

#113.10 Investigation Costs

Costs may be incurred prior to making a decision on a claim in investigating the validity of the claim or in paying benefits pursuant to an interim adjudication. Where the decision is ultimately in the worker's favour, these costs are charged to the employer's class in the normal way. Where the decision is unfavourable to the worker, these costs will not be charged to the employer's class, but will be spread across all classes. They are treated in effect as an administration cost.

The same rule also applies where:

1. A claim is accepted in error or benefits paid in error;
2. A decision is reversed by the Review Board **Division, Workers' Compensation Appeal Tribunal**, ~~Appeal Division (including a referral of a Review Board finding under section 96(4))~~ or Medical Review Panel;
3. There is a ~~re-adjudication~~ **reconsideration** by a Board officer, **Manager or Director**.

The employer's class is relieved where the original decision was favourable to the worker and benefits were paid pursuant to it. Conversely, the class will be charged with costs already incurred where the previous decision was unfavourable to the worker.

For another situation where the class of employers is relieved of costs as investigation costs, see the policy on suffering an occupational disease at policy item #26.10.

EFFECTIVE DATE: **March 3, 2003 (as to reference to the Review Division, the Worker's Compensation Appeal Tribunal and to reconsideration by a Manager or Director)**

APPLICATION: **Not applicable.**

#113.20 Occupational Diseases

The long period of exposure required for the development of some occupational diseases raises special problems in connection with the charging of claim costs. The position is the same as for injuries when the exposure has been with one employer only, but there are commonly situations where the relevant exposure has occurred during employments with two or more employers. The general rules followed in these cases are as follows:

1. Until September 27, 2002, all wage-loss and health care benefits are charged to the class of the employer at the time the claim was submitted for the first 13 weeks. Effective September 28, 2002, all wage loss and health care benefits are charged to the class of the employer at the time the claim was submitted for the first 10 weeks.
2. Until September 27, 2002, an assessment of the worker's work exposure history is then made and an apportionment of the costs incurred beyond 13 weeks, including the amount of any permanent disability award reserve, is carried out. The class of the employer at the time the claim is submitted will be charged with the portion of costs incurred after the 13 weeks, which is attributable to the worker's employment with the employer, provided that that portion exceeds 20% of the total amount. The balance will not be charged to any particular class but will be spread across all classes of industry.

Effective September 28, 2002, an assessment of the worker's work exposure history is then made and an apportionment of the costs incurred beyond 10 weeks, including the amount of any permanent disability award reserve, is carried out. The class of the employer at the time the claim is submitted will be charged with the portion of costs incurred after the 10 weeks, which is attributable to the worker's employment with the employer, provided that that portion exceeds 20% of the total amount. The balance will not be charged to any particular class but will be spread across all classes of industry.

3. Until September 27, 2002, where any portion attributable to any employer at the time the claim is submitted is less than 20%, the costs incurred following 13 weeks are not charged to any employer's class, but will be spread across all classes of industry. To ensure procedural fairness in the event of a ~~dispute~~ **request for review** or an appeal in such situations, decision letters and **review and** appeal information is sent to the employers' association that best represents the appropriate class and subclass of industry.

Effective September 28, 2002, where any portion attributable to any employer at the time the claim is submitted is less than 20%, the costs incurred following 10 weeks are not charged to any employer's class, but will be spread across all classes of industry. To ensure procedural fairness in the event of a ~~dispute~~ **request for review** or an appeal in such situations, decision letters and **review and** appeal information is sent to the employers' association that best represents the appropriate class and subclass of industry.

4. The apportionment is made by comparing the number of years of exposure with the employer at the time the claim is submitted with the worker's total exposure. No account is taken of varying degrees of exposure which may have occurred at different times.

EFFECTIVE DATE: **March 3, 2003 (as to references to review)**
APPLICATION: **Not applicable.**

#114.43 *Procedure Governing Applications under Section 39(1)(e)*

The Board officer in either the Compensation Services or the Disability Awards Departments has the responsibility to initiate consideration with or without a specific request or application by an employer, and to decide upon the applicability of the subsection on a claim. If a decision is made to apply this subsection, the employer will be notified. If relief has been requested, the employer will be advised if it has been denied. If there is a disagreement with such a decision, the employer may ~~appeal to the Appeal Division~~ **request a review by the Review Division.**

EFFECTIVE DATE: **March 3, 2003 (as to reference to review)**
APPLICATION: **Not applicable.**

#115.11 *Procedure for Applying Section 47(2)*

Following the acceptance of a claim, the Board officer will write to the employer and advise of the potential for liability under section 47(2). The employer will be invited to make comments as to why he or she should not be charged with the costs of the claim. A decision on the employer's liability, and whether or not to provide relief from any liability, will then be made by a committee comprised of the Board's General Counsel or delegate and the Director or Manager, Assessment Policy, of the Assessment Department. ~~An appeal lies to the Appeal Division under section 96(6.1) of the Act as designated by the Governors.~~ **The employer may request a review by the Review Division of the decision.**

~~Neither the committee nor the Appeal Division,~~ when reviewing a claim for the purpose of section 47(2), will **not** consider arguments made by the employer which question the validity of the Board officer's decision to accept the claim. If the employer wishes to challenge that decision, he or she must exercise the right **to request a review by the Review Division** of appeal with respect to the acceptance of the claim ~~to the review board or Medical Review Panel.~~

EFFECTIVE DATE: March 3, 2003 (as to references to review)
APPLICATION: Not applicable.

#115.20 Significance of Employers Conduct in Producing Injury

Generally speaking, whether or not an employer was at fault is not a material factor when determining how the costs of a claim are to be charged. The rules set out in policy item #113.00 apply both when the employer's negligence or misconduct caused an injury and when the injury was due to circumstances beyond the employer's control. However, an exception is provided by section 73(2), which states as follows:

“Where an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and the board considers that this was due substantially to the gross negligence of an employer or to the failure of an employer to adopt reasonable means for the prevention of injuries or occupational diseases or to comply with the orders or directions of the board, or with the regulations made under this Part, the board may levy and collect from that employer as a contribution to the accident fund the amount of the compensation payable in respect of the injury, death or occupational disease, not exceeding in any case \$11,160.08, and the payment of that sum may be enforced in the same manner as the payment of an assessment may be enforced.”

The Board has a discretion whether to charge an employer with the costs of a claim under this provision, but once it has decided to exercise that discretion, it has no choice but to charge the whole of the costs of the claim up to the maximum amount. It has no authority to charge a lesser amount or to relieve the employer in part.

The maximum amount is subject to Consumer Price Index adjustments, the figure set out above being applicable in the period January 1 to June 30, 1975. The amounts applicable in other periods are set out below:

July 1, 1995–December 31, 1995	\$36,188.70
January 1, 1996–June 30, 1996	36,297.21
July 1, 1996–December 31, 1996	36,704.13
January 1, 1997– June 30, 1997	36,948.28

If required, earlier figures may be obtained by contacting the Board.

The maximum in force at the date of the accident is the one that applies in any case.

As an alternative to the charge under section 73(2), penalty assessment may be levied under sections ~~70 and~~ 73(1). These are general provisions allowing the

Board to penalize employers for infractions of Occupational Safety and Health or First Aid Regulations or for other unsafe practices which apply whether or not an injury has occurred. Levies made under any of these sections are additional to the employer's ordinary liability to pay assessments and are credited to the Board's general funds rather than to the employer's class or subclass.

~~The Vice President and departmental directors in the Board's Occupational Safety and Health Division have authority to levy charges or penalties under the provisions discussed above. Before making a decision, the person in question will notify the employer of the proposed penalty and the grounds for it and provide a chance to respond. If it is decided to make the levy, the employer may appeal to the Appeal Division. The notice of appeal must be in writing and meet the grounds of appeal set out by section 96(6) of the Act. The appeal does not operate as a stay of the decision appealed against. (5)~~

EFFECTIVE DATE: **March 3, 2003 (as to deletion of reference to process for levies and penalties)**

APPLICATION: **Not applicable.**

#115.30 Experience Rating

Section 42 provides as follows.

“The ~~b~~Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be considered just; and where the board thinks a particular industry or plant is shown to be so circumstanced or conducted that the hazard or cost of compensation differs from the average of the class or subclass to which the industry or plant is assigned, the ~~b~~Board must confer or impose on that industry or plant a special rate, differential or assessment to correspond with the relative hazard or cost of compensation of that industry or plant, and for that purpose may also adopt a system of experience rating.”

The Board has adopted an experience rating plan (ER) under this section. The plan compares the ratio between an employer’s claim costs and assessable payroll with the ratio between the total claim costs and assessable payroll of the employer’s class. Subject to maximums, merits are assigned for favourable ratios and demerits for unfavourable ratios. The merit or demerit takes the form of a percentage increase or decrease in the usual assessment rate. Details of ER can be found in the *Assessment Policy Manual* (Policy No. 30:50:41).

As a general rule, all acceptable claims coded to a particular employer are counted for experience rating purposes. It makes no difference whether the injury was or was not the employer’s fault. There are, however, some types of claim costs which are excluded from consideration. These are:

1. Costs recovered by way of a third party action (see policy item #111.25).
2. Investigation and/or compensation costs paid out prior to the disallow of a claim or reversal of a decision by a Board officer, ~~or the Review Board, Appeal Division~~ **the Review Division, the Workers’ Compensation Appeal Tribunal** or Medical Review Panel (see policy item #113.10).
3. Costs transferred to the class of another employer under section 10(8) (see policy item #114.10).
4. Costs assigned to the funds created by section 39(1)(d) and (e) (see policy item #114.30 and policy item #114.40).

5. Occupational disease claims which on average require exposure for, or involve latency periods of, two or more years before manifesting into a disability. The diseases presently excluded on this ground are:

Non-traumatic hearing loss, excluding hearing loss resulting from other injuries

Silicosis

Asbestosis

Other diagnosed pneumoconioses, for example, anthracosis and siderosis

Pneumoconioses not specifically diagnosed

Heart disease

Cancer

Hand-arm vibration syndrome, vinyl chloride induced Raynaud's phenomenon, disablement from vibrations

6. Until September 27, 2002, costs after 13 weeks where section 5(3) applies (see policy item #16.60). Effective September 28, 2002, costs after 10 weeks where section 5(3) applies (see policy item #16.60).
7. Costs from accidents substantially due to personal illness, e.g. epilepsy (see policy item #15.30).
8. Injuries during a retraining program sponsored by the Vocational Rehabilitation Department (see policy item #88.43, policy item #88.54).
9. The situations covered by policy item #115.31 and policy item #115.32 below.

The decision whether a claim falls within one of the exclusions will usually be made by an officer in the Compensation Services Division. In the case of third party actions (Exclusion 1), a Board solicitor makes the decision.

EFFECTIVE DATE: March 3, 2003 (as to references to the Review Division and the Workers' Compensation Appeal Tribunal)

APPLICATION: Not applicable.

#115.31 *Injuries or Aggravations Occurring in the Course of Treatment or Rehabilitation*

Where there is an aggravation of an injury or a subsequent injury arising out of treatment for the primary injury, and the aggravation or subsequent injury is acceptable on the claim, compensation costs resulting from this secondary problem will be charged in the usual way. Exclusion from the employer's experience rating will only occur where:

1. the original injury was one that would not have been expected to result in death or permanent disability, and
2. the aggravation or subsequent injury occurred beyond the operations of the employer, and if the worker required transportation to a hospital or other place of medical treatment, after the employer had fulfilled the obligations under section 21(3) (see policy item #82.40), and
3. the aggravation or subsequent injury resulted in permanent disability or death.

The application of relief is limited to the permanent disability award reserve established for a fatality or permanent disability.

Consideration is automatically given by the Board officer to excluding the costs from experience rating in these cases. No request from the employer is required. The employer will be advised of the decision in writing **and of the relevant review and/or appeal rights**. ~~The decision is not appealable to the Review Board, but may be appealed to the Appeal Division.~~

EFFECTIVE DATE: **March 3, 2003 (as to deletion of references to the Review Board and the Appeal Division)**
APPLICATION: **Not applicable.**

NOTES

- (1) See policy item #31.20
- (2) See Policy No. 20:30:40 *Assessment Policy Manual*
- (3) See policy item #112.30
- (4) See policy item #82.40
- ~~(5) See policy item #82.40~~ **Deleted**
- ~~(6) S.96(6) and 96(7)~~ **Deleted**