



ASSESSMENT MANUAL

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ORGANIZATION OF THIS MANUAL

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

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*.

The Province of British Columbia holds copyright in the *Workers Compensation Act*. Complete copies are available from Crown Publications in Victoria.

This identifies the subject matter.

RE: _____ **ITEM:** _____

Each policy begins with "AP1". This number refers to Part 1 of the *Act*. The rest of the numbering refers to the section number of the *Act* and the policy number under that section. For example, in AP1-42-3, 42 refers to section 42 of the *Act*, and 3 indicates that this is the third policy under section 42.

BACKGROUND

This section reproduces the relevant provision(s) of the *Act*, 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 Board of Directors 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.

This is the effective date of the Policy.

EFFECTIVE DATE:

AUTHORITY:

This is the statutory authority for the Policy.

CROSS REFERENCES:

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

HISTORY:

APPLICATION:

This clarifies, where necessary, the categories of cases to which a changed Policy applies as of the effective date.

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

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RE: Application of the Act and Policies

ITEM: AP1-1-0

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 a 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 a 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 policy 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 Assessment Department’s Practice Directives 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:	Item developed to implement the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002 effective March 3, 2003.
APPLICATION:	This policy applies to decisions on or after March 3, 2003.

RE: Coverage under Act – Descriptions of Terms**ITEM: AP1-1-1**

BACKGROUND

1. Explanatory Notes

Items AP1-1-2 to AP1-1-7 of this *Manual* deal with determining the status of persons under Part 1 of the *Workers Compensation Act*. This Item provides very general descriptions of the main terms used in those Items.

2. The Act

Section 1:

“employer” includes every person having in their service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in work in or about an industry ...

“worker” includes

- (a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;
- (b) a person who is a learner, although not under a contract of service or apprenticeship, who becomes subject to the hazards of an industry within the scope of Part 1 for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment;
- (c) a member of a fire brigade or an ambulance driver or attendant working with or without remuneration, when serving
 - (i) a municipality, a regional district, an urban area, an improvement district, a board of school trustees, a francophone education authority as defined in the *School Act*, a library board or a parks board, or
 - (ii) a board or commission having the management or conduct of work or services on behalf of any of the bodies in subparagraph (i);

- (d) in respect of the industry of mining, a person while the person is actually engaged in taking or attending a course of training or instruction in mine rescue work under the direction or with the written approval of an employer in whose employment the person is employed as a worker in that industry, or while, with the knowledge and consent of an employer in that industry, either express or implied, he or she is actually engaged in rescuing or protecting or attempting to rescue or protect life or property in the case of an explosion or accident which endangers either life or property in a mine, and this irrespective of whether during the time of his or her being so engaged the person is entitled to receive wages from the employer, or from any employer, or is performing the work or service as a volunteer;
- (e) further, in respect of the industry of mining, a person while he or she is engaged as a member of the inspection committee, appointed or elected by the workers in the mine, to inspect the mine on behalf of the workers;
- (f) an independent operator admitted by the Board under section 2 (2)

Section 2:

- (1) This Part applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the Board.
- (2) The Board may direct that this Part 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, or
 - (b) to an employer as though the employer was a worker.

POLICY

The following, very general, descriptions may assist in understanding the various categories of persons to whom this *Manual* refers. These descriptions must be read in the context of the *Act* and the *Manual*.

- *Employer* – An employer is a person or entity employing workers. The employer may be a sole proprietor, a partner in a partnership, a

corporation, or another type of legal entity. “Employer” is defined under section 1 for purposes of Part 1 of the *Act*. An employer is an “independent firm”.

- *Worker* – A worker is an individual who performs work under a contract with an employer and has no business existence under the contract independent of the employer. “Worker” is defined under section 1 for purposes of Part 1 of the *Act*. A worker cannot be an “independent firm”.
- *Independent Operator* – “Independent operator” is not defined in the *Act*. The term is referred to in section 2(2) of the *Act* as being an individual “who is neither an employer nor a worker” and to whom the Board may direct that Part 1 applies as though the independent operator was a worker. An independent operator performs work under a contract, but has a business existence independent of the person or entity for whom that work is performed. An independent operator is an “independent firm”.
- *Labour Contractor* – The Board has created the term “labour contractor” to assist it in determining whether an individual is an employer, worker or independent operator. A labour contractor who is a worker cannot be an “independent firm”. For more information about “labour contractors”, see Item AP1-1-7.
- *Firm* – A firm is any person or entity carrying on a business.
- *Independent Firm* – The Board has created the term “independent firm” to identify those persons who are either required by the *Act* to register with the Board as employers of workers, or from whom, as unincorporated employers or independent operators, the Board will accept a registration through the purchase of Personal Optional Protection for themselves. An independent firm performs work under a contract, but has a business existence under the contract independent of the person or entity for whom that work is performed. An independent firm may be an individual, a corporation or another type of legal entity. A worker cannot be an “independent firm”. For more information about “independent firms”, see Item AP1-1-3.
- *Independent Contractor* – An independent contractor is an independent firm.
- *Principal* – A principal is a person who has the direct or indirect power or ability to control or influence the operations of a corporation or similar entity, through the ownership of voting securities, by contract, or otherwise. An officer, director or shareholder active in the operation of

a corporation or similar entity is presumed to be a principal of that firm. However, the Board may find that such a person is not a principal where it is shown that the person does not possess direct or indirect power or ability to control or influence the firm's operations.

This Manual also commonly uses the term “firm” to refer generally to persons engaged in business or work. Depending upon the context, this may refer to an “independent firm”, a “labour contractor” or some other category of persons.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	January 1, 2008
AUTHORITY:	ss.1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Types of Relationships (AP1-1-2), Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Independent Operators (AP1-1-6), Coverage under <i>Act</i> – Labour Contractors (AP1-1-7), Exemptions from Coverage (AP1-2-1), Personal Optional Protection (AP1-2-3), Extending Application of the <i>Act</i> (AP1-3-1), Fishing (AP1-4-1), Coverage under Federal Statutes or Agreements Between the Provincial and Federal Governments (AP6-97-1) in the <i>Assessment Manual</i> , and Introduction – Workers and Employers Covered by the <i>Act</i> (policy item #3.00), Coverage of Workers (policy item #5.00), Definitions of “Worker” and “Employer” (policy item #6.00), Nature of Employment Relationship (policy item #6.10), Federal Government Employees (policy item #8.10), <i>Principals – Composition of Earnings</i> (policy item #68.90) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> .
APPLICATION:	This policy is effective January 1, 2008.

RE: Coverage under Act – Types of Relationships

ITEM: AP1-1-2

BACKGROUND

1. Explanatory Notes

The POLICY in this Item describes the two types of relationships created by contracts to perform work and the consequences of which relationship is created by a particular contract. The POLICY in Item AP1-1-3 sets out the general principles for determining whether a contract to perform work creates an employment relationship or a relationship between independent firms.

2. The Act

See AP1-1-1.

POLICY

(a) General

Where a person contracts with another person or entity to do work, the contract creates one of two types of relationship. The relationship is either one of employment or one between independent firms.

(b) Employment relationships

If the contract creates an employment relationship, the individual doing the work is a “worker” covered by the *Act* and the other party to the contract is required to register with the Board as an “employer” and pay assessments on the earnings payable under the contract. In this situation, any application from the individual doing the work for registration as an employer will not be accepted by the Board.

The definitions of “worker” and “employer” in the *Act* are not exhaustive, so that persons may be “workers” or “employers” even though they have not entered into or are not working under a contract of service or hiring.

The definitions of “worker” and “employer” are treated as complementary. The question in each case is whether the relationship between two parties is to be classified as one of employment. The scope of the definitions must be determined in the context in which they appear and the overall purposes of the *Act*. The Board will not automatically

attribute to each word or phrase the meaning that has been given by another tribunal for other purposes. Coverage under the *Act* may commence for a worker even though by common law principles no contract of service yet exists.

(c) Relationships between independent firms

If the contract creates a relationship between independent firms, the rights and responsibilities of the firms depend upon their specific circumstances:

- An independent firm that has at least one worker must register with the Board as an employer and pay assessments. An unincorporated employer may also obtain personal compensation coverage for himself or herself by purchasing Personal Optional Protection.
- An independent firm that does not have at least one worker is not required to register with the Board. The individual who is the independent firm may, as an independent operator, obtain personal compensation coverage by purchasing Personal Optional Protection.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss.1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Independent Operators (AP1-1-6), Coverage under <i>Act</i> – Labour Contractors (AP1-1-7), Exemptions from Coverage (AP1-2-1), Personal Optional Protection (AP1-2-3), Extending Application of the <i>Act</i> (AP1-3-1), Fishing (AP1-4-1) and Coverage under Federal Statutes or Agreements Between the Provincial and Federal Governments (AP6-97-1) in the <i>Assessment Manual</i> , and Introduction – Workers and Employers Covered by the <i>Act</i> (policy item #3.00), Coverage of Workers (policy item #5.00), Definitions of “Worker” and “Employer” (policy item #6.00), Nature of Employment Relationship (policy item #6.10), Federal Government Employees (policy item #8.10) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces in part Policy No. 20:10:30 and 20:30:20 of the <i>Assessment Policy Manual</i> and Decisions No. 26, 32, 138, 183 and 255 of volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> .
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the

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HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

**RE: Coverage under Act –
Distinguishing Between Employment
Relationships and Relationships Between
Independent Firms**

ITEM: AP1-1-3

BACKGROUND

1. Explanatory Notes

The POLICY in this Item sets out the general principles for determining whether a contract to perform work creates an employment relationship or a relationship between independent firms.

2. The Act

See Item AP1-1-1.

Section 96(1):

Subject to sections 239 and 240, the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising under this Part, and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court, and proceedings by or before the Board must not be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise into any court, and an action may not be maintained or brought against the Board or a director, an officer, or an employee of the Board in respect of any act, omission or decision that was within the jurisdiction of the Board or that the Board, director, officer or employee believed was within the jurisdiction of the Board; and, without restricting the generality of the foregoing, the Board has exclusive jurisdiction to inquire into, hear and determine

(Clauses (a) to (g) omitted)

- (h) whether an industry or a part, branch or department of an industry is within the scope of this Part, and the class to which an industry or a part, branch or department of an industry within the scope of this Part should be assigned;
- (i) whether a worker in an industry within the scope of this Part is within the scope of this Part and entitled to compensation under it; and

- (j) whether a person is a worker, a subcontractor, a contractor or an employer within the meaning of this Part.

POLICY

(a) General principles

In distinguishing an employment relationship from one between independent firms, there is no single test that can be consistently applied. The factors considered include:

- whether the services to be performed are essentially services of labour;
- the degree of control exercised over the individual doing the work by the person or entity for whom the work is done;
- whether the individual doing the work might make a profit or loss;
- whether the individual doing the work or the person or entity for whom the work is done provides the major equipment;
- if the business enterprise is subject to regulatory licensing, who is the licensee;
- whether the terms of the contract are normal or expected for a contract between independent contractors;
- who is best able to fulfill the prevention and other obligations of an employer under the *Act*;
- whether the individual doing the work engages continually and indefinitely for one person or works intermittently and for different persons; and
- whether the individual doing the work is able or required to hire other persons.

The major test, which largely encompasses these factors, is whether the individual doing the work exists as a business enterprise independently of the person or entity for whom the work is done.

No business organization is completely independent of all others. It is a question of degree whether a party to a contract has a sufficient amount of independence to warrant registration as an employer. Many small parties may only contract with one or two large firms over a period of time. Yet they are often independent of the person with whom they are contracting in significant respects. For example, they must seek out and bid for their own contracts, keep their own books and records, make income tax,

unemployment insurance and Canada Pension Plan deductions. They also retain the right to hire and fire their own workers and exercise control over the work performed by their workers. These factors must be considered.

Some regard must also be paid to the structure and customs of the particular industry involved. Where an industry makes much use of the contracting out of work, this should be recognized as a factor in considering applications for registration as employers by parties to contracts in those industries.

(b) Specific guidelines

Parties who would be considered independent firms include:

- (1) Any firm supplying labour and materials on which a profit or loss may result. Items such as nails and drywall tape are not considered materials for this purpose.
- (2) Any firm which has two or more pieces of revenue producing equipment. Hand tools and personal transportation vehicles or vehicles used to move equipment are not considered to be revenue producing equipment.
- (3) Service industry firms that enter into two or more contracts simultaneously.
- (4) Incorporated companies unless there are circumstances indicating that the principals of the corporation are workers rather than independent firms. If such circumstances exist, a full investigation will be made and the applicant's position determined in accordance with the policies in this *Manual*. Two common situations where corporations will not be considered independent firms are where:
 - (i) the corporation is a personal service corporation, (A personal service corporation for this purpose is one where no worker other than a principal active shareholder is employed, and if the firm was not incorporated, the principal active shareholder would clearly be a worker. If, without incorporation, the firm would be a labour contractor, it would not be considered a personal service corporation.); or
 - (ii) the corporation's sole function is to provide an inescapable phase of a firm's operations, it is providing essentially labour only for one firm at a time, and there is a degree of common ownership between the two firms. In such cases, the corporation will be assessed through the operating company at the assessment rate of the operating company. If the corporation is working for more than one firm, or there is not common ownership, the company will be considered a separate employer.
- (5) Society, cooperative, trade union or similar entity.

(6) Manpower supply firms.

These guidelines will resolve the question whether a particular person or entity is an “independent firm” in most cases.

The Board, for the purposes of the *Act*, has the exclusive power under section 96(1) to determine status. The Board’s jurisdiction cannot be excluded by private agreement between two parties, whether the agreement does this expressly, or indirectly by labelling the parties as independent operators (who would therefore be independent firms). The Board makes its own judgment of their status, having regard to the terms of the contract and the operational routines of the relationship. However, decisions made by the Board are for workers’ compensation purposes only and have no binding authority under other statutes.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 1, 2 and 96(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – Types of Relationships (AP1-1-2), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Independent Operators (AP1-1-6) and Coverage under <i>Act</i> – Labour Contractors (AP1-1-7) in the <i>Assessment Manual</i> and Introduction – Workers and Employers Covered by the <i>Act</i> (policy item #3.00), Coverage of Workers (policy item #5.00), Definitions of “Worker” and “Employer” (policy item #6.00), Nature of Employment Relationship (policy item #6.10), Federal Government Employees (policy item #8.10) and Actions by Employers (policy item #47.10) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces in part Policies No. 20:10:30, 20:30:20 and 20:30:30 of the <i>Assessment Policy Manual</i> and Decisions No. 32, 138, 183, 229, 255 and 335 of volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> . Consequential changes were subsequently made to the restatement of the <i>Act</i> in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Coverage under Act – Employers**ITEM: AP1-1-4**

BACKGROUND

1. Explanatory Notes

The POLICY in this Item sets out the guidelines for determining who is an employer in certain specific situations.

2. The Act

See Item AP1-1-1.

POLICY

(a) General

An employer is a person or entity employing workers. The employer may be a sole proprietor, a partnership, a corporation, or another type of legal entity. An employer may also be an independent contractor who employs workers or a labour contractor who employs workers and elects to be registered as an employer. An employer is an “independent firm” for purposes of Item AP1-1-3.

(b) Proprietors and partners

Proprietors and partners of an unincorporated business are employers if the business has workers and independent operators if the business does not have workers. They do not have personal compensation coverage unless they have Personal Optional Protection.

The children of a proprietor or partner who are paid by the proprietorship or partnership and have an employment relationship are considered to be workers, regardless of age. Spouses of single proprietors have been exempted from coverage, but the spouse of a partner who is working for the partnership and is paid for his or her services is a worker.

(c) Principals of corporations or similar entities

As the incorporated entity is considered the employer, a director, shareholder or other principal of the company who is active in the operation of the company is

generally considered to be a worker under the *Act*. A spouse, child or other family member of a principal or a shareholder for whom earnings are reported for income tax purposes is considered to be active in the business and a worker.

If a sole, active principal of a limited company is injured at a time when the company was not registered as an employer with the Board, the principal will not be considered a worker at that time and a claim by the principal or his or her dependents will be denied. For the same reason, a claim from one of several principals of a company that was unregistered at the time of the injury, or in the case of fatality, his or her dependents, will be denied unless the evidence indicates that the principal was not personally responsible for the failure to register.

In determining whether a principal was personally responsible for a failure to register, the factors considered include whether the principal was:

- a minority or majority shareholder;
- a director of the company;
- carrying out management functions or simply doing work that an employee would normally do; and
- responsible for doing other functions equivalent to those associated with the Board, such as dealing with income tax or employment insurance.

If an injured principal of a company is denied compensation benefits under this policy, that principal's earnings prior to the date of injury are not assessed. Claims from a responsible principal of a company that has registered but has defaulted in paying assessments, or his or her dependents, will be honoured but a deduction from the resulting benefits will be made to offset the debt.

Active officers of a society, cooperative, trade union or similar entity are considered workers in the same manner as principals of a limited company, including the circumstances as described above.

However, elected officials in provincial/municipal government, school or library boards, and similar agencies are not considered workers or employers and are therefore not covered under the *Act* in their capacity as elected officials. Personal Optional Protection is not available to these individuals.

(d) Limited partnerships

For assessment purposes, only the "general" partners of limited partnerships registered under the *Partnership Act* will be registered as the employer. The

general partners are responsible for the payment of assessments and to fulfill all other employer obligations under the *Act*.

Limited partners are neither considered workers nor employers as they do not participate in the business and are confined to providing investment. If they become active in the business they are regarded as general partners and would be subject to the provision of the *Act*.

(e) Out-of-province corporations

A firm which is not incorporated either in BC or federally in Canada, but claims to be incorporated in another jurisdiction will be treated the same as a firm legally incorporated in BC.

(f) Property managers

In all situations, a property management firm must register as an employer of its own direct workers. The main question that arises is whether it needs to register for the staff in the buildings that it manages.

Apartment management firms usually work on a “cost plus” basis. They pay the caretakers, managers, and other expenses for which they are reimbursed out of the owner’s rental income, and receive a fee from the owner. In these situations, the property management firm may choose to register as the employer.

If the property management company chooses to register for the buildings it administers, it is responsible for all the employer obligations under the *Act*. The building owner is not then required to register. The property management firm must pay assessments on the on-site building personnel, casual temporary workers engaged in the repair or maintenance of the building as well as its own office staff who do any work in the property management field. This applies to all buildings it manages. If the property management firm has another business activity, such as a real estate operation, the multiple classification rules apply.

If the property manager does not register for a building it manages, that building’s owner is regarded as the employer of any on-site personnel engaged in the operation of the building as well as any casual workers directed by the property management firm for the purpose of repair or maintenance of the building.

If a property management firm is paid a fixed fee by the owner or owners of a commercial or apartment building, out of which it hires such persons as janitors, caretakers, managers, and pays other expenses, and has the potential to incur a gain or loss, the firm is regarded as the employer. The property management firm will have to register and pay assessments on the earnings of all workers engaged in the operation of the building as well as its own office staff. If it

operates on a “fixed fee” basis for some buildings and acts as an agent on other buildings, the multiple classification rules will apply.

This policy does not apply to hotels, motels and similar properties.

(g) Small log suppliers

Sawmills may purchase logs from small log suppliers such as farmers clearing their own land or other individuals who hold timber cutting licenses. Regardless of whether the sawmill or the supplier selects and pays the contractors who cut down and move the logs, the party who makes the contractual agreement with the contractor will be considered the contractor’s employer. The employer will be directly responsible for assessments on non-registered contractors.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	January 1, 2008
AUTHORITY:	ss. 1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – Types of Relationships (AP1-1-2), Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Independent Operators (AP1-1-6), Coverage under <i>Act</i> – Labour Contractors (AP1-1-7), Exemptions from Coverage (AP1-2-1), Personal Optional Protection (AP1-2-3), Classification – Multiple (AP1-37-2), Payroll – Categories (AP1-38-2) with regard to principals of corporations and Payroll – Out-of-Province Employers (AP1-38-4) in the <i>Assessment Manual</i> .
HISTORY:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. Replaces in part Policies No. 20:10:30, 20:30:20, 20:30:30, 20:30:50, 20:40:50, 20:50:10, 40:10:30 and 40:20:60 of the <i>Assessment Policy Manual</i> and Decisions No. 138, 229, 255 and 335 of volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> .
APPLICATION:	This policy is effective January 1, 2008.

RE: Coverage under Act – Workers**ITEM: AP1-1-5**

BACKGROUND

1. Explanatory Notes

The POLICY in this Item sets out guidelines for determining who is a “worker” covered by Part 1 of the *Act* in certain specific situations.

2. The Act

See Item AP1-1-1.

POLICY

(a) General

Workers include individuals not employing other individuals and who fall into the following categories:

- individuals paid on an hourly, salaried or commission basis;
- individuals paid on commission or piecework where the work is performed in the employer’s shop, plant or premises;
- individuals paid commission, piecework or profit sharing where they are using equipment supplied by the employer;
- individuals operating under circumstances where the “lease” or “rental” of equipment or “purchase” of material from their employer is merely a device to arrive at a wage or commission amount; and
- labour contractors who elect not to be registered as independent operators.

A worker cannot be an “independent firm”.

(b) Volunteers

Volunteers or other persons not receiving payment for their services are generally not workers.

Union delegates attending conferences, seminars, conventions or similar events are considered workers of the union if they receive a recorded payment for attending such functions, whether it be in the form of a wage or a per diem allowance.

A social service agency may operate a sheltered workshop to provide mentally or physically handicapped individuals with training or life enrichment opportunities in a workshop environment. Coverage applies only to the paid workers of the organization and paid instructors in the workshop, and not to the participants in the program, whether or not they receive a living allowance, incentive allowance, or nominal payment from the Provincial Government.

Volunteer firefighters or ambulance drivers and attendants employed by a municipality or other form of local government are given coverage by the definition of “worker” in section 1. This includes an individual at the scene of a fire who is requested by the Fire Chief or authorized delegate to assist and whose name is recorded. Only those individuals under the direction and control of the Fire Chief or authorized delegate are covered.

(c) Inmates

A prison inmate is considered a worker if he or she is involved in a work-release program and is permitted to work outside of the institution for regular wages, whether or not he or she is required to return daily to the institution. Similarly, a prison inmate who is conscripted to fight forest fires is considered a worker.

(d) Order-in-Council appointments

Order-in-Council appointments are generally to positions which operate autonomously and without the standard employer/worker relationship such as judges and the members of the Board of Directors of the Board. These persons are not workers and Personal Optional Protection is not available.

Some Order-in-Council appointments are for positions where there is a strong element of direction and control such as a secretary to a Provincial Government Minister. In these situations, the individual is considered a worker.

(e) Forest firefighters

The Provincial Government has authority to conscript members of the public to fight forest fires. In the event of an injury, the conscripted member of the public is considered a worker of the Provincial Government under the “Fire Suppression Vote”.

When logging companies receive “cutting rights”, they are required to fight fires which occur on those properties. If a worker of the logging company sustains an

injury while fighting a fire prior to the Provincial Government assuming control of the fire, he or she will be considered a worker of the logging company. Once the Provincial Government assumes control of the fire, all individuals engaged in fighting the fire become the responsibility of the Provincial Government.

(f) Lent employees

In determining whether a worker of one employer has become the seconded or lent employee of another employer, the question to be decided in each case is whether there is an employment relationship between the employee and the other employer for the purposes of the *Act*. The normal tests for determining whether an employment relationship exists are applied with the necessary modifications.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – Types of Relationships (AP1-1-2), Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Independent Operators (AP1-1-6), Coverage under <i>Act</i> – Labour Contractors (AP1-1-7), Extending Application of the <i>Act</i> (AP1-3-1) and Coverage under Federal Statutes or Agreements Between the Provincial and Federal Governments (AP1-97-1) and, with regard to firefighters, Payroll – Principles for Determining (AP1-38-3) in the <i>Assessment Manual</i> and Coverage of Workers (policy item #5.00), Voluntary and Other Workers Who Receive No Pay (policy item #6.20), Specific Inclusions in Definition of Worker (policy item #7.00), Members of Fire Brigades (policy item #7.10), Volunteer Firefighters and Ambulance Drivers and Attendants (policy item #67.32) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces in part Policies No. 20:10:30, 20:30:20, 20:40:30 and 40:20:50 of the <i>Assessment Policy Manual</i> and Decisions No. 229 and 241 of volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> .
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary

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to reflect legislative and other changes since the policies and items referred to in the history were issued.

**RE: Coverage under Act –
Independent Operators**

ITEM: AP1-1-6

BACKGROUND

1. Explanatory Notes

The term “independent operator” is not defined in the *Act*. The criteria for determining whether a person is an independent operator are those used to determine whether a contract creates an employment relationship or a relationship between independent firms.

2. The Act

See Items AP1-1-1.

POLICY

The term “independent operator” is referred to in section 2(2) of the *Act* as being an individual “who is neither an employer nor a worker” and to whom the Board may direct that Part 1 applies as though the independent operator was a worker. An independent operator performs work under a contract, but has a business existence independent of the person or entity for whom that work is performed. An independent operator is an “independent firm” for purposes of Item AP1-1-2.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – Types of Relationships (AP1-1-2), Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Labour Contractors

HISTORY:
APPLICATION:

(AP1-1-7), Personal Optional Protection (AP1-2-3) in the *Assessment Manual*.

New policy.

This Item results from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*.

RE: Coverage under Act – Labour Contractors	ITEM: AP1-1-7
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BACKGROUND

1. Explanatory Notes

For persons who are not covered by the normal criteria for “independent firms” set out in the POLICY in Item AP1-1-3, the Board uses a category called “labour contractors” in determining whether a person is a worker or independent firm under the *Act*. This policy sets out the guidelines for determining who is a labour contractor and the significance of that determination.

2. The Act

See Item AP1-1-1.

POLICY

Labour contractors may voluntarily choose to register as an employer (proprietorship or partnership) if they have workers or obtain Personal Optional Protection as an independent operator if they do not have workers. A labour contractor who takes one of these actions is an “independent firm” for purposes of Item AP1-1-3.

Labour contractors who choose not to register as an employer (if they have workers) or obtain Personal Optional Protection as an independent operator (if they do not have workers) are considered workers of the firm for whom they are contracting, and that firm is responsible for assessments. Any persons employed by the labour contractor to assist them are also considered workers of the firm with whom the labour contractor is contracting. A worker cannot be an “independent firm”.

If the labour contractor is registered, the proprietor or partner is not covered unless Personal Optional Protection is in effect.

Labour contractors include proprietors or partners who:

- have workers and supply labour only to one firm at a time;

- are not defined as workers, do not have workers, or do not supply major materials or major revenue-producing equipment but who contract a service to two or more firms on an ongoing simultaneous basis; or
- may or may not have workers but contract a service including one piece of major revenue-producing equipment to a firm or individual.

Persons who are normally labour contractors and who employ a worker are considered independent firms for any period of time that they are not contracting with another person or entity.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – General Principles (AP1-1-2), Coverage under <i>Act</i> – Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Independent Operators (AP1-1-6), and Personal Optional Protection (AP1-2-3) in the <i>Assessment Manual</i> .
HISTORY:	Replaces Policies No. 20:10:30 and 20:30:20 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued

RE: Exemptions from Coverage**ITEM: AP1-2-1**

BACKGROUND

1. Explanatory Notes

The Board has authority to exempt employers and workers from Part 1 of the *Act*.

2. The Act

Section 2(1):

This Part applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the Board.

POLICY

(a) What principles are followed?

- (1) The Board will, as a matter of policy, decide whether general exemption orders will be made under section 2(1) of the *Act*. In making these decisions, the principles considered include:
 - (i) Section 2(1) creates a scheme of universal coverage, with exemptions being granted for exceptional industries or occupations whose circumstances do not fit the purpose and intent of the *Act*.
 - (ii) For this purpose, the following principles are considered to underlie the purpose and intent of the *Act*, but an industry or occupation will not be automatically exempted because one or more of these principles do not apply:
 - prevention of injuries and occupational diseases;
 - compensation is paid for earnings losses resulting from injuries and diseases up to a maximum wage rate, medical expenses are reimbursed and rehabilitation provided;
 - coverage is limited to employment relationships and activities;
 - compensation is no fault and in lieu of the right to sue;

- compensation is a cost of production for the products and services marketed by the employer, not a charge on the taxpayer; and
 - collective liability of classes of employers for compensation and other costs of the system.
- (iii) The following circumstances will not by themselves be sufficient to result in a general exemption order being made:
- wishes of employers and workers;
 - size of the employer's operations;
 - coverage through private disability plans; or
 - degree of risk of injury.
- (iv) Exemption orders will only be made in respect of industrial or occupational groups. An exemption order will not be granted to an individual or to a business unless the individual or business constitutes the entire industrial or occupational group.
- (v) Since the WCB is a tribunal charged with administering a statute, principles of good public administration should be applied.
- (2) The Board may, on request, grant or terminate voluntary coverage for an individual person or business by varying the general exemption order. This will, however, be limited to situations where making the variance would be consistent with the reasons for which the exemption order has been made.

(b) What exemptions have been granted?

The Board has made the following general exemptions from coverage:

- (1) An individual employed by the owner or occupier in or around a private residence, other than for the purpose of the owner's or occupier's trade or business, or employed in serving the personal needs of the owner or occupier or the owner's or occupier's family is exempt where:
- (i) the individual is regularly employed for a definite or indefinite period on a weekly, monthly or similar basis for an average of less than
- 8 working hours per week; or

- 15 working hours per week, and the individual is employed caring for children in the period immediately preceding and following school; or
 - (ii) the individual is employed to do a specific job or jobs involving a temporary period of less than 24 working hours.
- (2) Both spouses involved in an unincorporated business are exempt where one or both own the business.

“Spouse” means a person who:

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship for a period of at least
 - (i) 2 years, or
 - (ii) if the person has had a child with the other person, 1 year.

The phrase “marriage-like relationship” is interpreted to mean a common law relationship, and describes situations in which two people are living together in a regular and established way, sharing conjugal relations and a common household.

Children are not exempted.

- (3) Certain employers with no place of business in the province who temporarily carry on business in BC, but do not employ a BC resident, are exempt from Part 1 of the *Act* provided they are covered in another jurisdiction that provides compensation for occupational injuries and diseases and meet additional criteria set out below. However, unless required as a matter of constitutional law, the exemption described in this section does not apply to the occupational health and safety provisions in Part 3 of the *Act*.
- (i) If an employer is in the trucking industry in BC, the additional criteria are that it:
 - is not incorporated in BC;
 - is not hauling goods between BC points; and
 - hauls goods out of BC six or fewer times per calendar year.

If an employer meets all these criteria, it is exempt regardless of the number of trips it may make hauling goods into the province, dropping them off and dead heading out.

- (ii) If an employer is not in the trucking industry in BC, the additional criteria are set out in the following table:

Number of actual or proposed working days in BC in a year	Number of actual or proposed visits to BC, in a year	Status if meets basic criteria and columns 1 and 2 apply
15 or more	Any number	Not exempt
10 to 14	3 or more	Not exempt
10 to 14	1 to 2	Exempt
9 or less	Any number	Exempt

An employer who qualifies as an “independent firm” and who does not meet all the above criteria for exemption must register with the Board and begin paying assessments when it first comes into BC.

Where an employer in BC hires a labour contractor (determined by the labour contractor’s activities in BC) from out-of-province to work in BC, the employer is responsible for the labour contractor’s coverage unless the labour contractor is registered with the BC Board. This policy applies regardless of the amount of time the labour contractor spends in BC, or the number of trips the labour contractor makes into BC.

- (4) Professional sports competitors or athletes are exempt. This exemption does not apply to non-competing workers of a sports team such as coaches, management, trainers or other support staff.
- (5) A personal financial holding company that complies with all of the following is exempt:
- (i) it is incorporated;
 - (ii) the only workers are the shareholders of the company;
 - (iii) no activities are carried out by the company except the management of the shareholders’ own personal financial investments; which consist solely of:

- investments in publicly traded stocks and bonds, mutual funds, or limited partnerships where the company has no say in day-to-day management of the partnership;
 - interest bearing financial instruments such as GICs, savings bonds, treasury bills or certificates for deposit; or
 - non-revenue producing land, buildings, or equipment where there is no development, construction, or direct rental activity; and
- (iv) the company invests only its own assets and the assets of its shareholders.

If a limited company that is granted an exemption under this policy changes its activities, the principals of the company must immediately notify the Board for a reconsideration of its exempted status.

(c) Exclusions from coverage under constitutional law

Some workers and employers are excluded from coverage under Part 1 and Part 3 of the *Act* as a matter of constitutional law as they have no attachment to BC industry. This includes:

- (1) Consulates and trade delegations from foreign countries.
- (2) With respect to air transportation firms from outside of BC conducting business in BC, flight crews (cockpit crew and cabin crew) who are on turn-around in BC for a short period of time if:
 - (i) they are not BC residents;
 - (ii) the firm does not supply service between BC points; and
 - (iii) they are employed exclusively as members of the flight crew.

PRACTICE

Where an association, union or other group which represents an entire industry or group of workers, wishes to apply for exemption from coverage, it must write to the Policy and Research Division requesting an exemption and providing reasons. The Policy and Research Division will research the request and present the request along with their findings to the Board of Directors for consideration.

For any other relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	s. 2(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> (AP1-1-1), Coverage under <i>Act</i> – Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Labour Contractors (AP1-1-4), Requesting a Variance from General Exemption Order (AP1-2-2) and Payroll – Out-of-Province Employers and Operations (AP1-38-4) in the <i>Assessment Manual</i> and Exemptions and Exclusions from Coverage (policy item #4.00) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Housekeeping Change made effective March 1, 2012, in accordance with amendments to the <i>Act</i> . Housekeeping change made effective January 1, 2005, to reflect jurisdictional differences between Part 1 and Part 3 of the <i>Act</i> . Replaces Policies No. 20:10:10, 20:10:20, 20:10:31, 20:30:40 and 20:40:30 of the <i>Assessment Policy Manual</i> and Decision No. 229 of volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> .
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

**RE: Requesting a Variance from a
General Exemption**

ITEM: AP1-2-2

BACKGROUND

1. Explanatory Notes

The Board may grant optional coverage to individuals who would otherwise be exempt.

2. The Act

See AP1-2-1.

POLICY

(a) Who can apply?

The following exempt individuals may request voluntary coverage:

- owners or occupiers of a private residence;
- the employed spouse of a proprietor (If accepted, the proprietor will be assessed for the spouse on the actual earnings of the spouse, and coverage will remain in effect until cancelled by either the Board or the spouse. Where the spouses are partners in an unincorporated business and wish to have coverage for themselves, they may apply for Personal Optional Protection.); and
- an exempt non-resident employer.

(b) Employer has both compulsorily covered and exempt operations

Before a request to cover the exempt operation can be accepted, the existing account or a previously cancelled account must be in good standing. This means that the current remittances have been paid and the outstanding balance is less than a minimum determined by the Board. The employer may re-apply when the account is brought up to date.

Where the employer has more than one exempt operation, each such operation meeting the requirements for separate classifications under the multiple classification policy requires a separate application for coverage. If the employer is registered for all

operations, administration personnel will be prorated. If the employer is not registered for its voluntary operations, the total administration payroll will be included with the compulsory undertaking.

(c) Scope of coverage

Once approved, coverage becomes effective from the date the Board receives the required application forms or a subsequent requested date accepted by the Board.

Voluntary coverage is in effect for all paid workers employed in the undertaking granted coverage. A firm may not apply for coverage for one group of workers and exclude another group unless the firm is involved in more than one exempted undertaking.

An employer who has been granted voluntary coverage has the same benefits and obligations as another employer covered under the *Act*.

(d) Cancellation of coverage

The employer may cancel voluntary coverage by telephone or written notice. The effective date is when the telephone instructions or notice are received by the Board.

Voluntary coverage may be cancelled by the Board when:

- an employer fails to pay the assessment, and the payment is in excess of two months overdue;
- an employer fails to provide the required payroll information on which an assessment is calculated, necessitating an estimate of payroll under section 38 of the *Act*, or
- mail addressed to an employer is returned and an alternate address is not available.

If a firm with voluntary coverage ceases all operations on a date prior to the date the notification is received, the account will be cancelled effective the date operations ceased.

PRACTICE

The minimum outstanding balance for the purpose of part (b) of the policy is set out in Appendix "A" to this *Manual*.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	s. 2(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Personal Optional Protection (AP1-2-3), Classification – Multiple (AP1-37-2), Decision of the former Governors No. 60 in Volume 10, Number 2 of the <i>Workers' Compensation Reporter</i> (April 1994) with regard to the exemption of coverage for spouses, http://www.worksafebc.com/publications/newsletters/wc_reporter/volume_10/assets/pdf/10_2.pdf#page=27 , Payroll – Principles for Determining (AP1-38-3) with regard to administration/management payroll and Payroll Estimates (AP1-38-5) in the <i>Assessment Manual</i> .
HISTORY:	Replaces in part Policies No. 20:10:20, 20:40:10 and 20:40:20 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Personal Optional Protection**ITEM: AP1-2-3**

BACKGROUND

1. Explanatory Notes

Employers and unincorporated independent operators without workers are not automatically covered for compensation purposes. They may purchase optional coverage called Personal Optional Protection.

2. The Act

Section 2(2):

The Board may direct that this Part 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; or
- (b) to an employer as though the employer was a worker.

Section 1:

“member of family” means

- (a) a spouse, parent, grandparent, stepparent, child, grandchild, stepchild, sibling or half sibling, and
- (b) a person who stood in the place of a parent to the worker or to whom the worker stood in place of a parent, whether related to the worker by blood or not.

POLICY

(a) Who can apply?

A proprietor or partners of a business that is not a limited company may apply for Personal Optional Protection.

Where a proprietor or partners who have Personal Optional Protection incorporate their business and are paid by the company, they become workers and Personal Optional Protection is no longer allowed.

Non-BC residents conducting business activities in British Columbia may apply for Personal Optional Protection subject to the same terms and conditions as a BC resident. Section 8 of the *Act* governs their coverage outside BC.

(b) Application for coverage

Only the individual seeking coverage, a member of the individual's immediate family, the individual's accountant or lawyer, or in the case of a partnership, a partner may make the application.

An applicant must complete and submit an application for optional coverage on the form provided by the Board. An incomplete or illegible application will not be accepted.

As a condition of coverage, and as a condition of maintaining or increasing coverage, an applicant is required to:

- comply with the terms and conditions of coverage established by the Board and provided with the application for coverage;
- provide all the required information and promptly advise the Board of any change that may affect coverage;
- comply with the obligations of a worker applying for and receiving benefits under Part 1 of the *Act*; and
- ensure that an existing or previous account in good standing. An account is not in good standing if:
 - the account has a balance that has been outstanding over 30 days and is equal to or over the minimum determined by the Board;
 - a required remittance has not been received and the firm has been penalized, regardless of whether or not payment of the penalty has been received;
 - an amount is outstanding under a legal action; or
 - the account is being revived and a previous balance was written off.

Applications for Personal Optional Protection for individuals who have previously had an outstanding balance written off through a discharged bankruptcy, will be subject to terms and conditions imposed by the Board, including the prepayment of assessments.

If an application for Personal Optional Protection is not accepted, the applicant is advised that coverage cannot be extended until the account is in good standing or until a correctly complete and legible application has been received.

If an application for Personal Optional Protection is accepted, the applicant is notified and advised of the terms of coverage. The acceptance date is either the date the complete and legible application is received by the Board or the date indicated as the commencement date on the application for coverage if that date is later than the date the complete and legible application is received.

(c) Earnings covered

Coverage for a proprietor or partner should not be more than the individual's actual earnings.

The amount of monthly coverage may not be less than the minimum designated by the Board. If no specific amount is requested, coverage may be set at the minimum.

An individual may apply for coverage between the minimum and the average established by the Board without providing verification of earnings to the Board. The average roughly corresponds to the average wages and salaries of all workers in all industries in BC.

An individual may apply for coverage over the average and up to the maximum but proof of earnings will be required before the application is accepted. The maximum corresponds to the annually adjusted maximum wage rate for compensation purposes. If proof of earnings is not submitted or is not acceptable, the coverage will be reduced to the average and the individual advised accordingly.

If the applicant is receiving a monthly WCB award, the maximum amount of Personal Optional Protection that he or she can apply for is a monthly amount that, when added to the amount of the monthly award, equals the current maximum level of benefits payable under the *Act*.

(d) Payment of initial assessment premium

Effective January 1, 2004, all new registrants who request Personal Optional Protection coverage, all cancelled coverage holders who reapply to renew coverage, and all existing coverage holders whose accounts are not in good standing, are required to submit the assessment payment within 20 days of the acceptance date of coverage.

Where the initial assessment payment for coverage is not received within 20 days of the acceptance date, coverage is automatically cancelled.

Subsequent assessment payment periods are determined based on the annual assessment amount.

(e) Applicant conducts more than one type of activity

If an independent operator who does not have Personal Optional Protection is hired by an employer, there is no coverage for injuries occurring at work even if the injury occurs when the independent operator is doing something outside his or her normal range of duties at the employer's request.

If an individual is a proprietor of a firm and also an active principal of an incorporated company, that individual has compulsory coverage for activities in the business of the incorporated company, but must obtain Personal Optional Protection to obtain coverage for activities in the business of the proprietorship.

Coverage will be provided based on the primary activity in the business for which optional coverage is being purchased. If an individual's operations fall under more than one classification, the Board will make a determination regarding the primary classification.

(f) Cancellation of coverage

Unless Personal Optional Protection has been applied for and accepted for a specific period of time, it remains continuously in effect until a request for cancellation is received from the individual covered and receipt is acknowledged by the Board, or cancellation is made by the Board. Only the individual covered, a member of the individual's immediate family, the individual's accountant or lawyer, or in the case of a partnership, a partner is authorized to cancel the coverage.

Cancellation is subject to a one-month minimum charge per application. Where the minimum charge is necessary, the cancellation date is one calendar month after the date coverage took effect.

Personal Optional Protection may be cancelled by the Board without notice to the applicant when the individual receiving coverage fails to:

- pay the assessment and the payment is in excess of 10 days overdue;
- permit Board officers to inspect a work site or premises or records;
- comply with an order or direction issued by the Board under the *Act*; or,
- provide the required payroll information on which an assessment is calculated, necessitating a payroll estimate under section 38 of the *Act*.

Personal Optional Protection will also be cancelled by the Board when:

- (a) the applicant's status for which coverage was requested changes and therefore, the individual is no longer eligible for coverage; or
- (b) mail addressed to the employer or person with Personal Optional Protection is returned and an alternative address cannot be obtained.

When Personal Optional Protection is cancelled by the Board, the individual concerned is notified in writing if practicable. "If practicable" means that the Board will take reasonable steps to locate the individual in order to communicate the impending cancellation to him or her.

The effective date of cancellation is generally when the telephone or written request for cancellation is received in a Board office. A cancellation date will not generally be backdated. Backdating may be allowed if there is reason to believe that the Board was no longer liable for work-related injuries because the individual covered had become physically incapacitated, the assets used to carry on the business were no longer available or for certain legal reasons. Some circumstances under which backdating may be allowed are:

- *Death* – Cancellation is automatically backdated to the date of death.
- *Work Caused Injury* – Cancellation may be backdated to the date business ceased, not necessarily the date of injury.
- *Sickness or Non-Work Caused Injury* – Cancellation may be backdated to the date the business ceased operating as a result of the sickness or injury, if it was a serious physical or mental disorder lasting 30 days or longer, and the owner supplies a doctor's confirmation of the sickness or injury in writing.
- *Jail, Institutionalization, Deportation, Military Service* – Cancellation may be backdated to the date of occurrence.
- *Sale of Business* – Cancellation may be backdated to the date of the bill of sale.
- *Sale of Equipment* – Cancellation may be backdated to the date the business ceased operating or the date the equipment is sold, whichever is later.
- *Change of Legal Status from Proprietorship, Partnership or Independent Operator to Incorporated Company* – Cancellation will be backdated to the date the firm began operating as an incorporated company.
- *Business Interruption Due to Fire, Flood or Other Disaster* – Cancellation may be backdated to the date the business ceased operating.

- *Seizure of Assets* – Cancellation may be backdated to the date the business ceased operating or the date the equipment was seized, whichever is later.
- *Bankruptcy* – Cancellation may be backdated to the date the firm was placed in bankruptcy.
- *Ceasing of Operations* – Where the request for cancellation is received on or before January 31st and the firm states that their operations ceased in the previous year, cancellation may be made effective December 31st of the previous year.

Requests for backdating must be made in writing. A written decision will be provided to the applicant.

PRACTICE

The minimum outstanding balance for the purpose of part (b) of the policy and the minimum amount for which Personal Optional Protection may be obtained under part (c) of the policy are set out in Appendix “A” to this *Manual*.

For more information on applying for Personal Optional Protection, including the application form, or any other relevant PRACTICE information, readers should consult the WorkSafeBC website at

http://www.worksafebc.com/insurance/registering_for_coverage/personal_optional_protection/default.asp

EFFECTIVE DATE:	January 1, 2004
AUTHORITY:	s. 2(2), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Requesting a Variance to a General Exemption (AP1-2-2), Extending Application of the <i>Act</i> (1-3-1), Classification – Multiple Industrial Activities (AP1-37-2), Payroll – Principles for Determining (AP1-38-3) with respect to management/administration payroll and Payroll Estimates (AP1-38-5) in the <i>Assessment Manual</i> and Admission of Workers, Employers, and Independent Operators (policy item #8.00), Vacations (policy item #21.20), Acts for Personal Benefit of Principals of Business (policy item #21.40), Amount of Payment (policy item #35.20), Commencement of Permanent Total Disability Payments (policy item #37.10), Overpayments/Money Owed to the Board (policy item #48.40), Unpaid Assessments (policy item #48.48), Worker with Two Jobs (policy item #65.02), Personal Optional Protection (policy item #67.20), Volunteer Firefighter and Ambulance Drivers and Attendants (policy item #67.32), Payments to Substitutes (policy item #68.70), Deduction of Permanent Disability Periodic Payments from Wage Loss (policy item #69.10), Form Fees (policy item #78.33), Application for Compensation (policy item #93.20), Adjudication Without an Application (policy item #93.23), Penalties for Failure to Report (policy item #94.15), Notification of Decisions (policy item #99.20), Notification of Right of Appeal (policy item #99.21), Meaning of “Worker” and “Employer” Under Section 10

HISTORY:

(policy item #111.30) of the *Rehabilitation Services & Claims Manual*, Volume II.

Housekeeping change made effective March 1, 2012, in accordance with amendments to the *Act*.

This Item resulted from an editorial consolidation of the former *Assessment Policy Manual*, which was effective on January 1, 2003.

The Policy in this Item continued the substantive requirements that existed before the consolidation, with any wording changes necessary to reflect legislative and other changes that had occurred. Policies No. 20:50:10 to 20:50:60 of the *Assessment Manual* and Decision No. 116 of volume 2 of the *Workers' Compensation Reporter* were replaced, in part, by this Item.

APPLICATION:

The changes to paragraphs (b) and (d) of the policy section of this item apply to all new Personal Optional Protection coverage registrants, all registrants who reapply for coverage, and all existing accounts that are not in good standing, on or after January 1, 2004. The changes to paragraphs (e) and (f) of the policy section of this item apply to all existing Personal Optional Protection accounts, all new Personal Optional Protection coverage registrants, and all registrants who reapply for coverage, on or after January 1, 2004.

RE: Extending Application of the Act**ITEM: AP1-3-1**

BACKGROUND

1. Explanatory Notes

Sections 3(4) to 3(7) of the *Act* give the Board authority to extend voluntary coverage to persons other than employers and independent operators.

2. The Act

Section 3:

- (4) Admissions under this section may be made at the time, in the manner, subject to the terms and conditions and for the period the Board considers adequate and proper.
- (5) Where a person or group of persons carries on an undertaking that the Board thinks is in the public interest, the Board may, on the terms and conditions it directs,
 - (a) deem the person or group of persons, whether or not any of them receive payment for their services, to be workers for the purposes of this *Act*;
 - (b) on approval of the Lieutenant Governor in Council, deem the person or group of persons to be workers of the Crown in right of the Province; and
 - (c) where a person who is deemed to be a worker is not regularly employed, and having regard to all the circumstances, including his or her income, fix his or her average earnings at not less than \$25 per week or more than the maximum wage rate provided under section 33. [Note – This amount is changed periodically by regulation.]
- (6) Where the Minister of Education, Skills and Training and the Minister of Labour approve a vocational or training program, and a school or other location as a place of that vocational or training program, the Board may, at the request of either minister, deem any person or class of persons enrolled in the program to be workers of the Crown in right of the Province and compensation under this *Act* is then payable out of the accident fund

for injuries arising out of and in the course of training for those workers, but where the injury results in a period of temporary disability with no loss of earnings,

- (a) a health care benefit only is payable except as provided in paragraph (b); and
 - (b) where training allowances paid by Canada or the Province are suspended, the Board may, for the period it considers advisable, pay compensation in the amount of the training allowance.
- (7) Where a person or group of persons is engaged in a work study program or other program of self improvement involving work, whether or not the person or group receives payment for the work, the Board may
- (a) on the application of an employer or a program organizer, and on the terms and conditions the Board directs, by order, admit the person or group as being within the scope of this Part, and, on admission, the person or group is deemed to be a worker or workers to whom this Part applies, and the Board may levy assessments on the employer or program organizer by the formula the Board determines; or
 - (b) with the approval of the Lieutenant Governor in Council, deem a person or group engaged in the program to be workers of the Crown in right of the Province, on the terms and conditions the Board determines.

POLICY

The general principles governing requests for a variance to a general exemption order also apply to requests under sections 3(5) to 3(7).

(a) An undertaking in the public interest (section 3(5))

In defining “public interest” for the purpose of section 3(5), the Board considers undertakings that affect a broad segment of the public rather than those whose activities centre around specific interest groups.

The persons involved in the project or program must apply in writing to the Board for coverage. If the Board feels that the undertaking is in the public interest, the matter may be referred to the Lieutenant Governor in Council to consider whether the

individuals involved should be accepted as workers of the Crown in Right of the Province. If the Lieutenant Governor in Council agrees, the Board will fix the average earnings of those individuals. Alternatively, such individuals may be admitted as workers of a municipality or other organization where appropriate.

If a volunteer fire or ambulance brigade is operated by a society (including Indian Bands), coverage is not compulsory, but may be extended to the society on a voluntary basis.

(b) Vocational or training programs (section 3(6))

No policy.

(c) Work study programs (section 3(7)(a) and (b))

Applications for coverage under section 3(7) will only be considered if:

- there is a period of training in a standard work place environment in the community as opposed to a workplace established specifically for the purpose of the group;
- the coverage is limited to injuries or diseases arising out of and in the course of the employment in that standard workplace; and
- the applicant accepts the Board's terms and conditions.

The employer or program organizer must make a written request for coverage to the Board. If the Board agrees, the employer or program organizer will be offered coverage under certain terms and conditions including an assessment formula.

PRACTICE

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 3(4) to 3(7), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Workers (AP1-1-2(a)) and Requesting a Variance from a General Exemption (AP1-2-2) in the <i>Assessment Manual</i> and Admission of Workers, Employers, and Independent Operators (policy item #8.00), Volunteer Workers Admitted by the Board Under Section 3(5) (policy item #67.31), Sisters in Catholic Institutions (policy item #67.33), Emergency Service Workers (policy item #67.34) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.

HISTORY: Replaces in part Policies No. 20:10:40 and 40:20:50 of the *Assessment Policy Manual* and Decisions No. 161 and 165 of volumes 1 - 6 of the *Workers' Compensation Reporter*.

APPLICATION: This Item results from the 2002 "editorial" consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Fishing**ITEM: AP1-4-1**

BACKGROUND

1. Explanatory Notes

Coverage for commercial fishers is provided for by section 4 of the *Act* and the *Fishing Industry Regulations* (“*Regulations*”) made under it. The matters covered by the *Regulations* include the right of fishers to claim compensation for injury or disease, the transportation of injured fishers, claims procedures and appeals, the situation where the injury is caused by a third party, and the payment of assessments on the proceeds of fish sales. Except for persons who transmit payments to commercial fishers in respect of fish sold out-of-province or directly to the public, assessments are normally paid by commercial fish buyers.

2. The Regulations

Section 1

In these regulations,

“commercial fisher” means

- (a) a master or member of a crew of a licensed commercial fishing vessel who is a possessor or required to be a possessor of a current personal commercial fishing license,
- (b) a master or member of a crew of a fish packing, fish collecting or other vessel which is licensed or required to be licensed under the *Fisheries Act* of the Province to engage in buying or collecting fish for commercial sale or use, or
- (c) any other person who, in the opinion of the Board, contributes to the catching or landing of fish for commercial sale or use,

and who

- (d) in the course of that person’s occupation as a fisher, contributes to the catching or landing of fish for arrival in British Columbia ports for sale to or use by a commercial buyer or other commercial recipient of fish,

- (e) has made arrangements with the Board for the payment of assessments, or
- (f) is a person who, apart from these regulations, would be a “worker” under Part 1 and a fisher

but, subject to paragraph (e) of this section, does not include

- (g) a fisher who rarely contributes to the catching or landing of fish for arrival in British Columbia ports for sale to or use by a commercial buyer or other commercial recipient of fish;

“commercial buyer” or “commercial recipient” means a person who is buying or receiving fish for resale or commercial use, but excludes a person who is buying for personal or family consumption;

Section 5

- (1) Unless the Board determines otherwise,
 - (a) a commercial buyer or other commercial recipient of fish who directly or indirectly acquires fish from a commercial fisher must pay assessments on the fish bought, obtained or paid for by or through the commercial buyer or other commercial recipient of fish, except if the fish are acquired from another commercial buyer or other commercial recipient,
 - (b) a person who engages the services of a master or crew of or for a fishing vessel must pay assessments on any fish in respect of which assessments are not payable under paragraph (a),
 - (c) the provisions of Part 1 relating to employers apply to a person engaged in transmitting payments to commercial fishers as if the person is engaged in the fishing industry, and that person is deemed to be the employer of any persons or organizations other than commercial buyers or commercial recipients who contributed in any manner to the catching or landing of the fish bought, obtained or paid for through or by that person and in respect of which assessments are not otherwise paid, and
 - (d) for assessment purposes, a commercial recipient does not include a person who receives fish only for transport to a commercial buyer or commercial recipient in the province. ...

- (3) Assessments shall be paid on the total wages, prices or other payments made or payable to or on behalf of commercial fishers and shall be calculated, determined and notified to the Board in such manner as the Board may prescribe. Where the total wages, price or other payments made or payable to or on behalf of commercial fishers exceed the maximum wage rate for one year as fixed for the time being under section 33 of part 1, a deduction may be made where practical in respect of the excess; and where the total wages, price or other payments made or payable to or on behalf of commercial fishers are shown to exceed the above maximum wage rate, the Board may make a deduction where practical in respect of the portion in excess of that rate.

Section 7:

All commercial buyers and other commercial recipients of fish and all other persons required to pay assessments under section 5 must register with the Board and provide such information as the Board may require.

POLICY

(a) Definition of “commercial fisher”

Clause (g) of the definition of “commercial fisher” in section 1 of the *Regulations* excludes persons who “rarely contribute to the catching or landing of fish...” but allows them to purchase Personal Optional Protection. This applies to fishers who sell less than 10% of the total value of their catch in BC to commercial buyers. Coverage is not available to fishers who have totally removed themselves from the BC fishing industry such as a fisher who catches and lands in another country. No coverage is available under the regulations for sports fishing activity, even though the fisher may have a commercial fishing license.

(b) Determining employers that must pay assessments

Section 5(1) of the *Regulations* provides the criteria to be considered in determining those persons in the fishing industry who must pay assessment premiums.

Pursuant to section 5(1) of the *Regulations*, the first commercial buyer or commercial recipient who enters into a commercial transaction in or from which the market value of the fish can be ascertained, and consequently the assessment premiums calculated, must pay assessment premiums in respect of the fish.

A commercial buyer or commercial recipient does not include a person who only receives fish for transport to a commercial buyer or commercial recipient in the province.

Where there is no commercial buyer or commercial recipient, the assessment premiums must be paid by the person who hired the master or crew of a fishing vessel.

The following factors may assist in applying these guidelines:

1. whether collecting assessments from the person is within the authority of the *Act*;
2. whether the person makes the economic decision to sell fish to persons or organizations other than BC commercial buyers or commercial recipients;
3. whether the person has control to act upon the economic decision on where to sell the fish;
4. whether it is practical or operationally feasible for the Board to collect the assessments; and
5. any other factor that is consistent with the *Act*, *Regulations* and Board policy.

(c) Calculation of assessable amount

There are three formulas for calculating the assessable amount under section 5(3) of the *Regulations*:

- Where the commercial fisher is paid a salary, the assessable amount may be based on the salary.
- Where the commercial fisher is paid by established settlement and a labour component is clearly identified, the assessable amount may be based on the gross labour component. That component includes bonuses and any other payment which, according to the practice of the industry, is part of the fisher's share.
- Where the commercial fishers' salary or the labour component of a settlement is not clearly identified by the assessed employer, the assessable amount is based on 60% of the gross purchase price of the fish.

Where it is the practice of the industry to deduct costs incurred to earn fishing income from the gross purchase price of the fish, or share those costs between the boat and the

crew, not more than 40% of the cost of a fishing license, permit or quota, if leased, may be deducted or shared.

Under section 5(3) of the *Regulations*, assessments are limited to the maximum wage rate for each fisher. Therefore, if records are retained by the assessment payer to identify payments to individuals, deduction of excess earnings will be considered, regardless of whether the commercial fishing firm is incorporated. Excess earnings are only deducted where the earnings paid by one source exceed the maximum. Payments from two sources to the same person are not added for this purpose.

(d) Registration of vessel owners

As assessments are generally paid by “commercial buyers” or “commercial recipients” under section 5(1) of the *Regulations*, vessel owners do not normally have to register. Some exceptional situations are discussed below.

A commercial fisher who is engaged in the maintenance or minor repair of his or her own fishing vessel or equipment during the fishing season or on the off-season is covered under the *Regulations*, as these activities are considered incidental to the fishing operations. Similarly, any commercial fisher who is doing maintenance or minor repairs on a fishing vessel owned by another person is also covered under these regulations. However, if a commercial fisher or vessel owner hires a person who is not a commercial fisher to perform maintenance or minor repairs, the *Regulations* do not apply and the fisher or owner must register with the Board as the employer of the non-fisher.

If a commercial fisher is involved in the construction of that fisher’s own fishing vessel or is doing major repairs on the vessel (greater than 25% of replacement value), that fisher would not be covered unless Personal Optional Protection was obtained. However, if that fisher hires help to assist in the construction or major repair of the vessel, the fisher would be required to register as an employer.

Subject to Part (b) of this policy, a person engaged in transmitting payments to commercial fishers must also register with the Board and pay assessments on the payments transmitted. For the purposes of this policy, transmitting includes the activity of sending, transferring, forwarding, conveying or distributing funds to commercial fishers.

(e) Payroll where there are multiple classifications

Persons paying assessments may have more than one classification in the fishing industry: relating to fish processing or other operations on the one hand and fishing or fish buying on the other hand. Payroll must be allocated to the applicable classification. Payroll allocated to fish processing includes plant crews, truck drivers, warehouse

workers and office staff. Payroll allocated to fishing or fish buying includes tendermen, campmen, net workers and any other acquiring personnel.

If a firm has assessable payroll in more than one classification in the fishing industry, then the administrative payroll (including active principals) that is common to the classifications must be pro-rated.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	April 1, 2006
AUTHORITY:	s.4, <i>Workers Compensation Act</i> ; and the <i>Fishing Industry Regulations</i> .
CROSS REFERENCES:	See also Personal Optional Protection (AP1-2-3), Classification – Multiple (AP1-37-2) and Maximum Wage (AP1-38-6) in the <i>Assessment Manual</i> and Fishers (policy item #65.03) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Amended in 2005 to clarify assessed employers in the fishing industry and the manner in which assessment premiums may be calculated. Amendments made in 2003 result from the amendment to the <i>Fishing Industry Regulations</i> gazetted as B.C. Reg. 364/2000. Amends parts of Item AP1-4-1 in the <i>Assessment Manual</i> approved on November 16, 2002. Specifically, inserts a new Part (b) to add factors for determining persons who should pay assessments on out-of-province and direct fish sales. Also amends Part (d) to require persons engaged in transmitting payments to commercial fishers to register with the Board to pay assessments.
APPLICATION:	This policy applies to all decisions made on or after April 1, 2006.

RE: No Contribution from Workers

ITEM: AP1-14-1

BACKGROUND

1. Explanatory Notes

The *Act* makes it an offence for employers to charge their workers with the cost of compensation coverage.

2. The Act

Section 14:

- (1) It is not lawful for an employer, either directly or indirectly, to deduct from the wages of the employer's worker any part of a sum which the employer is or may become liable to pay into the accident fund or otherwise under this Part, or to require or to permit the worker to contribute in any manner toward indemnifying the employer against a liability which the employer has incurred or may incur under this Part.
- (2) Every person who contravenes subsection (1) commits an offense against this Part and is liable to repay to the worker any sum which has been so deducted from his or her wages or which he or she has been required or permitted to pay in contravention of subsection (1).

POLICY

None.

PRACTICE

When the Board makes a decision concerning the status of a worker for the purpose of section 14, the decision is in writing and outlines the facts on which it is based. Copies are provided to both the worker and the employer. The decision also outlines rights of appeal.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	s. 14, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Assessment Appeal Procedure (AP6-96-1) in the <i>Assessment Manual</i> and Contributions from Workers to Employer (policy item #47.20) (and Appendix 6 - Maximum Fines for Committing Offences under the Act) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces in part Policy No. 20:10:30 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Attachment of Compensation

ITEM: AP1-15-1

BACKGROUND

1. Explanatory Notes

Section 15 of the *Act* gives the Board the authority to attach compensation payments for any amount owed to the Board by the recipient.

2. The Act

Section 15:

A sum payable as compensation or by way of commutation of a periodic payment in respect of it is not capable of being assigned, charged or attached, nor must it pass by operation of law except to a personal representative, and a claim must not be set off against it, except for money advanced by way of financial or other social welfare assistance owing to the Province or to a municipality, or for money owing to the accident fund.

POLICY

If a proprietor or partner with Personal Optional Protection has sustained an injury or occupational disease in the course of the business and is entitled to wage-loss compensation or pension benefits, and the business owes assessments to the Board, the Board may attach all or a portion of those benefits. This also applies to a director of a limited company who was personally responsible for the non-payment of assessments by the corporation.

Before compensation payments may be attached, the employer or affected individual must be given an opportunity to pay the outstanding amount. The amount of the compensation payment to be attached is determined after considering such factors as the marital status of the individual, the number of dependants and the amount of compensation available for attachment.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	s. 15, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Independent Firms (AP1-1-3) with respect to proprietors and partners and Personal Optional Protection (AP1-2-3) in the <i>Assessment Manual</i> and Overpayments/Money Owed to the Board (policy item #48.40), Unpaid Assessments (policy item #48.48) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces Policy No.70:20:80 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: The Classification System**ITEM: AP1-37-1**

BACKGROUND

1. EXPLANATORY NOTES

Every year the Board publishes the *Classification and Rate List*, which forms part of Board policy, and uses it to assign an assessment rate for the coming year. This publication lists every classification unit and the assessment rate assigned to it for the year.

2. THE ACT

Section 37(1):

- (1) The following classes are established for the purpose of assessment in order to maintain the accident fund:

Class	1:	Primary resource
Class	2:	Manufacturing
Class	3:	Construction
Class	4:	Transportation and warehousing
Class	5:	Trade
Class	6:	Public services
Class	7:	General services
Class	8:	Canadian Airlines International Ltd., Canadian Pacific Hotels Corporation, Canadian Pacific Railway Company, Cominco Ltd.
Class	9:	The Burlington Northern and Santa Fe Railway Company
Class	10:	Air Canada, Canadian National Railway Company, Via Rail Canada Inc.

Class 11: British Columbia Assessment Authority, British Columbia Buildings Corporation, British Columbia Ferry Corporation, British Columbia Railway Company, Emergency Health Services Commission, Government of British Columbia, Workers' Compensation Board of British Columbia.

POLICY

1. GENERAL

The classification system is based on the principle that the cost of producing a product or providing a service includes the cost of injuries or diseases incurred by the workers doing the work. The system is based on industrial undertaking rather than on occupation or hazard. If a specific product is being manufactured, the classification is the same, regardless of whether the manufacturing is done by the employer's workers or subcontracted out to another firm. A classification includes all occupations within the industry, including office or clerical staff.

The terms classes, subclasses and further subclasses are used in section 37 of the *Act*. For the purposes of describing the Board's industrial classification system, a sector is equivalent to a class, subsectors are equivalent to subclasses, and classification units are equivalent to further subclasses.

2. CLASSIFICATION UNITS

Employers and independent operators are assigned to classification units on the basis of the industry in which the firm is operating. In assigning the classification, some of the factors considered are the type of product or service being provided, the processes and equipment that are used, and the type of industry with which the firm is in competition. Occupations of individual workers may be reviewed when assigning the classification, but only as an indicator of the type of industry being carried on. The fact that an employer contracts out parts of an industry to other employers does not mean that the employer cannot be classified in that industry. The classification system should not unfairly differentiate between firms competing for the same business.

Where a firm's operations are an inescapable part of another firm's operations, the firm's classification will be the same as that of the other firm regardless of ownership.

If the firm's operations do not fall within this category, but are ancillary, or an extension or add-on phase, to another firm's operations, the classification will be the same as the other firm's if there is a degree of common ownership. Even if the firm is separately registered, the two firms will be regarded as one firm for the

purpose of classification. The multiple classification criteria will then be applied. Where a firm's operations are divided so that part is within BC and part is outside of BC, the firm will be classified according to the business of the operations conducted within BC.

3. SUBSECTORS

The purpose of subsectors is to provide boundaries within which classification units are grouped with other similar classification units based on industrial undertakings.

4. SECTORS

Sectors are large categories of subsectors that are involved in a similar area of the economy at the broadest level.

PRACTICE

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	November 8, 2011
AUTHORITY:	ss. 37(1) and 37(2), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Classifications – Multiple (AP1-37-2) and Classification – Changes (AP1-37-3) and Assessment Rates (AP1-39-1) in the <i>Assessment Manual</i> .
HISTORY:	<p>Policy changes to reflect the removal of the annual classification cycle were made effective November 8, 2011.</p> <p>Policy changes to reflect the adoption of an annual classification cycle were made effective October 1, 2009.</p> <p>Updated effective October 1, 2007 to reflect the Board's authority to classify firms.</p> <p>This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i>. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. Replaces in part Policies No. 30:10:00 and 30:20:10 of the <i>Assessment Policy Manual</i> and Decision No. 58 in volumes 1 - 6 of the <i>Workers' Compensation Reporter</i>. Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i>.</p>
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after November 8, 2011.

RE: Classification – Multiple Industrial Activities**ITEM: AP1-37-2**

BACKGROUND

1. EXPLANATORY NOTES

Usually, when a firm registers with the Board, the firm is assigned to a single classification unit based on the industry in which it is operating. On occasion the firm's business operations may involve more than one industrial activity, or the firm may, after the initial registration, become involved in another industrial activity. In either of these situations, the Board determines which classification unit is assigned to the whole of the firm's business operations or whether more than one classification unit should be assigned. The multiple classification policy assists in determining the circumstances in which a firm is assigned to more than one classification unit.

2. THE ACT

Section 37:

- (2) The Board may do one or more of the following:
- (a) create new classes in addition to those referred to in subsection (1);
 - (b) divide classes into subclasses and divide subclasses into further subclasses;
 - (c) consolidate or rearrange any existing classes and subclasses;
 - (d) assign an employer, independent operator or industry to one or more classes or subclasses;
 - (e) withdraw from a class
 - (i) an employer, independent operator or industry;
 - (ii) a part of the class; or
 - (iii) a subclass or a part of a subclass;and transfer it to another class or subclass, or form it into a separate class or subclass;
 - (f) withdraw from a subclass

- (i) an employer, independent operator or industry,
 - (ii) a part of the subclass, or
 - (iii) another subclass or part of another subclass,
- and transfer it to another class or subclass or form it into a separate class or subclass, and
- (3) If the Board exercises authority under subsection (2), it may make the adjustment and disposition of the funds, reserves and accounts of the classes and subclasses affected that the Board considers just and expedient.

Section 42:

The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be considered just

POLICY

A firm is assigned to a single classification unit unless the firm qualifies for multiple classification in accordance with this policy.

1. ASSIGNMENT OF MULTIPLE CLASSIFICATIONS

1.1 Policy Intent

The intent of the multiple classification policy is to support the purpose of the classification system, which is to classify firms into groups that can be used to set fair and equitable base rates. Towards this purpose, the multiple classification policy is designed to ensure that firms who operate in more than one industry:

- are of sufficient size to be a significant competitor with other firms operating in each such industry;
- are assigned to the classification units representing those industries; and
- pay the same base assessment rates as their competitors.

1.2 Responsibility for Obtaining Multiple Classification

It is the responsibility of each firm to apply to the Board for a multiple classification, or to remove a multiple classification designation, when the firm's business operations

change. The Board may, however, based on available information, assign more than one classification unit to a firm.

1.3 Multiple Classification Criteria

For a firm to qualify for more than one classification unit, the industrial activities identified for separate classification must be distinct and independent. To demonstrate this requirement, the following criteria must be satisfied:

- (a) Each industrial activity must be separate so that it does not contribute to the risk of injury or occupational disease in another industrial activity of the firm. The Board may consider this requirement to be met for the purpose of this policy if the industrial activity under consideration for a separate classification is:
 - performed by specific personnel as their sole employment function at any one time, and no personnel are engaged in more than one industrial activity simultaneously; or
 - conducted at a separate location from other industrial activities of the firm; or
 - conducted at the same location as other industrial activities of the firm, but at a different time.
- (b) The industrial activity in question must not simply be to assist, support or service the firm's main industry. This means that multiple classification will not normally be granted for such activities as administration, accounting or marketing. (However, there may be circumstances when such activities do not simply exist to assist, support or service the main industry.)
- (c) At least 50 percent of the product or service from the industrial activity, measured by the volume of the annual output or the revenue from the annual output, must be sold to unaffiliated customers or clients who operate at arm's length.
- (d) Each industrial activity must meet at least one of the following conditions:
 - generate an annual assessable payroll of at least four times the maximum wage rate; or
 - generate an annual assessable payroll that is at least 25 percent of the gross annual assessable payroll of all the firm's industrial activities; or

- generate an annual revenue that is at least 25 percent of the gross annual revenue of all the firm's industrial activities.

There are other limited circumstances in which the Board has assigned more than one classification unit to a firm. These include the following:

- classification within the fishing industry;
- classification of non-industrial building construction not associated with the firm's main industry;
- classification of the activities of owners or occupiers at a private residence as set out in Item AP1-2-1, *Exemptions from Coverage*;
- classification of companies managing other companies with common shareholders as set out in Item AP1-38-3, *Payroll – Principles for Determining*; and
- classification of activities in any classification unit designated as a special hazard as set out in section (3) of this policy.

Where a firm is assigned more than one classification unit, any of the firm's industrial activities that do not qualify for their own classification unit are assigned to the classification unit with the highest assessment rate in accordance with section (2) of this policy.

2. ASSIGNMENT OF A SINGLE CLASSIFICATION TO FIRMS OPERATING IN MORE THAN ONE INDUSTRY

If a firm is operating in more than one industrial activity but does not qualify for multiple classification, then the firm will be classified as follows:

- (a) if one or more industrial activity represents at least 25 percent of the firm's business operations, in the classification unit that has the highest assessment rate and represents at least 25 percent of the firm's business operations,
- (b) if no industrial activity represents at least 25 percent of the firm's business operations, in the classification unit coming closest to the 25 percent figure, and
- (c) in the case of two or more industrial activities representing the same percentage coming closest to the 25 percent figure, in the classification unit with the highest assessment rate.

In determining what constitutes 25 percent of the firm's business operations, the Board first considers revenue, however, payroll, units of production and/or any other measure which best represents a true picture of the firm's business operations may also be used.

3. ASSIGNMENT OF SPECIAL HAZARD CLASSIFICATION

Activities in any classification unit designated as a special hazard classification unit in the annual *Classification and Rate List* may attract higher assessment rates.

The preceding classification criteria do not apply to activities in a special hazard classification unit. Instead, the following policies apply:

- the Board classifies and treats an activity in a special hazard classification unit as distinct and independent; and
- the Board assesses the payroll for the activity in a special hazard classification unit at the rate specified for the classification unit in the annual *Classification and Rate List*, adjusted by experience rating as appropriate.

4. OTHER CONSIDERATIONS

4.1 Personal Optional Protection

The multiple classification criteria outlined above do not apply to individuals with Personal Optional Protection. Instead, the classification rules set out in section (2) of this policy apply.

4.2 Effective Dates

The addition or deletion of a classification unit in accordance with this policy is a change in classification. For guidance concerning the effective date of a change in classification, see Item AP1-37-3, *Classification – Changes*.

4.3 Notification

A firm must be informed when a classification has been added to or deleted from the firm's account.

PRACTICE

Practice Directives provide more information regarding the criteria by which an employer may be assigned to more than one classification. For any other relevant PRACTICE information, readers should consult the WorkSafeBC website at www.worksafebc.com.

A list of classification units which have been designated as special hazard classification units can be found online at www.worksafebc.com, under Rates/classifications.

EFFECTIVE DATE:	January 1, 2009
AUTHORITY:	ss. 37(2) and (3) and 42, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also The Classification System (AP1-37-1), Fishing (AP1-4-1), Exemptions from Coverage (AP1-2-1), Classification – Changes (AP1-37-3) with respect to management/administrative payroll, Payroll – Principles for Determining (AP1-38-3) in the <i>Assessment Manual</i> .
HISTORY:	<p>Amended in 2009 to clarify policy regarding the assignment of more than one classification unit when a firm that does not meet the multiple classification criteria, and the assignment of a single classification to firms operating in more than one industry. The 2009 amendments also removed the list of activities designated for special hazard classification and added a reference to the annual <i>Classification and Rate List</i>. The policy changes with respect to Personal Optional Protection apply to all existing Personal Optional Protection accounts, all new Personal Optional Protection coverage registrants, and all registrants who reapply for coverage, on or after January 1, 2004. The policy changes with respect to effective dates of classification changes, apply to all new decisions on or after January 1, 2004.</p> <p>This Item resulted from an editorial consolidation of the former <i>Assessment Policy Manual</i>, which was effective on January 1, 2003. The Policy in this Item continued the substantive requirements that existed before the consolidation, with any wording changes necessary to reflect legislative and other changes that had occurred. Policies No. 30:20:20, 30:20:21 and 30:20:30 in the former <i>Assessment Policy Manual</i> were replaced, in part, by this Item. Consequential changes to this Item made as a result of the <i>Workers Compensation Amendment Act (No. 2), 2002</i> were effective on March 3, 2003.</p>
APPLICATION:	Applies to all decisions made on or after January 1, 2009.

RE: Classification – Changes**ITEM: AP1-37-3**

BACKGROUND

1. EXPLANATORY NOTES

This policy sets out the reasons for changing a firm's classification, the effective date of a change, and the impact of a change in classification on experience rating.

The Board may do one or more of the following with respect to all or part of the firm's operation:

- (a) Change an existing classification unit;
- (b) Add classification unit; or,
- (c) Delete a classification unit.

2. THE ACT

See Items AP1-37-1, AP1-37-2 and AP1-42-1.

POLICY

1. FIRM'S RESPONSIBILITY

It is the duty of each firm to provide timely, complete and accurate information to the Board regarding changes in the firm's operations, and to act promptly on information requests and information provided by the Board.

2. CHANGE IN CLASSIFICATION

Set out below are possible reasons for a change in a firm's classification, with the associated effective date and the experience rating impact. However, if there has been fraud or misrepresentation, section 2.4 of this Item will be used to determine the effective date and the experience rating impact.

Decisions in these cases do not constitute reconsiderations of existing classification decisions.

2.1 Classification Changes under Section 37(2)(f)

The purpose of the classification system is to classify firms into groups that can be used to set fair and equitable rates. The Board undertakes periodic reviews of the classification system to ensure that this purpose is met and that the classification system does not unfairly differentiate between firms competing for the same business.

Section 37(2)(f) outlines the Board's authority to withdraw from a subclass:

- (i) an employer, independent operator or industry,
- (ii) a part of the subclass, or
- (iii) another subclass or part of another subclass,

and transfer it to another class or subclass or form it into a separate class or subclass.

Where a firm's classification changes as a result of the Board's exercise of this authority, the effective date is January 1st of the year following the date on which the Board identified the firm's classification for evaluation and the general rule is that a firm's experience will transfer.

2.2 Change in Operation

If the firm's operations have changed, and the firm is now misclassified, the change will be effective on the date of the change in operation, or if the date of the change cannot be determined, then January 1st of the year in which the decision to change the firm's classification occurred, whichever is later.

If there has been a distinct change in the firm's operations, a firm's experience will not transfer. If the change in operations has occurred incrementally or the firm's operations have evolved over time, a firm's experience may transfer.

2.3 Policy Changes Which Result in Changes to Classification Units

The Board may make policy changes regarding classification units or the composition of classification units which may result in changes to a firm's classification.

Changes to a firm's classification which occurs as a result of a policy change will be effective January 1st of the following year, unless otherwise specified by the Board.

The Board may transfer a firm's experience in this situation.

2.4 Fraud or Misrepresentation

A classification change may be necessary due to a firm's fraud or misrepresentation, as described in Item AP1-96-2. For the purposes of determining a firm's classification, misrepresentation includes failure to provide timely, complete, and accurate information to the Board regarding the firm's operations or changes to the firm's operations, and a failure to act promptly on information requests or information provided by the Board.

If the need to change the classification is the result of fraud or misrepresentation, the effective date of the change will be determined by the Board based on the reason for the fraud or misrepresentation.

If the Board changes a firm's classification because of fraud or misrepresentation, the general rule is that a firm's experience will not transfer. However, the Board may transfer experience if the firm could benefit from a failure to transfer.

PRACTICE

If a classification is being added to a firm's existing classification, the criteria of the multiple classification policy must be met before the classification change policy is applied.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	November 8, 2011
AUTHORITY:	ss. 37(2) and (3) and 42, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also The Classification System (AP1-37-1), Classification – Multiple (AP1-37-2), Transfer of Experience Between Firms (AP1-42-3), Reconsideration, Reviews and Appeals - Reconsiderations of Decisions (AP1-96-1), and Reconsideration, Reviews and Appeals – Fraud and Misrepresentation (AP1-96-2) in the <i>Assessment Manual</i> .
HISTORY:	<p>Policy changes to remove the annual classification cycle were made effective November 8, 2011.</p> <p>Policy changes to reflect the adoption of an annual classification cycle were made effective October 1, 2009.</p> <p>Policy changes to provide three general reasons for classification changes, with corresponding effective dates and direction on the transfer of experience rating were made effective January 1, 2004 and applied to all new decisions on or after that date.</p> <p>Consequential changes to this Item made as a result of the <i>Workers Compensation Amendment Act (No. 2), 2002</i> were effective on March 3, 2003.</p> <p>This Item resulted from an editorial consolidation of the former <i>Assessment Policy Manual</i>, which was effective on January 1, 2003. The Policy in this Item continued the substantive requirements that existed before the consolidation, with any wording changes necessary to reflect legislative and other changes that had occurred. Policy No. 30:20:40 in the former <i>Assessment Policy Manual</i> was replaced by this Item.</p>
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after November 8, 2011.

RE: Classification – Consulting

ITEM: AP1-37-4

BACKGROUND

1. Explanatory Notes

This policy contains some special rules regarding consulting businesses.

2. The Act

See Item AP1-37-1.

POLICY

For the purpose of classifying employers, a consultant is an employer or independent operator who performs impartial services for clients on a lump-sum fee basis. Services include investigations and analysis, pre-planning, design or compilation of a report without commercial or manufacturing affiliations that might bias judgment.

If the “consultant” undertakes directly or indirectly to fabricate, manufacture or construct a product by any means, or implement the recommendations of a report, the activity is not considered consulting. Rather, the activity is classified according to the nature of the fabricating, manufacturing, constructing or implementing activity.

Some of the factors considered when determining whether a person is a consultant include:

- basis of payment for services;
- nature of services provided;
- whether recommendations are implemented in any way;
- affiliations with manufacturing, sales or construction firms;
- which party pays for materials; and
- degree of supervision or control over workers or subcontractors.

A consulting firm may be classified in construction management consulting when:

- the firm acts as agent for the owner, where the owner is not the general contractor;
- the firm has no financial interest in the building;
- the firm's role is limited to one or more of the following: quantity surveying, specification writing, contract writing, tendering, recommending tenders, and ensuring that the contract between the owner and general contractor/subcontractors is being adhered to; and
- the firm has no affiliation with construction firms.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	s. 37(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also The Classification System (AP1-37-1) and Classification – Multiple (AP1-37-2) in the <i>Assessment Manual</i> .
HISTORY:	Replaces Policy No. 20:40:40 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Deposit Accounts

ITEM: AP1-37-5

BACKGROUND

1. Explanatory Notes

For historical and other reasons, several large employers listed in classes 8 to 11 of section 37(1) of the *Act* have their own classifications which are not shared with other employers. These deposit accounts include the Government of British Columbia, Air Canada and certain railways. These employers are sometimes referred to as “self-insured employers”.

2. The Act

See Item AP1-37-1.

POLICY

Deposit accounts are required to pay to the Board the cost of all compensation benefits distributed to their workers plus a share of the administration costs rather than an assessment rated on payroll. These employers are required to maintain a credit balance in their account from which amounts for claim costs and administration are drawn monthly.

There have been no additions to the group of employers made deposit accounts by the *Act*. It is the policy of the Board not to add further deposit accounts in the future.

(a) Transfers from a Deposit Account to the Classification System

There are three types of transfers from a deposit account to the classification system:

i. The transfer of a deposit account employer into the classification system.

A deposit account employer may request that the employer be transferred into the classification system. In this situation, the Board will classify the deposit account employer into the appropriate classification unit, industry group and rate group, or create a new classification unit, as per the guidelines set out in policy AP1-37-1, *The Classification System*.

The appropriate assessment rate is applied prospectively from the date that the employer is transferred into the classification system.

Any outstanding deposit account liabilities are not to be transferred into the employer's rate group. The transferring employer remains responsible for all unfinalled claims and other liabilities. The payment plan for these liabilities will be determined through an agreement between the Finance Division and the employer. The Federal or Provincial governments may guarantee these liabilities.

- ii. The transfer of a deposit account employer's operations to a new or existing employer in the classification system.

A deposit account employer's operations may be transferred to either a new employer or an existing employer in the classification system. For transfers to a new employer, the transfer is effective the date the new employer becomes an employer under the *Act*. The appropriate assessment rate will be applied prospectively from the date that the transfer is effective.

For existing employers in the classification system, the transfer is effective the date the existing employer took ownership of the deposit account employer's operations. In these situations, the Board may review the existing employer's classification to determine whether a classification change is required.

Any outstanding deposit account liabilities are not to be transferred into the rate group of the new or existing employer in the classification system. The Board will determine how the outstanding deposit account liabilities will be recovered. The Federal or Provincial governments may guarantee these liabilities.

- iii. The Board may transfer a deposit account employer into the classification system where the employer is unable to maintain credit worthiness.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	June 17, 2003
AUTHORITY:	s. 37(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Assessment Rates (AP1-39-1) in the <i>Assessment Manual</i> .

HISTORY:

Replaces Policies No. 30:40:00 and 40:30:70 of the *Assessment Policy Manual*. This Item results from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

APPLICATION:

This policy applies to all decisions made on or after June 17, 2003.

RE: Registration of Employers**ITEM: AP1-38-1**

BACKGROUND

1. Explanatory Notes

All employers must register with the Board unless exempt from the scope of Part 1 of the *Act*. The exemptions include certain home owners employing persons in or about the home, individuals employing their spouses in their unincorporated business, certain non-resident employers in the province for short periods and certain personal financial holding companies. More information about exemptions is set out in Item AP1-2-1.

2. The Act

Section 38:

- (1) Every employer must
 - (a) keep at all times at some place in the Province, the location of which the employer has given notice to the Board, complete and accurate particulars of the employer's payrolls;
 - (b) cause to be furnished to the Board
 - (i) when the employer becomes an employer within the scope of this Part; and,
 - (ii) at other times as required by a regulation of the Board of general application or an order of the Board limited to a specific employer,

an estimate of the probable amount of the payroll of each of the employer's industries within the scope of this Part, together with any further information required by the Board; and
 - (c) furnish certified copies of reports of the employer's payrolls, at or after the close of each calendar year and at the other times and in the manner required by the Board.

POLICY

(a) General

Every employer must contact the Board to determine if it is required to register, and if so required, must register with the Board. An employer is not registered until sufficient information to effect registration is received by the Board. The Board may register a firm on its own initiative if it becomes aware of a firm that is required to be registered.

The determination whether an applicant for registration is an independent firm, labour contractor, or worker is based on the facts available at the time the determination is made. The responsibility to provide full and accurate initial information and to update this information, by advising the Board of any material changes to the applicant's operations, rests with the applicant.

Shortly after a new registration has been established, the Board advises the employer of the new account number, the industry classification unit in which the employer has been registered, the assessment rate and remittance requirements, and the monthly cost of any Personal Optional Protection the employer has requested. Information is also sent to the employer, giving details about the rights and responsibilities of an employer under the *Act*.

If the employer is exempt from coverage under the *Act*, the employer is advised that registration is not required and, in most cases, the employer is offered voluntary coverage.

The effective date of registration is the date from which the employer will be assessed by the Board. Except where stated otherwise in this manual, this is the date the employer first employed workers. If the firm was employing workers, so that the registration with the Board would have been required in a previous year, the effective date will only go back as far as January 1st of three years prior to the current year. However, if there is evidence that the employer deliberately avoided registration by such means as misrepresentation, false statements or ignoring registration requests, a prior date may be used.

The Board does not provide rulings or information on ways to structure a business to avoid or minimize employer obligations under the *Act*.

(b) Labour contractors

The Board does not conduct a full investigation of each application for registration from a labour contractor. The fact that a contractor applies for registration is in itself indication of sufficient status. Most applications for registration are bona fide in respect of a properly registrable business. Therefore, applications for registration which are, on the face of it, proper, are accepted without further investigation. Where there are

grounds for suspecting that an attempt is being made to avoid the provisions of the *Act*, the status of the applicant will be fully investigated and determined according to the policies in this manual.

Where an application for registration from a labour contractor is accepted, the contractor will be informed that he or she is not personally covered for compensation benefits unless he or she applies for Personal Optional Protection. Since registration is elective, the effective date is when registration is received, unless a subsequent date is considered appropriate. Prior to that date the prime contractor is responsible for assessments.

(c) Corporations

Occasionally, a firm is registered which is inadvertently or deliberately misrepresented as an incorporated company. Alternatively, a properly incorporated and registered company may be struck from the register by the Registrar of Companies but may continue to operate as if it still has the status of a corporation. The status of such firms' accounts with the Board is changed to that of a proprietorship or partnership. The effective date of the change will be when the correct legal status of the firm is discovered. For the period up to that date, the proprietor or partners will be treated as if they were workers of the limited company, and will be provided compensation coverage and their earnings assessed. Collection of assessments owed will proceed under the proprietorship or partnership name(s) regardless of when the liability was incurred.

(d) Divisions

The term "employer" refers to the legal entity conducting the business such as a proprietorship, partnership or limited company. An employer may have one or more trade names, but the legal entity behind the name has the obligations and receives the benefits under the *Act*. The employer is generally considered one and indivisible for purposes of registration, classification, experience rating, assessment payment and all other employer obligations.

Registration of separate divisions of an employer will be considered:

- if the division is of sufficient size to warrant the administrative burden for a separation; and
- it is in the Board's best interest to allow the separation for the purpose of reporting of accurate payroll, auditing of physical payroll records and the payment of assessment.

For the purpose of this policy, "division" means an operation of a limited company that:

- operates as a profit centre (responsible for revenue and expenses - not a cost centre);

- has separate staff assigned solely to that division;
- is physically separate from any other operations of the company;
- maintains its own payroll records for all personnel (excluding senior management and/or executive payroll which is usually reported by the company head office) and payment records for contractors employed by the division);
- maintains the records physically separate from the records of any other part of the limited company; and
- carries on business in its division or trade name.

Even though divisions may be registered separately, they will be viewed as one for the purpose of classification and experience rating. Additionally, the debt of a division is the debt of the limited company and any collections action will be taken against the legal entity without regard to divisional registrations.

(e) Cancellation of registration

Registration with the Board is cancelled when the firm ceases to be an employer under the *Act*. The effective date of cancellation is when the employer ceased operating the business or ceased to employ workers. It is the employer's responsibility to notify the Board of this.

The date used for cancellation may be different if the firm is a labour contractor supplying labour and equipment. Where the contractor has no Personal Optional Protection and no reported assessable earnings, registration is cancelled when the Board becomes aware of the situation. Cancellation is effective December 31st of the year for which the report is made if the year-end report is received prior to March 31st of the next year. Apart from this situation, cancellations will not normally be made retroactively.

If a receiver-manager is appointed subsequent to the cancellation of a firm placed into receivership, a new registration must be established for the receiver-manager.

PRACTICE

For detailed information on how to register with the Board, see the Board's Internet site at http://www.worksafebc.com/for_employers/registering_with_the_wcb/registration_information/emp_10_20_40.asp.

For any other relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	January 1, 2007
AUTHORITY:	s. 38(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3) with respect to corporations, Coverage under <i>Act</i> – Labour Contractors (AP1-1-7), Exemptions from Coverage (AP1-2-1), Requesting a Variance from a General Exemption (AP1-2-2), Personal Optional Protection (AP1-2-3), Extending the Application of the <i>Act</i> (AP1-3-1), Fishing (AP1-4-1), Transfer of Experience Between Firms (AP1-42-3) and Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> .
HISTORY:	Replaces in part Policies No. 20:20:00, 20:30:10, 20:30:20, 20:30:30, 20:30:31, 40:40:00, 40:60:00 and 70:30:00 of the <i>Assessment Policy Manual</i> and Decision No. 255 of volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> . Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. Changes extending the registration retroactivity limit to January 1 of three years prior to the current year apply to all decisions made on or after January 1, 2007 concerning the effective date of registration of employers.

RE: Payroll – Categories**ITEM: AP1-38-2**

BACKGROUND

1. Explanatory Notes

Assessments are based on payroll. Section 38 imposes an obligation on employers to report the amount of their payroll to the Board. This policy discusses the main categories of payroll.

2. The Act

See Item AP1-38-1.

Section 39(1):

For the purpose of creating and maintaining an adequate accident fund, the Board must every year assess and levy on and collect from independent operators and employers in each class, by assessment rated on the payroll, or by assessment rated on a unit of production, or in a manner the Board considers proper, sufficient funds, according to an estimate to be made by the Board ...

POLICY

(a) General

Assessable payroll is considered by the Board under four general categories, any one of which may or may not be applicable to an employer. These are:

- wages and salaries;
- principals' earnings;
- contractors' earnings; and
- Personal Optional Protection amount (covered in Item AP1-2-3).

(b) Wages and salaries

Wages and salaries include the gross earnings of all workers, except those covered under one of the other above categories. These earnings include

wages, salaries, commissions, holiday pay, bonuses, and piecework, as well as any other means or manner by which a worker is paid for services. Earnings are covered even though the worker has not received an income tax statement, or has not had income tax, Canada Pension Plan contributions or Employment Insurance premiums deducted from the remuneration.

(c) Principals' earnings

The total remuneration paid to each active principal, including a shareholder, director, or officer of a corporation, is assessable. Remuneration is defined as any payment made to the principal regardless of the label attached to it. It includes:

- earnings shown in official statements of remuneration issued by the corporation for income tax purposes;
- management fees;
- payments purporting to reimburse business expenses except for the payment of out-of-pocket expenses; and
- payments of personal expenses made on behalf of the active shareholder, director, or officer.

If a director of a publicly traded company receives an official income tax statement from the company for directors' fees, these are not assessable if the director:

- only attends periodic meetings;
- is not a part-time or full-time employee; and
- is not an officer of the corporation.

Fees paid to directors of private companies are assessable.

Dividends are not considered part of payroll unless paid as remuneration for activity in the company.

Earnings in official income tax statements issued by the corporation to a spouse, child or family member of a principal or shareholder are included in payroll and are assessable.

If an individual is an active shareholder, director, or officer of more than one registered firm, then the combined remuneration from those firms is assessable. The combined earnings are prorated between the various firms as is the excess earnings if the earnings are above the maximum.

(d) Contractors' earnings

The earnings of non-registered labour contractors must be included in the assessable payroll. For labour-only contracts, the employer is assessed on the gross value of each contract.

For contracts involving the supply of labour and equipment, an equipment allowance may be deducted from the gross contract value where the contract requires use of revenue-producing equipment. The amount of the allowance will be determined having regard to such factors as the cost of purchasing the equipment and its ongoing operating cost and should be 15%, 40% or 75%.

Reimbursements for materials supplied by the contractor may be deducted from the gross contract amount where supported by receipts.

An employer may be registered as being an independent firm in a situation where payments to the firm by a prime contractor were previously included in the prime contractor's payroll on the erroneous assumption that the employer was a labour contractor. The payments may be retroactively excluded from the prime contractor's payroll, but not beyond the effective date of the registration of the subcontracting firm.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

With regard to part (c) of the POLICY in this Item, readers should consult Practice Directive 1-38-2(A) Assessable Payroll, available on the WorkSafeBC website.

With regard to part (d) of the POLICY in this Item, a list of established equipment allowances is available on the WorkSafeBC website.

EFFECTIVE DATE:	April 1, 2005
AUTHORITY:	ss. 38(1) and 39(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under the <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3) with respect to principals of corporations, Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Labour Contractors (AP1-1-6), Personal Optional Protection (AP1-2-3), Extending the Application of the <i>Act</i> (AP1-3-1), Fishing (AP1-4-1), Payroll – Principles for Determining (AP1-38-3) and Maximum Wage Rate (AP1-38-6) in the <i>Assessment Manual</i> .
HISTORY:	<p>A clarification to the payroll amendment limitations in part (d) was made effective April 1, 2005.</p> <p>A housekeeping change was made to the “Practice” section of this policy, effective December 31, 2003.</p> <p>Consequential changes to this Item made as a result of the <i>Workers Compensation Amendment Act (No. 2), 2002</i> were effective on March 3, 2003.</p> <p>This Item resulted from an editorial consolidation of the former <i>Assessment Policy Manual</i>, which was effective on January 1, 2003. The Policy in this Item continued the substantive requirements that existed before the consolidation, with any wording changes necessary to reflect legislative and other changes that had occurred. Policies No. 40:10:10, 40:10:30, 40:10:40 and 50:50:00 in the former <i>Assessment Policy Manual</i> were replaced, in part, by this Item.</p>
APPLICATION:	The amended policy applies to all decisions on or after April 1, 2005.

RE: Payroll – Principles for Determining**ITEM: AP1-38-3**

BACKGROUND

1. Explanatory Notes

The POLICY in this Item sets out some general principles for deciding what is included in payroll.

2. The Act

See Item AP1-38-1.

Section 39(1):

For the purpose of creating and maintaining an adequate accident fund, the Board must every year assess and levy on and collect from independent operators and employers in each class, by assessment rated on the payroll, or by assessment rated on a unit of production, or in a manner the Board considers proper, sufficient funds, according to an estimate to be made by the Board ...

POLICY

(a) Severance or termination pay

The Board does not assess firms for payments made as a result of severance, whether by collective agreement or other obligations.

(b) Self-funded leaves of absence

Self-funded leaves occur when an employer deducts and puts aside a certain portion of a worker's salary or wages for a period of time and, at the end of that time, the worker takes a leave of absence during which he or she is paid from the amounts withheld.

For assessment purposes, the gross payroll, including the amount deferred, is considered to be assessable up to the maximum assessable payroll established for that year. During the leave of absence, the individual is not a worker of the employer, nor is the payment to the individual assessable during this period.

(c) Living out allowances

Living out allowances will be considered assessable where they are included as part of the gross salary or wages and included as earnings in official income tax statements issued by the employer.

(d) Payments for vehicles

The assessability of payments to a worker for the use of the worker's vehicle depends on whether the payment is an allowance or a reimbursement.

An "allowance" is any periodic or other payment that a worker receives from the employer, in addition to salary and wages, for expenses incurred in the performance of assigned duties where the worker does not have to account for its use. Allowances are considered to be a part of the worker's earnings and are assessable, whether included with other earnings or paid separately.

"Reimbursement" occurs if a payment is made to a worker, in addition to salary and wages, upon the production of records or vouchers for expenses incurred in the performance of assigned duties or paid for on a basis of usage such as payments per kilometre. These payments must be reasonable.

Reimbursements are not normally considered assessable. When there are no supporting vouchers of claim for the expense in question, the payments are assessable and included with other earnings.

(e) Harmonized Sales Tax (HST)

Where HST cannot be identified as a separate amount in payments made under contracts or on a piecework basis, the total payment is assessable.

(f) Administration/management payroll

An employer's administration and/or management payroll must be reported and assessed in the classification assigned to the employer.

The administration, management or other common payroll must be prorated in the ratio of "net assessable direct payroll" if:

- an employer is assigned two or more classifications; or
- two or more separate companies have common controlling shareholders but with differing classifications or assessment rates.

This applies to personnel who support more than one classification or regularly move back and forth between classifications. "Net assessable direct payroll" is the payroll that is directly applicable to a specific classification, including the earnings of any labour contractors, after deducting any excess earnings that are attributable to the individuals included. Where an employer maintains formal cost accounting procedures that allocate the overhead payrolls to cost or profit

centres, and this allocation is reasonable, it is acceptable as an alternative to prorating according to “net assessable direct payroll”.

Payments to management companies are assessable if the management company is not registered with the Board because it is under common ownership with the company for which it works. A management company is a separate limited company which provides some degree of administrative or management services to the principal operating firm. A deduction for excess earnings for the management company is not normally allowed unless there is documentary proof of the management company’s payroll structure. When a management company provides services to two or more operating firms or a group of affiliated companies, the payroll of the management company must be prorated between the operating firms in the same ratio as the direct assessable payroll of each operating firm bears to the total assessable payroll of all operating firms.

(g) Volunteer firefighters

Except where section 3(5)(c) applies, the earnings of volunteer firefighters are fixed for assessment purposes at \$75.00 per month per member or their actual earnings as a member of the fire or ambulance brigade, whichever is greater.

In the case of volunteer firefighters employed by a municipality, improvement district or regional district only, the employer may increase the \$75.00 figure if the Board agrees and the same amount is used for each person.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WorkSafeBC website at www.worksafefbc.com.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 38(1) and 39(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Workers (AP1-1-5) with respect to forest firefighters, Extending the Application of the <i>Act</i> (AP1-3-1), Classifications – Multiple (AP1-37-2) and Maximum Wage Rate (AP1-38-6) in the <i>Assessment Manual</i> and Members of Fire Brigades (policy item #7.10) and Volunteer Firefighters and Ambulance Drivers and Attendants (policy item #67.32) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Updated August 2010 to reflect the adoption of the Harmonized Sales Tax. Replaces in part Policies No. 40:10:10, 40:10:11, 40:10:50, 40:10:60, 40:20:50 and 40:20:70 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the

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policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

**RE: Payroll – Out-Of-Province Employers
and Operations**

ITEM: AP1-38-4

BACKGROUND

1. Explanatory Notes

Some out-of-province employers are exempt from coverage under the *Act* and therefore do not have to register with the Board. Others may have to register and pay assessments while they are working in the province. Sections 8 and 8.1 of the *Act* address these issues.

Under these sections, the Board has entered into the Interjurisdictional Agreement on Workers' Compensation with the other provinces and territories of Canada. This agreement took effect in October 1993, except for Quebec (January 1, 1995) and Nunavut (April 1, 1999). The agreement has the following purposes:

- to avoid the double payment of assessments for the same work;
- to help workers or dependants where more than one workers' compensation authority may be involved in a claim;
- to create a system to permit one workers' compensation authority to help the claimants of another workers' compensation authority; and
- to provide a system which will try to solve disputes between workers' compensation authorities.

2. The Act

See Item AP1-38-2.

Section 8:

- (1) Where the injury of a worker occurs while the worker is working elsewhere than in the Province which would entitle the worker or the worker's dependants to compensation under this Part if it occurred in the Province, the Board must pay compensation under this Part if
 - (a) a place of business of the employer is situated in the Province;
 - (b) the residence and usual place of employment of the worker are in the Province;

- (c) the employment is such that the worker is required to work both in and out of the Province; and
 - (d) the employment of the worker out of the Province has immediately followed the worker's employment by the same employer within the Province and has lasted less than 6 months,
- but not otherwise.

Section 8.1:

- (1) The Board may enter into an agreement or make an arrangement with Canada, a province or the appropriate authority of Canada or a province to provide for
 - (a) compensation, rehabilitation and health care to workers in accordance with the standards established under this *Act* or corresponding legislation in other jurisdictions,
 - (b) administrative co-operation and assistance between jurisdictions in all matters under this *Act* and corresponding legislation in other jurisdictions, or
 - (c) avoidance of duplication of assessments on workers' earnings.
- (2) An agreement or arrangement under subsection (1) may
 - (a) waive or modify a residence or exposure requirement for eligibility for compensation, rehabilitation or health care, or
 - (b) provide for payment to the appropriate authority of Canada or a province for compensation, rehabilitation costs, or health care costs paid by it.

POLICY

(a) BC employers sending workers out of province

Where a BC employer assigns an employee to work outside of the province, that worker is covered for compensation for up to six months while working out of the province, and the worker's earnings are assessed for that period, if the criteria set out in section 8 of the *Act* are met.

If the BC employer assigns an employee to work in another jurisdiction that requires the employer to register and is a party to the Interjurisdictional Agreement, only that

worker's BC earnings are assessable in this province. The employer may also claim as a deduction a portion of that worker's excess earnings (if applicable) over the maximum wage, according to the relationship between BC earnings and total earnings. The excess earnings deduction is calculated as follows:

$$\frac{\text{BC Earnings}}{\text{Total Earnings}} \times \text{Total Earnings in excess of BC maximum wage rate} = \text{Claimable excess}$$

(b) Out-of-province employers operating in BC

If an employer from outside the province operates in BC and is required to register with this Board, the employer must pay an assessment to this Board that is based only on the earnings of workers while employed in BC.

If an employer from one of the other provinces participating in the Interjurisdictional Agreement is registered with this Board, the employer is permitted to prorate excess earnings over the maximum wage according to the formula set out in (a) above. However, if the employer is outside the scope of the agreement, the BC earnings are fully assessable up to the current maximum, with no proration of the excess.

(c) Jurisdictions where principals of corporations have voluntary coverage

In certain jurisdictions, active principals of a limited company are not covered and assessed as workers of the company, but instead must purchase optional coverage. If a principal works in BC and in a jurisdiction where this is the case, BC earnings are fully assessable in this province and excess earnings over the maximum wage may not be prorated, since this type of coverage is not listed in the Interjurisdictional Agreement as a proratable item.

Where the principal is a resident of BC, earnings while working in a jurisdiction with the optional type of principals' coverage are assessable for up to six months due to the provisions of section 8 of the *Act*.

Assessment liability is not affected by whether optional coverage in the other province has been obtained.

(d) Air carriers

When determining the assessable payroll for Canadian air carriers that have flight crews based in BC and in other provinces or territories, the Board considers their workers in two distinct groups: ground personnel and flight crews.

The rules for assessing ground personnel are identical to other out-of-province operations and employers discussed above.

The assessable payroll for flight crews is determined differently from ground crews. The BC payroll is extracted from the employer's total payroll for flight crews according to the ratio of miles flown in BC (plus a share of the foreign miles) to the total miles flown by employer's flight crews. This ratio is determined as follows:

$$\frac{\text{BC miles} + \text{Share of foreign miles}}{\text{Total miles}} \times 100 = \text{\% of Total flight crew payroll assessable in BC}$$

The BC miles figure includes all scheduled and charter miles flown in BC. The share of foreign miles is calculated as follows:

$$\frac{\text{No. of air crew residing in BC} \times \text{Total foreign miles}}{\text{Total number of air crew}} = \text{Share of foreign miles}$$

Miles flown in a Canadian jurisdiction in which the airline is not required to be registered for flying and is not registered are prorated on the same basis as the share of foreign miles.

Excess earnings may be deducted for flight crews. The deduction is calculated by taking the total earnings of all individuals who earned more than the BC maximum wage, subtracting the number of individuals multiplied by the maximum, and then multiplying the result by the percentage of total payroll ratio determined above.

The assessment of foreign air carriers is based on the gross payroll for any ground personnel residing in BC (less a deduction for excess earnings if applicable), plus the calculated assessable flight crew payroll. The assessable payroll for the non-resident flight crews is calculated according to the following formula:

$$\text{Assessable Payroll} = \frac{H1 \times M}{12 \times H2}$$

Where: H1 = actual block hours credited to flight crews for time worked over or in BC in hours.

M = current maximum assessable wage in BC.

H2 = the carrier's total flight crew block hours per month.

PRACTICE

A copy of the Interjurisdictional Agreement on Workers' Compensation may be obtained on request from any Employer Service Representative in the Assessment Department.

For more information on interjurisdictional trucking, readers should consult the WorkSafeBC website at www.worksafebc.com.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 8 and 8.1, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3) with respect to principals of corporations, Exemptions from Coverage (AP1-2-1) with regard to exemptions for non-residents and Maximum Wage Rate (AP1-38-6) in the <i>Assessment Manual</i> and Interjurisdictional Agreements (policy item #113.30) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Housekeeping change made to formula in section (a) April 1, 2005. Replaces Policies No. 40:20:20 and 40:20:40 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Payroll Estimates**ITEM: AP1-38-5****BACKGROUND****1. Explanatory Notes**

The *Act* allows the Board to estimate an employer's payroll when the employer has failed to provide required payroll information or has otherwise failed to comply with section 38(1), and to levy and collect an assessment on that estimate.

2. The Act

Section 38(2):

Where the employer fails to comply with subsection (1), the employer is liable to pay and must pay as a penalty for the default a percentage of the assessment prescribed by the regulations or determined by the Board, and the Board may make its own estimate of the payrolls and may make its assessment and levy on that estimate, and the employer is bound by it.

POLICY

There are two main situations when an estimate may be made under section 38(2):

- the employer has failed to submit a payroll report or remittance form; or
- payroll records or other information which the employer has been specifically required to produce have not been produced.

In order to estimate the amount due, the Board may use the amount that the employer paid in the previous remittance period, or any other amount the Board considers appropriate.

Where the failure to provide records is for reason beyond the employer's control, such as a fire, the Board will, if practicable, consult with the employer as to a reasonable amount.

The employer will be advised of the estimated assessment, how to have the estimate amended and of rights of appeal.

When an employer whose payroll has been estimated later provides the required report, records or information, the estimate will normally be amended.

A payroll estimate does not relieve an employer from penalties that may be levied for not filing a report or paying an assessment. Penalty amounts calculated on payroll estimates generally will not be amended when an employer reports actual payroll.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

EFFECTIVE DATE:	February 28, 2006
AUTHORITY:	s. 38(2), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Assessment Payments (AP1-39-2), Penalties (AP1-47-1) and Audits (AP6-88-1) in the <i>Assessment Manual</i> .
HISTORY:	Consequential change effective February 28, 2006 to reflect the new tiered penalty system. This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. Replaces Policy No. 50:60:10 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This policy applies to all decisions made on or after February 28, 2006.

RE: Maximum Wage

ITEM: AP1-38-6

BACKGROUND

1. Explanatory Notes

The earnings of workers are assessable up to a maximum wage per individual in any given year while working for the same employer. The amount by which an individual's earnings exceed the maximum wage is known as "excess earnings", which may be deducted from total earnings to arrive at the assessable payroll. This maximum wage is adjusted annually by a formula stipulated in the *Act*.

2. The Act

Section 33 (in part):

- (6) Until changed under subsection (7), the maximum wage rate under subsection (1) is \$11,200 per year.
- (7) Prior to the end of each calendar year, the Board must determine the maximum wage rate to be applicable for the following calendar year.
- (8) The maximum wage rate to be determined under subsection (7) must be an amount that the Board thinks represents the same relationship to the sum of \$11,200 as the annual average of wages and salaries in the Province for the year preceding that in which the determination is made bears to the annual average of wages and salaries for the year 1972; and the resulting figure may be rounded to the nearest \$100.
- (9) For the purpose of determining annual average of wages and salaries under subsection (8), the Board may use data published or supplied by Statistics Canada.
- (10) Where a worker is injured after December 31, 1985, the references in subsections (6) and (8) to \$11,200 must be read as references to \$40,000, and the reference in subsection (8) to 1972 must be read as a reference to 1984.

Section 38(3):

In computing the amount of the payroll for the purpose of assessment, regard must be had only to that portion of the payroll that represents workers and employment within the scope of this Part. Where the wages of a worker exceed the maximum wage for one year as fixed for the time being under section 33, a deduction may be made where practical in respect of the excess; and where the wages of a worker are shown to exceed the above maximum wage rate, the Board may make a deduction where practical in respect of the portion in excess of that rate; and where a worker within the scope of this Part works at a nominal wage or no wage, the amount of the worker's average earnings for purposes of this Part may be fixed by the Board.

POLICY

The maximum wage and excess earnings deduction applies to all earnings included in payroll and to workers of all firms as well as principals of limited companies.

A deduction for excess earnings may not be made from gross payments to contractors unless supported by the contractors' payroll records.

All earnings up to the maximum are fully assessable and the maximum wage figure may not be prorated on a monthly or other basis.

Except for related companies with shared employees, excess earnings will not be prorated or transferred between employers. When two or more companies amalgamate and continue as one company under the applicable company law so that the amalgamated company holds and possesses all of the property, rights and interests and is subject to all of the debts, liabilities and obligations of each amalgamating company, excess earnings will be transferred.

PRACTICE

The maximum wage rate is set out in Appendix "A" to this *Manual*.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 33 and 38(3), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Fishing (AP1-4-1), Payroll Categories (AP1-38-2), Payroll – Principles of Determining (AP1-38-3) and Payroll – Out-of-Province Employers and Operations (AP1-38-4) in the <i>Assessment Manual</i> .
HISTORY:	Replaces Policy No. 40:10:20 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Assessment Rates**ITEM: AP1-39-1**

BACKGROUND

1. Explanatory Notes

Assessment rates are set for each rate group. The intent is for each rate group to be self-sufficient with regard to costs. The cost of injuries and diseases that occur to the workers of employers in each group is paid by all the employers in that group.

2. The Act

Section 39 (in part):

- (1) For the purpose of creating and maintaining an adequate accident fund, the Board must every year assess and levy on and collect from independent operators and employers in each class, by assessment rated on the payroll, or by assessment rated on a unit of production, or in a manner the Board considers proper, sufficient funds, according to an estimate to be made by the Board to
 - (a) meet all amounts payable from the accident fund during the year;
 - (b) provide a reserve in aid of industries or classes which may become depleted or extinguished;
 - (c) provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all injuries which occur during the year;
 - (d) provide a reserve to be used to meet the loss arising from a disaster or other circumstance which the Board considers would unfairly burden the employers in a class;
 - (e) provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability; and
 - (f) provide and maintain a reserve for payment of retirement benefits.

POLICY

(a) General

The Board has adopted a modified collective liability system, under which self-sufficient groups of employers are created on the basis of similar cost rates. These groups must be large enough to provide for an adequate spread of the risk and stability in the assessment rate.

The costs of compensable injuries and diseases, along with the costs of administering claims and carrying out other statutory requirements, are collected from employers in the form of assessments. For this purpose, employers are classified into classification units, industry groups and rate groups. The costs incurred in relation to these groups determine the assessment rate paid by their members. The Board creates groups that are large enough to provide for an adequate spread of the risk and stability in the assessment rate.

The terms “classes”, “subclasses” and “industries” are used in section 39 of the *Act*. For the purpose of describing the Board’s rate setting structure a rate group is equivalent to a subclass, industry groups are equivalent to industries, and classification units are equivalent to parts of industries. For the purposes of section 10(8) of the *Act*, classes and subclasses are equivalent to rate groups.

(b) Classification units

Employers and independent operators are assigned to classification units on the basis of the industry in which the firm is operating.

(c) Industry groups

Industry groups must be of sufficient size to be fairly regarded as having some predictability for future claims experience. The Board may place classification units that are large enough into their own industry group. Otherwise, the Board will combine classification units into industry groups on the basis of similarity of industrial activity and a reasonable expectation of similar cost rates. The Board determines the minimum size for industry groups.

(d) Rate groups

Assessment rates are calculated at the rate group level. The Board may place industry groups that are large enough into their own rate group. Otherwise, the Board will combine industry groups into rate groups on the basis of similarity of historical injury cost rates. Rate groups must meet a minimum size requirement

as determined by the Board in order to be viable for statistical and insurance purposes.

Where the injury cost rate of the industry group differs from the average injury cost rate of its rate group by more than 20% for three consecutive years, the Board may move the industry group to a rate group that better reflects its actual injury cost rate.

(e) Assessment Rates

Each year, the total cost for a particular rate group is estimated. The total is divided by the estimated total assessable payroll for the group to produce the base assessment rate for the group for that year. Rate group data is used to create a classification unit's base assessment rate, which is then modified by the employer's own experience rating adjustment if applicable. The rate is expressed as a dollar amount per one hundred dollars of payroll.

As a result of section 39(1), the estimated total annual cost for each rate group is made up of different costs. This cost includes:

- the estimated current costs of all injuries which occur during the year;
- capitalized reserves sufficient to meet the future payments of compensation on those injuries;
- the rate group's contribution to other reserves described in section 39(1);
- the rate group's share of the Board's administrative costs; and
- an amount to amortize the rate group's account balance if appropriate.

The Board reviews the assessment rate for each rate group annually. The assessment rates may be adjusted more frequently, but this will be avoided where possible.

PRACTICE

For detailed information on how assessment rates are set and the rates payable by each classification, readers should consult the WorkSafeBC website at http://www.worksafebc.com/for_employers/premiums/default.asp.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	October 1, 2007
AUTHORITY:	s. 39(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also section 96.2(2)(f) of the <i>Workers Compensation Act</i> and The Classification System (AP1-37-1) with regard to classification units and Experience Rating (AP1-42-1) in the <i>Assessment Manual</i> and Introduction – Charging of Claim Costs (policy item #113.00), Occupational Diseases (policy item #113.20), Silicosis and Pneumoconiosis (policy item #113.21) and Hearing-Loss Claims (policy item #113.22) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Updated October 1, 2007 to reflect the Board's authority to set assessment rates. This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. Replaces Policy No. 30:30:00 of the <i>Assessment Policy Manual</i> . Consequential changes were subsequently made to the cross references in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	Applies on or after October 1, 2007.

RE: Assessment Payments**ITEM: AP1-39-2**

BACKGROUND

1. Explanatory Notes

Sections 38 to 40 of the *Act* set out the basic requirements for when employers must pay assessments and the manner of payment. Section 38 requires an employer to provide payroll information to the Board when it first becomes an employer, and at other times as required. The relevant parts of sections 39 and 40 are set out below.

2. The Act

Section 39 (in part):

- (2) Assessments may be made in the manner and form and by the procedure the Board considers adequate and expedient, and may be general as applicable to a class or subclass, or special as applicable to an industry or part or department of it.
- (3) Assessments may, wherever it is considered expedient, be collected in half yearly, quarterly or monthly installments, or otherwise; and where it appears that the funds in a class are sufficient for the time being, an installment may be abated or its collection deferred.

Section 40(1):

Where the Board

- (a) notifies an employer of assessment rates or percentages determined by the Board in respect of the industries in which the employer is engaged; and
- (b) informs the employer of the manner in which the assessment is calculated, and the date it is payable,

the notice constitutes an assessment under section 39, and the employer must, within the time limited in the notice,
- (c) make a return on the form provided or prescribed by the Board; and
- (d) remit the amount of the assessment.

Section 259:

- (1) The commencement of a review under section 96.2 or of an appeal under this Part respecting a matter described in section 96.2(1)(b) does not relieve an employer from paying an amount in respect of a matter that is the subject of the review or appeal.
- (2) If the decision on a review or an appeal referred to in subsection (1) requires the refund of an amount to an employer, interest calculated in accordance with the policies of the board of directors must be paid to the employer on that refunded amount.

POLICY**(a) Remittance schedules**

An employer will usually pay assessments annually or quarterly, depending on the size of the annual assessment or the industry in which the employer operates. Firms having an annual assessment of less than \$1,500 are usually assessed annually. Firms having an annual assessment of \$1,500 or more and all firms registered in the Oil, Gas or Mineral Resources, Forestry, or Transportation and Related Services subsectors are usually assessed quarterly.

The Board may change the usual remittance schedule for an employer if:

- the employer and the Board agree on a different schedule;
- an employer's annual assessment regularly fluctuates above and below \$1,500 and the Board determines that the employer should remit either annually or quarterly regardless of the amount of the annual assessment; or
- an employer's account is not in good standing or the employer has a history of failing to remit on time, and the Board determines that the employer is required to remit more frequently until the employer establishes an acceptable remittance record.

The decision whether or not to change the remittance frequency is based on such factors as the nature of the employer's operations, and the payment history and status of the account.

(b) Manner of reporting and payment

The Board may use any means of communication to advise an employer of the requirements for reporting and payment and accept payment and reports through any recognized payment medium.

Employers may be required to make a report with each quarterly or annual remittance. Firms remitting quarterly also submit a report at the end of the year covering the whole year. The information required to be provided by these reports may include:

- the amount of payroll, or estimated payroll;
- if the employer was in a previous report only required to provide an estimate of the payroll, the actual amount of payroll covered by the earlier report;
- excess earnings;
- principals' earnings; and
- contractors' earnings.

A report may require the employer to calculate the amount of the assessment and pay any outstanding amount due as a result of the report.

(c) Pre-payment of assessments

If an employer is required to register with the Board for a project that is non-recurring and less than one year in duration, and if an estimate of assessable payroll can be reasonably made, the Board may require pre-payment of an assessment based on the estimate.

The Board may permit other employers to pre-pay assessments for any year on the basis of an estimate of payroll. The Board may agree to provide a percentage discount or similar incentive for such employers.

In any situation where pre-payment takes place, the employer must report actual payroll at the end of the year or other times required by the Board. Based on these reports, additional assessments may be required or credits allowed, as the situation may warrant.

(d) Overpayments

If an employer overpays an assessment, the overpayment will be credited to its account. Refunds will be made on closed accounts and may be considered in other unusual circumstances if specifically requested. A refund will not be granted unless

- the employer's account is current;
- there are sufficient credits in the account;
- all required reports and remittances have been received; and
- there is no outstanding balance for which legal action has been commenced or that has been written off.

If the Board makes any changes to an employer's account as the result of an overpayment of assessments, it will inform the employer in writing.

Interest may be paid on an overpaid assessment in the following situations:

- The overpayment resulted from a blatant Board error. For an error to be blatant, it must be an obvious and overriding error. This means that, had the Board officer known that he or she was making the error at the time, it would have caused the officer to change the course of reasoning and the outcome. A "blatant" error cannot be characterized as an understandable error based on misjudgment. Rather, it describes a glaring error that no reasonable person should make. A blatant error would include where an employer is registered in an obviously incorrect classification when the employer identified the correct industry at the outset.
- An employer prepays an administrative penalty under Part 3 of the *Act* or a penalty assessment (including an experience rating demerit) pending a review under section 96.2 or an appeal under Part 4 and is then successful in the review or appeal.
- An amount other than a prepayment covered by paragraph 2 is returned to an employer as a result of a successful review under section 96.2 or a successful appeal under Part 4 respecting a matter described in section 96.2(1)(b) of the *Act*. In these cases, interest is payable from the date the employer overpaid the Board.

Where interest is payable, it will apply to penalty assessments and accrued interest on outstanding assessments that were paid during the period in question.

The Board pays simple interest at a rate equal to the prime lending rate of the banker to the government. During the first 6 months of a year interest is calculated at the interest rate as at January 1st. During the last 6 months of a year interest is calculated at the interest rate as at July 1st. Where an overpayment of assessment has resulted from a blatant Board error, interest will not accrue for a period greater than twenty years. For practical reasons, certain mathematical approximations may be used in the calculations.

(e) Transfers between accounts

Any request to transfer funds from one employer's account to another must be made in writing by the employer from whose account the funds will be transferred, unless the funds are being transferred as the result of a Board error.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	ss. 39(2) and (3), 40(1) and 96(7) <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Payroll Categories (AP1-38-2), Payroll – Principles for Determining (AP1-39-4), Maximum Wage (AP1-38-6), Collection of Assessments (AP1-45-1), Penalties (AP1-47-1) and Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> and with regard to penalties under Part 3 of the <i>Act</i> , D12-196-1 in the <i>Prevention Manual</i> .
HISTORY:	Replaces in part Policies No. 20:30:40, 40:30:10 to 40:30:30, 40:30:50, 40:30:60 and 40:70:10 to 40:70:40 of the <i>Assessment Policy Manual</i> and Decision No. 351 in volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> . Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Penalties

ITEM: AP1-40-1

BACKGROUND

See Item AP1-47-1.

POLICY

See the POLICY in Item AP1-47-1.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE: January 1, 2003
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:

RE: Experience Rating**ITEM: AP1-42-1**

BACKGROUND

1. EXPLANATORY NOTES

Experience rating is a means of adjusting individual employers' assessment rates to reflect their actual claims cost experience. Employers whose experience is better than their rate group average receive a discount. Employers whose experience is worse than their rate group average pay a surcharge.

The experience rating program attempts to promote positive safety attitudes and to provide equity through a system of recognition and accountability for claims costs. The goal is to encourage employers with high injury costs to reduce them, and to encourage employers with low injury costs to keep them low. The desired outcome is a reduction in the social and economic costs of work-related injuries and diseases.

2. THE ACT

Section 42:

The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be considered just; and where the Board thinks a particular industry or plant is shown to be so circumstanced or conducted that the hazard or cost of compensation differs from the average of the class or subclass to which the industry or plant is assigned, the Board must confer or impose on that industry or plant a special rate, differential or assessment to correspond with the relative hazard or cost of compensation of that industry or plant, and for that purpose may also adopt a system of experience rating.

POLICY

(a) The Experience Rating Plan

The main features of the experience rating ("ER") plan are:

- (1) The ER plan applies to all employers and independent operators in ratable classes.

- (2) The ER plan is prospective in application. ER adjustments are calculated on the basis of past claims costs and payroll and are applied to employers' assessments. Thus, a firm's experience is a measure of a firm's performance relative to its rate group based on information derived by the Board from appropriate past claims costs and payroll.
- (3) ER adjustments are based solely on claims costs. The costs used are those directly associated with compensation claims, including the capitalized value of pensions awarded. The cost used for fatal claims is the five-year moving Board-wide average rather than the actual cost of each claim.
- (4) The Board's administrative costs are not included in the ER calculation.
- (5) The ER plan uses claims costs arising from claims commenced in the three calendar years prior to the year in which the calculation is made (the "ER Window"). This includes all costs of those claims up to and including June 30th of the year of calculation.
- (6) The costs included are subject to maximum limits for each claim as follows:
 - 100% of the first \$70,000;
 - 50% of the next \$50,000; and
 - 10% of all costs above \$120,000.
- (7) An employer's cost to assessable payroll ratio is compared to the cost to assessable payroll ratio of the rate group to which the employer is assigned.
- (8) The payroll used is the total assessable payroll used to calculate employers' assessments in the ER Window. This amount excludes earnings above the maximum wage, and includes Personal Optional Protection amounts.
- (9) In determining the cost to assessable payroll ratio in the ER Window, the most recent year is weighted at 50%, the prior year at 33.3%, and the most distant year at 16.7%.
- (10) The calculation involves combining an employer's cost experience in the ER window with its ER factor for the previous year. The ER factor reflects the fact that employers participate at different levels, based on the size of the employer's assessment before the ER adjustment. The higher an employer's base assessment, the higher its level of participation in the plan. A higher level of participation means an employer's ER adjustment

- is more responsive to its claims costs experience in the current ER window.
- (11) The minimum participation level is set at 10%.
 - (12) The maximum ER discount is 50%. The maximum ER surcharge is 100%, except where an excess cost surcharge applies.
 - (13) Employers enter the plan for the first time when they have had some payroll within the current ER window.
 - (14) Where any part of an employer's payroll has been estimated, any resulting discount will not be applied. If a surcharge results, it will be applied. If an estimate is replaced by the actual payroll information, the experience rating will be recalculated.
 - (15) The employer for experience rating purposes is the legal entity operating the business. If an employer operates divisions, whether they are separately registered with the Board or not, the employer's combined experience determines the rating for all the employer's operations.
 - (16) Employers registered voluntarily under sections 3(5) to (7) of the *Act* or by a variance from a general exemption order under section 2(1) of the *Act* are excluded from participating in the experience rating plan.
 - (17) For simplicity, ER discounts or surcharges are generally expressed as percentage adjustments to employers' base assessment rates.

(b) The Excess Cost Surcharge

The excess cost surcharge is a component of the ER plan allowing the Board to more properly rate firms with ongoing high costs. A firm qualifies for an excess cost surcharge where:

- the firm is active and its average claim cost to payroll ratio, as calculated by the Board, is three or more times that of its rate group for three consecutive assessment years;
- the firm has a calculated ER surcharge adjustment of 90 percent or more; and,
- the firm has had 50 or more non-health care only claims in the five consecutive years ending with the most recent year in the ER window.

The Board will determine a required rate for a qualifying firm to enable calculation of the firm's excess cost surcharge. The required rate will be set annually based on the following:

- (1) In the first year a firm qualifies for an excess cost surcharge, the Board will determine the required rate using claims costs arising from claims commenced in a period of up to 15 calendar years prior to the year in which the calculation is made.
- (2) After the first year the required rate will be the lower of:
 - (i) a rate set as described in section (1), above; or
 - (ii) a rate set using a weighting determined by the Board that blends a rate using:
 - claims costs arising from claims commenced in the five years prior to the year in which the calculation is made, and,
 - a rate set as described in section (1), above, where the five-year rate is lower than the rate set as described in section (1).
- (3) Since the required rate is set annually, subsequent changes in claim cost or payroll information will be reflected in the next year's required rate calculation.
- (4) The required rate is capped at 500 percent of a firm's yearly-established classification base rate.

Once qualified for an excess cost surcharge, a firm is stepped toward the required rate over four years, and will be charged premiums at the required rate in the fifth and subsequent years. The progression toward the required rate functions as follows:

	(A) Starting Rate	(B) Yearly Calculated Required Rate	(C) ECS Calculation	(D) ECS Adjusted Net Rate Calculation For Year
Year 1	Firm's net rate from the prior year as calculated under the ER system	Required rate for Year 1	$\frac{(B) - (A)}{5}$	(A) + (C)
Year 2	Excess cost surcharge adjusted net rate from prior year	Required rate for Year 2	$\frac{(B) - (A)}{4}$	(A) + (C)
Year 3	Excess cost surcharge adjusted net rate from prior year	Required rate for Year 3	$\frac{(B) - (A)}{3}$	(A) + (C)
Year 4	Excess cost surcharge adjusted net rate from prior year	Required rate for Year 4	$\frac{(B) - (A)}{2}$	(A) + (C)
Year 5 (and subsequent years)	Excess cost surcharge adjusted net rate from prior year	Required rate for Year 5	$\frac{(B) - (A)}{1}$	(A) + (C) (equals the yearly calculated required rate)

Once qualified, a firm will be subject to an excess cost surcharge until, for two consecutive years:

- the firm's ER surcharge as calculated under the conventional ER plan is below 90 percent; or,
- the firm's claim cost to payroll ratio, as calculated by the Board within the ER window, is less than three times that of its rate group.

Policies concerning classification changes and experience rating transfers apply to firms subject to an excess cost surcharge. If a firm changes classifications, the Board determines the firm's qualification for, and/or the amount of, an excess cost surcharge within the new classification.

PRACTICE

For further information on the experience rating system and any other relevant PRACTICE information, readers should consult the Practice Directives and other materials available on the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	January 1, 2009
AUTHORITY:	s. 42, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Requesting a Variance from a General Exemption (AP1-2-2), Personal Optional Protection (AP1-2-3), Extending the Application of the <i>Act</i> (AP1-3-1) with regard to sections 3(5) to 3(7) of the <i>Act</i> , Classification – Changes (AP1-37-3), Registration of Employers (AP1-38-1), Payroll Estimates (AP1-38-5), Maximum Wage Rate (AP1-38-6), ER Cost Inclusions/Exclusions (AP1-42-2) and Transfer of Experience Between Firms (AP1-42-3) in the <i>Assessment Manual</i> .
HISTORY:	Updated to add the Excess Cost Surcharge effective January 1, 2009 Updated to define “experience” effective June 1, 2005. Replaces Policies No. 30:50:10 and 30:50:41 of the <i>Assessment Policy Manual</i> and Decision No. 401 in Volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> . This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the HISTORY were issued.
APPLICATION:	The amended policy applies to experience rating calculations made for years on or after January 1, 2009.

RE: Experience Rating Cost Inclusions/Exclusions ITEM: AP1-42-2

BACKGROUND

See Item AP1-42-1.

POLICY

As a general rule, every acceptable claim assigned to a particular employer is counted for experience rating purposes. The Board does not exclude the costs of claims from being considered on the basis that a particular injury or the resulting costs were not the fault of the employer.

Some types of claims costs are excluded from consideration. These are:

- (1) costs recovered by way of a third party action under section 10 of the *Act*;
- (2) costs transferred to the class of another employer or independent operator under section 10(8) of the *Act*;
- (3) costs assigned to the funds created by section 39(1)(d) and (e) of the *Act*; and
- (4) occupational disease claims which on average require exposure for, or involve latency periods of, two or more years before manifesting into a disability. The diseases excluded on this ground are:
 - Non traumatic hearing loss, excluding hearing loss resulting from other injuries
 - Silicosis
 - Asbestosis
 - Other pneumoconioses, for example anthracosis and siderosis
 - Heart disease
 - Cancer

- Hand-arm vibration syndrome, vinyl chloride induced Raynaud's phenomenon, disablement from vibrations

Several policies in the *Rehabilitation Services & Claims Manual* also provide for relief of costs. These costs are also excluded from consideration for experience rating purposes.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	Section 42 of the <i>Act</i> .
CROSS REFERENCES:	Item AP1-42-1, <i>Experience Rating in the Assessment Manual</i> ; and Item C3-16.00, <i>Pre-Existing Conditions or Diseases</i> ; Item C3-14.10, <i>Serious and Wilful Misconduct</i> ; Item C11-88.40, <i>Vocational Rehabilitation — Training-On-The Job</i> ; Item C11-88.50, <i>Vocational Rehabilitation — Formal Training</i> ; Policy item #113.10, <i>Investigation Costs</i> ; Policy item #113.20, <i>Occupational Diseases</i> ; Policy item #114.10, <i>Transfer of Costs from One Class to Another</i> ; Policy item #114.40, <i>Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability</i> ; Policy item #115.30, <i>Experience Rating Cost Exclusions</i> ; Policy item #115.31, <i>Injuries or Aggravations Occurring in the Course of Treatment or Rehabilitation</i> ; Policy item #115.32, <i>Claims Involving a Permanent Disability Award and a Fatality</i> ; in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Cross References section updated effective June 1, 2005. Replaces in part Policy No. 30:50:52 of the <i>Assessment Policy Manual</i> and Decision No. 49 of Volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> . This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the HISTORY were issued.

RE: Transfer of Experience Between Firms**ITEM: AP1-42-3**

BACKGROUND

1. Explanatory Notes

Employers may sell or otherwise transfer all or part of their business to another person or entity. When changes of this nature occur, the question arises whether there should be a transfer of the experience of the firm.

2. The Act

See Item AP1-42-1.

POLICY

1. Overview

Principles to consider in experience transfer include:

- Experience rating is a measure of a firm's "hazard or cost of compensation" within the workers' compensation system.
- A firm has control over the way it conducts its business operations, which in turn may impact claims costs.
- The Board applies experience rating to a firm, and maintains each firm's earned experience, to promote continuity and premium equity.

Therefore, when business operations or assets move between firms, the Board must determine whether or not it is appropriate to transfer the original firm's experience history to a successor firm.

2. Descriptions of Terms

The following terms assist in interpreting policy:

Affiliation

Firms are affiliated where:

- directly or indirectly through one or more intermediaries or by other means, one firm controls the other firm, or both firms are controlled by the same person or group of persons, or
- the firms are controlled by family members, immediate, extended, or equivalent.

Where an original firm's business operations or assets are split between multiple successor firms, affiliation is determined on the basis of the relationship between the original firm and each individual successor firm.

Control

Control is the ability or power, actual or potential, direct or indirect through intermediaries, to direct or cause the direction of the management of a firm's business operations, through the ownership of voting securities, by contract, or by other means.

Firm

A firm is any person or entity carrying on a business. An "original firm" is one that moves assets or business operations to one or more other firms. A "successor firm" is one receiving assets or operations from an original firm.

Business Operations

The commercial, industrial, or professional activities of a firm; which generally comprise its assets and activities respecting property, plant(s), equipment, products, or services.

3. Experience Transfer Guidelines

The following guidelines are used when considering whether experience should transfer between firms:

- a) Generally, experience will not transfer where a firm's business operations or assets move to another firm and the firms do not meet the description of affiliation. Experience may transfer where an original firm's business operations or a significant portion or aspect of an original firm's business operations move to an affiliated successor firm.

As an exception, experience may transfer between unaffiliated original and successor firms where both are publicly traded companies, and it is anticipated that the successor firm will continue the business operations unchanged by preserving the original undertaking, management, staff, plant, equipment, location and customers/clients.

Where experience transfer is considered between firms, generally the classification of the operations should remain the same. If the classification of

the operations changes, the provisions of Item AP1-37-3 (Classification - Changes) are considered in conjunction with this policy.

- a) Generally, a firm's experience will remain with the firm if it undergoes a change in ownership through a share purchase or other means, as the same firm remains in operation.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	June 1, 2005
AUTHORITY:	s. 42, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage Under <i>Act</i> – Descriptions of Terms (Item AP1-1-1) and Classification – Change (Item AP1-37-3) and Experience Rating (Item AP1-42-1) in the <i>Assessment Manual</i> .
HISTORY:	Changes to the criteria by which experience transfers are adjudicated were made effective June 1, 2005. This Item resulted from an editorial consolidation of the former <i>Assessment Policy Manual</i> , which was effective on January 1, 2003. The Policy in this Item continued the substantive requirements that existed before the consolidation, with any wording changes necessary to reflect legislative and other changes that had occurred. Policy No. 30:50:50 in the former <i>Assessment Policy Manual</i> was replaced by this Item. Consequential changes to this Item made as a result of the <i>Workers Compensation Amendment Act (No. 2), 2002</i> were effective on March 3, 2003.
APPLICATION:	The amended policy applies to all decisions made on or after June 1, 2005.

RE: Collection of Assessments

ITEM: AP1-45-1

BACKGROUND

1. Explanatory Notes

The *Act* contains several provisions for the Board to collect assessments from employers or independent operators who do not voluntarily pay.

2. The Act

Section 45:

- (1) If an assessment or part of it is not paid in accordance with the terms of the assessment and levy, the Board has a right of action against the defaulting employer in respect of the amount unpaid, together with costs of the action.
- (2) Where default is made in the payment of an assessment, or part of it, the Board may issue its certificate stating that the assessment was made, the amount remaining unpaid on account of it and the person by whom it was payable, and that certificate, or a copy of it certified by the secretary under the seal of the Board to be a true copy, may be filed with any district registrar of the Supreme Court, and when so filed becomes an order of that court and may be enforced as a judgment of the court against that person for the amount mentioned in the certificate.

In addition to writs of seizure and sale, land judgments and garnishing orders under section 45, the Board may pursue other means of collecting an outstanding balance, such as collections from third parties under section 51 and 52 of the *Act* and attachments of WCB pension and wage-loss claim benefits under section 15.

POLICY

When attempting to collect an outstanding assessment from a delinquent employer, it will become apparent at some point that the employer cannot or will not pay the outstanding balance as required. At this time, the Board will send the “final notice” to the employer allowing 10-15 days to satisfy the account.

(a) Payment proposals

Payment proposals from a delinquent employer may only be considered when the account is cancelled, or when the account is active and current assessments are being paid when due. In all cases, payment proposals should be considered with the purpose of satisfying the outstanding amount in the least time possible. However, in cases where the account is cancelled and is otherwise a possible write-off, or where the Board's position is well secured, an extended payment period may be accepted.

Proposals must meet the following conditions:

- post-dated cheques or equivalent are provided wherever possible in advance of a payment proposal being accepted;
- current remittance requirements, where applicable, are maintained;
- monthly overdue penalty charges accrue while the proposal is in effect (The exception to this is when the defaulting employer is a corporation, and a principal of the company is undertaking payment of the outstanding balance after the company's account with the Board has been cancelled. Under those circumstances, the balance will not accrue overdue penalty charges.); and
- the accepted proposal is strictly adhered to.

When a proposal has been accepted, the payment arrangements and conditions are confirmed in writing.

(b) Bankruptcy and receivership

When the Board is notified by a trustee that a firm has filed an assignment in bankruptcy, and the account has already been cancelled and the outstanding balance is below the minimum that the Board considers worth pursuing, the balance is written off and the trustee is notified that the Board has no claim. The same applies where a firm has gone into receivership.

(c) Writ of seizure and sale

If the "final notice" has been sent to the delinquent employer and the period specified has elapsed without a satisfactory payment or payment proposal, and an asset search indicates that the employer owns seizable assets other than land, the Board will file its certificate under section 45(2) of the *Act* and have a writ of seizure and sale issued. The Board may not issue the writ if it determines the outstanding balance is below the minimum it considers worth pursuing. Once the Board has issued a writ, the collection of the balance is the sole responsibility of the bailiff.

Before a writ is issued, the Board will review the possibility of the writ causing the firm to close down. Writs will not be withheld simply on the grounds that equipment seizure will put the firm out of business.

If the asset of a delinquent employer was purchased under a conditional sales agreement, a writ of seizure and sale with respect to the asset will not be issued unless the agreement has been paid or is almost paid.

(d) Land judgements

A land judgment is issued if an asset search has indicated that the debtor owns land and no other seizable assets and the balance of the account is over the minimum the Board considers worth pursuing. The same conditions must exist before a land judgment may be issued as those previously listed for a writ of seizure and sale; the employer must have received the “final notice” and a certificate must have been filed with the registrar of the appropriate court.

(e) Garnishing orders

If a garnishing order is to be issued for the wages of a delinquent employer, the employer must

- have been uncooperative;
- have received written warning of the Board’s intention to garnish wages; and
- have been given an opportunity to satisfy the account before such action is taken.

Consideration must also be given to the marital status and number of dependants of the delinquent employer. A garnishing order will not be issued if the available evidence indicates that the funds in question are otherwise attached.

(f) Write offs

If an account is cancelled and all attempts to collect the outstanding balance have been unsuccessful, the Board may “write off” the balance as uncollectable. When a balance is written off, it does not mean that the balance is eliminated, but that attempts to collect the balance have been suspended. Should the circumstances change in the future to allow further collection efforts, or should the employer revive the account with the Board, the balance is immediately reinstated.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	s. 45, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Attachment of Compensation (AP1-15-1), Contractor Liability (AP1-51-1), Statutory Lien (AP1-52-2) in the <i>Assessment Manual</i> and Pay Employer Claims (policy item #34.40), Overpayments/Money Owed to the Board (policy item #48.40) and Unpaid Assessments (policy item #48.48) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces in part Policies No. 70:20:20 to 70:20:45, 70:20:70, 70:20:90 and 70:30:00 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Penalties**ITEM: AP1-47-1**

BACKGROUND

1. Explanatory Notes

The *Act* authorizes the Board to charge penalties, interest and claims costs against employers who fail to provide payroll information and/or pay their assessments on time. The Board collects these penalties and other charges as assessments.

The main purpose of these penalties and other charges is to help ensure that employers comply with their remittance requirements, by imposing a monetary sanction on employers who are in default. Non-compliance involves a cost to the accident fund which, in fairness to the employers who meet their obligations, should be borne by the delinquent employers.

Sections 38, 40 and 47 of the *Act* provide for the following types of penalties and other charges used by the Board:

- Penalties may be charged under sections 38(2), 40(2) or 47(1) of the *Act* to employers who fail to submit their payroll or other information and/or their assessment payments on time.
- A penalty may be charged under section 47(1) of the *Act* to employers who pay less than they actually owe.
- A continuing penalty may be charged under section 47(1) to an employer when an amount remains overdue after the original default.
- Claims costs are charged under section 47(2) when an employer defaults and an injury or occupational disease occurs to one of its workers during the period of default. This is dealt with in Item AP1-47-2.

2. The Act

Section 38(2):

Where the employer fails to comply with subsection (1), the employer is liable to pay and must pay as a penalty for the default a percentage of the assessment prescribed by the regulations or determined by the Board,

and the Board may make its own estimate of the payrolls and may make its assessment and levy on that estimate, and the employer is bound by it.

Section 40(2):

Every employer who neglects or refuses to comply with subsection (1) is liable for the penalty prescribed by the regulations or determined by the Board, and that penalty is enforceable as an assessment under this Part.

Section 47(1):

If an assessment levied under this Part is not paid at the time when it becomes payable, the defaulting employer is liable to and must pay as a penalty for the default the percentage on the amount unpaid or the assessment for the preceding year, or the projected assessment for the current year, that may be prescribed by the regulations or determined by the Board, and the penalty may be added to the amount of the assessment and become a part of it, and where not added to the assessment must be enforced in the same manner as the payment of an assessment is enforced.

POLICY

(a) Penalties for failure to remit or report under sections 38(2), 40(2) and 47(1)

In general, unless the Board determines otherwise, the following penalties will apply under section 40(2), where employers fail to meet payroll reporting or payment requirements.

- (i) Where an employer fails to make a year-end payroll report as required, a penalty will apply based on the employer's annual assessment due, or the Board's estimate of that amount, as follows:

Tier	Annual Assessment Due	Penalty Amount
A	\$0 to \$5,999.99	\$50
B	\$6,000 to \$19,999.99	\$150
C	\$20,000 to \$199,999.99	\$500
D	Over \$200,000	\$1,000

- (ii) Where an employer fails to make a quarterly payment as required, a penalty will apply based on the employer's quarterly assessment due, or the Board's estimate of that amount, as follows:

Tier	Quarterly Assessment Due	Penalty Amount
1	\$0.01 to \$1,499.99	\$50
2	\$1,500 to \$4,999.99	\$150
3	\$5,000 to \$9,999.99	\$500
4	\$10,000 to \$49,999.99	\$1,000
5	\$50,000 to \$99,999.99	\$3,000
6	Over \$100,000	\$10,000

Where an employer fails to report payroll or make payments as required, the Board also has the authority under sections 38(2) and 47(1) to charge penalties based on a percentage of the employer's assessment. The Board may, for example in situations where it believes that the employer is not responding to the deterrent of the penalties applied under the authority of section 40(2), apply penalties under sections 38(1) or 47(1) at 8 percent of the amount due, or estimated to be due.

(b) Penalties for paying less than owed under section 47(1)

A penalty under section 47(1) may be applied when an employer under-remits, or pays less than the employer actually owes to the Board. The penalty is 8 percent or less of the amount unpaid, or estimated to be unpaid. The Board may use the amount the employer paid in the previous remittance period to estimate the amount of the deficiency, or any other amount the Board considers appropriate. The penalty is added to the amount of the deficiency and forms part of it. There is no minimum or maximum amount.

Subject to the reconsideration provisions of the *Act*, the Board may, on its own initiative, reduce or cancel the penalty where it is determined that the penalty was imposed as the result of a material error of fact, law or policy by the Board.

(c) Continuing penalty on overdue amounts under section 47(1)

A penalty under section 47(1) is charged when an employer has an overdue account of any type for 28 days or more. It applies to the outstanding balance until the overdue amount is paid in full. It is in addition to any penalty, interest or other charge that is imposed under this or other policies. The penalty may be imposed where an account has been overdue for less than 28 days if no initial penalty has been charged for the default under parts (a) or (b) of this policy.

The penalty is a percentage rate per month, calculated on a per diem basis on a 28 or 35 day cycle, depending on the number of weeks in the calculation period. The penalty is calculated on the amount outstanding, or estimated to be

outstanding, at the end of the cycle, and is added to the outstanding amount and becomes part of it. The Board may estimate the amount due from the amount the employer paid in the previous remittance period, or by any other method the Board considers appropriate.

The Board may adjust the rate for this penalty, effective January 1st and July 1st of each year, to a monthly rate which reflects an annualized rate of at least six percentage points above the Bank of Canada prime rate.

There is no minimum or maximum amount for this penalty.

(d) Reducing or Cancelling Penalties

A penalty decision may not be reconsidered where one of the limitations set out under section 96(5) of the *Act* exists, unless section 96(7) applies. In order to ensure that penalties are applied in a fair and consistent manner, a penalty may be reduced or cancelled only in limited circumstances, set out as follows:

- (1) error on the part of the Board;
- (2) the penalty is charged after the cancellation date for an employer's account, except if it applies to a period before the cancellation date;
- (3) the penalty is charged after the bankruptcy or receivership date of the firm;
- (4) death or incapacitation of a family member, partner, proprietor, principal or accountant within the last period for which a remittance would normally be due;
- (5) loss, destruction or theft of payroll records within the last three months prior to the penalty imposition;
- (6) non-return of a remittance form where there was a "nil" amount owing, either because of a nil payroll for the period or because there was a sufficient credit in the account to cover the assessment payable for the period (this reason will only be accepted upon written declaration from the firm, its representative or a Board officer of the payroll figures from the beginning to the end of the period for which the penalty is imposed.);
- (7) issued cheques have failed to arrive (The supporting information should include the cheque ledger or a copy showing the cheque stubs immediately before and after so that it can be reasonably

ascertained the WCB cheque was issued within two weeks of the due date.);

- (8) where the balance owing consists of penalties only (all other outstanding amounts have been paid), and the balance is less than \$15.00 or a higher minimum that has been set by the Board since this policy was published; or
- (9) in exceptional cases, for any other reason that the Board determines is consistent with the *Act* and the purpose of this policy.

PRACTICE

The percentage rate of penalty in effect under part (c) of this policy is set out in Appendix “A” to this *Manual*.

For any other relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

EFFECTIVE DATE:	February 28, 2006
AUTHORITY:	ss. 38(2), 40(2) and 47(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Charging Costs of Claim to Unregistered Employers (AP1-47-2) and Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> .
HISTORY:	Changes effective February 28, 2006 to adopt new tiered penalty system. This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. Replaces Policies No. 40:50:05 to 40:50:30 of the <i>Assessment Policy Manual</i> and Decision No. 351 of volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> . Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	This policy applies to all decisions made on or after February 28, 2006.

RE: Charging Claim Costs to Employers**ITEM: AP1-47-2**

BACKGROUND

1. Explanatory Notes

The costs of an injured worker's claim are normally allocated to the classification to which the worker's employer belongs. However, section 47(2) of the *Act* states that the employer must pay the full costs of a worker's claim if, at the time of the injury or occupational disease, the employer had failed to register or provide payroll information to the Board under section 38(1) or has failed to pay an assessment or part of an assessment. Section 47(3) gives the Board some discretion to reduce or cancel this liability.

2. The Act

Section 47 (in part):

- (2) An employer who refuses or neglects to make or transmit a payroll return or other statement required to be furnished by the employer under section 38 (1), or who refuses or neglects to pay an assessment, or the provisional amount of an assessment, or an instalment or part of it, must, in addition to any penalty or other liability to which the employer may be subject, pay the Board the full amount or capitalized value, as determined by the Board, of the compensation payable in respect of any injury or occupational disease to a worker in the employer's employ which happens during the period of that default, and the payment of the amount may be enforced in the same manner as the payment of an assessment may be enforced.
- (3) The Board, if satisfied that the default was excusable, may in any case relieve the employer in whole or in part from liability under this section.

Section 96(2) (in part):

- (4) Despite subsection (1), the Board may, on its own initiative, reconsider a decision or order that the Board or an officer or employee of the Board has made under this Part.

- (5) Despite subsection (4), the Board may not reconsider a decision or order if
- (a) more than 75 days have elapsed since that decision or order was made,
 - (b) a review has been requested in respect of that decision or order under section 96.2, or
 - (c) an appeal has been filed in respect of that decision or order under section 240.

Section 96.2(1) (in part):

Subject to subsection (2), a person referred to in section 96.3 may request a review officer to review the following in a specific case:

...

- (b) a Board decision under Part 1 respecting an assessment or classification matter, a monetary penalty or payment under section 47(2), 54(8) or 73(1) by an employer to the Board of compensation paid to a worker;

POLICY

The Board determines if any charges imposed under section 47(2) may be reduced or cancelled under section 47(3) of the *Act*. The Board does not charge claim costs to employers in the following circumstances:

- there has been a Board error;
- the employer contacted the Board prior to the injury with a view to registration, and the employer supplied the information required to proceed with registration within 30 days of the original contact;
- the employer is already registered as a different legal entity;
- the employer is a labour contractor who would be considered a worker if not registered;
- the costs associated with the claim are less than the minimum set by the Board;
- there is sufficient evidence that the employer mailed a registration form prior to the date of injury; or

- any other circumstances which the Board considers are consistent with the *Act* and the purpose of this charge.

Pursuant to section 96(4) of the *Act*, the Board may, on its own initiative, and subject to the provisions set out under section 96(5), reconsider any matter it has previously considered where there is significant new evidence, or where critical evidence was obviously overlooked (as contrasted with being considered and rejected), or where there was a clear error of law or policy in the previous decision.

Where an employer disagrees with a decision of the Board regarding section 47(2) or a decision not to relieve that employer either in whole or in part from the liability, under section 47(3), the provisions set out in sections 96.2 to 96.5 of the *Act* establish a right to request a review of a decision by a review officer.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	June 1, 2010
AUTHORITY:	ss. 47(2) and 96(2), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Registration of Employers (AP1-38-1), Coverage under <i>Act</i> – Labour Contractors (AP1-1-4)) and Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> and Failure to Register as an Employer at the Time of Injury (policy item #115.10) and Procedure for Applying Section 47(2) (policy item #115.11) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	<p>Amendments concerning the circumstances where the Board does not charge claim costs to employers were made effective June 1, 2010.</p> <p>This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i>. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.</p> <p>Replaces Policy No. 40:50:50 of the <i>Assessment Policy Manual</i> and Decision No. 111 of volumes 1 - 6 of the <i>Workers' Compensation Reporter</i>. Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i>, 2002, on March 3, 2003.</p>
APPLICATION:	Applies to all decisions made on or after June 1, 2010

RE: Contractor Liability**ITEM: AP1-51-1**

BACKGROUND

1. Explanatory Notes

Section 51 of the *Act* provides that, if a contractor employs a subcontractor to perform work within the scope of the *Act*, both are liable for the assessment in respect of the work. However, in the absence of a term in the contract to the contrary, the subcontractor is primarily liable. This section ensures that the collection of an assessment for work performed is not affected by contracts between contractors, subcontractors and persons engaging their services.

2. The Act

Section 51:

- (1) Where work within the scope of this Part is undertaken for a person by a contractor, both the contractor and the person for whom the work is undertaken are liable for the amount of any assessment in respect of it, and the assessment may be levied on and collected from either of them, or partly from each; but in the absence of a term in the contract to the contrary the contractor is, as between the contractor and the person for whom the work is performed, primarily liable for the amount of the assessment.
- (2) Where work within the scope of this Part is performed under subcontract, both the contractor and the subcontractor are liable for the amount of the assessments in respect of the work; and the assessments may be levied on and collected from either, or partly from each; but in the absence of a term in the subcontract to the contrary the subcontractor is, as between the subcontractor and the contractor, primarily liable for the assessments.
- (3) Where a contractor or subcontractor who is executing work in or for the purposes of an industry within the scope of this Part carried on by another person (in this subsection referred to as the “principal”) is not assessed with respect to the work so executed, the workers of the contractor or subcontractor may, in the discretion of the Board, be deemed workers of the principal with respect to the industry so carried on by the principal.
- (4) For the purposes of this section, a person, contractor, subcontractor or principal includes an employer within the scope of Part 1.

POLICY

(a) General

Section 51 of the *Act* establishes that where work is performed under contract, each party to the contract is liable for the amount of any assessment premiums in respect of the work performed. The Board will usually collect any unpaid assessment premiums owed from a subcontractor or contractor for work performed. Where a subcontractor or contractor fails to pay assessment premiums as required, the Board may collect these premiums from the contractor and/or person for whom the work is performed.

When the Board finds that a third party may have a section 51 liability, it informs the third party of the possible liability and requests information about the nature of the contract, the gross amount paid to the debtor firm and the disposition of "holdback" funds. If the third party claims to have no liability, and no information to the contrary is known, the Board will confirm to the third party that it does not have a section 51 liability.

If the third party has a liability, the amount of the liability is the lesser of the actual assessment outstanding on the account of the delinquent subcontractor or the assessment based on the labour component of the contract. The labour component is determined by subtracting an appropriate allowance for materials and equipment from the gross contract amount. This allowance depends on the nature of the work performed. The labour component is then multiplied by the assessment rate(s) of the contractor for the year(s) in question to arrive at the liability amount. The third party is advised of this amount.

If the third party has retained holdback funds, the Board requests the third party to remit the lesser of the holdback funds up to the amount of the section 51 liability or the outstanding assessment of the delinquent contractor's account. The Board may also issue a garnishing order for any holdbacks retained by the third party in excess of the section 51 liability. If the third party has not retained holdback funds, and all collection avenues with regard to the debtor firm have been exhausted, the Board will request payment of the section 51 liability from the third party.

The Board will not normally enforce payment of a section 51 liability if there is no holdback being retained, and

- the contractor or owner has a liability which is calculated to be less than a minimum determined by the Board; or
- the contractor or owner is a private homeowner who has a liability due to the contracting of work on his or her principal residence and the calculated liability based upon the value of that assessment is less than a minimum determined by the Board.

The Board considers any holdback or third party payment agreements between contractors and subcontractors to be private agreements between those two parties, which do not effect either party's reporting and remitting responsibilities.

(b) Clearance Letters

In order to reduce the uncertainty resulting from a section 51 liability, the Board has established a system through which it provides clearance letters. A section 51 clearance letter provides the addressee of the letter with the clearance date for a registered subcontractor or contractor. The Board will not collect any liability owed by a subcontractor or contractor for work performed up to the clearance date from an addressee who was the contractor or person for whom the work was done. Please note that the clearance date is in the text of the letter; it is not the date of the letter.

PRACTICE

The minimums in effect for the exemptions provided by the policy for contractors and homeowners are set out in Appendix "A" to this *Manual*.

For information on how to obtain a clearance, consult the WorkSafeBC website.

For any other relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	May 1, 2007
AUTHORITY:	s. 51, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Payroll Categories (AP1-38-2), Collection of Assessments (AP1-45-1) and Statutory Lien (AP1-52-1) in the <i>Assessment Manual</i> .
HISTORY:	Amendments effective May 1, 2007 to clarify the purpose and function of the clearance system. This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. Replaces Policies No. 70:20:50 and 70:40:00 of the <i>Assessment Policy Manual</i> .
APPLICATION:	Applies to all clearance letter requests on and after May 1, 2007.

RE: Statutory Lien**ITEM: AP1-52-1**

BACKGROUND

1. Explanatory Notes

Section 52 of the *Act* creates a statutory lien in favour of the Board that attaches to property or the proceeds arising from the sale of property.

2. The Act

Section 52:

- (1) Notwithstanding anything contained in any other *Act*, the amount due by an employer to the Board, or where an assignment has been made under subsection (4), its assignee, on an assessment made under this *Act*, or in respect of an amount which the employer is required to pay to the Board under this *Act*, or on a judgment for it, constitutes a lien in favour of the Board or its assignee payable in priority over all liens, charges or mortgages of every person, whenever created or to be created, with respect to the property or proceeds of property, real, personal or mixed, used in or in connection with or produced in or by the industry with respect to which the employer was assessed or the amount became payable, excepting liens for wages due to workers by their employer, and the lien for the amount due the Board or its assignee continues to be valid and in force with respect to each assessment until the expiration of 5 years from the end of the calendar year for which the assessment was levied.
 - (1.1) The exception in subsection (1) does not apply in respect of a lien for wages that is, by section 87 (5) of the *Employment Standards Act*, postponed to a mortgage or debenture.
- (2) Where the employer is a corporation, the word “property” in subsection (1) includes the property of any director, manager or other principal of the corporation where the property is used in, or in connection with, the industry with respect to which the employer was assessed or the amount became payable, or was so used within the period in respect of which assessments are unpaid.
- (3) Without limiting subsection (1), the Board may enforce its lien by proceedings under the *Court Order Enforcement Act*.

- (4) The Board may assign its lien rights to a person, contractor or subcontractor who has fully discharged his or her liability for the amount of an assessment under section 51 by payment of it.

POLICY

(a) General

Section 52 of the *Act* provides that where an employer does not pay assessments as required, the Board has a statutory lien in favour of the Board in respect of the unpaid assessments. Such a lien may attach:

- (1) to the employer's property, or to proceeds arising from the sale of the employer's property used in, or produced in, the industry for which the assessment arose; or
- (2) if the employer is a corporation, to the property of any director, manager, or other principal of the corporation where the property was used in, or in connection with the employer's operations.

If the Board determines that a third party may have a section 52 liability, the Board notifies the third party of the priority of the Board's lien on property or proceeds of property used in or produced by the industry of the debtor firm.

(b) Clearance Letters

In order to reduce the uncertainty resulting from a section 52 liability, the Board has established a system through which it provides clearance letters. A section 52 clearance letter informs the person requesting the letter of the clearance date in respect of a registered employer. The clearance date is the date to which the Board will waive its right to enforce a lien in respect of any unpaid assessments owed to the Board where there has been a transfer of assets. A section 52 clearance letter does not provide information concerning outstanding prevention matters under Part 3 of the *Act*. Please note that the clearance date is in the text of the letter; it is not the date of the letter.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	May 1, 2007
AUTHORITY:	s. 52, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Collection of Assessments (AP1-45-1) in the <i>Assessment Manual</i> .
HISTORY:	Amendments effective May 1, 2007 to clarify the purpose and function of the clearance system. This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.
APPLICATION:	Replaces Policy No. 70:20:60 of the <i>Assessment Policy Manual</i> . Applies to all clearance letter requests on and after May 1, 2007.

RE: Assignment of Board Authority

ITEM: AP1-84-1

BACKGROUND

1. Explanatory Notes

The assessment provisions of Part 1 of the *Act* give powers and responsibilities to the Board. The “Board” for this purpose is the corporation known as the Workers’ Compensation Board. It is necessary to determine which 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 under section 82 of the *Act*. Section 96 sets out the Board’s privative clause with respect to the exercise of authority under Part 1.

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 84.1(4):

The president is responsible to the board of directors and he or she

- (a) must attend and participate as a non-voting director at meetings of the board of directors,
- (b) must implement the policies of the board of directors with respect to administration of the Board and the *Act*,
- (c) is responsible for all functions related to staff, other than the appeal commissioners and the staff appointed by and reporting directly to the board of directors, and
- (d) must carry out other functions and duties assigned to the president by the board of directors.

Section 96(1) (in part):

Subject to sections 239 and 240, the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising under this Part, and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court, and proceedings by or before the Board must not be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise into any court, and an action may not be maintained or brought against the Board or a director, an officer, or an employee of the Board in respect of any act, omission or decision that was within the jurisdiction of the Board or that the Board, director, officer or employee believed was within the jurisdiction of the Board; ...

POLICY

The Board of Directors will exercise the following powers and responsibilities as set out in Part 1 relating to the payment of assessments:

- setting assessment rates;
- creating and rearranging employer classes and subclasses;
- approving changes to the *Classification and Rate List*;
- adopting the experience rating system;
- making and amending regulations;
- granting exemptions from the application of Part 1 under section 2(1);
- entering into formal agreements and arrangements with other agencies and governments covered by section 8.1; and
- setting and revising policies under Part 1. (s. 82(1)).

The President/Chief Executive Officer (CEO) has the authority to exercise the remaining powers and responsibilities in Part 1 in relation to the payment of assessments. The President/CEO also has the authority to assign these powers and responsibilities to divisions, departments, categories of officers or individual officers of the 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.

“Payment of assessments” for the purpose of this policy includes the registration and classification of employers or other persons, determining payroll, assessment rates and

assessments owed by employers, auditing records, collecting amounts owing to the Board and all activities incidental to these functions.

The Board's powers and responsibilities relating to the payment of assessments in Part 1 must be exercised in accordance with the policies of the Board of Directors.

PRACTICE

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 82, 84 and 96, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Exemptions from Coverage (AP1-2-1), The Classification System (AP1-37-1), Assessment Rates (AP1-39-1) and Experience Rating (AP1-42-1) of the <i>Assessment Manual</i> .
HISTORY:	Housekeeping change in February 2006 to remove statement in the Practice section on the President/CEO's assignment of authority. Replaces Policies No. 10:20:00, 50:10:00 and 70:20:00 of the <i>Assessment Policy Manual</i> . Consequential changes were subsequently made to the restatement of the <i>Act</i> in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , on March 3, 2003.
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Audits

ITEM: AP1-88-1

BACKGROUND

1. Explanatory Notes

Section 88 of the *Act* gives the Board the authority to examine the books and accounts of every employer and make any other enquiry that is considered necessary to ascertain whether an employer is classified correctly and has made an accurate payroll report. Payroll examinations (audits) are a means of ensuring that employers are meeting their assessment obligations under the *Act*.

2. The Act

Section 88:

- (1) The Board may act on the report of any of its officers, and any inquiry which it is considered necessary to make may be made by an officer of the Board or some other person appointed to make the inquiry, and the Board may act on his or her report as to the result of the inquiry.
- (2) The officer and every other person appointed to make an inquiry has for the purposes of an inquiry under subsection (1), all the powers conferred on the Board by section 87.
- (3) The Board, an officer of the Board or a person authorized by it for that purpose, may examine the books and accounts of every employer and make any other inquiry the Board considers necessary to ascertain whether a statement furnished to the Board under section 38 is an accurate statement of the matters which are required to be stated in it, or to ascertain the amount of the payroll of an employer, or to ascertain whether an industry or person is within the scope of this Part. For the purpose of the examination or inquiry, the Board or person authorized to make the examination or inquiry may give to the employer or the employer's agent notice in writing requiring the employer to bring or produce before the Board or person, at a place and time to be mentioned in the notice, which time must be at least 10 days after the giving of the notice, all documents, writings, books, deeds and papers in the possession, custody or power of the employer touching or in any way relating to or concerning the subject matter of the examination or inquiry referred to in the notice, and every employer and every agent of the employer named in and served with the notice must produce at the time

and place required all documents, writings, books, deeds and papers according to the tenor of the notice.

POLICY

The frequency, scope and periods audited will vary from employer to employer and to some degree are dependent on the type of operation and categories of labour or contractors engaged by the employer.

The records subject to audit are not limited to payroll journals, but encompass all books, documents, records, papers or things which relate to assessable earnings.

The audit may take place at the place of business of the employer or its agent, or at a location designated by the Board. Where the audit is to take place at a location designated by the Board, the employer must be given 10 days written notice under section 88(3) of the *Act*.

The purpose of an audit is to verify compliance with legislation and policy requirements during a prior period. Therefore, legislation and policies in effect during the time period under review in the audit will be used to determine compliance, unless otherwise specified by a subsequent legislation or policy change.

If an audit results in a change in the firm's assessment, the size and reason for the change is communicated to the employer or its representative and noted in the record of the audit.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

EFFECTIVE DATE:	April 1, 2005
AUTHORITY:	s. 88(1)-(3), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also the policies on determining payroll (AP1-38-2 to AP1-38-6) of the <i>Assessment Manual</i> .
HISTORY:	Amendments concerning policy application in audits were made effective April 1, 2005. Replaces Policy No. 50:40:00 of the <i>Assessment Policy Manual</i> . Consequential changes were subsequently made to the restatement of the <i>Act</i> in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , on March 3, 2003. This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues



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the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

APPLICATION:

The amended policy applies to all decisions on or after April 1, 2005.

RE: Disclosure of Assessment Information

ITEM: AP1-95-1

BACKGROUND

1. Explanatory Notes

For the purpose of administering the *Act*, the Board collects and maintains information on employers who are required to register and pay assessments, or employers or independent operators who have voluntarily registered under section 2 of the *Act*. The Board also disseminates information in its possession to stakeholders and others for this purpose.

Provincial legislation, the *Freedom of Information and Protection of Privacy Act* (“*FIPPA*”) provides access for the public to the information maintained by the Board while at the same time protecting personal privacy.

2. The Act

Section 95(1):

Officers of the Board and persons authorized to make examinations or inquiries under this Part must not divulge or allow to be divulged, except in the performance of their duties or under the authority of the Board, information obtained by them or which has come to their knowledge in making or in connection with an examination or inquiry under this Part.

POLICY

(a) General

This policy is intended to ensure that the Board complies with *FIPPA* and to reflect its commitment to ensuring the openness of the Workers’ Compensation system as well as the protection of personal privacy.

FIPPA differentiates between “personal information”, information relating to third party business interests and other types of information in the possession of a public body such as the Board. Personal information means recorded information about an identifiable individual. This policy reflects these differences.

Freedom of information and protection of privacy can be competing principles in many situations. The Board considers that, until it is advised otherwise by the Information and

Privacy Commissioner appointed under section 37 of *FIPPA*, openness should prevail as far as possible in the area of assessments. Where there is ambiguity, it should be resolved in favour of access. Exceptions to access should be narrowly construed.

The balance of this policy discusses common situations where information is requested.

The Board does not charge a fee for the disclosure of assessment information except to the extent this is permitted by *FIPPA*.

(b) Disclosure of assessment records to employers

Copies of the employer's or independent operator's assessment record will be sent to the employer or independent operator and any person or organization having their written approval as soon as possible after the Board has received a request.

The record or a copy of the record will also be made available for inspection by the employer or independent operator and any person or organization having their written approval during normal work hours at the nearest Board office.

The Board will apply mandatory exceptions from disclosure under *FIPPA* and may apply discretionary exceptions, if necessary.

The Board will generally accept the verbal advice of lawyers, accountants or similarly accredited professionals that they represent an employer or independent operator and are authorized to obtain information about the employer or independent operator. The name of the individual lawyer, accountant or similarly accredited professional will be recorded.

(c) Disclosure of claims cost information to employers

The Board may regularly send to employers pursuant to section 42 or other provisions of the *Act* a listing of claims of their workers showing the claim number, the claimant's name and the amount of compensation paid by the Board.

Where an employer has been granted relief of claims costs or the costs of the claim have been transferred to another classification, only the direct claims information which is related to the relief or transfer will be discussed with the employer or independent operator concerned.

(d) Disclosure to third parties with regard to sections 51 and 52 of the *Act*

Material information will be released to third parties without authorizations where they have a potential liability under sections 51 and 52 of the *Act*. In particular, clearances on any registered employer or person with Personal Optional Protection will be provided on request for this purpose.

Requests for personal information regarding individuals that is not directly related to the business must be accompanied by written authorization of those individuals.

(e) Disclosure to the public of information about a firm

The classification and basic assessment rate for the classification of an employer or an independent operator will be made available to anyone upon request.

The Board will also generally disclose to any person the experience rated assessment rate of an individual firm, the total assessment charged to a firm, and the total claim costs charged to a firm for assessment purposes. However, the particular circumstances of the case may require all or part of this information to be withheld under the provisions of *FIPPA*.

(f) Ombudsman, Employers' Advisers, Workers' Advisers, Workers' Compensation Appeal Tribunal, MLAs

The Board will release information about a firm to anyone having statutory authority to obtain the information such as the Ombudsman, Employers' and Workers' Advisers, the Workers' Compensation Appeal Tribunal and MLAs.

(g) Legal Actions

Information will be provided to affected parties where required by law.

PRACTICE

The Board's FIPP Office is responsible for the Board's application of *FIPPA*. Generally, if disclosure is granted in the normal course of business, it need not be referred to the FIPP Office. The department that holds the information can usually decide whether information is of a type that can be released in the normal course of business. In any case where information cannot clearly be released under the normal course of business, the matter is referred to the FIPP Office.

Requests within the Assessment Department for disclosure of the experience rated assessment rate of an individual firm, the total assessment charged to a firm, and the total claims costs charged to a firm for assessment purposes must be directed to the Manager, Assessment Policy.

Requestors can also be referred directly to the FIPP Office. Such requests should be in writing and directed to the Freedom of Information Coordinator.

Under section 75 of *FIPPA*, a fee may be charged where more than three hours is required to locate and retrieve a record of which disclosure has been requested.

Disclosure in the context of legal actions is usually handled by the Board's Records Management Office, which involves the FIPP Office where necessary.

If a requestor objects to the decision of the FIPP Office, they have a right to request a review to the Information and Privacy Commissioner under section 52 of *FIPPA*.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	s.95(1), <i>Workers Compensation Act</i> ; ss. 3(2), 21, 22(3), 33, 37 and 52, <i>Freedom of Information and Protection of Privacy Act</i> .
CROSS REFERENCES:	See also Personal Optional Protection (AP1-2-3), The Classification System (AP1-37-1), Assessment Rates (AP1-39-1), Experience Rating (AP1-42-1), Contractor Liability (AP1-51-1) and Statutory Lien (AP1-52-1) in the <i>Assessment Manual</i> .
HISTORY:	Replaces Policy No. 10:20:10 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

**RE: Reconsiderations, Reviews and Appeals
Reconsiderations of Decisions****ITEM: AP1-96-1**

BACKGROUND

1. Explanatory Notes

The *Act* provides the Board with a limited time period to reconsider previous decisions or orders. Subject to certain restrictions, the Board may only reconsider a decision or order under Part 1 of the *Act* during the period of 75 days subsequent to the decision or order being made.

2. The Act

Section 1:

“reconsider” means to make a new decision in a matter previously decided where the new decision confirms, varies or cancels the previous decision or order

Section 37:

- (2) The Board may do one or more of the following:
- (a) create new classes in addition to those referred to in subsection (1);
 - (b) divide classes into subclasses and divide subclasses into further subclasses;
 - (c) consolidate or rearrange any existing classes and subclasses;
 - (d) assign an employer, independent operator or industry to one or more classes or subclasses;
 - (e) withdraw from a class
 - (i) an employer, independent operator or industry;
 - (ii) a part of the class; or
 - (iii) a subclass or a part of a subclass;

and transfer it to another class or subclass, or form it into a separate class or subclass;

- (f) withdraw from a subclass
 - (i) an employer, independent operator or industry,
 - (ii) a part of the subclass, or
 - (iii) another subclass or part of another subclass,

and transfer it to another class or subclass or form it into a separate class or subclass, and

- (3) If the Board exercises authority under subsection (2), it may make the adjustment and disposition of the funds, reserves and accounts of the classes and subclasses affected that the Board considers just and expedient.

Section 39(6):

The Board must notify each employer of the amount of each assessment due in respect of the employer's industry and the time when it is payable. The notice may be sent by post to the employer, and is deemed to be given to the employer on the day the notice is mailed.

Section 96:

- (4) Despite subsection (1), the Board may, on its own initiative, reconsider a decision or order that the Board or an officer or employee of the Board has made under this Part.
- (5) Despite subsection (4), the Board may not reconsider a decision or order if
 - (a) more than 75 days have elapsed since that decision or order was made,
 - (b) a review has been requested in respect of that decision or order under section 96.2, or
 - (c) an appeal has been filed in respect of that decision or order under section 240.

Section 221:

- (1) A document that must be served on or sent to a person under this *Act* may be
 - (a) personally served on the person,
 - (b) sent by mail to the person's last known address, or
 - (c) transmitted electronically, by facsimile transmission or otherwise, to the address or number requested by the person.
- (2) If a document is sent by mail, the document is deemed to have been received on the 8th day after it was mailed.
- (3) If a document is transmitted electronically, the document is deemed to have been received when the person transmitting the document receives an electronic acknowledgement of the transmission.

POLICY**(a) Definition of reconsideration**

A reconsideration occurs when the Board considers the matters addressed in a previous decision anew to determine whether the conclusions reached were valid. Where the reconsideration results in the previous decision being varied or cancelled, it constitutes a redetermination of those matters.

Decisions that are reconsidered under section 96(4), and are therefore subject to the time limitations in section 96(5), are decisions on individual matters. Examples of such decisions include:

- the modification of an employer's assessment rate through experience rating;
- determinations regarding whether an individual is a worker, employer, independent operator or labour contractor;
- the application of a penalty for failure to remit or report as required under the *Act*; and
- the charging of claims costs when an employer is in default and an injury or occupational disease occurs to one of its workers during the period of default.

Matters of general application, on the other hand, are not intended to be covered by section 96(4) and (5). Examples of such matters include:

- the allocation of income, compensation payments, outlays, expenses, assets, liabilities, surpluses or deficits to or from an account of a class or subclass, or to or from a reserve of the accident fund, with the exception of section 10(8) and section 39(1)(b), (d) and (e) decisions as they relate to a specific employer or independent operator; and
- the determination of an assessment rate for a class or subclass.

Section 37 of the *Act* establishes the Board's authority to make any changes to classes and subclasses that are considered necessary and appropriate as part of the management of the classification system. Changes in classification resulting from the exercise of this authority, or resulting from a firm's fraud or misrepresentation, do not constitute a reconsideration of a Board decision. Rather, the change constitutes a new decision pursuant to the exercise of the Board's normal classification authority under section 37(2). The restrictions, including the 75-day time limit, placed upon the Board's reconsideration authority under section 96(5) do not apply.

On a review or an appeal, the Review Division and the WCAT may make a decision that confirms, varies or cancels the decision under review or appeal. The Review Division and WCAT decisions are final and must be complied with by the Board.

Varying or canceling a decision may make invalid other decisions that are dependent upon or result from the decision under review or appeal. The reconsideration requirements under sections 96(4) and 96(5) do not limit changes to previous decisions that are required in order to fully implement decisions of the Review Division or the WCAT.

(b) The purpose of sections 96(4) and (5)

The Board's authority to reconsider previous decisions and orders is found in section 96(4) and (5) of the *Act*. The purpose of these amendments is to promote finality and certainty within the workers' compensation system.

Sections 96.2 to 96.5 establish a right to request a review by a review officer, where a party disagrees with a decision or order made at the initial decision-making level. It is this review, rather than the application of the Board's reconsideration authority, which is intended to be the dispute resolution mechanism for initial decisions and orders of Board officers.

The use of the words “on its own initiative” in section 96(4), 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 for reconsideration process to resolve disputes that parties may have with decisions or orders.

Rather, the Board’s reconsideration authority is intended to provide a quality assurance mechanism by the Board. The Board is given a time-limited opportunity to vary or cancel, on its own initiative, any incorrect decisions it may have made.

However, this does not preclude the Board from basing a reconsideration on information that may be brought forward by a worker, employer or other party to a decision or order, provided the grounds for reconsideration have been met.

(c) Advice to parties

Parties to a decision or order will be advised at the time the decision or order is made of the right to request a review of the decision or order under section 96.2. The Board will take all reasonable steps to communicate a decision or order to a party. A party who requests the reconsideration of the decision or order will be reminded by the Board of the party’s right to request a review under section 96.2.

If the Board reconsiders a decision or order before the request for review is made, the Board will provide the parties to the decision or order with a reconsidered decision. The reconsidered decision gives rise to a new right to request a review under section 96.2.

(d) Restrictions on reconsideration

The *Act* places a number of express restrictions on reconsidering previous decisions and orders. It is noted, in this respect, that “reconsider” means the making of a new decision and not merely the starting of the reconsideration process leading to the new decision.

- The Board may not reconsider a decision or order more than 75 days after the decision or order was made. In accordance with section 221, where a decision or order has been sent by either registered or regular mail, the document is deemed to have been received on the 8th day after it was mailed. If the decision is sent electronically, the document is deemed to have been received on the date the Board receives electronic acknowledgement of receipt. One exception to section 221 applies to decisions mailed to employers in accordance with section 39(6) regarding the amount of assessment due in respect of the employer’s industry and the time when it is payable. This notice is deemed to be given to the employer on the day the notice is mailed.

- The Board may not reconsider a decision or order if a review has been requested by an employer or an independent operator in respect of that decision or order under section 96.2. A request for review under section 96.2 immediately terminates the authority of the Board to reconsider a previous decision or order, even if 75 days has not passed since the decision or order was made.
- The Board may not reconsider a decision or order if an appeal has been filed in respect of that decision or order to the Workers' Compensation Appeal Tribunal under section 240. The filing of an appeal under section 240 immediately terminates the authority of the Board to reconsider the decision or order, even if 75 days has not passed since the decision or order was made.

There are, in addition, a number of implicit restrictions on reconsidering previous decisions and orders. The Board is not authorized to reconsider appellate decisions or findings of the following bodies:

- the former Appeal Division;
- the former Commissioners, who existed prior to June 3, 1991;
- the boards of review and the Workers' Compensation Review Board; and
- the Board of Review, which existed prior to January 1, 1974.

Section 256 of the *Act* provides for the Workers' Compensation Appeal Tribunal to reconsider its own decisions and decisions of the former Appeal Division under certain limited conditions.

(e) Grounds for reconsideration

Subject to the limitations set out above, the Board may reconsider a decision on its own initiative where:

- there is new evidence indicating that a prior decision or order was made in error;
- there has been a mistake of evidence, such as:
 - material evidence was initially overlooked, or

- facts were mistakenly taken as established which were not supported by any evidence or by any reasonable inference from the evidence;
- there has been a policy error such as:
 - applying an applicable policy incorrectly, or
 - not applying an applicable policy;
- there has been a clear error of law, such as a failure by the Board to follow the express terms of the *Act*; or
- one or more of the reasons for reducing or cancelling a penalty under the policy in Item AP1-47-1 are met.

(f) Authority of Board officers, Managers and Directors to reconsider

A Board officer may only reconsider a decision made by another Board officer where there is new evidence, a mistake of evidence, a policy error or a clear error of law or where one or more of the reasons for reducing or cancelling a penalty are met.

A Manager or Director may reconsider a decision or order made by a Board officer in any of these circumstances, and may also reweigh the evidence and substitute his or her own judgment for that of the Board officer.

(g) Correction of administrative errors

The correction of an administrative error such as a clerical, typographical or mathematical error or a slip or omission does not result in a reconsideration of a previous decision. The ability to correct these types of errors, slips or omissions would not be considered a reconsideration of the original decision, as it would not change the intent of the original decision made by the Board officer.

This process for correcting errors, slips or omissions, however, cannot be applied to change previous decisions.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	November 8, 2011
AUTHORITY:	ss. 1, 37(2), 39(6), 96(2) and 221 of the <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Penalties (AP1-47-1); Fraud and Misrepresentation (AP1-96-2) in the <i>Assessment Manual</i> .

HISTORY:

Policy changes to reflect the removal of the annual classification cycle were made effective November 8, 2011.

Changes to policy to clarify that the correction of administrative errors and the implementation of Review Division and Workers' Compensation Appeal Tribunal decisions do not constitute a reconsideration effective January 1, 2005 and applied to all decisions on or after that date.

Consequential changes made in accordance with the *Workers Compensation Amendment Act (No. 2), 2002* and applied to all reconsiderations on or after March 3, 2003.

Replaces Policy No. 10:40:00 of the *Assessment Policy Manual*. This Item results from the 2002 "editorial" consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

APPLICATION:

Applies to all decisions, including appellate decisions, made on or after November 8, 2011.

**RE: Reconsiderations, Reviews and Appeals
Fraud and Misrepresentation**

ITEM: AP1-96-2

BACKGROUND

1. Explanatory Notes

Section 96(7) allows the Board to set aside any decision or order under Part 1 that has resulted from fraud or misrepresentation.

2. The Act

Section 96:

- (7) 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.

POLICY

In order for a decision or order to be set aside as a result of misrepresentation, there must be more than innocent misrepresentation.

The misrepresentation must have been made, or acquiesced in, by the employer, independent operator or other person with evidence to provide, knowing it to be wrong or with reckless disregard as to its accuracy, and the decision or order must have been made in reliance on the misrepresentation. Misrepresentation would include concealing information, as well as making a false statement.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	s. 96(7) of the <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> .
HISTORY:	Changes made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> .
APPLICATION:	To all decisions on or after March 3, 2003.

**RE: Coverage under Federal Statutes or
Agreements Between the Provincial and
Federal Governments**

ITEM: AP1-97-1

BACKGROUND

1. Explanatory Notes

The *Act* authorizes the Board to exercise authority under federal statutes and federal-provincial agreements.

2. The Act

Section 97:

The Board may exercise any power or duty conferred or imposed on it by or under a statute of Canada or agreement between Canada and the Province.

POLICY

The Board administers coverage for Provincial Emergency Program and Federal Government workers on behalf of the Provincial and Federal Governments, who are assessed on a cost plus administration basis.

Members of the Federal Police Force (RCMP) and Armed Forces are not covered by this Board but by the Federal Government directly.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:

January 1, 2003

AUTHORITY:

s. 97, *Workers Compensation Act*.

CROSS REFERENCES:

See also Coverage under *Act* – Terms (AP1-1-1), Coverage under *Act* – Types of Relationships (AP1-1-2), Coverage under *Act* – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3), Coverage under *Act* – Employers (AP1-1-4), Coverage under *Act* – Workers (AP1-1-5), Coverage under *Act* –

**HISTORY:
APPLICATION:**

Independent Operators (AP1-1-6), Coverage under *Act* – Labour Contractors (AP1-1-7) and Deposit Accounts (AP1-37-5) in the *Assessment Manual*.

Replaces in part Policy No. 20:10:30 of the *Assessment Policy Manual*.

This Item results from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

APPENDIX “A”**AMOUNTS REFERRED TO IN POLICIES THAT ARE
ADJUSTED FROM TIME TO TIME****AP1-2-2 – Requesting a Variance from a General Exemption**

The minimum outstanding balance for the purpose of part (b) of the policy is \$100.00

AP1-2-3 – Personal Optional Protection

The minimum outstanding balance for the purpose of part (b) of the policy is \$100.00.

The Board has designated \$1500 as the minimum amount for which Personal Optional Protection may be obtained under part (c) of the policy. This amount will be adjusted periodically to reflect the minimum wage rate for the Province of British Columbia.

AP1-38-6 – Maximum Wage

The maximum wage rate in 2010 is \$71,200 and in 2011 is \$71,700.

AP1-47-1 – Penalties

The percentage rate of penalty in effect under part (c) of this policy is 1%.

AP1-51-1 – Contractor Liability

The minimums in effect for the exemptions provided by the policy for prime contractors and homeowners are \$200 and \$500, respectively.

APPENDIX “B”**INDEX OF RETIRED DECISIONS FROM
VOLUMES 1 – 6 (DECISIONS NO. 1 – 423) OF THE
*WORKERS’ COMPENSATION REPORTER*****EXPLANATORY NOTE:**

The Board of Directors Bylaw re: Policies of the Board of Directors lists the policy manuals and other documents that are policies for purposes of the *Workers Compensation Act*. Included in the list are Decisions No. 1 – 423 in volumes 1 – 6 of the *Workers’ Compensation Reporter*. These Decisions consist, for the most part, of decisions made by the former commissioners on various matters between 1973 and 1991.

In order to reduce the number of sources of policies, a strategy has been approved for consolidating Decisions No. 1 – 423 into the various policy manuals, as appropriate, and “retiring” the Decisions over time.

“Retire” for this purpose means that, as of the “retirement date”, the Decision is no longer current policy under the Board of Directors Bylaw.

“Retiring” does not affect a Decision’s status as policy prior to the date it was “retired”. A “retired” Decision therefore applies in decision-making on historical issues to the extent it was applicable prior to the “retirement date”. “Retiring” also does not affect the disposition of any individual matters dealt with in a Decision.

This Index sets out the Decisions from volumes 1 - 6 that have been “retired” and the “retirement date”. It will be updated as further Decisions are “retired” in the future.¹

Please note that as of January 1, 2010, only one Decision from Volumes 1 – 6 of the *Workers’ Compensation Reporter* remains to be retired: No. 231. This Decision will be addressed in the near future.

¹ Decisions that do not appear in the Index should not necessarily be considered current policy. Decisions or parts of Decisions may have been replaced, either expressly or impliedly, by subsequent policies in the policy manuals or other policy documents. Under the Board of Directors Bylaw, where there is a conflict between policy in Decisions No. 1 - 423 and policy in a policy manual listed in the Bylaw, the policy in the manual is paramount. In the event of any other conflict between policies, the most recently approved policy is paramount.

DECISION NO.	TITLE	RETIREMENT DATE
01	Publication of Decisions	May 1, 2000
02	An Injured Person	February 24, 2004
03	A Claim For Industrial Disease	February 24, 2004
04	The Replacement of Eyeglasses	October 21, 2003
05	Partial Commutation of a Pension	June 17, 2003
06	The Enforcement of Accident Prevention Regulations	October 21, 2003
07	The Determination of Disability	October 21, 2003
08	The Measurement of Partial Disability	May 1, 2000
09	Publication of the Permanent Disability Evaluation Schedule	June 17, 2003
10	A Claim for Dependents Benefits	February 24, 2004
11	Communications with Unions in Matters of Safety and Health	October 21, 2003
12	A Claim to a Solicitor's Lien	June 17, 2003
13	The Provision of Rehabilitation Services	June 17, 2003
14	Rehabilitation and Re-training	May 1, 2000
15	Industrial Hygiene and Cominco Ltd.	October 21, 2003
16	<i>The Criminal Injuries Compensation Act</i>	October 21, 2003
17	Disablement Following Unauthorized Surgery	February 24, 2004
18	Dependent's Allowances	June 17, 2003
19	Industrial Hygiene and Cominco Ltd.	June 17, 2003
20	The Payment of Claims Pending Appeals by Employers	October 21, 2003
21	The Re-opening of a Commuted Pension	October 21, 2003

DECISION NO.	TITLE	RETIREMENT DATE
22	The Measurement of Partial Disability	May 1, 2000
23	A Penalty Assessment	October 21, 2003
24	The Revision of Appeal Procedures	May 1, 2000
25	Boards of Review	June 17, 2003
26	Coverage of Workmen's Compensation	January 1, 2003
27	An Application for Re-Opening	June 17, 2003
28	Oral Enquiries on Appeals to the Commissioners	May 1, 2000
29	The Re-Opening of Decisions	October 21, 2003
30	A Claim for Death by Suicide	June 17, 2003
31	Unemployment Insurance Benefits	June 17, 2003
32	The Employment Relationship (Taxis)	January 1, 2003
33	The Measurement of Partial Disability and Proportionate Entitlements	May 1, 2000
34	The Accident Prevention Regulations and the Prosecution of Workers	October 21, 2003
35	Procedure on Appeals	June 17, 2003
36	Industrial Hygiene	June 17, 2003
37	The Replacement of Eyeglasses	June 17, 2003
38	Compensation for Loss of Hearing	June 17, 2003
39	The Coverage of Workmen's Compensation	October 21, 2003
40	The Calculation of Compensation and Recurrence of Disability	June 17, 2003
41	The Composition of a Medical Review Panel	February 24, 2004
42	Changes in the <i>Workmen's Compensation Act</i>	June 17, 2003

DECISION NO.	TITLE	RETIREMENT DATE
43	<i>The Workmen's Compensation Amendment Act</i>	May 1, 2000
44	The Recurrence of Disability	October 21, 2003
45	Claims for Silicosis	June 17, 2003
46	The Consumer Price Index	May 1, 2000
47	The Commencement of the <i>Workmen's Compensation Amendment Act, 1974</i>	June 17, 2003
48	The Coverage of Workers' Compensation	February 24, 2004
49	The Coverage of Workers' Compensation	January 1, 2003
50	The Coverage of Workers' Compensation	February 24, 2004
51	A Penalty Assessment and Northwood Properties Ltd.	June 17, 2003
52	Evidence and the Standard of Proof	October 21, 2003
53	Fire Fighting and Hair	June 17, 2003
54	The Reimbursement of Expenses	October 21, 2003
55	Rehabilitation and Re-training	May 1, 2000
56	Rehabilitation Provisions for a Surviving Dependent Spouse	June 17, 2003
57	The Termination of Benefits at a Future Date	June 17, 2003
58	Industries and Classifications	January 1, 2003
59	Lump Sums in Fatal Cases	October 21, 2003
60	Appeals to Boards of Review	October 21, 2003
61	Employers' Reports of Injuries	June 17, 2003
62	Rehabilitation and Re-training	October 21, 2003
63	The Supply of In-File Information	June 17, 2003

DECISION NO.	TITLE	RETIREMENT DATE
64	Pensions for Widows aged 40 to 49 years	June 17, 2003
65	Cost Shifting Between Classes	February 24, 2004
66	Boards of Review	June 17, 2003
67	The Commutation of Pensions	May 1, 2000
68	The Maximum Wage Rate	May 1, 2000
69	Legal Fees	February 24, 2004
70	Boards of Review	October 21, 2003
71	The Industrial Hygiene Regulations	June 17, 2003
72	The Reinstatement of Pensions	June 17, 2003
73	Transcripts of Interviews	May 1, 2000
74	Unborn Children	June 17, 2003
75	Canada Pension Plan Benefits	June 17, 2003
76	Dependents Resident Abroad	June 17, 2003
77	Criminal Injuries Compensation	February 24, 2004
78	Multiple Disabilities and the Determination of the Maximum	June 17, 2003
79	Time Limit on Appeals	May 1, 2000
80	Safety Head Gear	October 21, 2003
81	The Recurrence of Disability	June 17, 2003
82	The Consumer Price Index	May 1, 2000
83	Cost of Living Increases and Commutations	October 21, 2003
84	Industrial Noise	June 17, 2003
85	Funeral Expenses	June 17, 2003

ASSESSMENT MANUAL

DECISION NO.	TITLE	RETIREMENT DATE
86	Disablement from Vibrations	October 21, 2003
87	A Common-Law Wife	October 21, 2003
88	The Application of Consumer Price Index Increases to Re-Instated Pensions under section 25A	June 17, 2003
89	Personal Care Allowances	May 1, 2000
90	A Common-Law Wife	June 17, 2003
91	Boards of Review and the Pension Plan	May 1, 2000
92	Allowances to Claimants	May 1, 2000
93	Industrial Diseases	June 17, 2003
94	Industrial Diseases	May 1, 2000
95	The Measurement of Partial Disability	October 21, 2003
96	Appeal Procedures	June 17, 2003
97	The Charging of Costs for Injuries Occurring in Connection with Treatment	October 21, 2003
98	Remarriage Allowances	May 1, 2000
99	Degeneration of Spine	January 1, 2010
100	Inspection Visits	June 17, 2003
101	Contagious Diseases	February 24, 2004
102	Disablement Through Exhaustion	February 24, 2004
103	Safety Awards	June 17, 2003
104	The Commutation of Pensions	June 17, 2003
105	The Future Employment of a Worker Disabled by a Compensable Injury of Industrial Disease	June 17, 2003
106	A One-Man Company	May 1, 2000
107	Termination Pay	February 24, 2004

DECISION NO.	TITLE	RETIREMENT DATE
108	The Violation of Safety Regulations by a Worker	February 24, 2004
109	The Dual System of Measurement for Injuries Involving the Spinal Column	June 17, 2003
110	Emphysema and Bronchitis	October 21, 2003
111	A Penalty for Non-Registration	January 1, 2003
112	The Consumer Price Index	May 1, 2000
113	Hearing Aids	June 17, 2003
114	Cost Shifting Between Classes	October 21, 2003
115	Employment Injuries and Natural Causes	October 21, 2003
116	The Coverage of Independent Operators	January 1, 2003
117	Adjustments According to the Consumer Price Index	May 1, 2000
118	Remarriages Allowances	May 1, 2000
119	Medical Information	May 1, 2000
120	The Coverage of Workers' Compensation and Participation in Competitions	June 17, 2003
121	Employment Injuries and Natural Causes	February 24, 2004
122	Industrial Disease	June 17, 2003
123	Changes in the <i>Workers Compensation Act</i>	May 1, 2000
124	Intoxication and Claims	October 21, 2003
125	The Commencement of <i>Workers Compensation Amendment Act, 1975</i>	May 1, 2000
126	Compensation Coverage and a Captive Road	October 21, 2003
127	Boards of Review	October 21, 2003
128	Bronchitis and Emphysema	February 24, 2004

DECISION NO.	TITLE	RETIREMENT DATE
129	Injuries and "Specific Incidents"	February 24, 2004
130	The Review of Old Disability Pensions	June 17, 2003
131	<i>The Criminal Injuries Compensation Act</i>	October 21, 2003
132	<i>The Criminal Injuries Compensation Act</i>	October 21, 2003
133	<i>The Criminal Injuries Compensation Act</i>	October 21, 2003
134	The Payment of Damages to a Worker and Subsequent Compensation Benefits	October 21, 2003
135	Compensation Decisions and the Death of the Worker	June 17, 2003
136	Compensation for Hearing Loss	May 1, 2000
137	Compensation for Hearing Loss	June 17, 2003
138	The Employment Relationship	January 1, 2003
139	Medical Aid Contracts	June 17, 2003
140	The Time Limit for Claiming Compensation	October 21, 2003
141	A One-Man Company	May 1, 2000
142	Employment Injuries and Natural Causes	October 21, 2003
143	The Maximum Wage Rate	May 1, 2000
144	The Management Role in Health and Safety	October 21, 2003
145	Employment Injuries and Natural Causes	February 24, 2004
146	An Unmarried Mother and Child	October 21, 2003
147	Health and Safety Awards	June 17, 2003
148	The Course of Employment	June 17, 2003
149	Commercial Stock Audits	January 1, 2003
150	Compensation for Compulsory Lay-off to Prevent the Carriage of Infection	October 21, 2003

DECISION NO.	TITLE	RETIREMENT DATE
151	The Apportionment of Dependents' Allowances	June 17, 2003
152	Injuries Arising out of Treatment and Other Appointments	February 1, 2004
153	Compensation Coverage for Volunteers	May 1, 2000
154	Legal Services for Rehabilitation Purposes	May 1, 2000
155	The Commutation of Pensions	May 1, 2000
156	The Review of Old Disability	June 17, 2003
157	Sexual Impotence	October 21, 2003
158	The Uses and Limitations of Sanctions in Industrial Health and Safety	October 21, 2003
159	The Consumer Price Index	May 1, 2000
160	The Calculation of Projected Loss of Earnings	May 1, 2000
161	Compensation Coverage for Volunteers	January 1, 2003
162	Personal Acts for an Employer	October 21, 2003
163	The Fishing Industry	January 1, 2003
164	Compensation for Hearing Loss	June 17, 2003
165	Compensation Coverage for Trainees	January 1, 2003
166	Adjustments According to the Consumer Price Index	May 1, 2000
167	Industrial Hygiene	June 17, 2003
168	The Disclosure of Information on Claim Files	May 1, 2000
169	An Employer or Independent Operator	January 1, 2003
170	The Fishing Industry	January 1, 2003
171	Allowances to Claimants	May 1, 2000

DECISION NO.	TITLE	RETIREMENT DATE
172	<i>The Criminal Injury Compensation Act</i>	February 24, 2004
173	<i>The Criminal Injury Compensation Act</i>	October 21, 2003
174	Time for Appeals	May 1, 2000
175	The Reimbursement of Expenses	May 1, 2000
176	The Binding Effects of Medical Review Certificates	October 21, 2003
177	Medical Research	June 17, 2003
178	<i>The Criminal Injury Compensation Act</i>	February 24, 2004
179	<i>The Criminal Injury Compensation Act</i>	October 21, 2003
180	Pollution	June 17, 2003
181	<i>The Criminal Injury Compensation Act</i>	October 21, 2003
182	The Course of Employment	February 24, 2004
183	An Employer or an Independent Operator	January 1, 2003
184	Application of the Dual System	May 1, 2000
185	Disability Assessment	October 21, 2003
186	Industrial Hygiene and Cominco Ltd.	June 17, 2003
187	The Fishing Industry	January 1, 2003
188	The Course of Employment	June 17, 2003
189	Broken Glass Claims	June 17, 2003
190	The Coverage of Workers Compensation	June 17, 2003
191	The Consumer Price Index	May 1, 2000
192	Industrial Hygiene and Cominco Ltd.	June 17, 2003
193	Adjustments According to the Consumer Price Index	May 1, 2000

DECISION NO.	TITLE	RETIREMENT DATE
194	Horseplay	February 24, 2004
195	Compensable Consequences of Work Injuries	February 24, 2004
196	Boards of Review	May 1, 2000
197	The Re-Opening of Board of Review Decisions	June 17, 2003
198	<i>The Criminal Injury Compensation Act</i>	February 24, 2004
199	The Review of Old Disability Pensions	June 17, 2003
200	Subsistence	October 21, 2003
201	Payments of Claims Pending Appeals to the Commissioners	May 1, 2000
202	Dual System of Measuring Disability	May 1, 2000
203	Legal Services for Rehabilitation Purposes	June 17, 2003
204	The Maximum Wage Rate	May 1, 2000
205	Rheumatoid Arthritis	October 21, 2003
206	Allergy Due to Red Cedar Dust	October 21, 2003
207	Bronchitis and Emphysema	February 24, 2004
208	The Awarding of Costs	October 21, 2003
209	Lunch Breaks	June 17, 2003
210	Re-Openings and New Evidence	June 17, 2003
211	The Reimbursement of Expenses	May 1, 2000
212	Commutation of Pensions	May 1, 2000
213	Bunkhouses	June 17, 2003
214	Travelling Employees	February 24, 2004
215	Consulting Firms	January 1, 2003

DECISION NO.	TITLE	RETIREMENT DATE
216	The Consumer Price Index	May 1, 2000
217	Adjustments According to the Consumer Price Index	May 1, 2000
218	Commutation of Pensions	May 1, 2000
219	Medical Review Panels	February 24, 2004
220	Proportionate Entitlement and the Dual System	May 1, 2000
221	Bronchitis and Emphysema	October 21, 2003
222	Compensable Consequences of Work Injuries	October 21, 2003
223	The Fishing Industry	January 1, 2003
224	The Fishing Industry	January 1, 2003
225	The Fishing Industry	April 1, 2006
226	The Fishing Industry	January 1, 2003
227	Broken Eyeglasses	October 21, 2003
228	Multiple Sclerosis	June 17, 2003
229	Industries and Employment	January 1, 2003
230	Unauthorized Activities	October 21, 2003
232	Cancer of Gastro-Intestinal Tract	June 17, 2003
233	Security and Investigation Services	May 1, 2000
234	Occupational Hygiene and Cominco Ltd.	June 17, 2003
235	Manpower Supply Agencies	January 1, 2003
236	Interim Adjudication	June 17, 2003
237	Complaints to the Commissioners in Respect of Compensation Claims	May 1, 2000
238	Bronchitis and Emphysema	October 21, 2003
239	Ganglia	October 21, 2003

DECISION NO.	TITLE	RETIREMENT DATE
240	Training Allowances	June 17, 2003
241	Inmates on Work Release Programmes	January 1, 2003
242	Supply of Appliances	October 21, 2003
243	Industrial Diseases	June 17, 2003
244	The Consumer Price Index	May 1, 2000
245	Adjustments According to the Consumer Price Index	May 1, 2000
246	Pulmonary Disease and "Hard Metal" Grinding	June 17, 2003
247	Workers Undergoing Custodial Care	June 17, 2003
248	Class 11	May 1, 2000
249	Recurrence of Disability	May 1, 2000
250	Industrial Diseases	June 17, 2003
251	Penalties under Section 61(2)	October 21, 2003
252	Scope of Employment	October 21, 2003
253	Replacement of Eyeglasses and Wage Loss	June 17, 2003
254	Payment of Claims Pending Appeals to the Commissioners	May 1, 2000
255	Registration of Labour Contractors as Employers	January 1, 2003
256	Scope of Employment	June 17, 2003
257	The Maximum Wage Rate	May 1, 2000
258	The Reimbursement of Expenses	May 1, 2000
259	Common-Law Spouses – "Re-Marriage Allowance"	June 17, 2003
260	Enhancement Factors and Multiple Disabilities	October 21, 2003

DECISION NO.	TITLE	RETIREMENT DATE
261	Temporary Partial Disability	June 17, 2003
262	Disability and Unemployability	June 17, 2003
263	Appeals to Medical Review Panels	October 21, 2003
264	Compensation Payable when Company Unregistered	May 1, 2000
265	The Consumer Price Index	May 1, 2000
266	Adjustments According to the Consumer Price Index	May 1, 2000
267	Section 7A: Compensation for Non-Traumatic Hearing Loss	February 24, 2004
268	Industrial Hygiene and Cominco Ltd.	June 17, 2003
269	Appeal Against Penalty Levy Amounting to \$13,649.37	June 17, 2003
270	Subsection 6(5) Proportionate Entitlement	February 24, 2004
271	Re: Subsection 37(1)(e) – Charging of Costs for Enhanced Disabilities	March 1, 2005
272	Commutations	May 1, 2000
273	School Teachers and Scope of Employment	October 21, 2003
274	Industrial Hygiene and Cominco Ltd.	June 17, 2003
275	Claim for Dependent Benefits	June 17, 2003

DECISION NO.	TITLE	RETIREMENT DATE
276	Compensation for Unauthorized Surgery	June 17, 2003
277	The Consumer Price Index	May 1, 2000
278	Adjustments According to the Consumer Price Index	May 1, 2000
279	Average Earnings and Projected Loss of Earnings	October 21, 2003
280	Appeals & Referrals to the Commissioners	May 1, 2000
281	Re-Opening of Decisions & Time Limits on Appeals	June 17, 2003
282	Sections 50 and 52	October 21, 2003
283	Scope of Employment	June 17, 2003
284	The Maximum Wage Rate	May 1, 2000
285	The Reimbursement of Expenses	May 1, 2000
286	Section 6(1): Injuries Arising out of Employment	February 24, 2004
287	Proportionate Entitlement and Dual System	May 1, 2000
288	The Review of Old Disability Pensions	June 17, 2003
289	Permanent Partial Disability and Devaluation	October 21, 2003
290	The Consumer Price Index	May 1, 2000
291	Adjustments According to the Consumer Price Index	May 1, 2000
292	Scope of Employment and Sports Professionals	June 17, 2003
293	Section 54 and Refusal of Medical Examination or Treatment	October 21, 2003
294	Payment of Costs for Medical Review Reports and Examinations	June 17, 2003
295	Section 54(2)(a) Insanitary or Injurious Practices	June 17, 2003
296	Section 8 – Employment out of Province	June 17, 2003

DECISION NO.	TITLE	RETIREMENT DATE
297	Dual System and Non-Spinal Injuries	May 1, 2000
298	Appeals to Medical Review Panels	June 17, 2003
299	Hearing Aids	June 17, 2003
300	Section 52 - "Special Circumstances"	May 1, 2000
301	Single Trauma and Cancer	June 17, 2003
302	Termination and Wage Loss Benefits	June 17, 2003
303	Access to Claim Files	May 1, 2000
304	The Consumer Price Index	May 1, 2000
305	Adjustments According to the Consumer Price Index	May 1, 2000
306	Selective Employment	October 21, 2003
307	The Fishing Industry	January 1, 2003
308	The Maximum Wage Rate	May 1, 2000
309	The Reimbursement of Expenses	May 1, 2000
310	Commutation of Hearing Loss Pensions	May 1, 2000
311	Commutation of Pensions	May 1, 2000
312	Transportation Costs for Physiotherapy and the Reimbursement of Expenses	June 17, 2003
313	Overpayments	June 17, 2003
314	The Consumer Price Index	May 1, 2000
315	Adjustments According to the Consumer Price Index	May 1, 2000
316	Herniae	October 21, 2003
317	Industrial Hygiene and Cominco Ltd.	June 17, 2003
318	Stress Testing	February 24, 2004

DECISION NO.	TITLE	RETIREMENT DATE
319	Clothing Allowances	May 1, 2000
320	Continuity of Income and Assessment for Permanent Disability	February 24, 2004
321	<i>Workers Compensation Act</i>	May 1, 2000
322	The Consumer Price Index	May 1, 2000
323	Adjustments According to the Consumer Price Index	May 1, 2000
324	Personal Care Allowances	February 24, 2004
325	The Review of Old Disability Pensions	June 17, 2003
326	Industrial Diseases	October 21, 2003
327	The Maximum Wage Rate	May 1, 2000
328	The Reimbursement of Expenses	May 1, 2000
329	Industrial Health and Safety Regulations	June 17, 2003
330	Scope of Employment	February 24, 2004
331	The Consumer Price Index	May 1, 2000
332	Adjustments According to the Consumer Price Index	May 1, 2000
333	Certain Industrial Diseases	February 24, 2004
334	Boards of Review	June 17, 2003
335	Principals of Limited Companies	January 1, 2003
336	The Consumer Price Index	May 1, 2000
337	Adjustments According to the Consumer Price Index	May 1, 2000
338	Disclosure of Claim Files	May 1, 2000
339	The Maximum Wage Rate	May 1, 2000
340	The Reimbursement of Expenses	May 1, 2000

DECISION NO.	TITLE	RETIREMENT DATE
341	Industrial Hygiene and Cominco Ltd.	June 17, 2003
342	Assessment of Employers	May 1, 2000
343	Scope of Employment	June 1, 2004
344	The Consumer Price Index	May 1, 2000
345	Adjustments According to the Consumer Price Index	May 1, 2000
346	Payment of Interest	May 1, 2000
347	Oral Hearings on Appeals to the Commissioners	May 1, 2000
348	Alcoholism	February 24, 2004
349	Industrial Health and Safety Regulations	October 21, 2003
350	Commissioners' Decisions	May 1, 2000
351	Assessment of Employers	January 1, 2003
352	The Consumer Price Index	May 1, 2000
353	Adjustments According to the Consumer Price Index	May 1, 2000
354	Industrial Hygiene and Cominco Ltd.	June 17, 2003
355	Industrial Health and Safety Inspections	October 21, 2003
356	Bilateral Herniae	October 21, 2003
357	Subsistence and the Reimbursement of Expenses	June 17, 2003
358	The Maximum Wage Rate	May 1, 2000
359	The Reimbursement of Expenses	May 1, 2000
360	Out of Province Injury and Travelling to Work	October 21, 2003
361	Coverage of the Farming Industry	May 1, 2000
362	The Maximum Wage Rate	May 1, 2000

DECISION NO.	TITLE	RETIREMENT DATE
363	The Review of Old Disability Pensions	October 21, 2003
364	Retraining of Surviving Spouses	May 1, 2000
365	The Consumer Price Index	May 1, 2000
366	Adjustments According to the Consumer Price Index	May 1, 2000
367	Hearing Aids	June 17, 2003
368	Appeals	June 17, 2003
369	Appeals to Boards of Review	October 21, 2003
370	Disclosure of Board Files	May 1, 2000
371	Publication of Board Manuals	January 1, 2003
372	The Consumer Price Index	May 1, 2000
373	Adjustments According to the Consumer Price Index	May 1, 2000
374	Appeals to the Commissioners	May 1, 2000
375	The Maximum Wage Rate	May 1, 2000
376	The Reimbursement of Expenses	May 1, 2000
377	Fraudulent Claims	June 17, 2003
378	Proportionate Entitlement	October 21, 2003
379	Time Limit on Application for Compensation	February 24, 2004
380	The Consumer Price Index	May 1, 2000
381	Adjustments According to the Consumer Price Index	May 1, 2000
382	The Commutation of Pensions	February 24, 2004
383	Application of Dual System	June 17, 2003
384	Interest Payments on Retroactive Pensions	October 21, 2003

DECISION NO.	TITLE	RETIREMENT DATE
385	The Consumer Price Index	May 1, 2000
386	Adjustments According to the Consumer Price Index	May 1, 2000
387	Chiropractic Treatment	June 17, 2003
388	Assignments, Charges, or Attachments of Compensation	June 17, 2003
389	Refusals of Certificates of Fitness Under the Mines Act	May 1, 2000
390	The Maximum Wage Rate	May 1, 2000
391	The Reimbursement of Expenses	May 1, 2000
392	The Consumer Price Index	May 1, 2000
393	Appeals	May 1, 2000
394	The Dual System of Measuring Disability	October 21, 2003
395	Payments Pending Appeals	June 17, 2003
396	The Consumer Price Index	May 1, 2000
397	The Maximum Wage Rate	May 1, 2000
398	The Consumer Price Index	May 1, 2000
399	Appeals to Workers' Compensation Review Board	June 17, 2003
400	The Consumer Price Index	May 1, 2000
401	Experience Rating	January 1, 2003
402	Adjustments According to the Consumer Price Index	May 1, 2000
403	Appeals to Workers' Compensation Review Board	May 1, 2000
404	The Maximum Wage Rate	May 1, 2000
405	The Consumer Price Index	May 1, 2000

DECISION NO.	TITLE	RETIREMENT DATE
406	Recurrence of Disabilities	October 21, 2003
407	Assessment of Permanent Disabilities	February 24, 2004
408	The Consumer Price Index	May 1, 2000
409	The Maximum Wage Rate	May 1, 2000
410	Disclosure of Board Files	May 1, 2000
411	The Consumer Price Index	May 1, 2000
412	The Consumer Price Index	May 1, 2000
413	The Maximum Wage Rate	May 1, 2000
414	The Consumer Price Index	May 1, 2000
415	The Consumer Price Index	May 1, 2000
416	The Maximum Wage Rate	May 1, 2000
417	Adjustments According to the Consumer Price Index	May 1, 2000
418	The Consumer Price Index	May 1, 2000
419	Schedule B	June 17, 2003
420	The Consumer Price Index	May 1, 2000
421	The Maximum Wage Rate	May 1, 2000
422	The Consumer Price Index	May 1, 2000
423	Adjustments According to the Consumer Price Index	May 1, 2000