

2003/09/17-02

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE BOARD OF DIRECTORS

RE: PERSONAL OPTIONAL PROTECTION POLICY

WHEREAS:

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

Section 2(2) of the *Act* provides that the Workers' Compensation Board ("WCB") may direct that Part 1 of the *Act* apply to an independent operator or an employer on the terms specified in the WCB's direction as though he or she was a worker;

AND WHEREAS:

Pursuant to section 39 of the *Act*, assessments may be made in the manner and form and by the procedure the WCB considers adequate and expedient and may be collected in half yearly, quarterly or monthly installments, or otherwise;

AND WHEREAS:

The WCB provides section 2 optional coverage to independent operators and employers through its Personal Optional Protection program, the terms of which are set out in the *Assessment Manual*;

AND WHEREAS:

By Resolution #990413-02, the former Panel of Administrators approved in principle policy changes that would require optional coverage registrants to prepay their assessments, subject to the Finance Division of the WCB developing a transition and implementation plan, and working with the Policy and Regulation Development Bureau to bring forward any policy issues identified in this process;

AND WHEREAS:

By Resolution #2003/02/11-07, the Board of Directors approved funding in an amount not to exceed \$2.25 million to analyze, design, develop and implement the optional coverage program changes;

AND WHEREAS:

The Finance Division has developed the new optional coverage program, and the Policy and Regulation Development Bureau has consulted with employer and worker stakeholders on the proposed policy changes required to implement the new program.

THE BOARD OF DIRECTORS RESOLVES THAT:

1. To implement the new optional coverage program, the changes to paragraphs (b) and (d) of the policy section in item AP1-2-3, Personal Optional Protection, contained in the *Assessment Manual*, attached as Appendix A, are approved. These changes are effective January 1, 2004 and apply to all new Personal Optional Protection coverage registrants, all registrants who reapply for coverage, and all existing accounts that are not in good standing, on or after January 1, 2004.
2. To implement the changes to policy to remove the ability to apply multiple classification to Personal Optional Protection accounts, and to clarify the cancellation of coverage, the following are approved:
 - (a) the changes to paragraphs (e) and (f) of the policy section in item AP1-2-3, Personal Optional Protection, contained in the *Assessment Manual*, attached as Appendix A; and

- (b) the change to the policy section in item AP1-37-2, Classification – Multiple, of the *Assessment Manual*, attached as Appendix B.

These changes are effective January 1, 2004 and apply to all existing Personal Optional Protection accounts, all new Personal Optional Protection coverage registrants, and all registrants who reapply for coverage, on or after January 1, 2004.

3. To implement the change to the Personal Optional Protection minimum coverage amount, the change to Appendix “A” of the *Assessment Manual*, attached as Appendix C, is approved. This change is effective January 1, 2005 and applies to all Personal Optional Protection accounts, all new Personal Optional Protection coverage registrants, and all registrants who reapply for coverage.
4. The former Panel of Administrators Resolution #990413-02 is amended in accordance with the above to give full effect to this Resolution.

DATED at Kelowna, British Columbia, September 17, 2003.

By the Workers’ Compensation Board

**DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTORS**

APPENDIX “A”

RE: Personal Optional Protection

ITEM: AP1-2-3

BACKGROUND

1. Explanatory Notes

Employers and unincorporated independent operators without workers are not automatically covered for compensation purposes. They may purchase optional coverage called Personal Optional Protection.

2. The Act

Section 2(2):

The Board may direct that this Part applies on the terms specified in the Board's direction

- (a) to an independent operator who is neither an employer nor a worker as though the independent operator was a worker; or
- (b) to an employer as though the employer was a worker.

Section 1:

“member of family” means wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother and half sister and a person who stood in loco parentis to the worker or to whom the worker stood in loco parentis, whether related to the worker by consanguinity or not;

POLICY

(a) Who can apply?

A proprietor or partners of a business that is not a limited company may apply for Personal Optional Protection.

Where a proprietor or partners who have Personal Optional Protection incorporate their business and are paid by the company, they become workers and Personal Optional Protection is no longer allowed.

Non-BC residents conducting business activities in British Columbia may apply for Personal Optional Protection subject to the same terms and conditions as a BC resident. Section 8 of the *Act* governs their coverage outside BC.

(b) Application for coverage

Only the individual seeking coverage, a member of the individual's immediate family, the individual's accountant or lawyer, or in the case of a partnership, a partner may make the application.

An applicant must complete and submit an application for optional coverage on the form provided by the Board. An incomplete or illegible application will not be accepted.

As a condition of coverage, and as a condition of maintaining or increasing coverage, ~~The Board may refuse coverage or an increase in coverage if the an~~ applicant is required to:

- **comply with the terms and conditions of coverage established by the Board and provided with the application for coverage;**
- ~~does not~~ provide all the required information **and promptly advise the Board of any change that may affect coverage;**
- **comply with the obligations of a worker applying for and receiving benefits under Part 1 of the Act; and**
- ~~purports to alter the standard terms of coverage,~~ **ensure that** ~~or an existing or previous account is not~~ in good standing. An account is not in good standing if:
 - the account has a balance that has been outstanding over 30 days and is equal to or over the minimum determined by the Board;
 - a required remittance has not been received and the firm has been penalized, regardless of whether or not payment of the penalty has been received;
 - an amount is outstanding under a legal action; or
 - the account is being revived and a previous balance was written off.

~~If an existing coverage is not in good standing, but no decision has been made to cancel the account, the person covered may request that coverage be decreased or transferred to another industry classification.~~

Applications for Personal Optional Protection for individuals who have previously had an outstanding balance written off through a discharged bankruptcy, ~~will not be automatically refused, but may~~ **will** be subject to terms and conditions imposed by the Board, ~~such as~~ **including** the prepayment of assessments.

If an application for Personal Optional Protection is not accepted, the applicant is advised that coverage cannot be extended until the account is in good standing or until a correctly completed **and legible** application has been received.

If an application for Personal Optional Protection is accepted, the applicant is notified ~~in writing~~ and advised of the terms of coverage. The acceptance date is **either** the date the **complete and legible** application is received ~~in a~~ **by the** Board office **or the date indicated as the commencement date on the application for coverage if that date is later than the date the complete and legible application is received.**

(c) Earnings covered

Coverage for a proprietor or partner should not be more than the individual's actual earnings.

The amount of monthly coverage may not be less than the minimum designated by the Board. If no specific amount is requested, coverage may be set at the minimum.

An individual may apply for coverage between the minimum and the average established by the Board without providing verification of earnings to the Board. The average roughly corresponds to the average wages and salaries of all workers in all industries in BC.

An individual may apply for coverage over the average and up to the maximum but proof of earnings will be required before the application is accepted. The maximum corresponds to the annually adjusted maximum wage rate for compensation purposes. If proof of earnings is not submitted or is not acceptable, the coverage will be reduced to the average and the individual advised accordingly.

If the applicant is receiving a monthly WCB ~~pension~~ **award**, the maximum amount of Personal Optional Protection that he or she can apply for is a monthly amount that, when added to the amount of the monthly award, equals the current maximum level of benefits payable under the Act.

(d) Payment of initial assessment premium

Effective January 1, 2004, all new registrants who request Personal Optional Protection coverage, all cancelled coverage holders who reapply to renew coverage, and all existing coverage holders whose accounts are not in good standing, are required to submit the assessment payment within 20 days of the acceptance date of coverage.

Where the initial assessment payment for coverage is not received within 20 days of the acceptance date, coverage is automatically cancelled.

Subsequent assessment payment periods are determined based on the annual assessment amount.

(de) Applicant conducts more than one type of activity

If an independent operator who does not have Personal Optional Protection is hired by an employer, there is no coverage for injuries occurring at work even if the injury occurs when the independent operator is doing something outside his or her normal range of duties at the employer's request.

If an individual is a proprietor of a firm and also an active principal of an incorporated company, that individual has compulsory coverage for activities in the business of the incorporated company, but must obtain Personal Optional Protection to obtain coverage for activities in the business of the proprietorship.

~~If any of the operations of the individual with Personal Optional Protection meet the requirements for multiple classification, the monthly coverage is prorated over the separate classifications in the ratio of the time the individual spends working in each. The Board will normally accept the individual's evaluation of how much time he or she spends in each classification, and change the allocation effective when it receives a written notice from the person of a change. However, the Board may change the allocation at any time to match the correct time the individual spends in each industry.~~

Coverage will be provided based on the primary activity in the business for which optional coverage is being purchased. Policy item AP1-37-2 (Classification – Multiple) does not apply to Personal Optional Protection. If an individual's operations fall under more than one classification, the Board will make a determination regarding the primary classification.

(ef) Cancellation of coverage

Unless Personal Optional Protection has been applied for and accepted for a specific period of time, it remains continuously in effect until a request for cancellation is received from the individual covered and **receipt is acknowledged by the Board**, or

cancellation is made by the Board. Only the individual covered, a member of the individual's immediate family, the individual's accountant or lawyer, or in the case of a partnership, a partner is authorized to cancel the coverage.

Cancellation is subject to a one-month minimum charge per application. Where the minimum charge is necessary, the cancellation date is one calendar month after the date coverage took effect.

Personal Optional Protection may be cancelled by the Board **without notice to the applicant** when: **the individual receiving coverage fails to:**

- ~~the employer fails to pay the assessment and the payment is in excess of two months~~ **10 days** overdue;
- **permit Board officers to inspect a work site or premises or records;**
- **comply with an order or direction issued by the Board under the Act; or,**
- ~~the employer with optional coverage fails to provide the required payroll information on which an assessment is calculated, necessitating a payroll estimate under section 38 of the Act; or.~~

Personal Optional Protection will also be cancelled by the Board when:

- (a) the applicant's status for which coverage was requested changes and therefore, the individual is no longer eligible for coverage; or**
- (b) mail addressed to the employer or person with Personal Optional Protection is returned and an alternative address cannot be obtained.**

When Personal Optional Protection is cancelled by the Board, the individual concerned is notified in writing if practicable. "If practicable" means that the Board will take all reasonable steps to locate the individual in order to communicate the impending cancellation to him or her.

The effective date of cancellation is generally when the telephone or written request for cancellation is received in a Board office. A cancellation date will not generally be backdated. Backdating may be allowed if there is reason to believe that the Board was no longer liable for work-related injuries because the individual covered had become physically incapacitated, the assets used to carry on the business were no longer available or for certain legal reasons. Some circumstances under which backdating may be allowed are:

- *Death* – Cancellation is automatically backdated to the date of death.

- *Work Caused Injury* – Cancellation may be backdated to the date business ceased, not necessarily the date of injury.
- *Sickness or Non-Work Caused Injury* – Cancellation may be backdated to the date the business ceased operating as a result of the sickness or injury, if it was a serious physical or mental disorder lasting 30 days or longer, and the owner supplies a doctor's confirmation of the sickness or injury in writing.
- *Jail, Institutionalization, Deportation, Military Service* – Cancellation may be backdated to the date of occurrence.
- *Sale of Business* – Cancellation may be backdated to the date of the bill of sale.
- *Sale of Equipment* – Cancellation may be backdated to the date the business ceased operating or the date the equipment is sold, whichever is later.
- *Change of Legal Status from Proprietorship, Partnership or Independent Operator to Incorporated Company* – Cancellation will be backdated to the date the firm began operating as an incorporated company.
- *Business Interruption Due to Fire, Flood or Other Disaster* – Cancellation may be backdated to the date the business ceased operating.
- *Seizure of Assets* – Cancellation may be backdated to the date the business ceased operating or the date the equipment was seized, whichever is later.
- *Bankruptcy* – Cancellation may be backdated to the date the firm was placed in bankruptcy.
- *Ceasing of Operations* – Where the request for cancellation is received on or before January 31st and the firm states that their operations ceased in the previous year, cancellation may be made effective December 31st of the previous year.

Requests for backdating must be made in writing. A written decision will be provided to the applicant.

PRACTICE

The minimum outstanding balance for the purpose of part (b) of the policy and the minimum amount for which Personal Optional Protection may be obtained under part (c) of the policy are set out in Appendix "A" to this *Manual*.

For more information on applying for Personal Optional Protection, including the application form, or any other relevant PRACTICE information, readers should consult

the WCB website at

http://www.worksafebc.com/for_employers/registering_for_coverage/personal_optional_protection/default.asp

EFFECTIVE DATE:	January 1, 2003 4
AUTHORITY:	s. 2(2), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Requesting a Variance to a General Exemption (AP1-2-2), Extending Application of the Act (1-3-1), Classifications—Multiple (AP1-37-2) , Payroll – Principles for Determining (AP1-38-3) with respect to management/administration payroll and Payroll Estimates (AP1-38-5) in the <i>Assessment Manual</i> and Admission of Workers, Employers, and Independent Operators (policy item #8.00), Vacations (policy item #21.20), Acts for Personal Benefit of Principals of Business (policy item #21.40), Amount of Payment (policy item #35.20), Commencement of Permanent Total Disability Payments (policy item #37.10), Overpayments/Money Owed to the Board (policy item #48.40), Unpaid Assessments (policy item #48.48), Worker with Two Jobs (policy item #65.02), Personal Optional Protection (policy item #67.20), Volunteer Firefighter and Ambulance Drivers and Attendants (policy item #67.32), Payments to Substitutes (policy item #68.70), Deduction of Permanent Disability Periodic Payments from Wage Loss (policy item #69.10), Form Fees (policy item #78.33), Application for Compensation (policy item #93.20), Adjudication Without an Application (policy item #93.23), Penalties for Failure to Report (policy item #94.15), Notification of Decisions (policy item #99.20), Notification of Right of Appeal (policy item #99.21), Meaning of “Worker” and “Employer” Under Section 10 (policy item #111.30) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces in part Policies No. 20:50:10 to 20:50:60 of the <i>Assessment Policy Manual</i> and Decision No. 116 of volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> . 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.
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. The changes to paragraphs (b) and (d) of the policy section of this item apply to all new Personal Optional Protection coverage registrants, all registrants who reapply for coverage, and all existing accounts that are not in good standing, on or after January 1, 2004. The changes to paragraphs (e) and (f) of the policy section of this item apply to all existing Personal Optional Protection accounts, all new Personal Optional Protection coverage registrants, and all registrants who reapply for coverage, on or after January 1, 2004.

APPENDIX “B”

RE: Classification – Multiple

ITEM: AP1-37-2

BACKGROUND

1. Explanatory Notes

Usually, when an employer registers with the Board, the employer is assigned to a single classification unit based on the industrial activity of the employer’s business. On occasion the employer’s business may involve more than one industrial activity, or the employer may, after the initial registration, establish a new business involving another industrial activity. In either of these situations, the Board must determine whether the additional industrial activity is assigned to the original classification unit, or whether a separate classification unit is justified. The multiple classification policy assists in determining the circumstances in which the employer must be assigned to more than one classification unit.

2. The Act

Section 37:

- (2) The Board may do one or more of the following:
- (a) create new classes in addition to those referred to in subsection (1);
 - (b) divide classes into subclasses and divide subclasses into further subclasses;
 - (c) consolidate or rearrange any existing classes and subclasses;
 - (d) assign an employer, independent operator or industry to one or more classes or subclasses;
 - (e) withdraw from a class
 - (i) an employer, independent operator or industry;
 - (ii) a part of the class; or
 - (iii) a subclass or a part of a subclass;

and transfer it to another class or subclass, or form it into a separate class or subclass;

- (f) withdraw from a subclass
 - (i) an employer, independent operator or industry,
 - (ii) a part of the subclass, or
 - (iii) another subclass or part of another subclass,and transfer it to another class or subclass or form it into a separate class or subclass, and
- (3) If the Board exercises authority under subsection (2), it may make the adjustment and disposition of the funds, reserves and accounts of the classes and subclasses affected that the Board considers just and expedient.

Section 42:

The 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

POLICY

An employer is assigned to a single classification unit based on the industry in which the employer is operating unless this policy applies.

(a) Policy intent

The intent of the multiple classification policy is to support the purpose of the employer classification system, which is to classify employers into groups that can be used to set fair and equitable assessment rates. Towards this purpose, the multiple classification policy is designed to ensure that employers who operate several lines of business in different industries:

- are of sufficient size to be a significant competitor with other employers carrying on those lines of business;
- are assigned to the classification units representing those industries; and
- pay the same base assessment rates as their competitors.

(b) Responsibility for obtaining multiple classification

It is the responsibility of each employer to apply to the Board for a multiple classification, or to remove a multiple classification designation, when the employer's business operation changes. The Board may, however, based on available information, assign more than one classification unit to an employer.

(c) Multiple classification criteria

In order for an employer to qualify for more than one classification unit, the industrial activities identified for separate classification must be distinct and independent operations. To demonstrate this requirement, the following criteria must be satisfied:

- (1) Each industrial activity must be separate so that it does not contribute to the risk of injury or occupational disease in another industrial activity of the employer. The Board may consider this requirement to be met for the purpose of this policy if the industrial activity under consideration for a separate classification is:
 - (i) performed by specific personnel as their sole employment function at any one time, and no personnel are engaged in more than one industrial activity simultaneously; or
 - (ii) conducted at a separate location from other industrial activities of the employer; or
 - (iii) conducted at the same location as other industrial activities of the employer, but at a different time.
- (2) The industrial activity in question must not simply be to assist, support or service the employer's main industry. This means that multiple classification will not normally be granted for such activities as clerical, accounting or marketing. (However, there may be circumstances when such activities do not simply exist to assist, support or service the main industry.)
- (3) At least 50 percent of the product or service from the industrial activity, measured by the volume of the annual output or the revenue from the annual output, must be sold to unaffiliated customers or clients who operate at arm's length.
- (4) Each industrial activity must meet at least one of the following conditions:
 - (i) generate an annual assessable payroll of at least four times the maximum wage rate; or

- (ii) generate an annual assessable payroll that is at least 25 percent of the gross annual assessable payroll of all the employer's industrial activities; or
- (iii) generate an annual revenue that is at least 25 percent of the gross annual revenue of all the employer's industrial activities.

(d) Special hazard operations

The following activities are designated as special hazard operations, and may attract higher assessment rates:

- Bridge, Overpass, or Viaduct Construction or Repair
- House Raising or Structural Moving of Buildings or Heavy Equipment
- Pier, Wharf, or Dry Dock Construction or Repair
- Piledriving
- Steel Frame Erection or Structural Repair of Steel Frames
- Steel Frame Painting, Bridge Painting, or Bridge Cleaning
- Structural Concrete Reservoir, Flume, Dam, Dyke, Causeway or Jetty Construction or Repair
- Tunneling

The preceding multiple classification criteria do not apply to special hazard operations. Instead, the following policies apply:

- the Board classifies and treats special hazard operations as separate industrial activities, although they may be ancillary to an employer's other industrial activities; and
- the Board assesses the payroll of special hazard operations, and activities that support them, at the rates specified for the classification units in the *Classification and Rate List*.

(e) Personal optional protection

The multiple classification criteria outlined above **do not** apply to individuals with Personal Optional Protection.

(fe) Effective dates

When adding a classification, the effective date is the date when the criteria for addition are first met, but not before January 1st of the year previous to the current year. The effective date may be prior to this date if the Board feels that the delay in submitting information was deliberate on the part of the employer. ~~However, where the classification exists for Personal Optional Protection coverage only, the effective date is the date the coverage is accepted by the Board.~~

The effective date for the deletion of a classification is the date the assessment liability for that classification ceased (i.e. last day when the criteria for having the classification were met and/or last day Personal Optional Protection was in effect).

An employer must be advised when a classification has been added to or deleted from the employer's account.

PRACTICE

Practice Directive "Multiple Classifications" - AP1-37-2 provides more information regarding the criteria by which an employer may be assigned to more than one classification. For this Practice Directive and any other relevant PRACTICE information, readers should consult the WCB website at http://www.worksafebc.com/law_and_policy/practice_directives/assessment_and_revenue_services/default.asp.

EFFECTIVE DATE:	January 1, 2003 4
AUTHORITY:	ss. 37(2) and (3) and 42, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Personal Optional Protection (AP1-2-3), The Classification System (AP1-37-1) and with respect to management/administrative payroll, Payroll – Principles for Determining (AP1-38-3) in the <i>Assessment Manual</i> .
HISTORY:	Replaces in part Policies No. 30:20:20, 30:20:21 and 30:20:30 of the <i>Assessment Policy Manual</i> . 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. Consequential changes were subsequently made to the restatement of the <i>Act</i> 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.~~ **The policy changes apply to all existing Personal Optional Protection accounts, all new Personal Optional Protection coverage registrants, and all registrants who reapply for coverage, on or after January 1, 2004.**

APPENDIX "C"

APPENDIX "A"

**AMOUNTS REFERRED TO IN POLICIES THAT ARE
ADJUSTED FROM TIME TO TIME**

AP1-2-2 – REQUESTING A VARIANCE FROM A GENERAL EXEMPTION

The minimum outstanding balance for the purpose of part (b) of the policy is \$100.00

AP1-2-3 – PERSONAL OPTIONAL PROTECTION

The minimum outstanding balance for the purpose of part (b) of the policy is \$100.00.

The Board has designated \$15000 as the minimum amount for which Personal Optional Protection may be obtained under part (c) of the policy. **This amount will be adjusted periodically to reflect the minimum wage rate for the Province of British Columbia.**

AP1-38-6 – MAXIMUM WAGE

The maximum wage rate in 2002 is \$59,600 and in 2003 is \$60,100.

AP1-47-1 – PENALTIES

The percentage rate of penalty in effect under part (c) of this policy is 1%.

AP1-51-1 – CONTRACTOR LIABILITY

The minimums in effect for the exemptions provided by the policy for prime contractors and homeowners are \$200 and \$500, respectively.