

**2005/10/06-04****THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA  
RESOLUTION OF THE BOARD OF DIRECTORS****RE: Assessment Penalties Policy****WHEREAS:**

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

**AND WHEREAS:**

Section 40 of the *Act* provides that where the Workers' Compensation Board ("WCB") notifies an employer of assessment rates or percentages determined by the WCB in respect of the industries in which the employer is engaged and informs the employer of the manner in which the assessment is calculated, and the date it is payable, the employer must make a return and remit the assessment as required by the WCB within the time limited in the notice, and every employer who does not do so is liable for a penalty that may be determined by the WCB;

**AND WHEREAS:**

The current application of the eight percent penalty charged under sections 38, 40, and 47 of the *Act* in *Assessment Manual* Item AP1-47-1 (Penalties) may be seen by some stakeholders and the Assessment Department as unclear, at times overly punitive, and administratively cumbersome;

**AND WHEREAS:**

The practice of amending penalty amounts imposed based upon estimated payroll to reflect actual payroll reported by employers may cause administrative challenges in some situations;

**AND WHEREAS:**

The Assessment Department has developed the Assessment Operating Strategy, which proposes changes to the penalty model;

**AND WHEREAS:**

Policy changes are required to implement the proposed penalty model;

**THE BOARD OF DIRECTORS RESOLVES THAT:**

1. *Assessment Manual* Item AP1-47-1 (Penalties) is amended in order to:
  - a) Adopt two schedules of tiered penalties imposed under section 40 of the *Act* for employers that fail to report payroll or make premium payments as required; and
  - b) Consolidate and clarify the reasons by which decision makers may reduce or cancel penalties.
2. *Assessment Manual* Item AP1-38-5 (Payroll Estimates) is amended in order to:
  - a) Provide that penalties imposed based on estimated payroll will generally not be amended when actual payroll is reported; and
  - b) Include language formerly found in *Assessment Manual* Item AP1-47-1 (Penalties) that sets out the basis for payroll estimates.
3. This resolution is effective February 28, 2006, and applies to all decisions made on or after that date.

DATED at Richmond, British Columbia, October 6, 2005.

**By the Workers' Compensation Board**

---

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

**APPENDIX A  
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



**ASSESSMENT MANUAL**

**RE: Penalties**

**ITEM: AP1-47-1**

**BACKGROUND**

**1. Explanatory Notes**

The *Act* authorizes the Board to charge penalties, interest and claims costs against employers who fail to provide payroll information and/or pay their assessments on time. The Board collects these penalties and other charges as assessments.

The main purpose of these penalties and other charges is to help ensure that employers comply with their remittance requirements, by imposing a monetary sanction on employers who are in default. Non-compliance involves a cost to the accident fund which, in fairness to the employers who meet their obligations, should be borne by the delinquent employers.

Sections 38, 40 and 47 of the *Act* provide for the following types of penalties and other charges used by the Board:

- Penalties may be charged under sections 38(2), 40(2) or 47(1) of the *Act* to employers who fail to submit their payroll or other information and/or their assessment payments on time.
- A penalty may be charged under section 47(1) of the *Act* to employers who pay less than they actually owe.
- A continuing penalty may be charged under section 47(1) to an employer when an amount remains overdue after the original default.
- Claims costs are charged under section 47(2) when an employer defaults and an injury or occupational disease occurs to one of its workers during the period of default. This is dealt with in Item AP1-47-2.

**2. The Act**

Section 38(2):

Where the employer fails to comply with subsection (1), the employer is liable to pay and must pay as a penalty for the default a percentage of the

**APPENDIX A  
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

**ASSESSMENT MANUAL**

assessment prescribed by the regulations or determined by the Board, and the Board may make its own estimate of the payrolls and may make its assessment and levy on that estimate, and the employer is bound by it.

Section 40(2):

Every employer who neglects or refuses to comply with subsection (1) is liable for the penalty prescribed by the regulations or determined by the Board, and that penalty is enforceable as an assessment under this Part.

Section 47(1):

If an assessment levied under this Part is not paid at the time when it becomes payable, the defaulting employer is liable to and must pay as a penalty for the default the percentage on the amount unpaid or the assessment for the preceding year, or the projected assessment for the current year, that may be prescribed by the regulations or determined by the Board, and the penalty may be added to the amount of the assessment and become a part of it, and where not added to the assessment must be enforced in the same manner as the payment of an assessment is enforced.

**POLICY**

**(a) Penalties for failure to remit or report under sections 38(2), 40(2) and 47(1)**

~~The Board may apply a penalty against a delinquent employer at any time after an assessment payment or payroll report is not received by the due date. The penalty will be as follows:~~

- ~~• under section 38(2) when an employer fails to meet the requirements in section 38(1) to keep, in the province, particulars of the employer's payroll and/or to furnish payroll or other information to the Board as required;~~
- ~~• under section 40(2) when an employer fails to meet the requirements in section 40(1) to make a return and remit an assessment on time; and~~

**APPENDIX A  
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

**ASSESSMENT MANUAL**

- ~~under section 47(1) when an employer fails to pay an assessment on time, in circumstances where the employer is not required to make a return at the same time.~~

~~The penalty under the above provisions is 8% or less of the amount due or estimated to be due. In order to estimate the amount due, the Board may use the amount that the employer paid in the previous remittance period, or any other amount the Board considers appropriate. These penalties are subject to a minimum charge of \$25. There is no maximum amount.~~

**In general, unless the Board determines otherwise, the following penalties will apply under section 40(2), where employers fail to meet payroll reporting or payment requirements.**

- (i) Where an employer fails to make a year-end payroll report as required, a penalty will apply based on the employer's annual assessment due, or the Board's estimate of that amount, as follows:**

<b>Tier</b>	<b>Annual Assessment Due</b>	<b>Penalty Amount</b>
A	\$0 to \$5,999.99	\$50
B	\$6,000 to \$19,999.99	\$150
C	\$20,000 to \$199,999.99	\$500
D	Over \$200,000	\$1,000

- (ii) Where an employer fails to make a quarterly payment as required, a penalty will apply based on the employer's quarterly assessment due, or the Board's estimate of that amount, as follows:**

<b>Tier</b>	<b>Quarterly Assessment Due</b>	<b>Penalty Amount</b>
1	\$0.01 to \$1,499.99	\$50
2	\$1,500 to \$4,999.99	\$150
3	\$5,000 to \$9,999.99	\$500
4	\$10,000 to \$49,999.99	\$1,000
5	\$50,000 to \$99,999.99	\$3,000
6	Over \$100,000	\$10,000

**Where an employer fails to report payroll or make payments as required, the Board also has the authority under sections 38(2) and 47(1) to charge**

**APPENDIX A  
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

**ASSESSMENT MANUAL**

**penalties based on a percentage of the employer's assessment. The Board may, for example in situations where it believes that the employer is not responding to the deterrent of the penalties applied under the authority of section 40(2), apply penalties under sections 38(1) or 47(1) at eight percent of the amount due, or estimated to be due.**

~~Penalties for failure to remit or report will be reduced or cancelled only in limited circumstances. The Board may on its own initiative, and subject to the limits on reconsideration set out under section 96(5), reconsider a penalty charge and reduce or cancel it for the following reasons:~~

- ~~(1) error on the part of the Board;~~
- ~~(2) the correct payment was received but improperly coded (This normally applies to a remittance being coded as unidentified cash, but it could also include a subcontractor's remittance paid on a prime contractor's account where the Board is satisfied the payment should properly have been put on the subcontractor's account.);~~
- ~~(3) the penalty is charged after the cancellation date for an employer's account, except if it applies to a period before the cancellation date;~~
- ~~(4) death of a family member, partner, proprietor, principal or accountant within the last period for which a remittance would normally be due;~~
- ~~(5) loss, destruction or theft of payroll records within the last three months prior to the penalty imposition;~~
- ~~(6) non-return of a remittance form where there was a "nil" amount owing, either because of a nil payroll for the period or because there was a sufficient credit in the account to cover the assessment payable for the period (This reason will only be accepted upon written declaration from the firm, its representative or a Board officer of the payroll figures from the beginning to the end of the period for which the penalty is imposed.);~~
- ~~(7) issued cheques have failed to arrive (The supporting information should include the cheque ledger or a copy showing the cheque stubs immediately before and after so that it can be reasonably ascertained the WCB cheque was issued within two weeks of the due date.); or~~

**APPENDIX A  
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

**ASSESSMENT MANUAL**

~~(8) any other reason that the Board determines is consistent with the Act and the purpose of these penalties.~~

**(b) Penalties for paying less than owed under section 47(1)**

A penalty under section 47(1) may be applied when an employer under-remits, or pays less than the employer actually owes to the Board. The penalty is **8% percent** or less of the amount unpaid, or estimated to be unpaid. The Board may use the amount the employer paid in the previous remittance period to estimate the amount of the deficiency, or any other amount the Board considers appropriate. The penalty is added to the amount of the deficiency and forms part of it. There is no minimum or maximum amount.

Subject to the reconsideration provisions of the Act, the Board may, on its own initiative, reduce or cancel the penalty where it is determined that the penalty was imposed as the result of a material error of fact, law or policy by the Board.

**(c) Continuing penalty on overdue amounts under section 47(1)**

A penalty under section 47(1) is charged when an employer has an overdue account of any type for 28 days or more. It applies to the outstanding balance until the overdue amount is paid in full. It is in addition to any penalty, interest or other charge that is imposed under this or other policies. The penalty may be imposed where an account has been overdue for less than 28 days if no initial penalty has been charged for the default under parts (a) or (b) of this policy.

The penalty is a percentage rate per month, calculated on a per diem basis on a 28 or 35 day cycle, depending on the number of weeks in the calculation period. The penalty is calculated on the amount outstanding, or estimated to be outstanding, at the end of the cycle, and is added to the outstanding amount and becomes part of it. The Board may estimate the amount due from the amount the employer paid in the previous remittance period, or by any other method the Board considers appropriate.

The Board may adjust the rate for this penalty, effective January 1<sup>st</sup> and July 1<sup>st</sup> of each year, to a monthly rate which reflects an annualized rate of at least six percentage points above the Bank of Canada prime rate.

There is no minimum or maximum amount for this penalty.

~~In order to ensure that penalties are applied in a fair and consistent manner, a penalty will be reduced or cancelled only in exceptional circumstances, including:~~

**APPENDIX A  
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

**ASSESSMENT MANUAL**

- ~~where the balance owing consists of penalties only (all other outstanding amounts have been paid), and the balance is less than \$15.00 or a higher minimum that has been set by the Board since this policy was published;~~
- ~~where an amended payroll figure has been submitted reducing the assessment for the period in question;~~
- ~~where the penalties have been imposed for non-payment of a prior penalty and the initial penalty is cancelled;~~
- ~~when penalties are applied after bankruptcy or receivership dates;~~
- ~~when a penalty is applied as the result of a Board error; and~~
- ~~any other reason which the Board determines is consistent with the Act and the purpose of this penalty.~~

~~A decision may not be reconsidered where one of the limitations set out under section 96(5) of the Act exists.~~

**(d) Reducing or Canceling Penalties**

**A penalty decision may not be reconsidered where one of the limitations set out under section 96(5) of the Act exists, unless section 96(7) applies. In order to ensure that penalties are applied in a fair and consistent manner, a penalty may be reduced or cancelled only in limited circumstances, set out as follows:**

- (1) error on the part of the Board;**
- (2) the penalty is charged after the cancellation date for an employer's account, except if it applies to a period before the cancellation date;**
- (3) the penalty is charged after the bankruptcy or receivership date of the firm;**
- (4) death or incapacitation of a family member, partner, proprietor, principal or accountant within the last period for which a remittance would normally be due;**

**APPENDIX A  
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

**ASSESSMENT MANUAL**

- (5) **loss, destruction or theft of payroll records within the last three months prior to the penalty imposition;**
- (6) **non-return of a remittance form where there was a “nil” amount owing, either because of a nil payroll for the period or because there was a sufficient credit in the account to cover the assessment payable for the period (this reason will only be accepted upon written declaration from the firm, its representative or a Board officer of the payroll figures from the beginning to the end of the period for which the penalty is imposed.);**
- (7) **issued cheques have failed to arrive (The supporting information should include the cheque ledger or a copy showing the cheque stubs immediately before and after so that it can be reasonably ascertained the WCB cheque was issued within two weeks of the due date.);**
- (8) **where the balance owing consists of penalties only (all other outstanding amounts have been paid), and the balance is less than \$15.00 or a higher minimum that has been set by the Board since this policy was published; or**
- (9) **in exceptional cases, for any other reason that the Board determines is consistent with the Act and the purpose of this policy.**

**PRACTICE**

The percentage rate of penalty in effect under part (c) of this policy is set out in Appendix “A” to this *Manual*.

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

---

<b>EFFECTIVE DATE:</b>	<del>March 3, 2003</del> <b>February 28, 2006</b>
<b>AUTHORITY:</b>	ss. 38(2), 40(2) and 47(1), <i>Workers Compensation Act</i> .
<b>CROSS REFERENCES:</b>	See also Charging Costs of Claim to Unregistered Employers (AP1-47-2) and Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> .
<b>HISTORY:</b>	<b>Changes effective February 28, 2006 to adopt new tiered penalty system.</b>

**APPENDIX A  
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

**ASSESSMENT MANUAL**

**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.**

Replaces Policies No. 40:50:05 to 40:50:30 of the *Assessment Policy Manual* and Decision No. 351 of volumes 1 - 6 of the *Workers' Compensation Reporter*. Consequential changes were subsequently made in accordance with the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003.

**APPLICATION:**

~~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. This policy applies to all decisions made on or after February 28, 2006.~~

**APPENDIX A  
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



**ASSESSMENT MANUAL**

**RE: Payroll Estimates**

**ITEM: AP1-38-5**

**BACKGROUND**

**1. Explanatory Notes**

The *Act* allows the Board to estimate an employer's payroll when the employer has failed to provide required payroll information or has otherwise failed to comply with section 38(1), and to levy and collect an assessment on that estimate.

**2. The Act**

Section 38(2):

Where the employer fails to comply with subsection (1), the employer is liable to pay and must pay as a penalty for the default a percentage of the assessment prescribed by the regulations or determined by the Board, and the Board may make its own estimate of the payrolls and may make its assessment and levy on that estimate, and the employer is bound by it.

**POLICY**

There are two main situations when an estimate may be made under section 38(2):

- the employer has failed to submit a payroll report or remittance form; or
- payroll records or other information which the employer has been specifically required to produce have not been produced.

**In order to estimate the amount due, the Board may use the amount that the employer paid in the previous remittance period, or any other amount the Board considers appropriate.**

Where the failure to provide records is for reason beyond the employer's control, such as a fire, the Board will, if practicable, consult with the employer as to a reasonable amount.

**APPENDIX A  
PROPOSED ASSESSMENT MANUAL POLICY CHANGES**



WORKERS' COMPENSATION BOARD OF BC

**ASSESSMENT MANUAL**

The employer will be advised of the estimated assessment, how to have the estimate amended and of rights of appeal.

When an employer whose payroll has been estimated later provides the required report, records or information, the estimate will normally be amended.

A payroll estimate does not relieve an employer from penalties that may be levied for not filing a report or paying an assessment. **Penalty amounts calculated on payroll estimates generally will not be amended when an employer reports actual payroll.**

**PRACTICE**

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

---

<b>EFFECTIVE DATE:</b>	January 1, 2003 <b>February 28, 2006</b>
<b>AUTHORITY:</b>	s. 38(2), <i>Workers Compensation Act</i> .
<b>CROSS REFERENCES:</b>	See also Assessment Payments (AP1-39-2), Penalties (AP1-47-1) and Audits (AP6-88-1) in the <i>Assessment Manual</i> .
<b>HISTORY:</b>	<b>Consequential change effective February 28, 2006 to reflect the new tiered penalty system.</b> <b>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.</b> Replaces Policy No. 50:60:10 of the <i>Assessment Policy Manual</i> .
<b>APPLICATION:</b>	<del>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.</del> <b>This policy applies to all decisions made on or after February 28, 2006.</b>