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May 2007

Update 2007 – 2

**TO: HOLDERS OF THE *ASSESSMENT MANUAL***

This update to the *Assessment Manual* contains amendments to the *Manual* implemented since Update 2007– 1.

Amendments to the following **effective May 1, 2007:**

AP-1-51-1 *Contractor Liability*  
AP-1-52-1 *Statutory Lien*

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

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

Local phone: 604-232-9704  
Toll-free: 1-866-319-9704

Local fax: 604-232-9703  
Toll-free fax: 1-888-232-9714

Roberta Ellis  
Vice President  
Policy and Research Division

Attachments

## **ASSESSMENT MANUAL**

### **SUMMARY OF AMENDMENTS – Update 2007 – 2**

AP1-51-1 <i>Contractor Liability</i>	Pages 1 – 3	Policy amended to clarify the purpose and function of clearance letters.
AP1-52-1 <i>Statutory Lien</i>	Pages 1 – 3	Policy amended to clarify the purpose and function of clearance letters.

**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, see the Board's Internet site at [http://www.worksafebc.com/online\\_services/clearance\\_letters/default.asp](http://www.worksafebc.com/online_services/clearance_letters/default.asp).

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

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<b>EFFECTIVE DATE:</b>	May 1, 2007
<b>AUTHORITY:</b>	s. 51, <i>Workers Compensation Act</i> .
<b>CROSS REFERENCES:</b>	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> .
<b>HISTORY:</b>	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> .
<b>APPLICATION:</b>	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.

<b>EFFECTIVE DATE:</b>	May 1, 2007
<b>AUTHORITY:</b>	s. 52, <i>Workers Compensation Act</i> .
<b>CROSS REFERENCES:</b>	See also Collection of Assessments (AP1-45-1) in the <i>Assessment Manual</i> .
<b>HISTORY:</b>	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.
<b>APPLICATION:</b>	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.