

BOARD OF DIRECTORS
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December 2003

Update 2003 – 4

TO: HOLDERS OF THE *ASSESSMENT MANUAL*

This update to the *Assessment Manual* contains amendments to the *Manual* implemented since Update 2003-3.

These amendments include:

- Policy AP1-4-1, Fishing
- Policy AP1-2-3, Personal Optional Protection;
- Policy AP1-37-2, Classification – Multiple;
- Policy AP1-37-3, Classification – Changes;
- Policy AP1-38-2, Payroll – Categories; and
- Policy AP1-42-3, Transfer of Experience Rating

A summary of the amendments is attached and the amended pages are included as part of the package.

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

DOUGLAS J. ENNS
Chair, Board of Directors

ASSESSMENT MANUAL

SUMMARY OF AMENDMENTS – Update 2003 – 4

- Policy AP1-4-1 – Fishing
- change the word “of” to “or” in the final paragraph on page 2
 - this housekeeping change is effective December 31, 2003
- Policy AP1-38-2 – Payroll – Categories
- change of alphabetical reference in Practice section on page 3, part “(b)” to “(c)” and part “(c)” to “(d)”
 - this housekeeping change is effective December 31, 2003
- Policy AP1-2-3 – Personal Optional Protection
- all new POP registrants requesting coverage, any individuals reapplying for coverage, and any existing POP clients not in good standing, will be required to submit initial assessment payment within 20 days of the commencement of coverage
 - this policy change is effective January 1, 2004
- Policy AP1-37-2 – Classification – Multiple
- removal of the ability to calculate the amount of POP coverage owing based on multiple classifications
 - to direct the reader to Item 1-37-3 – Classification Changes for guidance on effective dates
 - this policy change is effective January 1, 2004
- Policy AP1-37-3 – Classification – Changes
- to rationalize and clarify the criteria for and the effective dates of a change in classification and, amend policy concerning transfer of experience rating on change in classification
 - this policy change is effective January 1, 2004
- Policy AP1-42-3 – Classification – Multiple
- to advise the reader that provisions of Item 1-37-3 – Classification Changes must be considered in conjunction with this policy
 - this policy change is effective January 1, 2004

In addition, effective **January 1, 2005**, the minimum POP coverage amount for all POP clients will be increased from \$1,000 to the minimum wage amount of \$1,500 per month. This amount is contained in Appendix A of the *Assessment Manual*.

December 2003

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 wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother and half sister and a person who stood in loco parentis to the worker or to whom the worker stood in loco parentis, whether related to the worker by consanguinity 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. Policy item AP1-37-2 (Classification – Multiple) does not apply to Personal Optional Protection. 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 WCB website at

http://www.worksafebc.com/for_employers/registering_with_the_wcb/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), 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 (policy item #111.30) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	This Item resulted from an editorial consolidation of the former <i>Assessment Policy Manual</i> , which was effective on January 1, 2003.



ASSESSMENT MANUAL

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: 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* made under it. The matters covered by those 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 as there is no employment relationship on fishing vessels.

2. The Regulation

Section 1

In these regulations,

“commercial fisherman” 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 his occupation as a fisherman, 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 fisherman

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

- (g) a fisherman 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 fish processing establishment licensed or required to be licensed under the *Fisheries Act* of the Province which, directly or indirectly, acquires fish from a commercial fisherman shall pay assessments on the fish brought, obtained or paid for by or through such fish processing establishment, except where the fish are acquired from another such fish processing establishment;
 - (b) any other commercial buyer or other commercial recipient who acquires fish from a commercial fisherman other than for resale to such a fish processing establishment or as agent for such a fish processing establishment shall pay assessments on the fish brought, obtained or paid for by or through such commercial buyer or other commercial recipient of fish;
 - (c) a person who engages the services of a master or crew of or for a fishing vessel shall pay assessments on any fish in respect of which assessments are not paid or payable under paragraphs (a) and (b).
- (2) 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.

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

BACKGROUND

1. Explanatory Notes

Usually, when an employer registers with the Board, the employer is assigned to a single classification unit based on the industrial activity of the employer's business. On occasion the employer's business may involve more than one industrial activity, or the employer may, after the initial registration, establish a new business involving another industrial activity. In either of these situations, the Board must determine whether the additional industrial activity is assigned to the original classification unit, or whether a separate classification unit is justified. The multiple classification policy assists in determining the circumstances in which the employer must be 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

An employer is assigned to a single classification unit based on the industry in which the employer is operating unless this policy applies.

(a) Policy intent

The intent of the multiple classification policy is to support the purpose of the employer classification system, which is to classify employers 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 employers who operate several lines of business in different industries:

- are of sufficient size to be a significant competitor with other employers carrying on those lines of business;
- are assigned to the classification units representing those industries; and
- pay the same base assessment rates as their competitors.

(b) Responsibility for obtaining multiple classification

It is the responsibility of each employer to apply to the Board for a multiple classification, or to remove a multiple classification designation, when the employer's business operation changes. The Board may, however, based on available information, assign more than one classification unit to an employer.

(c) Multiple classification criteria

In order for an employer to qualify for more than one classification unit, the industrial activities identified for separate classification must be distinct and independent operations. To demonstrate this requirement, the following criteria must be satisfied:

- (1) 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 employer. 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:
 - (i) 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
 - (ii) conducted at a separate location from other industrial activities of the employer; or
 - (iii) conducted at the same location as other industrial activities of the employer, but at a different time.
- (2) The industrial activity in question must not simply be to assist, support or service the employer's main industry. This means that multiple classification will not normally be granted for such activities as clerical, accounting or marketing. (However, there may be circumstances when such activities do not simply exist to assist, support or service the main industry.)
- (3) 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.
- (4) Each industrial activity must meet at least one of the following conditions:
 - (i) generate an annual assessable payroll of at least four times the maximum wage rate; or

- (ii) generate an annual assessable payroll that is at least 25 percent of the gross annual assessable payroll of all the employer's industrial activities; or
- (iii) generate an annual revenue that is at least 25 percent of the gross annual revenue of all the employer's industrial activities.

(d) Special hazard operations

The following activities are designated as special hazard operations, and may attract higher assessment rates:

- Bridge, Overpass, or Viaduct Construction or Repair
- House Raising or Structural Moving of Buildings or Heavy Equipment
- Pier, Wharf, or Dry Dock Construction or Repair
- Piledriving
- Steel Frame Erection or Structural Repair of Steel Frames
- Steel Frame Painting, Bridge Painting, or Bridge Cleaning
- Structural Concrete Reservoir, Flume, Dam, Dyke, Causeway or Jetty Construction or Repair
- Tunneling

The preceding multiple classification criteria do not apply to special hazard operations. Instead, the following policies apply:

- the Board classifies and treats special hazard operations as separate industrial activities, although they may be ancillary to an employer's other industrial activities; and
- the Board assesses the payroll of special hazard operations, and activities that support them, at the rates specified for the classification units in the *Classification and Rate List*.

(e) Personal optional protection

The multiple classification criteria outlined above do not apply to individuals with Personal Optional Protection.

(f) 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.

(g) Notification

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

PRACTICE

Practice Directive "Multiple Classifications" - AP1-37-2 provides more information regarding the criteria by which an employer may be assigned to more than one classification. For this Practice Directive and any other relevant PRACTICE information, readers should consult the WCB website at http://www.worksafefbc.com/law_and_policy/practice_directives/assessment_and_revenue_services/default.asp.

EFFECTIVE DATE:	January 1, 2004
AUTHORITY:	ss. 37(2) and (3) and 42, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also The Classification System (AP1-37-1) and with respect to management/administrative payroll, Payroll – Principles for Determining (AP1-38-3) in the <i>Assessment Manual</i> .
HISTORY:	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)</i> , 2002 were effective on March 3, 2003.
APPLICATION:	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.

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 a 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 responsibility 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

The Board may change a firm's classification. The reasons for a change in classification fall into three main categories:

- (a) The firm's operations have changed and the firm is now misclassified;
- (b) The firm's operations have not changed, but it is misclassified; or,
- (c) The firm was misclassified based on the firm's non-compliance with reporting requirements, which includes, but is not limited to fraud,

misrepresentation, failure or delay in providing timely, complete and accurate information to the Board, or failure to act on information.

The effective date of a change in a firm's classification depends on the reason for the change.

3. Effective Date of Change in Classification

(a) Change in Operation

Unless there has been firm non-compliance, if the operations have changed, and the firm is now misclassified, the change will be effective on the date of the change in operation, or January 1st of the year in which the decision to change the firm's classification occurred, whichever is later.

If the date of the change in operation cannot be determined, the effective date will be January 1st of the year in which the decision to change the classification occurred.

(b) No Change in Operation

i. No Board Error

Unless the firm was misclassified because of firm non-compliance or Board error, if the operations have not changed, but the firm is misclassified, the effective date of a change in classification will depend on whether the change will lead to an increase or decrease in the base rate.

- If the change will lead to a decrease in the base rate it will be effective January 1st of the year in which the decision to change the firm's classification occurs.
- If the change will lead to an increase in the base rate it will be effective January 1st of the year following the date of the decision to change the firm's classification.

ii. Board Error

A Board error occurs if the firm has provided timely, complete and accurate information to the Board, but a clear error is made by the Board in classifying the firm. It includes a misclassification that continues after a Board officer has audited a firm and a classification review has taken place. It does not include borderline classification questions requiring a judgment decision or situations where the information supplied by the firm

is not timely, complete and accurate, regardless of whether this was deliberate or inadvertent.

If the need to change the firm's classification is the result of a Board error, the effective date of the change will depend on whether the change will lead to an increase or decrease in the base rate.

- If the change will lead to a decrease in the base rate, the change may be effective on the date that the firm was misclassified because of the Board error, but in no circumstances will the effective date be earlier than January 1st of the year three (3) years before the date the error came to the Board's attention.
- If the change will lead to an increase in the base rate, the change will be effective on January 1st of the year following the date the error came to the Board's attention.

(c) Firm Non-Compliance

A classification change may be necessary due to a firm's non-compliance. Firm non-compliance includes, but is not limited to:

- fraud;
- misrepresentation;
- failure to provide timely, complete or accurate information to the Board;
- failure to act promptly on information requests; or,
- failure to act on information provided by the Board.

If the need to change the classification is the result of firm non-compliance, the effective date of the change will depend on whether the change will lead to an increase or decrease in the base rate:

- i. If the change will lead to a decrease in base rate, the change will be effective January 1st of the year in which the decision to change the firm's classification occurred.
- ii. If the change will lead to an increase in base rate, the change may be effective up to three (3) years before the date of the decision to the change the firm's classification.

4. Impact on Experience Rating

A change in classification may result in a transfer of experience rating. The following principles apply:

- (a) The classification has changed because of a change in the firm's operations.
 - i. If there has been a distinct change in the operations, the experience rating will not transfer.
 - ii. If the change in operations has occurred incrementally or the firm's operations have evolved over time, the experience rating may transfer.
- (b) If the classification has changed, but not as a result of a change in the firm's operations, the experience rating may transfer. This includes a change in classification because of Board error.
- (c) If the classification has changed because of firm non-compliance, the general rule is that experience rating will not transfer. However, the Board may decide to transfer experience rating if the non-compliant firm could benefit from a failure to transfer.

The firm will be advised of any change in its classification.

A decision to change a firm's classification does not constitute a reconsideration of a decision under section 96(4) of the *Act*. Rather, the change constitutes 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) does not apply.

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 WCB website.

EFFECTIVE DATE: January 1, 2004
AUTHORITY: ss. 37(2) and (3) and 42, *Workers Compensation Act*.

- CROSS REFERENCES:** See also The Classification System (AP1-37-1), Classification – Multiple (AP1-37-2) and Transfer of Experience Rating (AP1-42-1) in the *Assessment Manual*.
- HISTORY:** 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. Policy No. 30:20:40 in the former *Assessment Policy Manual* was replaced by this Item. Consequential changes to this Item made as a result of the *Workers Compensation Amendment Act (No. 2), 2002* were effective on March 3, 2003.
- APPLICATION:** The amended policy applies to all new decisions on or after January 1, 2004.

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), in part:

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) Shareholders' earnings

The total remuneration paid to each active principal, 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 January 1st of the year preceding the year in which the registration occurs.

PRACTICE

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

With regard to part (c) of the POLICY in this Item, readers should see, in particular, Practice Directive "Shareholder Earnings – Assessment of Dividends" - AP1-38-2(A) - on the WCB website at http://www.worksafebc.com/law_and_policy/practice_directives/assessment_and_revenue_services

With regard to part (d) of the POLICY in this Item, a list of established equipment allowances will be available on the WCB website by January 1, 2003.

EFFECTIVE DATE: January 1, 2003
AUTHORITY: ss. 38(1) and 39(1), *Workers Compensation Act*.

CROSS REFERENCES:

See also Coverage under the *Act* – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3) with respect to principals of corporations, Coverage under *Act* – Workers (AP1-1-5), Coverage under *Act* – Labour Contractors (AP1-1-6), Personal Optional Protection (AP1-2-3), Extending the Application of the *Act* (AP1-3-1), Fishing (AP1-4-1), Payroll – Principles for Determining (AP1-38-3) and Maximum Wage Rate (AP1-38-6) in the *Assessment Manual*.

HISTORY:

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. 40:10:10, 40:10:30, 40:10:40 and 50:50:00 in the former *Assessment Policy Manual* were replaced, in part, by this Item.

Consequential changes to this Item made as a result of the *Workers Compensation Amendment Act (No. 2), 2002* were effective on March 3, 2003.

A housekeeping change was made to the "Practice" section of this policy, effective December 31, 2003.

APPLICATION:

RE: Transfer of Experience Rating**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 change in the experience rating of the business.

2. The Act

See Item AP1-42-1.

Section 1 (in part):

“member of the family” means wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother and half sister

POLICY

The concept behind experience rating is to promote positive safety attitudes and provide a degree of equity among employers, through a system of recognition and accountability for claims costs arising out of a firm's operations. It is the owner(s) of a business who determines the nature of operations and the approach to occupational health and safety in the workplace. Therefore, the general criteria to determine whether a firm's experience will be transferred/continued is whether there has been a change in ownership of the business.

Where the classification of the operations changes with ownership, the provisions of Item AP1-37-3 must be considered in conjunction with this policy.

Where a firm undergoes a change in ownership, its experience will continue if at least 50% of the ownership remains the same. Generally, the firm's classification must also remain the same. In these situations, it is assumed that the firm's relative hazard or cost of compensation remain substantially unchanged.

Where a firm undergoes a majority change in ownership (i.e., less than 50% of the ownership remains the same), the experience of the old firm will generally not continue or transfer to the new firm.

As an exception to this general rule, the Board may transfer/continue a firm's experience if the firm's business operations remain substantially the same. Indications of continuing business operations include where the firm's undertaking, management, staff, plant, equipment, location, and customers/clients remain the same. Under these circumstances, it may be reasonable to expect the firm's relative hazard or cost of compensation to remain the same.

This exception is primarily intended to address the following situations:

- Where the firm's owner is relatively removed from day-to-day operation and management decisions. This is typically the case for a large publicly traded firm where shareholder activity may result in a change in ownership, but does not alter the firm's business operations.
- Where an equal partnership splits and the former partners continue to operate in the same business. In this situation, the former partners may, through their respective firms, continue the business operations of the old firm.
- Where the new owner is a "member of the family" of the previous owner and the firm's business operations continue unaffected by the change in ownership. The definition of "member of the family" in section 1 of the *Act* is generally followed, but a same-sex spouse is also included.

PRACTICE

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

For Practice Directive "Transfer of Experience" - AP1-42-3, readers should see, in particular,
http://www.worksafebc.com/law_and_policy/practice_directives/assessment_and_revenue_services/default.asp.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	s. 42, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Classification – Change (AP1-37-3) and Experience Rating (AP1-42-1) in the <i>Assessment Manual</i> .
HISTORY:	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.



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

APPLICATION:

Consequential changes to this Item made as a result of the *Workers Compensation Amendment Act (No. 2), 2002* were effective on March 3, 2003.

The amended policy applies to all new decisions on or after January 1, 2004.

