

DISCUSSION PAPER

1. TITLE

Draft 2008 – 2010 Compensation, Occupational Disease and Assessments Policy Priorities Workplan

2. ISSUE

At issue is the draft 2008 – 2010 policy priorities workplan for stakeholder review and comment.

3. OVERVIEW

3.1 2007 Workplan Overview

As of the end of September 2007, the Worker and Employer Policy Department of the Policy and Research Division (“PRD”) completed the following projects related to compensation, occupational disease and assessments:

- Commutation of Permanent Disability Awards – Term Commutations
- Tendinitis, Tenosynovitis & Bursitis – Policy Item #26.03
- Contractor Liability/Statutory Lien – AP1-51-1
- Mental Stress – Recurrence
- Workplace Status (Independent Operator) – AP1-1-1 thru AP1-1-7
- Volunteer Firefighters – Policy Item #7.10 Chapter 3
- Miscellaneous CMS Amendments
- Preventive Measures & Exposures – Review of Policy Item #32.60
- Policy Item #114.40, Volume I, Cost Relief
- Classification and Rate-Making Policies – AP1-37-1 and AP1-39-1
- Re-write of Chapter 3, Compensation for Personal Injury
- Principals and Average Earnings – Policy Item #68.90
- Reconsideration of Classification Decisions – AP1-37-3 and AP1-96-1

Considerable work has also been undertaken on the following key projects which are scheduled for referral to the BOD for decision in 2008:

- Loss of Earnings Assessments – Policy item #40.00
- Re-write of Chapter 10, Medical Assistance
- Chronic Pain – Review of Policy Items #22.35 and #39.02
- Experience Rating and Fatal Claims
- Notification of Decisions
- Day Call Workers

- Re-Openings Over 3 Years
- Disfigurement

3.2 2008 – 2010 Workplan Priorities

TAB A of this paper contains the draft 2008 – 2010 compensation and occupational disease workplan. TAB B contains the draft assessments workplan.

The 2008 key priorities for the Worker and Employer Policy Department of the PRD include the following:

- Loss of Earnings Assessments – Policy item #40.00;
- Completion of the Chapter 10, Medical Assistance re-write;
- Re-write of Chapter 9, Average Earnings; and
- Review of the Permanent Disability Evaluation Schedule (“PDES”).

It is anticipated that, as in prior years, issues will arise during the year that will require immediate attention and will result in a shifting of work priorities.

With respect to the ongoing full-scale review of the *Rehabilitation Services & Claims Manual*, Volume II (“RS&CM”), as noted above, the re-write of Chapter 3 is scheduled for referral to the BOD in the last quarter of 2007 and then Chapters 9 and 10 of the RS&CM will be key priorities for 2008 and 2009. Following completion of Chapters 9 and 10, Chapters 5, 6 and 12 will then be the focus of full-scale reviews.

4. CONSULTATION

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

Stakeholder comments will be accepted until November 12, 2007. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

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WorkSafeBC's governing body, the Board of Directors, will consider the opinions expressed by stakeholders before it adopts the proposed workplan.

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*.

TAB A

Policy and Research Division

2008 – 2010 Policy Priorities

Compensation and Occupational Disease Policy Workplan

1. Claims Management Solutions (“CMS”) Project – 2007/2008

Aligned with WorkSafeBC’s strategic plan, the CMS project is designed to refocus core claims-related business to increase the efficiency of adjudication, improve delivery of claims services, and enhance systems and financial control. The aim of CMS is to facilitate improved timeliness of claims-handling and payments, and earlier identification of workers requiring return-to-work assistance.

It is anticipated that policy issues will be identified during the development of the CMS project which will require policy guidance and policy development in order to ensure the effective implementation of the project.

2. Loss of Earnings Assessments – 2007/2008

At issue is a review of policy item #40.00, *Loss of Earning Assessments* in Chapter 6 of the *Rehabilitation Services and Claims Manual (“RS&CM”)*. This policy establishes criteria for determining when the combined effect of a worker’s occupation and disability is “so exceptional” that an award based upon the worker’s loss of function is not appropriate.

This project will involve a review of a number of issues identified by WorkSafeBC staff, the Workers Compensation Appeal Tribunal (“WCAT”) and external stakeholders. The aim of this review is to ensure that the policy provides appropriate guidance to WorkSafeBC and WCAT decision-makers, workers and employers through this very complex adjudication.

Consultation on this project is proceeding in two phases. The first phase commenced in August 2007 and is scheduled to conclude October 31, 2007 and included the distribution of a discussion paper with a series of questions for stakeholder input. Once the results of the first phase of consultation are reviewed, a discussion paper that includes policy options and draft policy will be circulated to stakeholders for their feedback.

3. Medical Assistance, Re-write of Chapter 10 of the *RS&CM* – 2007/2008

This project involves a review of the 87 policies contained in Chapter 10. The re-write of the Chapter 10 policies consists of putting the policies into the new 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 – Review of the current policy to ensure that it reflects the latest medical and scientific information.
- The Provision of Hearing Aids – Reviewing current policy that provides that “the Board will provide such hearing aids as is reasonable and necessary to achieve optimum satisfaction for the worker”.
- Reviewing of discretionary allowances and benefits provided to injured workers, such as:
 - (i) Those provided to seriously injured workers;
 - (ii) Those regarding travel expenses and subsistence, related to workers’ receipt of health care; and;

(iii) Those related to childcare and homemaker services.

Considerable work has been completed on this project and it is anticipated that draft proposed policies will be released for stakeholder consultation in mid-2008.

4. Chronic Pain – Policy Items #22.35 and #39.02 of the RS&CM – 2007/2008

The policies with respect to chronic pain have been in effect since January 1, 2003. A review of these policies is proposed in order to evaluate their effectiveness and to improve consistency in the adjudication and management of chronic pain.

Work has commenced on this project and it is anticipated that the Policy and Research Division (“PRD”) will be seeking approval from the Board of Directors (“BOD”) to release a discussion paper for external consultation by the first quarter of 2008.

5. Notification of Decisions – 2007/2008

Policy regarding when a WorkSafeBC officer is required to provide written notification of a decision is set out in policy item #99.20 of the *RS&CM*. Written notification is currently provided where a decision is adverse to the worker or an employer has protested a decision to allow a claim. Where a claim is allowed and there is no protest from the employer, current policy provides that no written decision is required.

An issue is whether a decision has to be documented and/or communicated to the affected parties in some form before it can be considered to have been “made” for the purposes of the reconsideration and appeal provisions of the *Act*. A secondary issue raised with respect to this policy is the distinction between the terms “reject” and “disallow”. The distinction between the two terms has created some confusion among officers and has led to incorrect coding of claims.

It is anticipated that this policy project will be brought before the BOD for approval to release for public consultation in the fourth quarter 2007.

6. Reopenings Over Three Years – Policy item #70.20 of the RS&CM – 2007/2008

Section 32(1) of the *Act* provides that where there is a recurrence of a temporary disability after a lapse of three years following the occurrence of the injury, WorkSafeBC may calculate the compensation as if the recurrence was the happening of the injury.

This project will involve a review of policy item #70.20 to ensure it is consistent with the wording of section 32(1) of the *Act* along with a review of the appropriate date to use to determine the application of the policy. This project will also involve a review of the application of the policy to persons with personal optional protection.

7. On Call Workers – 2007/2008

Current policy does not specifically set out how to establish short-term average earnings for workers who are regularly employed on an on-call basis for more than one employer, such as film workers. In these situations, an issue has arisen regarding whether it is more appropriate to establish average earnings with reference to earnings on the date of injury or whether earnings based on the three month period immediately preceding the worker’s date of injury is more reflective of a worker’s average earnings.

8. Disfigurement Awards – 2007/2008

Section 23(5) of the *Act* provides:

Where the worker has suffered a serious and permanent disfigurement which the board considers is capable of impairing the worker's earning capacity, a lump sum in compensation may be paid, although the amount the worker was earning before the injury has not been diminished.

Policy item #43.20 sets out calculations to be completed in order to assess a worker's level of disability. A review of the calculations is required to ensure that they are accurate.

9. Tinnitus – 2007/2008

Policy item #31.00, *Hearing Loss*, 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.

At issue is a review of the current medical and scientific literature related to this condition to determine whether the current policy is appropriate. The PRD has commissioned a review of the medical and scientific literature on this issue. It is anticipated that the report will be completed by September 2008, at which time the PRD will commence a policy review.

10. Workers Injured While Participating in Return to Work Programs – 2007/2008

At issue are questions regarding workers' compensation coverage for individuals injured while participating in non-WorkSafeBC return to work programs. Current policy does not specifically address whether these individuals would be considered workers and thereby entitled to compensation. An additional issue is how to calculate an individual's average earnings in situations where the injury occurs in the course of a return to work program sponsored by an insurance provider.

11. Overpayments – 2008

Policy Item #48.41 provides guidance as to when an "overpayment" of compensation payments is considered to have occurred. The Worker and Employer Services Division has requested policy clarification with respect to what is meant by administrative errors, decisional errors and "actions outside the statutory authority of the Board."

12. Exceptional Circumstances, Long-Term Average Earnings – 2008

At issue is a review of policy item #67.60, *Exceptional Circumstances*, contained in Chapter 9 of the *RS&CM*, Volume II, to determine whether revisions are required to the criteria for determining whether a worker's circumstances are exceptional. This policy project will be undertaken separately from the comprehensive review of Chapter 9 referred to below.

13. Average Earnings, Chapter 9 of the RS&CM – 2008/2009

This project is part of the overall plan to redevelop the *RS&CM*, Volume II on a chapter by chapter basis. This project will involve putting the policies into the new 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:

- Review of policy item #65.02 to determine if clarification is required with respect to calculation of wages rates for persons with two jobs
- Consideration of whether additional policy guidance is required with respect to calculation of long-term average earnings for workers with multiple employment where more than one of the average earnings exceptions appears to be applicable

Work is scheduled to commence on this project in 2008.

14. Permanent Disability Evaluation Schedule ("PDES") – 2008/2009

At issue is the ongoing review of the percentages listed on the PDES to ensure that the PDES remains current with emerging medical and scientific knowledge. This issue is complex and will require additional research and analysis including significant cross-jurisdictional analysis of schedules, methods of application and scientific bases. Included in this project will be a review of the Additional Factors Guidelines to ensure it is also medically current and clear enough to ensure consistency in application.

15. Enhancement/Devaluation – 2008

This policy project will involve a review of policy items #39.12 and #39.13 to determine whether policy amendments are advisable to ensure consistency of application. In particular, consideration will be given to clarifying the approaches/methods to calculate devaluation and enhancement.

16. Aggravation of a Disease, ASTD Claims – 2008

Policy item #26.55 provides guidance with respect to compensability for a disability resulting from an aggravation of a pre-existing disease by a work activity. A concern has been raised that the policy is unclear as to whether certain diseases should be excluded, such that any worsening of the condition would not be considered compensable or whether there is a requirement for the pre-existing disease to be recognized as an “occupational disease” by the WCB. If it need not be recognized, additional guidance may be required as to when the aggravation is compensable.

17. Compensation on the Death of a Worker, Survivor Benefits – 2008/2009

A series of policies in Chapter 8 of the *RS&CM*, Volume II pertain to calculation and apportionment of compensation payable on the death of a worker. Concerns have been raised that the existing policies have resulted in unclear interpretation and/or application of sections 10 and 17 of the *Act*, including provisions pertaining to payment and apportionment of benefits to children. This policy project will involve a review of the current policies and consideration of options for revisions to the applicable policies to provide additional or clearer guidance.

18. Osteoarthritis of the First Carpo-Metacarpal Joint in Physiotherapists – Policy Item #26.02 of the *RS&CM* – 2007/2008

Policy item #26.02 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.

Policy item #26.02 states that this recognition is limited to factual situations substantially the same as those applied to the worker in *WCR* Decision No. 231, dated February 9, 1977. *WCR* Decision No. 231 is one of three remaining *WCR* Decisions that have yet to be retired from official policy status. The general reference in policy item #26.02 to *WCR* Decision No. 231 is problematic, as accessibility to old *WCR* Decisions is limited. The old *WCR* has not been published in over ten years, nor is it available electronically.

At issue is a review of the scientific and medical literature related to this condition to determine whether the current recognition is current and supportable. This project will also facilitate the retirement of *WCR* Decisions. A medical and scientific literature review was completed in mid-2007 and is currently out for peer review. Any policy development that flows from the report will be done in 2008.

19. Compensation for Bronchogenic Carcinoma (Lung Cancer) in Asbestos Exposed Workers – 2008/2009

Schedule B item #4(a) provides a presumption of work causation in favour of a worker who has developed a primary site lung cancer which is associated with either asbestosis or bilateral diffuse pleural thickening, or fibrosis measuring a specified size.

At issue is whether these descriptions are current and supportable based on the most current medical science. Another issue is whether WorkSafeBC should consider the recognition of primary site lung cancers in workers who have had significant exposures to asbestos in British Columbia, but who do not display radiographic evidence of benign asbestos-related pleural or lung disease. This second issue has arisen out of recent studies and reports including the “Report by the Industrial Injuries Advisory Council” (United Kingdom) dated July 2005.

In October 2006, the Research Secretariat released a request for proposals for a systematic review of available literature on Bronchogenic Carcinoma (Lung Cancer) in Asbestos Exposed Workers. The results of this review will form the basis for a comprehensive analysis and development of WorkSafeBC policy options that could be applied in the adjudication of lung cancer claims.

The peer reviewed report is expected to be received in the 3rd quarter of 2008.

20. Whole Body Vibration – Policy Item #26.50 of the *RS&CM* – 2009

Worker and Employer Services Division has requested policy direction regarding the possible relationship between occupational exposure to Whole Body Vibration (“WBV”) and back injuries/disorders. There are conflicting views in the medical literature as to whether there is a causal link between WBV and certain back disorders.

Policy item #26.50 provides that disability can occur due to the natural aging process. Where degeneration is a kind that affects the population at large due to multi-factoral causes, it is difficult for WorkSafeBC to measure or determine whether the occupation had any significant effect in advancing the pace of the degeneration compared with other occupations.

For a disability to be compensable, evidence must establish that the work activity brought about a disability that would probably not otherwise have occurred, or that the work activity significantly advanced the development of a disability that probably would not otherwise have occurred until later.

This project will involve a review of the scientific and medical literature on back disorders in workers exposed to whole body vibration. The results of this review will form the basis for a comprehensive analysis and development of policy options for stakeholder consultation.

21. Non-Reporting/Mis-Reporting of Claims – Ongoing Project

The project will consider possible policy approaches to addressing non-reporting and mis-reporting of claims by employers and workers.

TAB B

Policy and Research Division

2008 – 2010 Policy Priorities

Assessments Workplan

1. Experience Rating and Fatal Claims – 2007/2008

This project will consider the current way in which fatal claims' costs are treated within the experience rating system, and whether there are alternate options that would provide incentives for employers to prevent such claims either within the experience rating system or outside of it.

2. Effective Date of Account Cancellation – 2007/2008

The general rule for account cancellation is that an account should be cancelled when the firm ceases to be an employer or ceases to employ workers. The effective date of cancellation is the date the employer ceased operating the business.

It is not unusual for an employer to cease operating the business or cease to be an employer without informing WorkSafeBC. In these situations, there is no one date that is readily identifiable as the date operations ceased.

A review of item AP1-38-1 is required to clarify the effective date for account cancellations.

3. Multiple Classification Policy Review – Item AP1-37-3 – 2008

Usually when an employer registers with WorkSafeBC, the employer is assigned to a single classification unit based on the industrial activity of the business. Where an employer is involved in more than one industrial activity, WorkSafeBC considers the criteria set out in the multiple classification policy to determine whether payroll for the additional industrial activity is assigned to the original classification unit or whether a separate classification unit is appropriate.

At issue is a review of the multiple classification policy, as it does not provide any guidance as to treatment of unassigned payroll when the firm's operations do not meet the criteria for multiple classifications. Also at issue is a review of the list of special hazard operations contained in the policy which may attract higher assessment rates. In the case of a special hazard operation, WorkSafeBC classifies and treats special hazard operations as separate industrial activities, regardless of whether they meet the multiple classification criteria.

4. Combining Experience Rating of Affiliated Firms – 2008

The Assessment Department has raised concerns that there is no policy specific to affiliated firms acting in concert in business. The project proposal contemplates a review of the current policy to determine whether it would be advisable to expand the experience rating system to include affiliated firms, such that they share a common experience rating.

5. Inclusion of Shareholder Dividends in Assessable Payroll – 2008

Assessment policy Item AP1-38-2 provides that dividends are not considered part of payroll unless paid as remuneration for activity in 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.

6. Section 4 of the Act and the Fishing Industry Regulations – 2008/2009

The Assessment Department is undertaking a review of the fishing industry both in terms of status determination and assessments obligations. It is anticipated that following this review, a review of the *Fishing Industry Regulations* may be required in order to clarify assessment obligations.

7. Employer Compliance with Reporting & Remitting Requirements – Ongoing

A number of concerns have been raised regarding employer non-compliance with the reporting and remittance requirements of the *Act*. The Priorities and Governance Committee of the Board of Directors has directed the PRD and the Finance Division to evaluate the existing law and policy and determine whether there are items that are not being applied, or policies that can be developed, to assist in addressing this issue.