be incurred after the decision under section 73(1). The Board will charge the employer:

- the costs incurred up to the time of the decision; and
- any additional amounts that result from matters still under consideration by the Compensation Services Division, the Review Division or the Workers' Compensation Appeal Tribunal.

Where appropriate, the Board will apply the policies and practices set out in the following Items to the charging of claim costs under section 73(1):

- D12-196-1, -2, -3;
- D12-196-8;
- D12-196-10, -11; and
- D16-223-1.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	s. 73(1), <i>Workers Compensation Act</i>
CROSS REFERENCES:	See also Accident Reporting and Investigation – Types of Incidents Covered (Item D10-172); Administrative Penalties – Criteria for Imposing (Item D12-196-1);
HISTORY:	Item developed to implement the <i>Workers Compensation (Occupational Health and Safety) Amendment Act, 1998</i> , effective October 1, 1999. Consequential changes subsequently made to the policy statement to reflect the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , on March 3, 2003.
APPLICATION:	This policy applies to all decisions to charge claim costs on and after March 3, 2003.