

2005/03/22-03

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA
RESOLUTION OF THE BOARD OF DIRECTORS

RE: Changes to Two Items in the *Assessment Manual*

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:

Pursuant to section 38 of the *Act*, an employer must provide reports of the employer's payrolls;

AND WHEREAS:

Pursuant to section 88 of the *Act*, the Workers' Compensation Board ("*WCB*") may examine the books and accounts of every employer to ascertain whether a statement furnished to the *WCB* under section 38 is an accurate statement of the matters which are required to be stated in it, or to ascertain the amount of the payroll of an employer;

AND WHEREAS:

Assessment Manual Item AP1-38-2 has been identified as requiring minor amendments to improve clarity on payroll reporting requirements of prime contractor and subcontractor firms;

AND WHEREAS:

Assessment Manual Item AP1-88-1 has been identified as requiring minor amendments to clarify legislation and policy application in *WCB* audits of employer records;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. To clarify the payroll amendment limits of prime contractors, a change to section (d) of Item AP1-38-2 is approved, as per the attached Appendix "A".
2. To clarify law and policy application in WCB audits of employer records, a change to Item AP1-88-1 is approved, as per the attached Appendix "B".
3. This resolution is effective April 1, 2005.

DATED at Richmond, British Columbia, March 22, 2005.

By the Workers' Compensation Board

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

RE: Payroll – Categories

ITEM: AP1-38-2

BACKGROUND

1. Explanatory Notes

Assessments are based on payroll. Section 38 imposes an obligation on employers to report the amount of their payroll to the Board. This policy discusses the main categories of payroll.

2. The Act

See Item AP1-38-1.

Section 39(1), in part:

For the purpose of creating and maintaining an adequate accident fund, the Board must every year assess and levy on and collect from independent operators and employers in each class, by assessment rated on the payroll, or by assessment rated on a unit of production, or in a manner the Board considers proper, sufficient funds, according to an estimate to be made by the Board ...

POLICY

(a) General

Assessable payroll is considered by the Board under four general categories, any one of which may or may not be applicable to an employer. These are:

- wages and salaries;
- principals' earnings;
- contractors' earnings; and
- Personal Optional Protection amount (covered in Item AP1-2-3).

**(b) Wages and salaries**

Wages and salaries include the gross earnings of all workers, except those covered under one of the other above categories. These earnings include wages, salaries, commissions, holiday pay, bonuses, and piecework, as well as any other means or manner by which a worker is paid for services. Earnings are covered even though the worker has not received an income tax statement, or has not had income tax, Canada Pension Plan contributions or Employment Insurance premiums deducted from the remuneration.

(c) Shareholders' earnings

The total remuneration paid to each active principal, shareholder, director, or officer of a corporation is assessable. Remuneration is defined as any payment made to the principal regardless of the label attached to it. It includes:

- earnings shown in official statements of remuneration issued by the corporation for income tax purposes;
- management fees;
- payments purporting to reimburse business expenses except for the payment of out-of-pocket expenses; and
- payments of personal expenses made on behalf of the active shareholder, director, or officer.

If a director of a publicly traded company receives an official income tax statement from the company for directors' fees, these are not assessable if the director:

- only attends periodic meetings;
- is not a part-time or full-time employee; and
- is not an officer of the corporation.

Fees paid to directors of private companies are assessable.

Dividends are not considered part of payroll unless paid as remuneration for activity in the company.



Earnings in official income tax statements issued by the corporation to a spouse, child or family member of a principal or shareholder are included in payroll and are assessable.

If an individual is an active shareholder, director, or officer of more than one registered firm, then the combined remuneration from those firms is assessable. The combined earnings are prorated between the various firms as is the excess earnings if the earnings are above the maximum.

(d) Contractors' earnings

The earnings of non-registered labour contractors must be included in the assessable payroll. For labour-only contracts, the employer is assessed on the gross value of each contract.

For contracts involving the supply of labour and equipment, an equipment allowance may be deducted from the gross contract value where the contract requires use of revenue-producing equipment. The amount of the allowance will be determined having regard to such factors as the cost of purchasing the equipment and its ongoing operating cost and should be 15%, 40% or 75%.

Reimbursements for materials supplied by the contractor may be deducted from the gross contract amount where supported by receipts.

An employer may be registered as being an independent firm in a situation where payments to the firm by a prime contractor were previously included in the prime contractor's payroll on the erroneous assumption that the employer was a labour contractor. The payments may be retroactively excluded from the prime contractor's payroll, but not beyond ~~January 1st of the year preceding the year in which the registration occurs~~ **the effective date of the registration of the subcontracting firm.**

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

With regard to part (c) of the POLICY in this Item, readers should see, in particular, Practice Directive "Shareholder Earnings – Assessment of Dividends" - AP1-38-2(A) - on the WCB website at http://www.worksafebc.com/law_and_policy/practice_directives/assessment_and_revenue_services

APPENDIX "A"



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With regard to part (d) of the POLICY in this Item, a list of established equipment allowances will be available on the WCB website by January 1, 2003.

EFFECTIVE DATE:	January 1, 2003 April 1, 2005
AUTHORITY:	ss. 38(1) and 39(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under the <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3) with respect to principals of corporations, Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Labour Contractors (AP1-1-6), Personal Optional Protection (AP1-2-3), Extending the Application of the <i>Act</i> (AP1-3-1), Fishing (AP1-4-1), Payroll – Principles for Determining (AP1-38-3) and Maximum Wage Rate (AP1-38-6) in the <i>Assessment Manual</i> .
HISTORY:	A clarification to the payroll amendment limitations in part (d) was made effective April 1, 2005. This Item resulted from an editorial consolidation of the former <i>Assessment Policy Manual</i> , which was effective on January 1, 2003. The Policy in this Item continued the substantive requirements that existed before the consolidation, with any wording changes necessary to reflect legislative and other changes that had occurred. Policies No. 40:10:10, 40:10:30, 40:10:40 and 50:50:00 in the former <i>Assessment Policy Manual</i> were replaced, in part, by this Item. Consequential changes to this Item made as a result of the <i>Workers Compensation Amendment Act (No. 2), 2002</i> were effective on March 3, 2003. A housekeeping change was made to the "Practice" section of this policy, effective December 31, 2003.
APPLICATION:	The amended policy applies to all decisions on or after April 1, 2005.



RE: Audits

ITEM: AP1-88-1

BACKGROUND

1. Explanatory Notes

Section 88 of the *Act* gives the Board the authority to examine the books and accounts of every employer and make any other enquiry that is considered necessary to ascertain whether an employer is classified correctly and has made an accurate payroll report. Payroll examinations (audits) are a means of ensuring that employers are meeting their assessment obligations under the *Act*.

2. The Act

Section 88:

- (1) The Board may act on the report of any of its officers, and any inquiry which it is considered necessary to make may be made by an officer of the Board or some other person appointed to make the inquiry, and the Board may act on his or her report as to the result of the inquiry.
- (2) The officer and every other person appointed to make an inquiry has for the purposes of an inquiry under subsection (1), all the powers conferred on the Board by section 87.
- (3) The Board, an officer of the Board or a person authorized by it for that purpose, may examine the books and accounts of every employer and make any other inquiry the Board considers necessary to ascertain whether a statement furnished to the Board under section 38 is an accurate statement of the matters which are required to be stated in it, or to ascertain the amount of the payroll of an employer, or to ascertain whether an industry or person is within the scope of this Part. For the purpose of the examination or inquiry, the Board or person authorized to make the examination or inquiry may give to the employer or the employer's agent notice in writing requiring the employer to bring or produce before the Board or person, at a place and time to be mentioned in the notice, which time must be at least 10 days after the giving of the notice, all documents, writings, books, deeds and papers in the possession,



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custody or power of the employer touching or in any way relating to or concerning the subject matter of the examination or inquiry referred to in the notice, and every employer and every agent of the employer named in and served with the notice must produce at the time and place required all documents, writings, books, deeds and papers according to the tenor of the notice.

POLICY

The frequency, scope and periods audited will vary from employer to employer and to some degree are dependent on the type of operation and categories of labour or contractors engaged by the employer.

The records subject to audit are not limited to payroll journals, but encompass all books, documents, records, papers or things which relate to assessable earnings.

The audit may take place at the place of business of the employer or its agent, or at a location designated by the Board. Where the audit is to take place at a location designated by the Board, the employer must be given 10 days written notice under section 88(3) of the *Act*.

The purpose of an audit is to verify compliance with legislation and policy requirements during a prior period. Therefore, legislation and policies in effect during the time period under review in the audit will be used to determine compliance, unless otherwise specified by a subsequent legislation or policy change.

If an audit results in a change in the firm's assessment, the size and reason for the change is communicated to the employer or its representative and noted in the record of the audit.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003 April 1, 2005
AUTHORITY:	s. 88(1)-(3), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also the policies on determining payroll (AP1-38-2 to AP1-38-6) of the <i>Assessment Manual</i> .
HISTORY:	Amendments concerning policy application in audits were made effective April 1, 2005. Replaces Policy No. 50:40:00 of the <i>Assessment Policy Manual</i> . Consequential changes were

APPENDIX “B”



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subsequently made to the restatement of the *Act* in accordance with the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003. **This Item results from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.**

APPLICATION:

The amended policy applies to all decisions on or after April 1, 2005.~~This Item results from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.~~