



WORKING TO MAKE A DIFFERENCE

BOARD OF DIRECTORS
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2010/12/08-03

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE BOARD OF DIRECTORS

RE: INTEREST PAYMENT PERIOD ON AMOUNTS REFUNDED TO EMPLOYERS

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 259(1) of the *Act*, the commencement of a review under section 96.2 or of an appeal under Part 4 respecting a matter described in section 96.2 (1) (b) does not relieve an employer from paying an amount in respect of a matter that is the subject of the review or appeal;

AND WHEREAS:

Pursuant to 259(2) of the *Act*, if the decision on a review or an appeal referred to in subsection (1) requires the refund of an amount to an employer, interest calculated in accordance with the policies of the Board of Directors must be paid to the employer on that refunded amount;

AND WHEREAS:

A statement in Item AP1-39-2, Assessment Payments of the *Assessment Manual* which provides that interest is payable from the date the employer requests the review or files the notice of appeal has been reviewed by the Board of Directors;

AND WHEREAS:

The Board of Directors has considered the principles outlined in
Governors' Decision No. 36 concerning the retroactivity of policy changes.

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The POLICY statement in AP1-39-2 of the *Assessment Manual*, attached to this Resolution, is approved and applies to all decisions, including appellate decisions, on or after September 22, 2010.
2. This resolution is effective September 22, 2010.
3. This resolution constitutes a policy decision of the Board of Directors.

DATED at Richmond, British Columbia, December 10, 2010.

By the Workers' Compensation Board

**GEORGE MORFITT, FCA
CHAIR, BOARD OF DIRECTORS**

RE: Assessment Payments**ITEM: AP1-39-2**

BACKGROUND

1. Explanatory Notes

Sections 38 to 40 of the *Act* set out the basic requirements for when employers must pay assessments and the manner of payment. Section 38 requires an employer to provide payroll information to the Board when it first becomes an employer, and at other times as required. The relevant parts of sections 39 and 40 are set out below.

2. The Act

Section 39 (in part):

- (2) Assessments may be made in the manner and form and by the procedure the Board considers adequate and expedient, and may be general as applicable to a class or subclass, or special as applicable to an industry or part or department of it.
- (3) Assessments may, wherever it is considered expedient, be collected in half yearly, quarterly or monthly installments, or otherwise; and where it appears that the funds in a class are sufficient for the time being, an installment may be abated or its collection deferred.

Section 40(1):

Where the Board

- (a) notifies an employer of assessment rates or percentages determined by the Board in respect of the industries in which the employer is engaged; and
- (b) informs the employer of the manner in which the assessment is calculated, and the date it is payable,

the notice constitutes an assessment under section 39, and the employer must, within the time limited in the notice,
- (c) make a return on the form provided or prescribed by the Board; and
- (d) remit the amount of the assessment.

Section 259:

- (1) The commencement of a review under section 96.2 or of an appeal under this Part respecting a matter described in section 96.2(1)(b) does not relieve an employer from paying an amount in respect of a matter that is the subject of the review or appeal.
- (2) If the decision on a review or an appeal referred to in subsection (1) requires the refund of an amount to an employer, interest calculated in accordance with the policies of the board of directors must be paid to the employer on that refunded amount.

POLICY

(a) Remittance schedules

An employer will usually pay assessments annually or quarterly, depending on the size of the annual assessment or the industry in which the employer operates. Firms having an annual assessment of less than \$1,500 are usually assessed annually. Firms having an annual assessment of \$1,500 or more and all firms registered in the Oil, Gas or Mineral Resources, Forestry, or Transportation and Related Services subsectors are usually assessed quarterly.

The Board may change the usual remittance schedule for an employer if:

- the employer and the Board agree on a different schedule;
- an employer's annual assessment regularly fluctuates above and below \$1,500 and the Board determines that the employer should remit either annually or quarterly regardless of the amount of the annual assessment; or
- an employer's account is not in good standing or the employer has a history of failing to remit on time, and the Board determines that the employer is required to remit more frequently until the employer establishes an acceptable remittance record.

The decision whether or not to change the remittance frequency is based on such factors as the nature of the employer's operations, and the payment history and status of the account.

(b) Manner of reporting and payment

The Board may use any means of communication to advise an employer of the requirements for reporting and payment and accept payment and reports through any recognized payment medium.

Employers may be required to make a report with each quarterly or annual remittance. Firms remitting quarterly also submit a report at the end of the year covering the whole year. The information required to be provided by these reports may include:

- the amount of payroll, or estimated payroll;
- if the employer was in a previous report only required to provide an estimate of the payroll, the actual amount of payroll covered by the earlier report;
- excess earnings;
- principals' earnings; and
- contractors' earnings.

A report may require the employer to calculate the amount of the assessment and pay any outstanding amount due as a result of the report.

(c) Pre-payment of assessments

If an employer is required to register with the Board for a project that is non-recurring and less than one year in duration, and if an estimate of assessable payroll can be reasonably made, the Board may require pre-payment of an assessment based on the estimate.

The Board may permit other employers to pre-pay assessments for any year on the basis of an estimate of payroll. The Board may agree to provide a percentage discount or similar incentive for such employers.

In any situation where pre-payment takes place, the employer must report actual payroll at the end of the year or other times required by the Board. Based on these reports, additional assessments may be required or credits allowed, as the situation may warrant.

(d) Overpayments

If an employer overpays an assessment, the overpayment will be credited to its account. Refunds will be made on closed accounts and may be considered in other unusual circumstances if specifically requested. A refund will not be granted unless

- the employer's account is current;
- there are sufficient credits in the account;
- all required reports and remittances have been received; and

- there is no outstanding balance for which legal action has been commenced or that has been written off.

If the Board makes any changes to an employer's account as the result of an overpayment of assessments, it will inform the employer in writing.

Interest may be paid on an overpaid assessment in the following situations:

- The overpayment resulted from a blatant Board error. For an error to be blatant, it must be an obvious and overriding error. This means that, had the Board officer known that he or she was making the error at the time, it would have caused the officer to change the course of reasoning and the outcome. A "blatant" error cannot be characterized as an understandable error based on misjudgment. Rather, it describes a glaring error that no reasonable person should make. A blatant error would include where an employer is registered in an obviously incorrect classification when the employer identified the correct industry at the outset.
- An employer prepays an administrative penalty under Part 3 of the *Act* or a penalty assessment (including an experience rating demerit) pending a review under section 96.2 or an appeal under Part 4 and is then successful in the review or appeal.
- An amount other than a prepayment covered by paragraph 2 is returned to an employer as a result of a successful review under section 96.2 or a successful appeal under Part 4 respecting a matter described in section 96.2(1)(b) of the *Act*. In these cases, interest is payable from the date the employer requests the review or files the notice of appeal **overpaid the Board**.

Where interest is payable, it will apply to penalty assessments and accrued interest on outstanding assessments that were paid during the period in question.

The Board pays simple interest at a rate equal to the prime lending rate of the banker to the government. During the first 6 months of a year interest is calculated at the interest rate as at January 1st. During the last 6 months of a year interest is calculated at the interest rate as at July 1st. Where an overpayment of assessment has resulted from a blatant Board error, interest will not accrue for a period greater than twenty years. For practical reasons, certain mathematical approximations may be used in the calculations.

(e) Transfers between accounts

Any request to transfer funds from one employer's account to another must be made in writing by the employer from whose account the funds will be transferred, unless the funds are being transferred as the result of a Board error.

PRACTICE

With regard to part (a) of the POLICY in this Item, the actual dates when employers must make quarterly and annual reports and remittances and details of the forms that must be completed are set out on the WCB website at

http://www.worksafebc.com/for_employers/managing_your_account/payroll_reports/default.asp.

With regard to part (d) of the POLICY in this Item, readers should consult Practice Directive “Payment of Interest” - AP1-39-2 - on the **WCBWorkSafeBC** website at http://www.worksafebc.com/law_and_policy/practice_directives/assessment_and_revenue_services/default.asp. The banker to the government is the Canadian Imperial Bank of Commerce.

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

EFFECTIVE DATE:	March 3, 2003 September 22, 2010
AUTHORITY:	ss. 39(2) and (3), 40(1) and 96(7) <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Payroll Categories (AP1-38-2), Payroll – Principles for Determining (AP1-39-4), Maximum Wage (AP1-38-6), Collection of Assessments (AP1-45-1), Penalties (AP1-47-1) and Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> and with regard to penalties under Part 3 of the <i>Act</i> , D12-196-1 in the <i>Prevention Manual</i> .
HISTORY:	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. Replaces in part Policies No. 20:30:40, 40:30:10 to 40:30:30, 40:30:50, 40:30:60 and 40:70:10 to 40:70:40 of the <i>Assessment Policy Manual</i> and Decision No. 351 in volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> . Consequential changes were subsequently made 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. Applies to all decisions, including appellate decisions, on or after September 22, 2010.

