

BOARD OF DIRECTORS  
Douglas J. Enns, Chair

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December 2003

Update 2003 – 6

**TO: HOLDERS OF THE *PREVENTION MANUAL***

This update of the *Prevention Manual* contains amendments implemented since update 2003 – 5.

The update contains amended policy items in the *Prevention Manual* which result from the retirement of the final 39 policies from the Prevention Division *Policy and Procedure Manual*. These amendments are effective December 31, 2003.

If you have any questions regarding subscription information for updates to the *Prevention Manual*, please call WCB Customer Service provided by Benwell Atkins/Moore at 1-866-271-4879.

DOUGLAS J. ENNS  
Chair, Board of Directors

## **PREVENTION MANUAL**

Transmittal Sheet for Update 2003 - 6

<b>Check As Done</b>	<b>Remove Old Pages Numbered/Titled:</b>	<b>Insert New Pages Numbered/Titled:</b>
<input type="checkbox"/>	Table of Contents Pages i – iv	Table of Contents Pages i – iv
<input type="checkbox"/>	D8-160-1 First Aid Equipment – Imposition of Special Rate of Assessment	D8-160-1 First Aid Equipment – Imposition of Special Rate of Assessment
<input type="checkbox"/>	D12-187-1 Order – General Authority	D12-187-1 Order – General Authority
<input type="checkbox"/>	D12-196-1 Administrative Penalties – Criteria for Imposing	D12-196-1 Administrative Penalties – Criteria for Imposing
<input type="checkbox"/>	No old pages	D12-196-4 Administrative Penalties – Authority to Impose
<input type="checkbox"/>	D24-73-1 Imposition of Levies – Charging of Claim Costs	D24-73-1 Imposition of Levies – Charging of Claim Costs

December 2003

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**RE: First Aid Equipment –  
Imposition of Special Rate of Assessment**

**ITEM: D8-160-1**

## **BACKGROUND**

### **1. Explanatory Notes**

The Board may impose a special rate of assessment under Part 1 of the *Act* where an employer fails, neglects or refuses to install or maintain first aid equipment required by regulation or order.

### **2. The Act**

Section 160:

If an employer fails, neglects or refuses to install or maintain first aid equipment or service required by regulation or order, the board may do one or more of the following:

- (a) have the first aid equipment and service installed, in which case the cost of this is a debt owed by the employer to the board;
- (b) impose a special rate of assessment under Part 1 of this Act;
- (c) order the employer to immediately close down all or part of the workplace or work being done there until the employer complies with the applicable regulation or order.

## **POLICY**

Where appropriate, the Board will apply the policies and practices set out in the following Items to the imposition of special rates of assessment for first aid equipment and service under section 160:

- D12-196-1, -2, -3, -4, -6;
- D12-196-8;
- D12-196-10, -11; and
- D16-223-1.

## **PRACTICE**

There is no PRACTICE for this Item.



WORKERS' COMPENSATION BOARD OF BC

## PREVENTION MANUAL

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**EFFECTIVE DATE:**

October 1, 1999

**AUTHORITY:**

s. 160(b), *Workers Compensation Act*

**CROSS REFERENCES:**

**HISTORY:**

Effective December 31, 2003, references to two prior policies (Items D12-196-4 and D12-196-5) which no longer exist were deleted and a consequential housekeeping reference to a new Item D12-196-4 was added.

**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.

In operations where cooperation and compliance are generally present, and minor, low hazard violations are noted, Board officers may issue oral orders at their discretion, but shall check back to ensure compliance before leaving the site. In such cases, a brief explanatory note shall be included in the office memo portion of the Inspection Report. Where compliance has not been achieved by the end of the inspection, the Board officer shall issue a written order.



WORKERS' COMPENSATION BOARD OF BC

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### PRACTICE

There is no PRACTICE for this Item.

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**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. Effective December 31, 2003, this policy incorporates portions of Procedure No. 1.3.3-1 "*Issuing Inspection Reports*" of the former Prevention Division *Policy and Procedure Manual*.

**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;

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- an employer is found in violation of the same section of Part 3 or the regulations on more than one occasion. This includes where, though a different section is cited, the violation is essentially the same, for example, citations of sections 8.11 and 20.11 of the *OHS Regulation* for failure to use safety headgear;
- 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.

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<b>EFFECTIVE DATE:</b>	July 1, 2003
<b>AUTHORITY:</b>	s.196(1), <i>Workers Compensation Act</i>
<b>CROSS REFERENCES:</b>	See also Administrative Penalties – High Risk Violations (Item D12-196-2), Prior Violations and Orders (Item D12-196-3), Authority to Impose Administrative Penalties (Item D12-196-4), and Due Diligence (Item D12-196-10 and s. 196(6) of the <i>Workers Compensation Act</i> )
<b>HISTORY:</b>	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. Effective July 1, 2003, minor change made to the second bullet of the policy, for congruency with Items D12-196-3 and D12-196-6.
<b>APPLICATION:</b>	



**RE: Administrative Penalties –  
Authority to Impose****ITEM: D12-196-4**

## **BACKGROUND**

### **1. Explanatory Notes**

This policy sets out the non-exclusive ways in which financial penalties may be imposed by the Board for an employer's non-compliance with the occupational health and safety requirements in the *Act* and *regulations*.

### **2. The Act**

Section 73(1):

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 \$44,468.66.

Section 160(b):

160 If an employer fails, neglects or refuses to install or maintain first aid equipment or service required by regulation or order, the Board may do one or more of the following:

- (b) impose a special rate of assessment under Part 1 of this 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 Board has authority under the *Act* to:

1. impose an administrative penalty under section 196(1),
2. levy and collect a contribution from an employer under section 73(1), and
3. impose a special rate of assessment under section 160(b).

The Vice-President, Prevention Division, or Board officer assigned in writing by the Vice-President may exercise the authority to levy and collect a contribution under section 73(1) on behalf of the Board. Copies of assignments of authority under this policy can be obtained on request. Authority with respect to sections 160(b) and 196(1) is covered by Item D2-111-1.

**PRACTICE**

There is no PRACTICE for this Item.

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<b>EFFECTIVE DATE:</b>	December 31, 2003
<b>AUTHORITY:</b>	
<b>CROSS REFERENCES:</b>	See also Administrative Penalties – Criteria for Imposing (Item D12-196-1), Imposing of Levies – Charging of Claims Costs (Item D24-73-1), and First Aid Equipment – Imposing of Special Rate of Assessment (Item D8-160-1).
<b>HISTORY:</b>	This policy incorporates portions of, and replaces, Policy No. 1.4.2 “ <i>Penalty Assessments and Levies</i> ” of the former Prevention Division <i>Policy and Procedure Manual</i> .
<b>APPLICATION:</b>	

**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 amount the Board may levy is adjusted annually in accordance with the Consumer Price Index under section 25 of the *Act*. Starting January 1, 2004, the maximum amount is \$44,468.66.

### **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 \$44,468.66.

- (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, -4;
- D12-196-8;
- D12-196-10, -11; and
- D16-223-1.

## **PRACTICE**

There is no PRACTICE for this Item.

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<b>EFFECTIVE DATE:</b>	March 3, 2003
<b>AUTHORITY:</b>	s. 73(1), <i>Workers Compensation Act</i>
<b>CROSS REFERENCES:</b>	See also Accident Reporting and Investigation – Types of Incidents Covered (Item D10-172); Administrative Penalties – Criteria for Imposing (Item D12-196-1);
<b>HISTORY:</b>	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. Effective December 31, 2003 a consequential change was made to include a reference to new Item D12-196-4 and the maximum amount referenced in section 73(1) was updated.
<b>APPLICATION:</b>	This policy applies to all decisions to charge claim costs on and after March 3, 2003.