



WORKERS' COMPENSATION BOARD OF BC

Policy and Research Division

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Update 2005 – 1

TO: HOLDERS OF THE *ASSESSMENT MANUAL*

This update to the *Assessment Manual* contains amendments to the *Manual* implemented since Update 2004 – 4.

This amendment includes:

- Changes to policy AP1-96-1 *Reconsiderations, Review and Appeals*
- Housekeeping changes to policy AP1-2-1 *Exemptions from Coverage*
- Appendix "A"

A summary of the amendment is attached and the amended pages are included as part of the package and effective January 1, 2005.

If you have any questions regarding subscription information for updates to the *Assessment Manual*, please call WCB Customer Service at the following:

Local phone: 604 232-9704
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Margaret Eckenfelder
Vice President
Policy and Research Division

Attachments

ASSESSMENT MANUAL

SUMMARY OF AMENDMENTS – Update 2005 – 1

Policy AP1-2-1 – Exemptions from Coverage	Pages 3 – 6	Housekeeping
Policy AP1-96-1 – Reconsiderations, Reviews and Appeals	Pages 3 – 6	To clarify that the correction of administrative errors and the implementation of Review Division and the Workers Compensation Appeal Tribunal decisions do not constitute a reconsideration.
Appendix “A”	Page 1	<p>This amendment is to change the Personal Optional Protection minimum coverage amount as a result of changes to Policies AP1-2-3 – Personal Optional Protection and AP1-37-2 – Classification – Multiple which were effective January 1, 2004.</p> <p>This amendment is effective January 1, 2005 and applies to all decisions made on or after that date.</p>

- 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. "Spouses" includes common-law spouses. "Common-law spouse" is defined as an individual who is known in the community as being a spouse, is living together with an individual of a different or the same sex and is not married to that individual:
- (i) where there is a child from the relationship, for at least one year; or
 - (ii) where there is no child from the relationship, for at least three years.

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 WCB 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 January 1, 2005, to reflect jurisdictional differences between Part 1 and Part 3 of the <i>Act</i> . <i>Replaces</i> 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.

- 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. The exercise of this authority, including withdrawing an employer or independent operator from a subclass and transferring the employer or independent operator to another class or subclass, does not constitute a reconsideration of a Board decision.

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 WCB website.

EFFECTIVE DATE:	January 1, 2005
AUTHORITY:	ss. 1, 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:	Consequential changes made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> and applied to all reconsiderations on or after March 3, 2003. Replaces Policy No. 10:40:00 of the <i>Assessment Policy Manual</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:	Applies to all decisions on and after January 1, 2005.

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 2004 is \$60,700 and in 2005 is \$61,300.

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.

