

DISCUSSION PAPER

1. TITLE AND DATE

Assessment Penalties Policy

2. ISSUE

The Assessment Department has launched the Assessments Operating Strategy ("AOS") which includes an integrated suite of projects designed to meet the service goals of the Worker and Employer Services Division.

One of the areas identified for review under the AOS is the penalty system for non-reporting of payroll and non-payment of assessment premiums. The current system is seen by stakeholders and the Assessment Department as being unclear, overly punitive at times, and administratively cumbersome. This is largely due to the practice of recalculating penalty amounts based on estimated payroll once actual payroll is reported by a firm.

As part the AOS initiative, the Assessment Department is seeking to institute a new model for applying penalties to firm accounts where they do not meet the payroll reporting or assessment premium payment requirements of the Workers' Compensation Board ("WCB"). The Assessment Department has developed a new tiered penalty model in conjunction with the development of an enhancement to the Assessment Department systems that handle penalties.

At issue are the policy changes that would be required in order to implement a new penalty model for non-reporting of payroll and non-payment of premiums.

The Priorities and Governance Committee (the "PGC"), a subcommittee of the Board of Directors, recognizes that employer non-compliance with reporting obligations is a significant issue. The PGC has directed the PRD to develop policy initiatives that reinforce the existing enforcement tools available under the *Workers Compensation Act* ("Act"). The issues addressed in this discussion paper, and those addressed in the Employer Report of Injury project, are consistent with this direction in that they examine different approaches to encourage employer compliance with reporting obligations.

3. BACKGROUND

3.1 The Assessments Operating Strategy

The Assessments Operating Strategy ("AOS") is an integrated suite of projects developed by the Assessment Department to meet key service goals of the Worker and Employer Services Division. The goals of the AOS are linked to the

WCB's strategic initiatives, and are centred on making improvements to existing programs and practices while preparing for future initiatives. Each of the projects that make up the AOS has systems, business process, and/or policy implications.

As part of the AOS, the Assessment Department is modifying the current PeopleSoft Accounts Receivable software that calculates and applies penalties to firm accounts. The systems changes to manage this software enhancement and the concepts behind the Assessment Department's proposed changes to penalties were approved at the April 21, 2005 meeting of the Information Systems Review Committee, a subcommittee of the Senior Executive Committee that evaluates business cases for new information technology projects.

3.2 Overview of Firms' Reporting and Payment Requirements

As set out in *Assessment Manual* ("AM") policy, there is a threshold of \$1,500 in assessment premiums per year that separates firms that must report and pay premiums yearly from those that must do so quarterly.¹ Generally, firms that must pay less than \$1,500 in assessment premiums per year report and pay annually. There are about 110,000 annual firms.

Firms that must pay more premiums in a year must make payments and report payroll quarterly. Firms in some specified industries that pay less are also required to report and pay quarterly.² Quarterly firms must also return a fifth report to reconcile their year-end payroll, and make a corresponding payment if necessary. Sometimes quarterly firms overlook returning the year-end reconciliation report, as they have already reported and paid for four quarters. There are about 68,000 quarterly firms.

If any firm has an outstanding balance on its account, it is sent a statement of account showing the firm's calculated balance. About 20,000 to 25,000 such statements are sent out monthly, demonstrating that between about 12 to 15 percent of all firms have debit balances on their accounts in a given month. Such balances can result from account activities such as classification changes or assessable payroll changes, as well as not reporting payroll as required.

3.3 Principles behind Penalties

There are two principles behind penalizing firms that do not make payments or report payroll as required.

The first is deterrence, in that a penalty should deter a firm from repeating the infraction. A penalty should be of sufficient size to ensure firms do not view it as a "cost of doing business", and continue to not meet the requirements set out by the *Act* to report payroll or make payments.

¹ See AM Item AP1-39-2 (Assessment Payments).

² Firms in the Oil, Gas or Mineral Resources, Forestry, and Transportation and Related Services subsectors are usually assessed quarterly.

The second is restitution, or recovery of the costs borne by the workers' compensation system as a result of the infraction. In cases where a firm does not make a payment as required, the firm benefits by holding the money, perhaps earning interest on it, while the workers' compensation system remains unfunded as a result. In addition, there is an administrative burden borne by the WCB as it must then try and collect the information or payment required of the firm. A penalty therefore should not only deter a firm from repeating the infraction, but also recompense the WCB for the costs it incurs as a result of the infraction.

3.4 Penalties for Non-Reporting or Non-Payment Imposed Under Sections 38 and 47 of the Act

A penalty for non-reporting of payroll may be charged to firms under section 38 of the *Act*. A penalty for late or non-payment of assessment premiums may be charged to firms under section 47. The *Act* provides that these penalties must be based on a percentage of the assessment premiums due or estimated to be due. *AM* Item AP1-47-1 (Penalties) guides the WCB in applying these assessment penalties to firm accounts.

Where a firm does not report payroll and/or make a payment as required under section 38 or 47, current *AM* penalty policy provides that the WCB charges the firm eight percent of the amount due or estimated to be due. Despite having the authority under the *Act* to apply a penalty for non-reporting of payroll under section 38 and a penalty for non-payment under section 47, in practice the WCB applies only one penalty when both infractions occur in the same period. For these infractions, policy sets out that there is a \$25 minimum penalty amount, and no maximum.

Per *AM* Item AP1-38-2 (Payroll Estimates), where a firm does not report payroll, the Assessment Department's systems generate an estimate of the firm's payroll, creating a billable assessment premium. In addition to the premium based on the estimated payroll, systems also calculate a penalty based on the estimated payroll amount.

However, once actual payroll figures are received by the Assessment Department and entered onto a penalized firm's account two things happen:

- 1) there is an automated system process that replaces the assessment premium based on the payroll estimate with the actual calculated assessment premium due, and
- 2) per long-standing practice, the system amends any sections 38 and 47 penalty amounts originally calculated based on the payroll estimate to reflect the actual calculated premium assessment.

Thus firms are penalized on an initial estimated amount, and then the penalty amount is subsequently amended along with the payroll estimate when actual payroll is received. Often the system reduces these penalties outside of the 75-

day limit for reconsideration imposed by Bill 63 in March 2003.³ Policy is currently silent on whether the WCB is required to adjust penalty amounts based on estimated payroll. As noted above, the WCB has the authority to impose penalties based on estimates and is not obligated to amend penalty amounts based on estimates when actual payroll figures are reported.

In addition, some firms believe that the section 38 penalties for not reporting payroll are unfair in some cases. For a quarterly firm that does not submit a year-end reconciliation report on time (which may otherwise provide the firm with a credit), a penalty is imposed by the system calculated on eight percent of the fourth quarter's premiums. This has resulted in a \$28,000 penalty for late filing of a form. For most of these firms, who have usually reported and made payments on time for the four previous quarters, not filing the year-end payroll report is a result of an administrative oversight.

In considering canceling sections 38 and 47 penalties, Board officers may use one of eight acceptable reasons in policy to cancel or reduce them. Policy provides that such decisions are subject to the limits on reconsideration set out in section 96(5) of the *Act*, but in practice, where a firm reports payroll for earlier years, the system makes such changes outside the 75-day time limit.

The following chart shows the typical volume of penalties reversed in a year for the 2003 year, the latest for which data is available:

Penalty Type	Total Penalties Issued	Total Penalties Reversed	Percentage Reversed
Quarterly Non-Payment	\$4,599,387	\$1,620,234	35%
Annual Non-Report	\$1,904,737	\$577,368	30%

Firms frequently request the reversal of assessment penalties, causing significant call volumes each month after statements are sent out. The main cause of the large volume of such requests is seen to be that the Assessment Department has a history of reducing and/or canceling many penalties when requested to do so by firms. In general, larger firms are more successful at having these penalties reversed. It is believed that this is because smaller firms do not have the resources to invest in penalty disputes. The wide discretion granted by policy to cancel penalties is also thought to contribute to the large volume of penalty reversals.

3.5 Penalties Imposed Under Section 40 of the Act

Section 40 of the *Act* allows the WCB to penalize a firm where the firm does not "make a return on the form provided or prescribed" by the WCB and make a

³ Bill 63 imposed a 75-day time limit for the WCB to reconsider all types of decisions. The Assessment Department's systems were developed prior to this legislative change, and as a result, they do not currently follow the 75-day time limit on reconsidering penalty decisions.

payment as required. Penalties levied under section 40 are different from those that may be levied under sections 38 and 47, as the amount of such penalties may be determined by the WCB, and are not required to be a percentage of the assessment premiums owed.

The *AM* penalty policy does not currently differentiate section 40 penalties from sections 38 and 47 penalties, and provides that a section 40 penalty is also based on eight percent of the amount due or estimated to be due.

3.6 Penalties for Carrying a Balance Imposed Under Section 47 of the Act

Under current policy, where a firm carries a balance owing on its account for more than 28 days, the WCB may impose another kind of penalty under section 47. There is no minimum or maximum amount for this "continuing penalty on overdue amounts". Policy provides that the rate of this penalty is set by the WCB as practice, and it is published in Appendix A of the *AM*. Currently the rate is one percent per month.

Such penalties are generally calculated and applied by Assessment Department systems, and like the other penalties applied under sections 38 and 47, are subject to amendment when actual payroll figures are received. Thus, a late payroll report often has a "ripple effect", as a change in payroll results in the recalculation of a non-reporting or non-payment penalty amount, and then a subsequent recalculation of all associated monthly balance-carrying penalty amounts. In some cases such recalculations must be performed manually due to system limitations, which results in an administrative burden.

There is a separate list of reasons in policy allowing Board officers to cancel or reduce these penalties. As with the non-reporting and non-payment penalties, the system will recalculate the amounts of these penalties when revised payroll for earlier periods is received, and such changes often occur outside the 75-day reconsideration time limit set out under the *Act*.

4. DISCUSSION

In conjunction with the development of the modifications to the PeopleSoft Accounts Receivable software, the Assessment Department has requested changes to the policy on penalties. The Assessment Department seeks to reduce the volatility and controversy of the current system, the frequent reductions and cancellations made to penalties, and the large penalties that can result from late filing of a year-end payroll report. While there are very few Review Division Decisions or Workers' Compensation Appeals Tribunal Decisions that vary penalty decisions, the current penalty system results in a significant administrative burden at times, due to large call volumes and significant penalty recalculation work.

4.1 Limiting the Practice of Amending Penalty Amounts Based on Estimates

Up until 1999, estimates of payroll on which penalties were based were not of a consistently high quality, and could vary significantly from the actual payroll reported by firms at year end. As estimated payroll amounts were at times questionable, it made sense to adjust penalties to reflect actual payroll. Since the implementation of the Employer Services Strategy⁴ in 1999, the quality of the WCB's estimates of firm payroll has improved greatly, and estimates are now updated weekly based on the most recent information received either from the firm or a WCB Assessment officer who has audited the firm.

Now that the estimated payroll data is more consistent with the actual payroll reported by most firms, it may be appropriate to add a statement to policy providing that all penalty amounts based on estimates will not be adjusted when actual payroll is reported.

This approach would eliminate much of the current system churn and the administratively difficult "ripple effect" of amending penalty amounts when actual payroll is reported. In addition, introducing such a statement in the *AM* policy on estimated payroll would support the adherence of the WCB's penalty decisions to time limits on reconsiderations set out in the *Act*, as system-generated adjustments to penalty amounts are reconsiderations of the original penalty decision. It is noted that four of the other Canadian workers' compensation jurisdictions have such statements in policy.⁵

4.2 A New Tiered Penalty System for Non-Reporting and Non-Payment

The Assessment Department would like to further simplify the administration of the penalty system by adopting a new penalty model based on graduated tiers of penalty amounts.

Under the system proposed by the Assessment Department, firms would no longer be charged sections 38 and 47 percentage penalties for failing to report or make payments as required. Instead, penalties for these infractions based on two schedules of tiers would be imposed under authority derived from section 40 of the *Act*. This is because sections 38 and 47 provide for percentage penalties, while section 40 does not specify how penalty amounts should be calculated.

The proposed system would have one schedule for non-payment of quarterly premiums and another for non-reporting of year-end payroll. The amount of the penalty applied for each infraction would vary depending on an estimate of the

⁴ The Employer Services Strategy introduced business process changes and new software systems, enabling the Assessment Department to better track data on firms' classifications and payroll.

⁵ See section 6 for more information.

amount of annual or quarterly premiums due from a firm, but would not be tied directly to that amount through the use of a percentage.

In order to determine the number of tiers and associated penalty amounts for each schedule, analysis was performed on the two types of penalties in the existing system. The analysis included dividing all firms into groups by the amount of assessment premiums paid by each and reviewing the average penalty assigned to firms today in each group. The Assessment Department's goal was to ensure that the penalties in the new model are sufficient to ensure appropriate levels of deterrence and restitution for each tier. Data on the number of firms in each tier and the amounts of penalties paid under the current system compared to those payable under the proposed system are found in Appendix A of this paper.

4.2.1 A Tiered Annual Non-Reporting Penalty

As a result of the Assessment Department's analysis, the following schedule was developed for the non-reporting of year-end payroll:

Tier	Annual Assessment Estimate	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

Restitution was the primary consideration for determining the amounts of these non-reporting penalties, as the cost of not having payroll reported on time is lower for the workers' compensation system than not receiving payments. However, deterrence was also a factor, as the amounts were set to ensure that larger firms are appropriately penalized for failing to report year-end payroll.

Firms with annual premiums of less than \$6,000 received 95.3 percent of the 2004 year-end non-reporting penalties applied in 2005 (representing 70.1 percent of the total dollar amount of such penalties). The average amount of such penalties was about \$44.20 per firm for this group; the proposed schedule has one tier for such firms, and the amount of the penalty would be \$50.

The schedule has three more tiers for this type of penalty, with penalty amounts that are not overly punitive in nature given the sizes of the firms they would apply to. For this penalty, larger firms would be penalized less than under the current system, but for most large firms, this penalty is incurred infrequently as a result of an administrative oversight. It is anticipated that under the proposed system, these penalties would not change in most cases, whereas under the current system they are often amended.

4.2.2 A Tiered Quarterly Non-Payment Penalty

The Assessment Department's analysis resulted in a schedule of six tiers of penalty amounts for non-payment of quarterly assessment premiums:

Tier	Quarterly Assessment Estimate	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

As with the non-reporting penalty, in the current system smaller firms receive the bulk of non-payment penalties. For the first quarter of 2005, firms whose quarterly premiums were less than \$1,500 received 79.4 percent of all quarterly non-payment penalties (representing 27.1 percent of the total dollar amount of such penalties).

There are six tiers in this schedule for non-payment penalties, in an effort to have more appropriately scaled deterrence and restitution measures in force for non-payment of premiums. The average amount of penalties applied to firms in the lowest tier under the current system is \$61.64, although the average for firms that pay under \$1,000 per year (representing 67.1 percent of first-tier firms) is \$28. In the proposed system, the penalty would be \$50.

For large firms, the \$10,000 penalty amount is more than what a firm at the low end of the tier would pay under the current system, but less than what a firm paying more than \$125,000 under the current system would pay. The Assessment Department intends to apply early intervention principles to proactively call and request payment from firms like the 137 firms in tiers 4 to 6 that were levied a non-payment penalty in the first quarter of 2005.

4.2.3 Perceived Benefits of Using a Tiered System

For both schedules, depending on where a firm sits within a tier, firms at the lower end of each tier would be penalized more than they are currently, and firms at the higher end of each tier would be penalized less. Using data from first quarter 2005 non-payment penalties, the WCB would have imposed \$237,396 less in penalties under the proposed system than was applied. For non-reporting of year-end payroll, the WCB would have imposed \$51,546 less. However, it is believed that many more of the penalties would not change under the proposed tiered system, whereas between 30 and 35 percent of the amounts of penalties are currently cancelled or amended. The Assessment Department believes that as penalty amounts would be seen to be more appropriate and not frequently

subject to amendment, much less reconsideration of penalties and adjustment to penalty amounts would be made.

The Assessment Department believes that adopting a system like this will deter most firms from repeating the infractions that earn such penalties, while having many benefits to both stakeholders and the administration of the WCB. The Assessment Department believes that firms would be more conscious of penalties under the proposed structure, since penalty amounts for each infraction would be clear, as opposed to the constant flux of penalty amounts in the current system.

The Assessment Department also believes that it will be easier to explain the proposed model to firms, and easier and more cost-effective to modify the PeopleSoft Accounts Receivable software to administer the system.

4.3 Reasons to Reduce or Cancel Penalties

Current policy has two lists of allowable reasons for canceling or reducing penalties, one list for non-reporting and non-payment of penalties, the other for the continuing penalty on overdue amounts. It is unclear why there are two lists of reasons to reduce or cancel penalties in the policy.

If the proposed changes to the non-reporting penalties are made, there would be fewer reasons to vary or cancel penalty amounts, as the large penalties resulting from not filing a form on time would no longer be an issue.

As part of the AOS, if the new penalty structure is approved, the Assessment Department anticipates taking a much firmer approach to reducing or canceling penalties. The Assessment Department believes that the clarity and appropriateness of the penalty amounts under the proposed system will allow it to do this.

5. OTHER JURISDICTIONS

The other Canadian workers' compensation jurisdictions and the Canada Revenue Agency ("CRA") were surveyed to determine how each penalizes firms that do not report payroll or make payments as required. It is important to note that the penalty policies of Manitoba, Ontario, Quebec, and Prince Edward Island set out that penalty amounts based on estimated payroll will not be amended when payroll is subsequently reported.

5.1 Non-Reporting Penalties

Nine of the other jurisdictions and the CRA apply penalties for not reporting payroll in the same way BC currently does, based on a percentage of the amount estimated to be due. The percentages vary between 5 and 20 percent, with six

of the jurisdictions capping the maximum or minimum penalty amount to prevent large penalties for not filing a payroll report as required.

In Prince Edward Island, failing to report payroll on time results in a penalty of \$100, regardless of the size of the firm.

The regulations in Newfoundland provide for a tiered penalty system for non-reporting of payroll.⁶ There is a different schedule of tiers used depending on whether the report deadline missed is an annual payroll reconciliation report or a quarterly payroll report. The regulations provide that an additional 10 percent of the tiered penalty amount may be applied for each day after the due date a firm fails to report, but this provision is not currently used.

5.2 Non-Payment Penalties

Where firms fail to make payments as required, all of the other jurisdictions including Newfoundland and the CRA apply a percentage penalty to the outstanding balance on the account, as is currently done here in BC. The penalty percentages vary from 7 to 24 percent on an annualized basis. Five jurisdictions tie the penalty percentage rate to the Bank of Canada prime lending rate. This is also currently the approach taken in BC. In Nova Scotia, policy ties the penalty percentage rate to that used by the CRA.

6. OPTIONS AND IMPLICATIONS

Option 1: Status quo

Under this option, no changes would be made to the current practice and policy on penalizing employers for not reporting payroll or making payments as required.

Implications

- Penalties would be based on percentages of the amount estimated to be due, and subject to change when actual payroll is reported.
- Lack of clarity for firms regarding the amount of penalties would continue.
- Large penalties would continue to result in cases where quarterly-reporting firms do not file a year-end payroll report on time, often the result of an administrative oversight.
- Large volumes of penalties would continue to be reduced or cancelled.
- The penalty changes proposed under the AOS would not be implemented.

⁶ See Appendix B for the relevant provisions of Newfoundland's regulations.

Option 2: Eliminate the practice of adjusting penalty amounts and maintain current percentage approach to penalties

Under this option, the *AM* estimated payroll policy would be changed to state that the WCB will no longer amend penalty amounts based on estimates when actual payroll is reported. In addition, a statement currently found in the penalties policy concerning how the WCB may determine the amount of a payroll estimate would be moved to the payroll estimate policy. The other existing penalty provisions of Item AP1-47-1 would remain in place.

Implications

- Large penalties would continue to result in cases where quarterly-reporting firms do not file a year-end payroll report on time.
- Penalties would be based on percentages of the amount estimated to be due, and not subject to change when actual payroll is reported.
- Lack of clarity for firms regarding the amount of penalties would continue.
- The penalty changes proposed under the AOS would not be implemented.

Option 3: Adopt a tiered penalty structure and eliminate the practice of adjusting penalty amounts

Under this option, the following changes to penalty policy would be made:

- Penalties would no longer be applied to firms under sections 38 and 47 of the *Act* for not reporting payroll or making payments.
- The WCB would adopt a tiered penalty system under section 40 of the *Act* for not reporting payroll or making payments as required.
- The current provisions on penalties applied for non-reporting or non-payment under sections 38 and 47 would remain in policy with some minor adjustments, to reflect the authority the WCB has under the *Act* to impose such penalties. The Assessment Department would maintain the ability to charge such penalties in rare cases.
- A statement that penalties based on estimated payroll will not be amended would be added to the *AM* estimated payroll policy. In addition, a statement currently found in the penalties policy concerning how the WCB may determine the amount of a payroll estimate would be moved to the payroll estimate policy.
- The two lists of reasons by which penalties are reduced or cancelled would be amalgamated into one list and placed at the end of the policy.
- There is currently a redundant category in policy to allow reduction or cancellation of a penalty. The "improper coding of payments" category could be included under the category for "Board error". This category to reduce or cancel a penalty would be removed from policy.

Implications

- The tiers used would be scaled to provide an appropriate financial deterrent for firms to ensure compliance, as the non-reporting penalties would be more appropriately scaled to the infraction.
- Penalty amounts for non-payment of assessment premiums would be scaled to provide restitution for the infraction and more incentive for firms to make payments as required.
- Penalty amounts would not be subject to amendment, except in rare situations where the WCB's estimate of a firm's payroll is incorrect, and the correction places the firm in a different tier.
- Overall, firms in the highest tiers of each tier structure will receive lower penalty amounts.
- On the whole, the WCB would impose a lower dollar amount for penalties across the system, but the volume of penalty reductions and cancellations would decrease. It is not possible to forecast exactly how much the volume of penalty reductions would decrease, but it is anticipated that it will be lower than the 30 to 35 percent that is the current volume.
- Would confirm the policy changes as contemplated for the PeopleSoft Accounts Receivable software enhancement.

There are two sub-options under Option 3. The first, sub-option A, is to maintain the penalty amounts within the tiers as policy. The second, sub-option B, is to place the penalty amounts within the tier structures as practice in Appendix A of the *AM*. The implications for each sub-option are listed below.

Implications of Sub-Option A

- Penalty amounts would have the force of policy.
- The WCB would have to return to the BOD to make changes to penalty amounts within the tiers.

Implications of Sub-Option B

- The adoption of a tiered penalty system is a new concept for the WCB and if the amounts are found to be ineffective, or too punitive, maintaining the amounts as practice would mean that the WCB would not have to return to the BOD to make changes to penalty amounts within the tiers.
- Penalty amounts would not have the force of policy.
- This approach is consistent with the monthly balance penalty, or "continuing penalty on overdue amounts" set out in the same policy.

Draft policy reflecting Option 3 and Sub-Option A is attached in Appendix C.

7. CONSULTATION

Stakeholders are invited to provide feedback on the discussion paper, options, draft policy, and any additional comments that may be relevant to the issue.

Attached as Appendix "B" is draft policy reflecting Option 3 and sub-option A, under which the WCB would adopt a tiered penalty system and end the practice of amending penalty amounts based on estimates.

Stakeholder comments will be accepted until **September 14, 2005**. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

By mail: Cameron Angus
Policy Analyst
Policy and Research Division
Workers' Compensation Board
P.O. Box 5350, Stn Terminal
Vancouver, BC V6B 5L5

By fax: 604 279-7599

By e-mail: policy@worksafebc.com

The WCB's governing body, the Board of Directors, will consider the opinions expressed by stakeholders before it adopts any amendments to the current policies.

Please note that all comments become part of the Policy and Research Division's database and may be published, including the identity of organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

APPENDIX A

COMPARISON DATA BETWEEN THE CURRENT PENALTY SYSTEM AND THE PROPOSED TIERED PENALTY SYSTEM

This table shows data for the penalties applied for non-reporting of 2004 assessable payroll. Percentages are rounded to the nearest decimal.

Tier	A	B	C	D	Totals
Annual Assessment Estimate	\$0 to \$5,999.99	\$6,000 to \$19,999.99	\$20,000 to \$199,999.99	Over \$200,000	
Firms Within Tier (Percentage of such penalties applied)	28,954 (95.3%)	1,160 (3.8%)	253 (.8%)	13 (.04%)	30,380
Total \$ of Penalties - Current System (Percentage of such penalties applied)	\$1,271,371 (70.1%)	\$255,512 (14.1%)	\$187,442 (10.3%)	\$98,421 (5.4%)	\$1,812,746 (\$1,268,922 if the 2003 30% penalty reduction is figured in.)
Total \$ of Penalties - Proposed System (Percentage of such penalties applied)	\$1,447,700 (82.2%)	\$174,000 (9.9%)	\$126,500 (7.2%)	\$13,000 (.7%)	\$1,761,200

This table shows data for the penalties applied for non-payment of first-quarter 2005 assessment premiums. Percentages are rounded to the nearest decimal.

Tier	1	2	3	4	5	6	Totals
Quarterly Assessment Estimate	\$0.01 to \$1,499.99	\$1,500 to \$4,999.99	\$5,000 to \$9,999.99	\$10,000 to \$49,999.99	\$50,000 to \$99,999.99	Over \$100,000	
Firms Within Tier (Percentage of such penalties applied)	5659 (79.4%)	1153 (16.2%)	181 (2.5%)	110 (1.5%)	16 (.2%)	11 (.2%)	7130
Total \$ of Penalties - Current System (Percentage of such penalties applied)	\$285,453 (27.1%)	\$234,678 (22.3%)	\$97,678 (9.3%)	\$166,748 (15.9%)	\$87,083 (8.3%)	\$180,156 (17.1%)	\$1,051,796 (\$683,667 if the 2003 35% penalty reduction is figured in.)
Total \$ of Penalties - Proposed System (Percentage of such penalties applied)	\$282,950 (34.7%)	\$172,950 (21.2%)	\$90,500 (11.1%)	\$110,000 (13.5%)	\$48,000 (5.9%)	\$110,000 (13.5%)	\$814,400

APPENDIX B

NEWFOUNDLAND'S PENALTY REGULATION

The following tables are from sections 25 and 25.1 of the *Consolidated Newfoundland And Labrador Regulation*. These amounts were adopted for use in 2001, and were doubled from previous values.

For firms that fail to provide year-end payroll reports as required, the following penalty amounts apply:

Annual Assessment	\$50 to \$999	\$1,000 to \$4,999	\$5,000 to \$49,999	\$50,000 to \$99,999	Over \$100,000
Penalty	\$50	\$100	\$500	\$1,000	\$2,000

For firms that fail to provide quarterly payroll reports as required (in the fishing and logging industries), the following penalty amounts apply:

Quarterly Assessment	\$12.50 to \$249.99	\$250 to \$1,249.99	\$1,250 to \$1,249.99	\$12,500 to \$24,999.99	Over \$25,000
Penalty	\$12.50	\$25	\$125	\$250	\$500

**APPENDIX C
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

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,

**APPENDIX C
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

RE: Penalties

ITEM: AP1-47-1

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)

~~The Board may apply a penalty against a delinquent employer at any time after an assessment payment or payroll report is not received by the due date. The penalty will be as follows:~~

- ~~• under section 38(2) when an employer fails to meet the requirements in section 38(1) to keep, in the province, particulars of the employer's payroll and/or to furnish payroll or other information to the Board as required;~~
- ~~• under section 40(2) when an employer fails to meet the requirements in section 40(1) to make a return and remit an assessment on time;~~
~~and~~

**APPENDIX C
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

RE: Penalties

ITEM: AP1-47-1

- ~~under section 47(1) when an employer fails to pay an assessment on time, in circumstances where the employer is not required to make a return at the same time.~~

~~The penalty under the above provisions is 8% or less of the amount due or estimated to be due. 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. These penalties are subject to a minimum charge of \$25. There is no maximum amount.~~

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 Board's estimate of the employer's annual assessment due, as follows:**

Tier	Annual Assessment Estimate	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 Board's estimate of the employer's quarterly assessment due, as follows:**

Tier	Quarterly Assessment Estimate	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

**APPENDIX C
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

RE: Penalties

ITEM: AP1-47-1

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 eight percent of the amount due, or estimated to be due.

~~Penalties for failure to remit or report will be reduced or cancelled only in limited circumstances. The Board may on its own initiative, and subject to the limits on reconsideration set out under section 96(5), reconsider a penalty charge and reduce or cancel it for the following reasons:~~

- ~~(1) error on the part of the Board;~~
- ~~(2) the correct payment was received but improperly coded (This normally applies to a remittance being coded as unidentified cash, but it could also include a subcontractor's remittance paid on a prime contractor's account where the Board is satisfied the payment should properly have been put on the subcontractor's account.);~~
- ~~(3) the penalty is charged after the cancellation date for an employer's account, except if it applies to a period before the cancellation date;~~
- ~~(4) death 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.); or~~

**APPENDIX C
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

RE: Penalties

ITEM: AP1-47-1

~~(8) any other reason that the Board determines is consistent with the Act and the purpose of these penalties.~~

(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.

**APPENDIX C
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

RE: Penalties

ITEM: AP1-47-1

In order to ensure that penalties are applied in a fair and consistent manner, a penalty will be reduced or cancelled only in exceptional circumstances, including:

- 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;
- where an amended payroll figure has been submitted reducing the assessment for the period in question;
- where the penalties have been imposed for non-payment of a prior penalty and the initial penalty is cancelled;
- when penalties are applied after bankruptcy or receivership dates;
- when a penalty is applied as the result of a Board error; and
- any other reason which the Board determines is consistent with the Act and the purpose of this penalty.

A decision may not be reconsidered where one of the limitations set out under section 96(5) of the Act exists.

(d) Decisions on reducing or canceling 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:

**APPENDIX C
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

RE: Penalties

ITEM: AP1-47-1

- (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 these penalties.**

APPENDIX C
PROPOSED ASSESSMENT MANUAL POLICY CHANGES



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

RE: Penalties

ITEM: AP1-47-1

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 Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 3, 2003 January 1, 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 January 1, 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 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. This policy applies to all decisions made on or after January 1, 2006.

**APPENDIX C
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

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.

**APPENDIX C
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

RE: Payroll Estimates

ITEM: AP1-38-5

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 Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003 January 1, 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 January 1, 2006 to reflect the new tiered penalty system. 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. Replaces Policy No. 50:60:10 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. This policy applies to all decisions made on or after January 1, 2006.