

Policy and Regulation Division

2012 – 2014 Policy Priorities

Compensation and Occupational Disease Policy Workplan

1. Re-write of the Chapter 10 Policies on Health Care in the *Rehabilitation Services and Claims Manual, Volume II (“RS&CM”)* – 2011/12

This project involves a review of the 87 policies contained in Chapter 10 of the *RS&CM*. The re-write of the Chapter 10 policies includes putting the policies into the new *RS&CM* format and addressing various issues that have been raised, such as:

- Other Health Care Providers – re-writing policy to reflect changes to health care services provided to workers, such as physiotherapy, acupuncture and massage therapy.
- The Prescription of Narcotics and Other Drugs of Addiction – reviewing the current policy to ensure that it reflects the latest medical and scientific information.
- Respite Care – providing guidance on the provision of respite care.
- Reviewing discretionary allowances and benefits provided to injured workers, such as those:
 - i. provided to seriously injured workers;
 - ii. regarding travel expenses and subsistence, related to workers’ receipt of health care; and
 - iii. related to childcare and homemaker services.

The key objectives of this project are to: improve decision-making, ensure that health care policies reflect the latest science and latest contracts with health care providers, ensure that WorkSafeBC provides appropriate health care services to aid in recovery and return to work, and improve customer service in the delivery of health care services.

Consultation with external stakeholders is currently underway and is scheduled to conclude on January 27, 2012.

1a. Suspension of Benefits – 2011/12

Sections 57(2) and 57.1(2) of the *Act* give WorkSafeBC the authority to reduce or suspend compensation to a worker in certain situations of worker noncompliance.

At issue is whether further policy direction is required to:

- provide guidance in determining whether the resumption of full benefits (after a suspension is lifted) includes retroactive entitlement to the benefits that were reduced or suspended, and
- address the type or extent to which compensation is to be reduced or suspended.

Work on this project has been incorporated into the Chapter 10 project.

2. Duration of Permanent Disability Periodic Payments – Policy Item #41.00 of the *RS&CM* – 2011/12

On January 1, 2008, amendments were made to the *Human Rights Code* to eliminate mandatory retirement in British Columbia. A new provision was also added that allows for distinction on the basis of age, where the distinction is permitted or required by another Act or Regulation. An example of this is section 23.1 of the *Workers' Compensation Act*, which contains statutory limits on the duration of compensation payments based on age.

Policy item #41.00 provides guidance on the evidence required to determine whether a worker would have continued to work past age 65. At issue is a review of the policy language to ensure that it is appropriate given the changes to the *Human Rights Code*.

Work has begun on this project and it is anticipated that this issue will be referred to the Board of Directors for approval to consult with external stakeholders in the first quarter of 2012.

3. Permanent Disability Evaluation Schedule (“PDES”) – 2011/12

At issue is the ongoing review of the percentages listed on the PDES.

The goals of this project are to:

- ensure that the PDES remains current with emerging medical and scientific knowledge,
- to confirm whether the Additional Factors Guidelines are medically current and clear enough to ensure consistency in application, and
- to reduce the number of disputes and appeals that arise on the percentages of disability granted under the PDES.

This issue is complex and will require considerable research and analysis including significant cross-jurisdictional analysis of schedules, methods of application and scientific basis.

The PRD is working with Senior Medical Advisors and Disability Awards staff on this issue. It is anticipated that a draft revised PDES will be referred to the Board of Directors for approval to consult in the first quarter of 2012.

4. Nerve Entrapments and Teninopathies of the Arm, Neck and Shoulder Policy Items #27.32 and #27.33 of the *RS&CM* – 2011/12

Activity related soft tissue disorder (“ASTD”) claims are difficult to adjudicate. Certain ASTDs are recognized under Schedule B of the *Act*, for example shoulder or knee bursitis, while others are set out in policy, such as carpal tunnel syndrome.

At issue is a review of the ASTD policies to ensure that they are consistent with medical science and to improve consistency in decision-making. This review will be undertaken in stages, beginning with a review of the carpal tunnel and cubital tunnel policies.

The PRD has received a systematic review of the medical and scientific literature on this issue, as well as the peer review reports. Policy review is now underway.

5. Overpayments – Policy Item #48.41 of the *RS&CM* – 2011/12

Policy item #48.41, *When Does an Overpayment of Compensation Occur?* of the *RS&CM* distinguishes between recoverable overpayments and excess payments that are not recoverable. It distinguishes erroneous payments on the basis of administrative error, fraud or misrepresentation, decisions not within the statutory authority of WorkSafeBC, and decisions made as a result of decisional errors. The policy provides limited guidance on the meanings of these types of errors and as a result, decision makers often have difficulty determining when an error falls into which category.

At issue is a review of the policy in order to determine whether:

- the current distinctions between recoverable and non-recoverable errors are appropriate, and how to classify an error when it appears to contain elements of more than type;
- it is consistent with WorkSafeBC’s 75-day time limitation for reconsidering past decisions; and
- clarification is required for determining when claim costs related to overpayments will and will not be charged to an employer for experience rating purposes.

Work on this project has commenced and it is anticipated that external consultation will take place in the first quarter of 2012.

6. Tinnitus – Policy Item #31.00 of the *RS&CM* – 2011

Policy item #31.00, *Hearing Loss*, of the *RS&CM* provides that tinnitus alone is not considered a condition for which a permanent disability award can be granted.

However, tinnitus in combination with a permanent degree of hearing loss may have an impact on a worker's employability and affect the amount of the resulting award.

A review of the current medical and scientific literature related to this condition was commissioned to determine whether the current policy is appropriate.

External consultation concluded on October 7, 2011. The consultation results and draft policy will be referred to the Board of Directors for decision at the January 2012 meeting.

7. Chronic Pain – Policy Items #22.35 and #39.02 of the *RS&CM* – 2011/12

The policies with respect to chronic pain have been in effect since January 1, 2003. A review of these policies is required to address a number of issues in order to improve consistency in the adjudication and management of chronic pain. To date, the following issues have been identified for clarification:

- i. whether the current fixed 2.5% loss of function award for chronic pain is appropriate;
- ii. how compensation should be provided when chronic pain occurs at multiple sites on the body;
- iii. whether a Pain Disorder diagnosed under the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* ("DSM-IV-TR") should be adjudicated as a claim for chronic pain, or as a distinct psychological disability, using the permanent psychological disability schedule;
- iv. whether an award for chronic pain includes any restrictions in range of motion due to chronic pain; and
- v. whether the terminology used in the current policies is appropriate.

Work on this project has commenced and will continue into 2012.

8. Average Earnings, Chapter 9 of the *RS&CM* – 2012/13

This project is part of the overall plan to redevelop the *RS&CM*, on a chapter by chapter basis. This project will involve putting the policies into the new *RS&CM* format, conducting a review of the Chapter 9 policies on average earnings as a whole, and addressing various issues that have been raised, such as:

- Reviewing policy item #65.02, *Workers with Two Jobs*, to determine if clarification is required with respect to calculation of wage rates for persons with two jobs. In addition, a review of policy item #35.22, *Calculation of Earnings for Workers with Two Jobs*, is required to ensure that the two policies are consistent.
- Considering whether additional policy guidance is required with respect to the calculation of long-term average earnings for workers in multiple employment

situations where more than one of the average earnings exceptions appears to be applicable.

Work on this project will commence in 2012.

9. Osteoarthritis of the First Carpo-Metacarpal Joint in Physiotherapists – Policy Item #26.02 of the *RS&CM* – 2011/12

Policy item #26.02 of the *RS&CM* addresses the recognition of an occupational disease under section 6(4.2) of the *Act* as a “disease that is peculiar to or characteristic of a particular process, trade or occupation”. To date, only one disease has been recognized in this manner – osteoarthritis of the first carpo-metacarpal joint in physiotherapists who perform deep friction massage. This recognition is limited to factual situations substantially the same as those applied to the worker in *Workers’ Compensation Reporter* (“*WCR*”) Decision No. 231, dated February 9, 1977.

Two matters are at issue:

- A review of the scientific and medical literature related to this disease is required to determine whether the heightened recognition in policy is current and supportable.
- *WCR* Decision No. 231 is the last remaining *WCR* Decision that has yet to be retired from policy status. Policy item #26.02’s reliance upon it is problematic. The old *WCR* has not been published in over ten years, nor is it available electronically.

The PRD received the systematic review from the Evidence Based Practice Group of WorkSafeBC in the second quarter of 2011. Peer review of the systematic review is underway.

10. Cost Relief for Compensable Consequences of Work-Related Injuries and Diseases – Chapter 17 of the *RS&CM* – 2011/12

At issue is a review of policy to determine whether cost relief should be provided to employers where a further injury, increased disablement, disease or death occurs as a consequence of an accident during treatment, surgery, a WorkSafeBC-related medical assessment, or claim-related travel, for a compensable injury or disease.

Along with determining whether cost relief should be granted, this project will also look at whether it should be applied to an employer’s experience rating alone or to the employer’s experience rating and its rate group.

Work on this project has commenced and it is anticipated that external consultation will take place in the first quarter of 2012.

11. Minor Consequential Amendments to Policy on Aggravation of a Disease and Recognition of Occupational Diseases by Order Dealing with a Specific Case – 2012

As a consequence of the re-write of the policies for *Compensation for Personal Injury* in Chapter 3 of the *RS&CM*, and the policy project involving Nerve Entrapments and Tendinopathies of the Arm, Neck and Shoulder, two policies were identified that require minor revisions.

At issue is whether policy item #26.55 *Aggravation of a Disease* of the *RS&CM* should be revised to clarify that policy item #26.55 does not apply when dealing with an aggravation of a pre-existing disease that is attributed to a personal injury.

Also at issue, policy item #26.04 *Recognition by Order Dealing with a Specific Case* of the *RS&CM* currently contains process information which is not typically included in policy and is now outdated.

Work on this project has commenced.

12. Subsequent Non-Compensable Incidents – Policy Item #34.55 of the RS&CM – 2012

This policy resulted from the re-write of Chapter 3 in the *RS&CM*. Policy item #34.55 addresses situations where a subsequent non-compensable incident occurs after a compensable injury and delays recovery of the compensable injury. The Employers' Forum requested a review of the policy.

13. Vacation Pay – Policy Item #34.41 of the RS&CM – 2012

Policy states that if a vacation period or statutory holiday occurs while a worker is receiving wage-loss benefits, WorkSafeBC will continue to pay those benefits where the vacation will not hinder or protract recovery.

Employer stakeholders have requested that policy item #34.41 *Vacation Pay* be reviewed regarding the situation where a worker receives vacation pay as part of their remuneration, becomes injured, and then goes off on a pre-planned vacation while in receipt of wage-loss benefits.

14. Multiple Sclerosis as a Compensable Consequence – Policy Item #22.31 of the RS&CM – 2012

Policy item #22.31, *Multiple Sclerosis*, of the *RS&CM* includes the following statements, "While the cause of multiple sclerosis is unknown, there has been much medical literature on factors which may precipitate the onset of the disease in an already predisposed person. One of these factors is traumatic injury."

At issue is whether multiple sclerosis may be caused by a traumatic injury. A systematic review of the current medical and scientific literature is underway. Subject to the final result of the systematic review, policy development may be required.

15. Mental Stress and the *Government Employees Compensation Act* (“*GECA*”) – 2012/2013

GECA provides direction on the provision of workers’ compensation for federal government employees. Under *GECA*, compensation is paid to employees who are caused personal injury by an accident arising out of and in the course of employment or who are disabled by reason of an industrial disease due to the nature of the employment. *GECA* does not include a specific entitlement provision on mental stress.

Recent appeal court decisions from the Atlantic Provinces have concluded that the ordinary reading of the definition of accident under *GECA* is sufficiently broad enough to include gradual onset stress. WorkSafeBC’s Review Division has considered the issue of *GECA* and gradual onset stress in four recent reviews. In all cases, the Review Division supported the views taken in the appeal courts’ decisions referenced above.

At issue is whether specific policy direction is required to guide the adjudication of *GECA* claims for gradual onset stress.

16. Skin Cancer – 2013/14

Skin cancer is the most commonly diagnosed form of cancer. Schedule B item #4(g) provides a presumption of work causation in favour of a worker who has developed a primary site skin cancer where there is prolonged contact with coal tar products, arsenic, cutting oils or prolonged exposure to solar ultraviolet light.

At issue is whether this description is accurate and supportable based on the most current medical and scientific literature. Another issue is whether specific types of skin cancer should be set out in Schedule B.

A systematic review of the medical and scientific literature is underway.

17. Plantar Fasciitis Due to Prolonged Weight Bearing – 2013/14

The British Columbia Nurses’ Union has requested that a policy project commence to determine whether exceptional prolonged weight bearing is a risk factor that can result in plantar fasciitis.

At issue is a review of the medical/scientific literature to determine whether there are work-related risk factors associated with plantar fasciitis.

The PRD forwarded a request for systematic review to the Research Secretariat. It is anticipated that the systematic review will commence in 2012. Based on the results, a review of the policy may occur.

18. Tendinosis – 2013/14

This project is being undertaken as part of a larger review of the ASTD policies.

Schedule B lists “Hand-wrist tendinitis, tenosynovitis (including deQuevain’s tenosynovitis)” and “Shoulder tendinitis” as occupational diseases. Policy item #27.12 of the *RS&CM* confirms that a claim made by a worker diagnosed with hand-wrist tendinitis/tenosynovitis or with shoulder tendinitis where no specific event or trauma, or series of events or traumas, has occurred, will be treated as a disease and adjudicated in accordance with all the policies in Chapter 4 of the *RS&CM*. The policy provides the guiding principles when interpreting Schedule B. As well, the policy details risk factors typically associated with these conditions to assist in determining whether it is biologically plausible that the hand-wrist tendinitis/tenosynovitis has resulted from the work activities.

It appears that there is a growing acceptance of the condition “tendinosis” in the medical community. As a result, WorkSafeBC is receiving an increasing number of medical reports where the diagnosis is tendinosis. An 'itis' condition is characterized by inflammation and typically will heal within six weeks. However, tendinosis is considered a chronic deterioration of the tendon and does not necessarily have the same risk factors or treatment protocols as tendinitis.

At issue is whether WorkSafeBC should recognize tendinosis as an occupational disease and whether policy should be developed to provide guidance on the risk factors and treatment protocols for tendinosis.

A set of six field studies sponsored by the American National Institute of Occupational Safety and Health (“NIOSH”) examining the association between workplace physical risk factors and upper limb musculoskeletal disorders is underway. The pooled results are not expected until 2012. As these studies are expected to directly address the questions the PRD would use to sponsor a systematic review of the scientific and medical literature, the PRD is awaiting the results of the NIOSH studies before proceeding with this project.

Policy and Regulation Division

2012 – 2014 Policy Priorities

Assessment Policy Workplan

1. Classification Policy Review – Consistent Language – 2011/12

Since 2003, the PRD has completed several reviews of various classification policies. A review of all five classification policies is required to ensure consistency in the description and usage of terms among the policies.

Work on this project is ongoing and it is anticipated that external consultation will take place in the first quarter of 2012.

2. Workplace Status – 2011/12

In 2007 the BOD approved changes to the workplace status policies in the *Assessment Manual* that guide the determination of whether an individual is a worker, employer or independent operator. These policy changes were scheduled to come into effect on January 1, 2010.

Employer stakeholders continued to express significant concerns regarding the impact of the policy changes on business relationships and activities. In addition, the Assessment Department raised significant concerns regarding the challenges in implementing the policy changes.

Given these concerns, as well as concerns that assessment policy is not well positioned to address workplace health and safety issues, the BOD decided, at their September 15, 2009 meeting, to rescind the policy changes. The PRD was directed to undertake additional analysis on the issues and develop a discussion paper and draft policy to address the assessment issues. Specifically, challenges relating to the labour contractor policy are to be addressed as part of this project, as well as an extensive review of other jurisdictions' approaches to this issue.

Work on this project has commenced and will continue into 2012.

3. Forest Firefighter Status Under the Act – Item AP1-1-5 of the Assessment Manual – 2011

The language and direction of Item AP1-1-5 of the *Assessment Manual*, which guides the determination of the status of forest firefighters under the *Act*, is inconsistent with the *British Columbia Wildfire Act* and Regulations. This project would bring the policy in line with the current statutory framework.

Consultation on this issue occurred during the summer of 2011. Based on stakeholder feedback, further work has been undertaken and a revised discussion paper with draft policy will be released for consultation in the fourth quarter of this year.

4. Net Rate Transitioning – 2011/12

The Assessment Department has raised concerns about the potential for a firm to be faced with an unexpected rate increase due to a change in the classification system which could cause financial hardship to the firm.

At issue is whether new policy should be developed to introduce a transition period for such firms to minimize the financial burden of the rate increase.

Analysis of this issue has commenced.

5. Clarification of the Obligation of Firms to Maintain and Furnish Records – 2012/13

An issue that has arisen on review and appeal is the failure of some firms to keep complete and accurate payroll information and to supply such information to WorkSafeBC. This includes financial data and information regarding the workplace status of subcontractors, all of which is required to determine assessable payroll figures.

Section 38(1) of the *Act* provides that maintaining and furnishing this information is the responsibility of all employers. However, on review and appeal, some firms have argued that WorkSafeBC has power of inquiry under the *Act* and therefore is responsible for performing its own investigation to obtain the required information.

A review of the *Assessment Manual* policies concerning payroll reporting and audits is required to clarify WorkSafeBC's power of inquiry and a firm's responsibility to keep and supply payroll records as required by the *Act*. At issue is whether there is adequate guidance in policy with respect to the following:

- an employer's duty to compute and furnish an estimate of the probable amount of its assessable payroll;
- an employer's duty to maintain necessary records;
- WorkSafeBC's authority with respect to audit and inquiry; and
- the nature and scope of WorkSafeBC's audit function.

6. Allocation of Claim Costs – 2012

At issue is a review of policy to clarify WorkSafeBC's jurisdiction to withdraw claim costs from a firm and transfer the costs to the firm that was the employer of the injured worker, or to transfer costs between classifications on an employer's account where appropriate. The issue is of significance, as the correct allocation of claim costs affects employers' rates and experience rating calculations.

7. Transfer of Experience Between Firms – Item AP1-42-3 of the Assessment Manual – 2012

The Assessment Department has raised concerns that there is no specific policy to address the combining of experience rating for affiliated firms acting in concert in business. At issue is a review of Item AP1-42-3, *Transfer of Experience Between Firms*, to address this issue.

8. Payroll – Principles for Determining – Item AP1-38-3 of the Assessment Manual – 2012

The Assessment Department has identified the following two issues with respect to policy on determining payroll:

A. Assessing Employers' Administration and Management Payroll, and Payments to Management Companies

The Assessment Department advises that the current policy does not provide sufficient guidance on the assessment of administration and management payroll, and payments made to management companies.

At issue is a review of the policy to review what is included in payroll when considering payments made to management companies or other affiliated firms. Policy clarification is also required to ensure the language of policy is broad enough to accommodate complex, modern corporate structures.

B. Determining Net Assessable Payroll

Policy provides that "net assessable payroll" includes the earnings of *any* labour contractors, after deducting any excess earnings that are attributable to the individuals. It is the Assessment Department's practice to include only the earnings of unregistered labour contractors, and exclude the earnings of registered labour contractors when calculating a firm's "net assessable payroll".

A recent decision of the Review Division calculated a firm's net assessable payroll by including the earnings of *all* labour contractors, including those who are registered. A review of the policy is required to clarify the approach to be taken in these cases.

9. Property Managers and Registration Requirements for Building Owners – Item AP1-1-4 of the Assessment Manual – 2011/12

Item AP1-1-4(f), *Property Managers*, was developed before January 1, 1994: a time when certain industries, including property management, were not subject to compulsory registration and coverage under the *Act*. With the registration and coverage changes made to the *Act* in 1994, clarification is required to ensure the registration requirements of building owners and the duties of property managers are clearly set out in policy.

10. Principals – Item AP1-38-2 of the *Assessment Manual* – 2011/12

The Assessment Department has identified the following four issues with respect to principals.

A. Exemption of Principals

WorkSafeBC policy applies the rule of corporate law that a corporation is a separate legal entity from its shareholders and principals. Employer stakeholders have expressed concern that application of this rule may result in inequities in the workers' compensation system. At issue is a review of the implications of WorkSafeBC's treatment of principals as workers.

B. Inclusion of Shareholder Dividends in Assessable Payroll

Item AP1-38-2 of the *Assessment Manual* provides that dividends are not considered part of payroll unless paid for services rendered to the company. Current practice of the Assessment Department, however, is to include dividend payments in assessable payroll where they exceed T4 amounts, without regard to the value of the shareholders' activities. A review of the policy is required to address this inconsistency.

An initial round of consultation on this portion of the project was completed in 2009. Further work has been undertaken based on the feedback.

C. Principals of Corporations

Item AP1-1-4(c) of the *Assessment Manual* sets out that when a principal of an unregistered limited company is injured, and that principal was responsible for the firm's failure to register, any claim by that principal will be denied and the principal's earnings prior to the date of injury not assessed. However, if no claim was submitted and WorkSafeBC became aware of the firm's failure to register, a retroactive assessment would be made.

This is a different approach than when an unregistered employer employs workers. In this instance, once WorkSafeBC becomes aware of the failure to register, a retroactive assessment is made, regardless if a claim has been submitted or not.

At issue is a review of the above approach for principals of unregistered limited companies.

D. Active Officers of a Society, Cooperative, Trade Union or Similar Entity

At issue is a review of whether policy should maintain the current approach of determining status for active officers of a society, cooperative, trade union or similar entity, in the same manner as principals of a limited company. Prior to the 2002 editorial consolidation of all assessment policies, the workplace status for these individuals was determined in accordance with the normal employment considerations.

11. Divisional Accounts – Item AP1-38-1 of the Assessment Manual – 2012

Item AP1-38-1, *Registration of Employers*, provides direction on when WorkSafeBC will register separate divisions of an employer.

At issue is a review of policy to ensure it reflects current methods of electronic record keeping. As well, policy currently limits the application of divisions to limited companies, even though they would be applicable to societies and large non-profit agencies.

12. Personal Optional Protection (“POP”) – Earnings Covered – Item AP1-2-3 of the Assessment Manual – 2012

At issue is a review of the POP minimum and average amounts for monthly coverage. The current POP minimum is \$1,500 which was last adjusted in 2005. The current POP average is \$2,500 and was set in 1989.

Policy requires an applicant to provide proof of earnings for any amount of POP coverage over the average amount. If proof is not provided or is not acceptable, the application will be accepted but coverage will be reduced to the average. The Assessment Department has requested that this concept be clarified in policy, along with a review of the current minimum and average POP amounts.

13. Voluntary Coverage for Exempt Non-Resident Employers – Item AP1-2-2 of the Assessment Manual – 2013

Item AP1-2-2, *Requesting a Variance from a General Exemption*, currently uses the term “individuals” to refer to “non-resident corporations” which has created avoidable confusion. Policy clarification would eliminate confusion on whether an exempt non-resident corporation may apply for voluntary coverage.

14. Meaning of “24 Working Hours” – Item AP1-2-1 of the Assessment Manual – 2013

Section b(1)(ii) in Item AP1-2-1, *Exemption from Coverage*, provides a general exemption from coverage where “the individual is employed to do a specific job or jobs involving a temporary period of less than 24 working hours.” This language is ambiguous and may be interpreted to mean that the individual must have been in service for a minimum of 24 working hours, or that the job or jobs involved must take less than 24 person hours, regardless of the number of individuals who undertake the work.

Assessment Department practice, a recent Review Division decision, and a provision of the *Occupational Health and Safety Guidelines* would support adoption of the latter interpretation. A review of the policy is required to address this ambiguity.

Work on this project will commence in 2012.

15. Section 4 of the *Act* and the *Fishing Industry Regulations* – 2013/14

Following the review of the Workplace Status policies, a review of the *Fishing Industry Regulations* may be required in order to clarify fishing industry workplace roles and responsibilities, and assessment obligations.