

ASSESSMENT MANUAL

ORGANIZATION OF THIS MANUAL

This *Manual* sets out the policies and practices that relate to the Board's Assessment mandate.

The *Manual* consists of a number of "Items" that relate to particular provisions. An explanation of how the Items are organized is found on the following page.

The Background section for various Items reproduces relevant excerpts from the *Workers Compensation Act*.

The Province of British Columbia holds copyright in the *Workers Compensation Act*. Complete copies are available from Crown Publications in Victoria.

WORK SAFE BC ASSESSMENT MANUAL

RE: **ITEM:**

BACKGROUND

This section reproduces the relevant provision(s) of the *Act*, preceded by a brief explanatory note.

POLICY

This section sets out the Board's Policy statement. The Policy is approved or amended only by the Board of Directors after appropriate consultation.

PRACTICE

This section sets out the Board's Practice to implement the Policy. The Practice is approved or amended by the President/CEO, or delegate, after appropriate consultation.

This information relates to the POLICY section of each item only, unless otherwise indicated.

EFFECTIVE DATE:

AUTHORITY:

CROSS REFERENCES:

HISTORY:

APPLICATION:

This identifies the subject matter.

Each policy begins with "AP#". The number refers to which Part of the *Act* the policy is related to. The rest of the numbering refers to the section number of the *Act* and the policy number under that section. For example, in AP5-247-3, 5 refers to Part 5 of the *Act*, 247 refers to section 247 of the *Act*, and 3 indicates that this is the third policy under section 247.

This is the effective date of the Policy.

This is the statutory authority for the Policy.

This documents the changes in each Item of this *Manual* since the Item was first approved.

This clarifies, where necessary, the categories of cases to which a changed Policy applies as of the effective date.

This identifies other relevant Items in the *Manual*, or other provisions of the *Act*. This information is only inserted for the assistance of the reader. It should not be considered exhaustive.

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RE: Application of the Act and Policies**ITEM: AP1-1-0**

BACKGROUND

1. Explanatory Notes

Decision-making at the Workers' Compensation Board is governed by the *Workers Compensation Act*.

Section 319 of the *Act* authorizes the Board of Directors to set and revise the Board's policies. These policies are of broad general application and provide further direction to the Board in dealing with individual matters.

Section 339(2) of the *Act* requires the Board to make decisions based on the merits and justice of the case, but in doing this the Board must apply the policies of the Board of Directors that are applicable in that case.

The purpose of the POLICY in this Item is to provide direction regarding the interaction between the application of the *Act* and the policies made under the *Act* and the consideration of the individual circumstances of the case.

The POLICY does not comment on documents issued under the authority of the President/Chief Executive Officer of the Board. That is a matter for the President/Chief Executive Officer to address.

2. The Act

Section 319:

The board of directors must set and revise as necessary the policies of the board of directors, including policies respecting occupational health and safety, compensation, rehabilitation and assessment.

Section 339(2):

The Board must make its decision based on the merits and justice of the case, but in doing this the Board must apply the policies of the board of directors that are applicable in that case.

POLICY

In making decisions, the Board must take into consideration:

1. the relevant provision or provisions of the *Act*;
2. the relevant policy or policies in this *Manual*; and
3. all facts and circumstances relevant to the case.

By considering the relevant provisions of the *Act*, the relevant policies, and the relevant facts and circumstances, the Board ensures that:

1. similar cases are adjudicated in a similar manner;
2. each participant in the system is treated fairly; and
3. the decision-making process is consistent and reliable.

Section 339(2) of the *Act* provides that:

The Board must make its decision based on the merits and justice of the case, but in doing this the Board must apply the policies of the board of directors that are applicable in that case.

Section 339(2) requires the Board to make all its decisions based on the merits and justice of the case. In making decisions, the Board must take into account all relevant facts and circumstances relating to the case before it, including the worker's individual circumstances. This is required, among other reasons, in order to comply with section 339(2) of the *Act*. In doing this, the Board must consider the relevant provisions of the *Act*. If there are specific directions in the *Act* that are relevant to those facts and circumstances, the Board is legally bound to follow them.

Section 339(2) also requires the Board to apply the policies of the Board of Directors that are applicable to the case before it. The policies reflect the obligations and discretion delegated to the Board under the *Act*. Each policy creates a framework that assists and directs the Board in its decision-making role when certain facts and circumstances come before it. If such facts and circumstances arise and there is an applicable policy, the policy must be applied. Where the *Act* and policy provide for Board discretion, the Board is also required to exercise the discretion based upon the merits and justice of the case, in accordance with the *Act* and applicable policies.

All substantive and associated practice components in the policies in this *Manual* are applicable under section 339(2) of the *Act* and must be applied in decision-making. The term "associated practice components" for this purpose refers to the steps outlined in

the policies that must be taken to determine the substance of decisions. Without these steps being taken, the substantive decision required by the *Act* and policies could not be made.

References to business processes that appear in policies are only applicable under section 339(2) of the *Act* in decision-making to the extent that they are necessary to comply with the rules of natural justice and procedural fairness. The term “business processes” for this purpose refers to the manner in which the Board conducts its operations. These business processes are not intrinsic to the substantive decisions required by the *Act* and the policies.

If a policy requires the Board to notify an employer, worker, or other workplace party before making a decision or taking an action, the Board is required to notify the party if practicable. “If practicable” for this purpose means that the Board will take all reasonable steps to notify, or communicate with, the party.

This policy item is not intended to comment on the application of practice directives, guidelines and other documents issued under the authority of the President/Chief Executive Officer of the Board. The application of those documents is a matter for the President/Chief Executive Officer to address.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

| | |
|--------------------------|--|
| EFFECTIVE DATE: | July 1, 2019 |
| AUTHORITY: | Sections 319 and 339(2) of the <i>Act</i> . |
| CROSS REFERENCES: | |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. July 1, 2019 – Amendments were made to emphasize the obligation of the Board to base its decisions on the merits and justice of the case and delete references to Board officers. March 3, 2003 – Item was developed to implement the <i>Workers Compensation Amendment Act (No. 2), 2002</i> (Bill 63 of 2002). |
| APPLICATION: | This policy applies to decisions on or after July 1, 2019. |

**RE: Coverage under Act –
Determining Workplace Status**

ITEM: AP1-1-1

BACKGROUND

1. Explanatory Notes

This policy sets out how the Board determines workplace status under the compensation provisions of the *Workers Compensation Act*. “Workplace status” refers to whether a person or entity is an employer, worker, or independent operator for the purposes of the compensation provisions, which has important implications for their rights and responsibilities under the *Act*.

2. The Act

Section 1, in part:

“**employer**” includes every person having in their service under a contract of hiring or apprenticeship, whether the contract is written or oral, express or implied, a person engaged in work in or about an industry;

...

“**firefighter**” means a member of a fire brigade, working with or without remuneration, who is assigned primarily to

- (a) fire suppression duties, whether or not those duties include the performance of ambulance or rescue services,
- (b) investigation duties respecting the cause, origin or circumstances of a fire, or
- (c) any combination of both fire suppression duties as described in paragraph (a) and fire investigation duties as described in paragraph (b);

...

“**worker**” includes the following:

- (a) a person who has entered into or works under a contract of service or apprenticeship, whether the contract is written or oral, express or implied, and whether by way of manual labour or otherwise;

- (b) a person who
 - (i) is a learner who is not under a contract of service or apprenticeship, and
 - (ii) becomes subject to the hazards of an industry within the scope of the compensation provisions for the purpose of undergoing training or probationary work specified by the employer as a preliminary to employment;
- (c) a firefighter;
- (d) in respect of the industry of mining, a person
 - (i) while the person is actually engaged in taking or attending a course of training or instruction in mine rescue work under the direction or with the written approval of an employer in whose employment that person is employed as a worker in that industry,
 - (ii) while, with the knowledge and consent of an employer in that industry, either express or implied, the person is actually engaged in rescuing or protecting, or attempting to rescue or protect, life or property in the case of an explosion or accident that endangers either life or property in a mine, whether or not during the time that person is so engaged the person is entitled to receive wages from the employer, or from any employer, or is performing the work or service as a volunteer, or
 - (iii) while the person is engaged as a member of the inspection committee, appointed or elected by the workers in the mine, to inspect the mine on behalf of the workers;
- (e) an independent operator to whom the compensation provisions apply by the Board direction under section 4(2)(a) *[extending application: independent operator who is neither an employer nor a worker];*
- (f) a person deemed by the Board to be a worker under section 6(2) *[extending application: vocational or training programs];*

...

Section 4, in part:

- (1) The compensation provisions apply to
 - (a) all employers, in their capacity as employers, in British Columbia, and
 - (b) all workers in British Columbia,
other than employers or workers exempted by order of the Board.
- (2) The Board may direct that the compensation provisions apply on the terms specified in the Board's direction to
 - (a) an independent operator who is neither an employer nor a worker as if the independent operator were a worker, or
 - (b) an employer as if the employer were a worker.

...

Section 122, in part:

- (1) Subject to sections 288 and 289 [*appeals to appeal tribunal*], the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined under the compensation provisions, and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court.
- (2) Without restricting the generality of subsection (1), the Board has exclusive jurisdiction to inquire into, hear and determine the following:

...

- (h) whether a person is a worker, subcontractor, contractor or employer within the meaning of the compensation provisions;

...

- (j) whether an industry or a part, branch or department of an industry is within the scope of the compensation provisions, and the class to which an industry or a part, branch or

department of an industry within that scope should be assigned;

- (k) whether a worker in an industry that is within the scope of the compensation provisions is within the scope of those provisions and entitled to compensation under those provisions.

3. The *Partnership Act*

Section 2:

Partnership is the relation which subsists between persons carrying on business in common with a view of profit.

POLICY

A. DESCRIPTION OF TERMS

The following general descriptions may assist in understanding the various categories of persons to whom this *Manual* refers. These descriptions must be read in the context of the *Act* and the *Manual*.

- *Employer* – “Employer” is defined under section 1 for purposes of the compensation provisions of the *Act*. An employer includes a person or entity engaging an individual under a contract of service. The employer may be a sole proprietor, a partner in a partnership, a corporation, or another type of legal entity.

The compensation provisions of the *Act* apply to every employer unless the Board exempts the employer from those provisions (see Item AP1-4-1, *Exemptions from Coverage*). The compensation provisions’ requirements include that every employer must register with the Board, report assessable payroll, and pay assessments.

- *Worker* – “Worker” is defined under section 1 for purposes of the compensation provisions of the *Act*. A worker includes an individual engaged under a contract of service and who does not have an independent business existence under that contract.

A worker is paid by wage, salary, commission, piecework, profit sharing, or other means. A worker may also be reimbursed for lease or rental of equipment, or for purchased material or service.

- *Independent Operator* – “Independent operator” is not defined in the *Act*. The term is referred to in section 4(2) of the *Act* as being an individual “who is neither an employer nor a worker” and to whom the Board may direct that the compensation provisions of the *Act* apply as if the independent operator were a worker.

An independent operator is an individual who performs work and has an independent business existence in the course of that work. An independent operator who is neither an employer nor a worker is excluded from the compensation provisions of the *Act* unless the Board applies those provisions by allowing the independent operator to purchase Personal Optional Protection. An independent operator may be a sole proprietor or a partner of a partnership.

Registration with the Board is optional for an independent operator. An independent operator who registers with the Board by purchasing Personal Optional Protection is a worker for the purposes of the compensation provisions of the *Act*.

This *Manual* also commonly uses the term “firm” to refer generally to persons or entities which have an independent business existence. Depending upon the context, this may refer to an employer, independent operator, or some other category of persons or entities.

B. DETERMINING WORKPLACE STATUS

This section of the policy sets out that the primary test for determining workplace status is whether a contract of service exists.

1. Board Authority To Determine Workplace Status

The Board has the exclusive jurisdiction under section 122 to determine status for the purposes of the *Act*. The Board is not bound by the determinations of other agencies or authorities.

The Board’s jurisdiction cannot be excluded by private agreement, whether the agreement does this expressly, or indirectly by labelling the parties as independent operators (e.g., the parties to a contract describing themselves as independent of each other). The Board makes its own judgment of their status, having regard to the contract and the operational routines of the relationship. Decisions made by the Board are for the purposes of the *Act* only and have no binding authority under other statutes.

2. Contract of Service

A contract of service creates an employment relationship in which an individual (a worker) performs work subject to the direction and control of another person or entity (an employer) for consideration, generally wages or other remuneration.

The definitions of “worker” and “employer” in the *Act* are not exhaustive. The terms are generally relational and complementary through a contract of service, which for the purposes of the compensation provisions of the *Act* is identical to a contract of hiring. Under the *Act*, a contract of service may be written or oral, express or implied.

The Board applies the common law’s general concept of contract of service but does not adopt all of its technical rules. This means coverage under the compensation provisions of the *Act* may commence even though by common law principles no contract of service yet exists.

3. The Test to Determine Workplace Status

The primary test to determine workplace status is whether a contract of service exists. In many cases, it is evident where a contract of service exists. In cases where it is not evident, the Board considers the factors of control, chance of profit and risk of loss, provision of major equipment, and business integration to determine whether the individual is engaged under a contract of service.

Parties can enter into more than one contract at the same time, and the status of the parties can differ between these contracts or change over time. Therefore, an individual could be a worker under a contract of service with an employer and, at the same time, could be an independent operator under a different contract.

A person or entity’s registration with the Board is not determinative of status. Each situation may be examined by the Board independently to determine the status of the parties.

3.1 Distinguishing between Worker and Independent Operator

The need to distinguish between a worker and an independent operator may arise where it is not evident a contract of service exists. In these cases, the Board considers the factors as set out above:

(a) Control

The Board considers the ability, authority or right of the person for whom the work is done to exercise control over the individual doing the work.

Control includes authority over what work is performed, how the work is performed, when the work is performed, and where the work is performed.

The greater the degree of control, the more likely the individual doing the work is engaged under a contract of service. However, the type of work and the skills or expertise required for the work being done are also considered.

(b) Chance of Profit and Risk of Loss

The Board considers whether the individual doing the work has an opportunity to make a profit, and whether the individual doing the work will risk a loss.

Profit is not remuneration based on performance for work done, such as through commission or piece work. Rather, profit is the difference between revenue earned and expenses incurred, which is generally associated with running a business.

Risk of loss measures whether the individual doing the work assumes a potential financial risk that is more often borne by a business.

Generally, an individual engaged under a contract of service does not have a real opportunity for profit or bear a risk of loss.

(c) Provision of Major Equipment

The Board considers whether the individual doing the work, or the person or entity for whom the work is done, is required to provide the major equipment.

Major equipment means a single asset used to generate revenue. The major equipment must be necessary to perform the work, and generally requires a significant investment or commitment to acquire and a significant expense to provide.

Generally, an individual engaged under a contract of service is not required to provide major equipment.

(d) Business Integration

Business integration is considered from the perspective of the individual doing the work. The Board considers whether the individual doing the work has or continues to have an independent business existence in the course of the work. Is the work and business identity of the individual

doing the work integrated into the business operations of the person or entity for whom the work is done?

The Board may also consider who is best able to fulfill the occupational health and safety and other obligations of an employer under the *Act*.

Generally, an individual who is engaged under a contract of service is integrated into the others' business operations.

3.2 Weighing of Factors

The relevance and weight of the above factors will depend on the particular context of the relationship. The determination of status depends not on one singular factor, but on all relevant factors considered together.

Regard may be given to the structure and customs of the industry involved, the parties' intentions, and/or the terms of the parties' contract.

If the evidence of an individual's status is equally weighed between a worker and independent operator, the Board will generally presume that individual to be a worker.

C. EMPLOYERS AND WORKERS IN SPECIFIC SITUATIONS

This section of the policy sets out the guidelines for determining who is an employer and who is a worker covered by the compensation provisions of the *Act* in certain specific situations.

1. Proprietors

A proprietor is an individual who is the sole owner of an unincorporated business. A proprietor controls the business, is personally responsible for its liabilities, and is entitled to its profits.

A proprietor is an employer if the proprietor employs a worker in the business. A proprietor is an independent operator if the proprietor does not employ a worker.

A child of a proprietor who is paid by, and has an employment relationship with the proprietor, is a worker, regardless of age. Spouses of proprietors have been exempted from coverage, but the employed spouse of a proprietor may request voluntary coverage.

A proprietor is eligible to purchase Personal Optional Protection for work in the business.

2. Partners

A partner is a person carrying on business in a partnership. A person who is a partner is an employer if the partnership employs a worker and is an independent operator if the partnership does not employ a worker.

Each partner in a partnership that employs a partner's spouse under a contract of service is an employer. The spouse is a worker. A child of a partner who is paid by the partnership and has an employment relationship is considered to be a worker, regardless of age.

In a limited partnership registered under the *Partnership Act*, each "general partner" is an employer if the limited partnership employs a worker. The general partners are responsible for fulfilling all of the *Act's* employer obligations.

A partner is eligible to purchase Personal Optional Protection for work in the business.

However, limited partners are neither considered workers nor employers as they do not participate in the business and are confined to providing investment. If they become active in the business they are regarded as general partners, would be subject to the provision of the *Act*, and are eligible to purchase Personal Optional Protection for work in the business.

3. Corporations

The term "corporation" encompasses all forms of incorporated entities, including limited company, strata corporation, incorporated society, and cooperative.

Generally, a corporation which is incorporated in British Columbia or elsewhere, and which is active in an industry in British Columbia, is the employer of its workers in British Columbia.

As the incorporated entity is considered the employer, a director, shareholder or other principal of a company who is active in the business operations of the company is generally considered to be a worker under the *Act*. A spouse, child or other family member of a principal or a shareholder for whom earnings are reported for income tax purposes is considered to be active in the business operations and a worker.

If a sole, active principal of a limited company is injured at a time when the company was not registered as an employer with the Board, the principal will not be considered a worker at that time and a claim by the principal or that principal's dependants will be denied. For the same reason, a claim from one of several principals of a company that was unregistered at the time of the injury, or in the case of fatality, that principal's dependants, will be denied unless the evidence

indicates that the principal was not personally responsible for the failure to register.

In determining whether a principal was personally responsible for a failure to register, the factors considered include whether the principal was:

- a minority or majority shareholder;
- a director of the company;
- carrying out management functions or simply doing work that an employee would normally do; and
- responsible for doing other functions equivalent to those associated with the Board, such as dealing with income tax or employment insurance.

If an injured principal of a company is denied compensation benefits under this policy, that principal's earnings prior to the date of injury are not assessed. Compensable claims from a responsible principal of a company that has registered but has defaulted in paying assessments, or that principal's dependants, will be accepted but a deduction from the resulting benefits will be made to offset the debt.

Active officers of a cooperative or an incorporated society are considered workers in the same manner as principals of a limited company, including the circumstances as described above.

However, the Board will not register a corporation as an employer if the corporation does not have sufficient independence from other persons or entities.

4. Other Entities

An entity such as an Indian Band, trade union, unincorporated society or association that employs a worker is an employer. An active officer, member, or principal of an Indian Band, trade union, unincorporated society, association, or similar entity, may be considered a worker in the same way as an officer or a principal of a corporation.

Union delegates attending conferences, seminars, conventions or similar events are considered workers of the union if they receive a recorded payment for attending such functions, whether it be in the form of a wage or a per diem allowance.

5. Labour Supply Firms

A labour supply firm hires workers directly and arranges for the workers to work under the direction and control of a client. A labour supply firm employs a worker under a contract of service, pays the worker's remuneration, and is that worker's employer.

6. Elected Officials

Elected officials in provincial or municipal government, school or library boards, or similar agencies are not considered workers or employers in their capacity as elected officials. Personal Optional Protection is not available to elected officials.

7. Volunteers

"Volunteer" is not defined in the *Act*. A volunteer is an individual who generally provides services freely and without pay or expectation of pay. Volunteers may receive tokens of appreciation including honorariums. A volunteer is not engaged under a contract of service and is not a worker.

For example, a social service agency may operate a sheltered workshop to provide mentally or physically disabled individuals with training or life enrichment opportunities in a workshop environment. Coverage applies only to the paid workers of the organization and paid instructors in the workshop, and not to the participants in the program, whether or not they receive a living allowance, incentive allowance, or nominal payment from the Provincial Government.

Volunteer firefighters are given coverage by the definition of "worker" in section 1 of the *Act*. This includes an individual at the scene of a fire who is requested by the Fire Chief or authorized delegate to assist and whose name is recorded. Only those individuals under the direction and control of the Fire Chief or authorized delegate are covered.

8. Practicums and Internships

A practicum is the supervised, hands-on application of classroom-taught theory offered through a post-secondary institution authorized or certified by the Provincial Government. An individual engaged in a practicum is not paid for the practicum's activities. The individual is not a worker unless the Board has extended voluntary coverage to that individual under section 6 of the *Act*.

An internship is an extended placement involving independent, hands-on application of skills and knowledge for work in a work place. An intern is generally a worker of the person or entity for whom the work is done.

9. Prison Inmates

A prison inmate is considered a worker if that individual is involved in a work-release program and is permitted to work outside of the institution for regular wages, whether or not that individual is required to return daily to the institution. Similarly, a prison inmate who is conscripted to fight forest fires is considered a worker.

10. Order-in-Council Appointments

Order-in-Council appointments are generally to positions which operate autonomously, appointees to a tribunal or a board of directors. These individuals are not engaged under a contract of service and are not workers. Personal Optional Protection is not available to these individuals.

Some Order-in-Council appointments are for positions where there is an element of direction and control such as a secretary to a Provincial Government Minister. In these situations, the individual is considered a worker.

11. Forest Firefighters

The Provincial Government has authority to conscript members of the public to fight forest fires. In the event of an injury, the conscripted member of the public is considered a worker of the Provincial Government.

When logging companies receive “cutting rights”, they are required to fight fires which occur on those properties. If a worker of the logging firm sustains an injury while fighting a fire prior to the Provincial Government assuming control of the fire, that individual will be considered a worker of the logging firm. Once the Provincial Government assumes control of the fire, all individuals engaged in fighting the fire become the responsibility of the Provincial Government.

12. Seconded or Lent Workers

A seconded or lent worker is an individual who is temporarily transferred from that individual's usual employment to another's employment for a specific purpose and for a defined period of time.

In determining whether a worker of one employer has become the seconded or lent worker of another employer, the question to be decided in each case is whether the other employer assumes fundamental control over the individual's work. The Board considers factors such as who has the control of the selection, hiring, remuneration, discipline, training, evaluation, assignment of duties, and working conditions of the worker. The Board also considers the degree to which the worker is integrated into the business of the employer to which the worker has been lent, and the length of time of that employment.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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|--------------------------|---|
| EFFECTIVE DATE: | January 1, 2023 |
| AUTHORITY: | Sections 1 and 4 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-4-1, <i>Exemptions from Coverage</i> ; Item AP1-4-3, <i>Personal Optional Protection</i> ; Item AP1-5/6/7-1, <i>Extending Application of the Act</i> ; Item AP1-8-1, <i>Fishing</i> ; Item AP8-336-1, <i>Coverage under Federal Statutes or Agreements Between the Provincial and Federal Governments</i> , of the <i>Assessment Manual</i> . Policy item #3.00, <i>Introduction – Workers and Employers Covered by the Act</i> ; Policy item #5.00, <i>Coverage of Workers</i> ; Policy item #6.00, <i>Definitions of “Worker” and “Employer”</i> ; Policy item #6.10, <i>Nature of Employment Relationship</i> ; Policy item #8.10, <i>Admission of Federal Government Employees</i> ; Policy item #68.90, <i>Principals – Composition of Earnings</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | January 1, 2023 – Amendments concerning workplace status determinations were implemented, consolidating policy from Items AP1-1, AP1-1-2, AP1-1-3, AP1-1-4, AP1-1-5, AP1-1-6, and AP1-1-7. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. December 1, 2019 – Housekeeping amendments to reflect the alphabetical order established by Bill 18 of 2019. May 16, 2019 – the <i>Workers Compensation Amendment Act, 2019</i> (Bill 18 of 2019) added the definition of “firefighter” to section 1 of the <i>Act</i> and amended the definition of “worker”. January 1, 2013 - Consequential changes related to the consolidation of the classification policies were made effective. September 16, 2009 – Board of Directors’ Resolution Number 2007/05/23-02, which approved policy amendments relating to workplace status determinations and which were delayed coming into effect until January 1, 2010, was repealed. Additionally, Part 3 of the Board of Directors’ Resolution Number 2007/10/04-05, which added a description for the term “principal” related to the compensation of principals, was also repealed. March 19, 2008 – The January 1, 2009 effective dates of Board of Directors Resolutions 2007/05/23-02, 2007/10/04-04 and 2007/10/04-05, which approved amendments relating to workplace status determinations, a consequential policy change, and the addition of a description of the term “principal” relating to |

the compensation of principals respectively, were repealed and replaced with the date January 1, 2010.

January 1, 2008 – Amendment regarding Compensation of Principals.

January 1, 2003 – This Item results from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*.

Replaced in part Policy No. 20:10:30 and 20:30:20 of the *Assessment Policy Manual* and Decisions 26, 32, 138, 183 and 255 of volumes 1 - 6 of the *Workers' Compensation Reporter*.

APPLICATION:

This policy is effective January 1, 2023.

RE: Exemptions from Coverage**ITEM: AP1-4-1**

BACKGROUND

1. Explanatory Notes

The compensation provisions of the *Act* apply to all employers and all workers in BC except: a) where the *Act* does not apply for constitutional reasons; or b) where employers or workers have been exempted by order of the Board.

2. The Act

Section 4, in part:

- (1) The compensation provisions apply to
 - (a) all employers, in their capacity as employers, in British Columbia, and
 - (b) all workers in British Columbia,
other than employers or workers exempted by order of the Board.

...

POLICY

(a) Exclusions from coverage under constitutional law

Some workers and employers are excluded from coverage under the *Act* as a matter of constitutional law. Some examples are:

- (1) Consulates and trade delegations from foreign countries.
- (2) With respect to air transportation firms from outside of BC conducting business in BC, flight crews (cockpit crew and cabin crew) who are on turn-around in BC for a short period of time if:
 - (i) they are not BC residents;
 - (ii) the firm does not supply service between BC points; and
 - (iii) they are employed exclusively as members of the flight crew.

(b) Exemptions by order of the Board: What principles are followed?

- (1) The Board will, as a matter of policy, decide whether general exemption orders will be made under section 4(1) of the *Act*. In making these decisions, the principles considered include:
 - (i) Section 4(1) creates a scheme of universal coverage, with exemptions being granted for exceptional industries or occupations whose circumstances do not fit the purpose and intent of the *Act*.
 - (ii) For this purpose, the following principles are considered to underlie the purpose and intent of the *Act*, but an industry or occupation will not be automatically exempted because one or more of these principles do not apply:
 - prevention of injuries and occupational diseases;
 - compensation is paid for earnings losses resulting from injuries and diseases up to a maximum wage rate, medical expenses are reimbursed and rehabilitation provided;
 - coverage is limited to employment relationships and activities;
 - compensation is no fault and in lieu of the right to sue;
 - compensation is a cost of production for the products and services marketed by the employer, not a charge on the taxpayer; and
 - collective liability of classes of employers for compensation and other costs of the system.
 - (iii) The following circumstances will not by themselves be sufficient to result in a general exemption order being made:
 - wishes of employers and workers;
 - size of the employer's operations;
 - coverage through private disability plans; or
 - degree of risk of injury.
 - (iv) Exemption orders will only be made in respect of industrial or occupational groups. An exemption order will not be granted to an individual or to a business unless the individual or business constitutes the entire industrial or occupational group.

- (v) Since the Board is a tribunal charged with administering a statute, principles of good public administration should be applied.
- (2) The Board may, on request, grant or terminate voluntary coverage for an individual person or business by varying the general exemption order. This will, however, be limited to situations where making the variance would be consistent with the reasons for which the exemption order has been made.

(c) What exemptions have been granted?

The Board has made the following general exemptions from coverage:

- (1) An individual employed by the owner or occupier in or around a private residence, other than for the purpose of the owner's or occupier's trade or business, or employed in serving the personal needs of the owner or occupier or the owner's or occupier's family is exempt where:
 - (i) the individual is regularly employed for a definite or indefinite period on a weekly, monthly or similar basis for an average of less than
 - 8 working hours per week; or
 - 15 working hours per week, and the individual is employed caring for children in the period immediately preceding and following school; or
 - (ii) the individual is employed to do a specific job or jobs and the total cumulative hours to be worked by all individuals employed on the job or jobs involve a temporary period of less than 24 working hours.
- (2) Both spouses involved in an unincorporated business are exempt where one or both own the business.

“Spouse” means a person who:

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship for
 - (i) a period of at least 1 year, if the person has had a child with the other person, or
 - (ii) a period of at least 2 years in any other case.

The phrase “marriage-like relationship” is interpreted to mean a common law relationship, and describes situations in which two people are living

together in a regular and established way, sharing conjugal relations and a common household.

Children are not exempted.

- (3) Certain employers with no place of business in the province who temporarily carry on business in BC, but do not employ a BC resident, are exempt from the compensation provisions of the *Act* provided they are covered in another jurisdiction that provides compensation for occupational injuries and diseases and meet additional criteria set out below. However, unless required as a matter of constitutional law, the exemption described in this section does not apply to the occupational health and safety provisions in the OHS provisions of the *Act*.
- (i) If an employer is in the trucking industry in BC, the additional criteria are that it:
- is not incorporated in BC; and
 - is not hauling goods between BC points; and
 - if the employer is based in Canada, hauls goods out of BC six or fewer times per calendar year.

If an employer meets all these applicable criteria, it is exempt regardless of the number of trips it may make hauling goods into the province, dropping them off and dead heading out.

- (ii) If an employer is not in the trucking industry in BC, the additional criteria are set out in the following table:

| Number of actual or proposed working days in BC in a year | Number of actual or proposed visits to BC, in a year | Status if meets basic criteria and columns 1 and 2 apply |
|--|---|---|
| 15 or more | Any number | Not exempt |
| 10 to 14 | 3 or more | Not exempt |
| 10 to 14 | 1 to 2 | Exempt |
| 9 or less | Any number | Exempt |

An employer who does not meet all the above criteria for exemption must register with the Board and begin paying assessments when it first comes into BC.

- (4) Professional sports competitors or athletes are exempt. This exemption does not apply to non-competing workers of a sports team such as coaches, management, trainers or other support staff.
- (5) A personal financial holding company that complies with all of the following is exempt:
 - (i) it is incorporated;
 - (ii) the only workers are the shareholders of the company;
 - (iii) no activities are carried out by the company except the management of the shareholders' own personal financial investments; which consist solely of:
 - investments in publicly traded stocks and bonds, mutual funds, or limited partnerships where the company has no say in day-to-day management of the partnership;
 - interest bearing financial instruments such as GICs, savings bonds, treasury bills or certificates for deposit; or
 - non-revenue producing land, buildings, or equipment where there is no development, construction, or direct rental activity; and
 - (iv) the company invests only its own assets and the assets of its shareholders.

If a limited company that is granted an exemption under this policy changes its business operations, the principals of the company must immediately notify the Board for a reconsideration of its exempted status.

PRACTICE

Where an association, union or other group which represents an entire industry or group of workers, wishes to apply for exemption from coverage, it must write to the Policy, Regulation and Research Division requesting an exemption and providing reasons. The Policy, Regulation and Research Division will research the request and present the request along with their findings to the Board of Directors for consideration.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

| | |
|--------------------------|--|
| EFFECTIVE DATE: | January 1, 2023 |
| AUTHORITY: | Section 4(1) of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-1-1, <i>Coverage under Act – Determining Workplace Status</i> ; Item AP1-4-2, <i>Requesting a Variance from a General Exemption</i> ; Item AP5-245-3, <i>Payroll – Out-of-Province Employers and Operations</i> , of the <i>Assessment Manual</i> . Policy item #4.00, <i>Exemptions and Exclusions from Coverage</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | January 1, 2023 – Consequential changes related to the consolidation of policies on determining workplace status were made effective. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2016 – Six-trip criterion were made applicable only to employers based in Canada. For clarity, exclusions from coverage under constitutional law were moved to section (a) and an explanatory narrative were made effective January 1, 2016. January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective. June 1, 2012 – Amendments were made to clarify the general exemption of an individual employed by the owner or occupier in or around a private residence. March 1, 2012 – Housekeeping change was made effective, in accordance with amendments to the <i>Act</i> . January 1, 2005 – Housekeeping change was made effective to reflect jurisdictional differences between Part 1 and Part 3 of the <i>Act</i> . January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continued 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. Replaced Policies No. 20:10:10, 20:10:20, 20:10:31, 20:30:40 and 20:40:30 of the <i>Assessment Policy Manual</i> and Decision No. 229 of volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> . |
| APPLICATION: | The amended policy applies to all decisions made on or after January 1, 2023. |

**RE: Requesting a Variance from a
General Exemption**

ITEM: AP1-4-2

BACKGROUND

1. Explanatory Notes

The Board may grant optional coverage to individuals or firms who would otherwise be exempt.

2. The Act

See Item AP1-4-1.

POLICY

(a) Who can apply?

The following exempt individuals or firms may request voluntary coverage:

- owners or occupiers of a private residence;
- the employed spouse of a proprietor (If accepted, the proprietor will be assessed for the spouse on the actual earnings of the spouse, and coverage will remain in effect until cancelled by either the Board or the spouse. Where the spouses are partners in an unincorporated business and wish to have coverage for themselves, they may apply for Personal Optional Protection.); and
- an exempt non-resident employer.

(b) Employer has both compulsorily covered and exempt business undertakings

Before a request to cover the exempt business undertaking can be accepted, the existing account or a previously cancelled account must be in good standing. This means that the current remittances have been paid and the outstanding balance is less than a minimum determined by the Board. The employer may re-apply when the account is brought up to date.

Where the employer has more than one exempt business undertaking, each such business undertaking meeting the requirements for separate classifications under the multiple classification policy requires a separate application for coverage. If the employer is registered for all business undertakings, administration personnel will be prorated between the classification units each business undertaking is assigned to.

If the employer is not registered for its voluntary business undertakings, the total administration payroll will be included with the compulsory business undertaking.

(c) Scope of coverage

Once approved, coverage becomes effective from the date the Board receives the required application forms or a subsequent requested date accepted by the Board.

Voluntary coverage is in effect for all paid workers employed in the business undertaking granted coverage. A firm may not apply for coverage for one group of workers and exclude another group unless the firm is involved in more than one exempted business undertaking.

An employer who has been granted voluntary coverage has the same benefits and obligations as another employer covered under the *Act*.

(d) Cancellation of coverage

The employer may cancel voluntary coverage by telephone or written notice. The effective date is when the telephone instructions or notice are received by the Board.

Voluntary coverage may be cancelled by the Board when:

- an employer fails to pay the assessment, and the payment is in excess of two months overdue;
- an employer fails to provide the required payroll information on which an assessment is calculated, necessitating an estimate of payroll under section 245 of the *Act*; or
- mail addressed to an employer is returned and an alternate address is not available.

If a firm with voluntary coverage ceases all business operations on a date prior to the date the notification is received, the account will be cancelled effective the date the business operations ceased.

PRACTICE

The minimum outstanding balance for the purpose of part (b) of the 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 WorkSafeBC website at www.worksafebc.com.

| | |
|--------------------------|---|
| EFFECTIVE DATE: | June 1, 2012 |
| AUTHORITY: | Section 4(1) of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-4-3, <i>Personal Optional Protection</i> ; Item AP5-244-2, <i>Classification – Assignment</i> ; Item AP5-245-2, <i>Assessable Payroll</i> with regard to administration/management payroll; Item AP5-245-4, <i>Payroll Estimates</i> , of the <i>Assessment Manual</i> . Decision of the former Governors No. 60 in Volume 10, Number 2 of the <i>Workers' Compensation Reporter</i> (April 1994) with regard to the exemption of coverage for spouses, available on the WorkSafeBC website at www.worksafebc.com . |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2017 – Housekeeping amendment. January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective. June 1, 2012 – Amendments to clarify who can apply for voluntary coverage were made effective. July 20, 2011 – Housekeeping amendment in CROSS REFERENCE section. January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continued 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. Replaced in part Policies No. 20:10:20, 20:40:10 and 20:40:20 of the <i>Assessment Policy Manual</i> . |
| APPLICATION: | The amended policy applies to all decisions on or after June 1, 2012. |

RE: Personal Optional Protection**ITEM: AP1-4-3**

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 1, in part:

“**family member**”, in relation to a worker, means the following:

- (a) a spouse, parent, grandparent, step-parent, child, grandchild, stepchild, sibling or half-sibling of the worker;
- (b) a person, whether related to the worker by blood or not, who stood in the place of a parent of the worker or to whom the worker stood in place of a parent;

...

Section 4(2):

The Board may direct that the compensation provisions apply on the terms specified in the Board’s direction to

- (a) an independent operator who is neither an employer nor a worker as if the independent operator were a worker, or
- (b) an employer as if the employer were a worker.

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 147 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, an applicant is required to:

- comply with the terms and conditions of coverage established by the Board and provided with the application for coverage;
- 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 the compensation provisions of the *Act*; and
- ensure that an existing or previous account is 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.

Applications for Personal Optional Protection for individuals who have previously had an outstanding balance written off through a discharged bankruptcy, will be subject to terms and conditions imposed by the Board, 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 complete and legible application has been received.

If an application for Personal Optional Protection is accepted, the applicant is notified and advised of the terms of coverage. The acceptance date is either the date the complete and legible application is received by the Board 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 an amount established by the Board without providing verification of earnings to the Board.

An individual may apply for coverage over this established amount and up to the maximum but proof of earnings for the coverage requested will be required. The maximum corresponds to the annually adjusted maximum wage rate for compensation purposes. If proof of earnings is not submitted or is insufficient, the coverage will be reduced to the maximum amount of coverage permitted without proof of earnings, as established by the Board, and the individual advised accordingly.

If the applicant is receiving a monthly permanent disability benefits payment from the Board, 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.

(e) 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 operations of the incorporated company, but must obtain Personal Optional Protection to obtain coverage for activities in the business operations of the proprietorship.

Coverage will be provided based on the main business undertaking of the business operations for which optional coverage is being purchased. If an individual's business operations fall under more than one classification, the Board will determine the main business undertaking and the appropriate classification.

(f) 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:

- pay the assessment and the payment is in excess of 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,
- provide the required payroll information on which an assessment is calculated, necessitating a payroll estimate under section 245 of the *Act*.

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 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 Business Operations* – Where the request for cancellation is received on or before January 31st and the firm states that its business 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, readers should consult <https://www.worksafebc.com/en/insurance/need-coverage/optional-coverage/personal-optional-protection> of the WorkSafeBC website.

For any other relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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|--------------------------|--|
| EFFECTIVE DATE: | January 1, 2015 |
| AUTHORITY: | Section 4(2) of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-4-2, <i>Requesting a Variance from a General Exemption</i> ; Item AP1-5/6/7-1, <i>Extending Application of the Act</i> ; Item AP5-244-2, <i>Classification – Assignment</i> ; Item AP5-245-2, <i>Assessable Payroll</i> , with respect to management/administration payroll; Item AP5-245-4, <i>Payroll Estimates</i> , of the <i>Assessment Manual</i> . Policy item #8.00, <i>Admission of Workers, Employers, and Independent Operators</i> ; Item C3-18.00, <i>Personal Acts</i> (B. Acts for Personal Benefit of Principals of Business); Policy item #35.20, <i>Amount of Compensation for Temporary Partial Disability</i> ; Item C6-37.00, <i>Permanent Total Disability Benefits</i> ; Policy item #48.40, <i>Overpayments/Money Owed to the Board</i> ; Policy item #48.48, <i>Unpaid Assessments</i> ; Policy item #65.02, <i>Worker with Two Jobs</i> ; Policy item #67.20, <i>Personal Optional Protection</i> ; Policy item #67.32, <i>Volunteer Firefighters</i> ; Policy item #68.70, <i>Payments to Substitutes</i> ; Policy item #69.10, <i>Deduction of Permanent Disability Periodic Payments from Wage-Loss Benefits</i> ; Item C10-75.00, <i>Health Care Accounts – General</i> ; |

Policy item #93.20, *Application for Compensation*;
Policy item #93.23, *Adjudication Without an Application*;
Policy item #94.15, *Penalties for Failure to Report*;
Policy item #99.20, *Notification of Decisions*;
Policy item #111.30, *Meaning of “Worker” and “Employer” Under Division 3 of Part 3 of the Act*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:

January 1, 2021 – Housekeeping change made to cross-reference consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

January 1, 2017 – Housekeeping amendment.

January 1, 2015 – The changes to part (c) of the policy section of this item and the minimum amount for which Personal Optional Protection may be obtained under part (c) of the policy, listed in Appendix “A”, were made effective.

January 1, 2015 – Consequential amendments were made effective.

January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective.

March 1, 2012 – Housekeeping change was made effective, in accordance with amendments to the *Act*.

October 1, 2009 – Housekeeping amendments.

November 1, 2006 – Correction to the website link.

January 1, 2004 – The changes to paragraphs (b) and (d) of the policy section of this item applied to all new Personal Optional Protection coverage registrants, all registrants who reapplied for coverage, and all existing accounts that were not in good standing, on or after January 1, 2004. The changes to paragraphs (e) and (f) of the policy section of this item applied to all existing Personal Optional Protection accounts, all new Personal Optional Protection coverage registrants, and all registrants who reapplied for coverage, on or after January 1, 2004.

January 1, 2003 – This Item resulted from an editorial consolidation of the former *Assessment Policy Manual*, 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. 20:50:10 to 20:50:60 of the *Assessment Manual* and Decision No. 116 of volume 2 of the *Workers’ Compensation Reporter* were replaced, in part, by this Item.

APPLICATION:

Applies to all Personal Optional Protection coverage in effect on or after January 1, 2015.

**RE: Extended Coverage for Motion Picture
and Television Productions****ITEM: AP1-4-4**

BACKGROUND

1. Explanatory Notes

This policy sets out how a motion picture or television production firm may apply to the Board for extended workers' compensation coverage to include all individuals engaged to provide services on a motion picture or television production.

2. The Act

See Item AP1-4-3.

POLICY

For the purposes of this Item, a motion picture or television production firm is restricted to a firm that has signed onto one of the master or collective agreements between producers and unions in the motion picture and television industry in force at the time coverage is requested.

(a) Who may apply?

A motion picture or television production firm or the firm's authorized agent or representative may apply to the Board to have all individuals engaged to provide services on a motion picture or television production, who are not otherwise entitled to receive workers' compensation benefits, declared workers of the firm.

(b) Application for extended coverage

Only a motion picture or television production firm may apply for extended coverage under this policy.

An applicant is required to complete and submit an application for extended coverage on the form provided by the Board. An incomplete or illegible application will not be accepted.

As a condition for extended coverage a motion picture or television production firm is required to:

- comply with the requirements set out in this policy;

- provide all required information and promptly advise the Board of any material change that may affect coverage; and
- be registered with the Board and be in compliance with the reporting and remitting requirements of the *Act*.

(c) Who is included under extended coverage?

Unless excluded under (d) of this Item, the following individuals are subject to coverage under an extended coverage application:

- principals of limited companies;
- independent operators;
- employers (partners and proprietors that are individuals); and
- employers that meet the criteria set out in Item AP1-1-1.

(d) Who is excluded from extended coverage?

The following individuals are not subject to coverage under an extended coverage application:

- any worker already covered by the production firm or by another employer.
- registered employers and independent operators with personal optional protection in good standing during the period of requested extended coverage.
- volunteers and learners on practicum or work assignments. If a production firm wishes to cover volunteers and learners, the production firm is required to submit a separate request for inclusion to the Board in accordance with Item AP1-5/6/7-1.

(e) Payroll reporting and pre-payment of assessments

The Board may require pre-payment of assessments based on the estimate of payroll prior to commencement of coverage, prior to approval of an application for extended coverage.

During the motion picture or television production, and for a period of up to six years following conclusion of the extended coverage, the motion picture or television production firm is required to maintain full and accurate payroll records in BC for Board examination.

At the end of the production, the motion picture or television production firm is required to submit the actual payroll to the Board. Based on the reported payroll, the motion picture or television production firm may be required to pay an additional assessment, or may be entitled to a refund if there is an overpayment, in accordance with Item AP5-243-1.

(f) Effective date of coverage

A decision on whether extended coverage is granted will be made at the discretion of the Board.

Once approved, coverage is effective from the date the Board receives the required application or a subsequent requested date accepted by the Board.

(g) Extent of coverage

Once extended coverage commences, those subject to coverage are covered while engaged in employment activities related to the motion picture or television production.

Following approval for extended coverage, a motion picture or television production firm may contact the Board to request amendment to the start and/or end date of its extended coverage.

Coverage extended under this policy to employers does not affect their status as employers under the *Act*. All employers covered under extended coverage are still required to meet their obligations as employers under the *Act*.

(h) Cancellation of extended coverage

Once approved, extended coverage remains in effect until the earliest of:

- conclusion of the motion picture or television production;
- receipt of a request, in a manner prescribed by the Board, for termination of extended coverage by the motion picture or television production firm; or
- cancellation by the Board, with written notification where practicable.

The Board may cancel extended coverage when a motion picture or television production firm that was granted extended coverage fails to:

- comply with this Item and the terms and conditions of the extended coverage established by the Board;
- permit the Board to inspect a work site or premises or records; or

- comply with an order or direction issued by the Board under the *Act*.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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|--------------------------|---|
| EFFECTIVE DATE: | January 1, 2023 |
| AUTHORITY: | Sections 1 and 4(2) of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-1-1, <i>Coverage under Act – Determining Workplace Status</i> ; Item AP1-4-1, <i>Exemptions from Coverage</i> ; Item AP1-4-3, <i>Personal Optional Protection</i> ; Item AP1-5/6/7-1, <i>Extending Application of the Act</i> ; Item AP5-243-1, <i>Assessment Payments</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | January 1, 2023 – Consequential changes related to the consolidation of policies on determining workplace status were made effective. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2013 – New Item. |
| APPLICATION: | This item applies to all applications for extended coverage for motion picture or television productions made on or after January 1, 2023. |

RE: Extending Application of the Act**ITEM: AP1-5/6/7-1**

BACKGROUND

1. Explanatory Notes

Sections 5, 6 and 7 of the *Act* give the Board authority to extend voluntary coverage to persons other than employers and independent operators.

2. The Act

Section 5:

- (1) In relation to a person or group of persons carrying on an undertaking that the Board considers is in the public interest, the Board may, on the terms and conditions the Board directs,
 - (a) deem the person or group of persons, whether or not any of them receive payment for their services, to be a worker or workers for the purposes of this Act, and
 - (b) on approval of the Lieutenant Governor in Council, deem the person or group of persons to be a worker or workers of the Crown in right of British Columbia.
- (2) Without limiting subsection (1), admissions under this section may be made at the time, in the manner, subject to the terms and conditions and for the period the Board considers adequate and proper.

Section 6:

- (1) This section applies if the minister responsible for the *School Act* or the minister responsible for the *College and Institute Act*, as applicable, and the minister responsible for the administration of this Act approve
 - (a) a vocational or training program, and
 - (b) a school or other location as a place at which the vocational or training program is to be provided.
- (2) The Board may, at the request of a minister referred to in subsection (1), deem a person or class of persons enrolled in a program approved under

that subsection to be a worker or workers of the Crown in right of British Columbia.

- (3) In relation to a person who is deemed to be a worker under subsection (2), compensation under this Act is payable under the compensation provisions for injuries to the worker arising out of and in the course of training for that worker.
- (4) As limits on subsection (3), if an injury results in a period of temporary disability with no loss of earnings,
 - (a) subject to paragraph (b) of this subsection, a health care benefit only is payable, and
 - (b) if training allowances paid by Canada or British Columbia are suspended, the Board may, for the period the Board considers advisable, pay compensation in the amount of the training allowance.
- (5) Admissions under this section may be made at the time, in the manner, subject to the terms and conditions and for the period the Board considers adequate and proper.

Section 7:

- (1) This section applies in relation to a person or group of persons engaged in a work study program or other program of self-improvement involving work, whether or not the person or group of persons receives payment for the work.
- (2) The Board may,
 - (a) on the application of an employer or a program organizer, and on the terms and conditions the Board directs, by order, admit the person or group of persons as being within the scope of the compensation provisions, and
 - (b) with the approval of the Lieutenant Governor in Council, deem a person or group of persons engaged in the program to be a worker or workers of the Crown in right of British Columbia, on the terms and conditions the Board determines.
- (3) Without limiting subsection (2), admissions under this section may be made at the time, in the manner, subject to the terms and conditions and for the period the Board considers adequate and proper.

- (4) On admission under subsection 2(a),
 - (a) the person or group of persons is deemed to be a worker or workers to whom the compensation provisions apply, and
 - (b) the Board may levy assessments on the applicable employer or program organizer by the formula the Board determines.

POLICY

The general principles governing requests for a variance to a general exemption order also apply to requests under sections 5, 6 and 7.

(a) An undertaking in the public interest (section 5)

In defining “public interest” for the purpose of section 5, the Board considers undertakings that affect a broad segment of the public rather than those whose activities centre around specific interest groups.

The persons involved in the project or program must apply in writing to the Board for coverage. If the Board feels that the undertaking is in the public interest, the matter may be referred to the Lieutenant Governor in Council to consider whether the individuals involved should be accepted as workers of the Crown in Right of British Columbia. If the Lieutenant Governor in Council agrees, the Board will fix the average earnings of those individuals. Alternatively, such individuals may be admitted as workers of a municipality or other organization where appropriate.

If a volunteer fire or ambulance brigade is operated by a society (including Indian Bands), coverage is not compulsory, but may be extended to the society on a voluntary basis.

(b) Vocational or training programs (section 6)

No policy.

(c) Work study programs (section 7)

Applications for coverage under section 7 will only be considered if:

- there is a period of training in a standard work place environment in the community as opposed to a workplace established specifically for the purpose of the group;
- the coverage is limited to injuries or diseases arising out of and in the course of the employment in that standard workplace; and

- the applicant accepts the Board's terms and conditions.

The employer or program organizer must make a written request for coverage to the Board. If the Board agrees, the employer or program organizer will be offered coverage under certain terms and conditions including an assessment formula.

PRACTICE

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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|--------------------------|---|
| EFFECTIVE DATE: | January 1, 2003 |
| AUTHORITY: | Sections 5, 6, and 7 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-1-1, <i>Coverage under Act – Determining Workplace Status</i> ; Item AP1-4-2, <i>Requesting a Variance from a General Exemption</i> , of the <i>Assessment Manual</i> ; Policy item #8.00, <i>Admission of Workers, Employers, and Independent Operators</i> ; Policy item #67.31, <i>Volunteer Workers Admitted by the Board Under Section 5</i> ; Policy item #67.33, <i>Sisters in Catholic Institutions</i> ; Policy item #67.34, <i>Emergency Services Workers</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | October 21, 2020 – Housekeeping amendments to the <i>Act</i> portion of the Background section to reflect amendments to the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. November 1, 2006 – Editorial amendment to the PRACTICE section. January 1, 2003 – Replaced in part Policies No. 20:10:40 and 40:20:50 of the <i>Assessment Policy Manual</i> and Decisions No. 161 and 165 of volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> . |
| 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. |

RE: Fishing**ITEM: AP1-8-1**

BACKGROUND

1. Explanatory Notes

Coverage for commercial fishers is provided for by section 8 of the *Act* and the *Fishing Industry Regulations* (“*Regulations*”) made under it. The matters covered by the *Regulations* include the right of fishers to claim compensation for injury or disease, the transportation of injured fishers, claims procedures and appeals, the situation where the injury is caused by a third party, and the payment of assessments on the proceeds of fish sales. Except for persons who transmit payments to commercial fishers in respect of fish sold out-of-province or directly to the public, assessments are normally paid by commercial fish buyers.

2. The Regulations

Section 1:

In these regulations:

...

“commercial fisher” means

- (a) a master or member of a crew of a licensed commercial fishing vessel who is a possessor or required to be a possessor of a current personal commercial fishing license,
- (b) a master or member of a crew of a fish packing, fish collecting or other vessel which is licensed or required to be licensed under the *Fisheries Act* of the Province to engage in buying or collecting fish for commercial sale or use, or
- (c) any other person who, in the opinion of the Board, contributes to the catching or landing of fish for commercial sale or use,

and who

- (d) in the course of that person’s occupation as a fisher, contributes to the catching or landing of fish for arrival in British Columbia ports for sale to or use by a commercial buyer or other commercial recipient of fish,

- (e) has made arrangements with the Board for the payment of assessments, or
- (f) is a person who, apart from these regulations, would be a “worker” under the compensation provisions of the *Act* and a fisher

but, subject to paragraph (e) of this definition, does not include

- (g) a fisher who rarely contributes to the catching or landing of fish for arrival in British Columbia ports for sale to or use by a commercial buyer or other commercial recipient of fish;

“commercial buyer” or “commercial recipient” means a person who is buying or receiving fish for resale or commercial use, but excludes a person who is buying for personal or family consumption;

...

Section 5:

- (1) Unless the Board otherwise determines:
 - (a) a commercial buyer or other commercial recipient of fish who directly or indirectly acquires fish from a commercial fisher must pay assessments on the fish bought, obtained or paid for by or through the commercial buyer or other commercial recipient of fish, except if the fish are acquired from another commercial buyer or other commercial recipient;
 - (b) a person who engages the services of a master or crew of or for a fishing vessel must pay assessments on any fish in respect of which assessments are not payable under paragraph (a);
 - (c) the compensation provisions of the *Act* relating to employers apply to a person engaged in transmitting payments to commercial fishers as if the person is engaged in the fishing industry, and that person is deemed to be the employer of any persons or organizations other than commercial buyers or commercial recipients who contributed in any manner to the catching or landing of the fish bought, obtained or paid for through or by that person and in respect of which assessments are not otherwise paid, and
 - (d) for assessment purposes, a commercial recipient does not include a person who receives fish only for transport to a commercial buyer or commercial recipient in the province.

...

- (3) Assessments shall be paid on the total wages, prices or other payments made or payable to or on behalf of commercial fishers and shall be calculated, determined and notified to the Board in such manner as the Board may prescribe. Where the total wages, price or other payments made or payable to or on behalf of commercial fishers exceed the maximum wage for one year as fixed for the time being under section 209 [annual determination of maximum wage rate for average earnings] of the Act, a deduction may be made where practical in respect of the excess; and where the total wages, price or other payments made or payable to or on behalf of commercial fishers are shown to exceed the above maximum wage rate, the Board may make a deduction where practical in respect of the portion in excess of that rate.

Section 7:

All commercial buyers and other commercial recipients of fish and all other persons required to pay assessments under section 5 must register with the Board and provide such information as the Board may require.

POLICY

(a) Definition of “commercial fisher”

Clause (g) of the definition of “commercial fisher” in section 1 of the *Regulations* excludes persons who “rarely contribute to the catching or landing of fish...” but allows them to purchase Personal Optional Protection. This applies to fishers who sell less than 10% of the total value of their catch in BC to commercial buyers. Coverage is not available to fishers who have totally removed themselves from the BC fishing industry such as a fisher who catches and lands in another country. No coverage is available under the regulations for sports fishing activity, even though the fisher may have a commercial fishing license.

(b) Determining employers that must pay assessments

Section 5(1) of the *Regulations* provides the criteria to be considered in determining those persons in the fishing industry who must pay assessment premiums.

Pursuant to section 5(1) of the *Regulations*, the first commercial buyer or commercial recipient who enters into a commercial transaction in or from which the market value of the fish can be ascertained, and consequently the assessment premiums calculated, must pay assessment premiums in respect of the fish.

A commercial buyer or commercial recipient does not include a person who only receives fish for transport to a commercial buyer or commercial recipient in the province.

Where there is no commercial buyer or commercial recipient, the assessment premiums must be paid by the person who hired the master or crew of a fishing vessel.

The following factors may assist in applying these guidelines:

1. whether collecting assessments from the person is within the authority of the *Act*;
2. whether the person makes the economic decision to sell fish to persons or organizations other than BC commercial buyers or commercial recipients;
3. whether the person has control to act upon the economic decision on where to sell the fish;
4. whether it is practical or operationally feasible for the Board to collect the assessments; and
5. any other factor that is consistent with the *Act*, *Regulations* and Board policy.

(c) Calculation of assessable amount

There are three formulas for calculating the assessable amount under section 5(3) of the *Regulations*:

- Where the commercial fisher is paid a salary, the assessable amount may be based on the salary.
- Where the commercial fisher is paid by established settlement and a labour component is clearly identified, the assessable amount may be based on the gross labour component. That component includes bonuses and any other payment which, according to the practice of the industry, is part of the fisher's share.
- Where the commercial fishers' salary or the labour component of a settlement is not clearly identified by the assessed employer, the assessable amount is based on 60% of the gross purchase price of the fish.

Where it is the practice of the industry to deduct costs incurred to earn fishing income from the gross purchase price of the fish, or share those costs between the boat and the crew, not more than 40% of the cost of a fishing license, permit or quota, if leased, may be deducted or shared.

Under section 5(3) of the *Regulations*, assessments are limited to the maximum wage rate for each fisher. Therefore, if records are retained by the assessment payer to identify payments to individuals, deduction of excess earnings will be considered, regardless of whether the commercial fishing firm is incorporated. Excess earnings are only deducted where the earnings paid by one source exceed the maximum. Payments from two sources to the same person are not added for this purpose.

(d) Registration of vessel owners

As assessments are generally paid by “commercial buyers” or “commercial recipients” under section 5(1) of the *Regulations*, vessel owners do not normally have to register. Some exceptional situations are discussed below.

A commercial fisher who is engaged in the maintenance or minor repair of his or her own fishing vessel or equipment during the fishing season or on the off-season is covered under the *Regulations*, as these activities are considered incidental to the fishing operations. Similarly, any commercial fisher who is doing maintenance or minor repairs on a fishing vessel owned by another person is also covered under these regulations. However, if a commercial fisher or vessel owner hires a person who is not a commercial fisher to perform maintenance or minor repairs, the *Regulations* do not apply and the fisher or owner must register with the Board as the employer of the non-fisher.

If a commercial fisher is involved in the construction of that fisher’s own fishing vessel or is doing major repairs on the vessel (greater than 25% of replacement value), that fisher would not be covered unless Personal Optional Protection was obtained. However, if that fisher hires help to assist in the construction or major repair of the vessel, the fisher would be required to register as an employer.

Subject to Part (b) of this policy, a person engaged in transmitting payments to commercial fishers must also register with the Board and pay assessments on the payments transmitted. For the purposes of this policy, transmitting includes the activity of sending, transferring, forwarding, conveying or distributing funds to commercial fishers.

(e) Payroll where there are multiple classifications

Persons paying assessments may have more than one classification in the fishing industry: relating to fish processing or other operations on the one hand and fishing or fish buying on the other hand. Payroll must be allocated to the applicable classification. Payroll allocated to fish processing includes plant crews, truck drivers, warehouse workers and office staff. Payroll allocated to fishing or fish buying includes tendermen, campmen, net workers and any other acquiring personnel.

If a firm has assessable payroll in more than one classification in the fishing industry, then the administrative payroll (including active principals) that is common to the classifications must be pro-rated.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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|--------------------------|---|
| EFFECTIVE DATE: | April 1, 2006 |
| AUTHORITY: | Section 8 of the <i>Act</i> ; <i>Fishing Industry Regulations</i> . |
| CROSS REFERENCES: | Item AP1-4-3, <i>Personal Optional Protection</i> ; Item AP5-244-2, <i>Classification – Assignment</i> ; Item AP5-246-1, <i>Maximum Wage</i> , of the <i>Assessment Manual</i> . Policy item #65.03, <i>Fishers</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. April 1, 2006 – Amended in 2005 to clarify assessed employers in the fishing industry and the manner in which assessment premiums may be calculated. December 31, 2003 – Housekeeping change. January 1, 2003 – Amendments made in 2003 resulted from the amendment to the <i>Fishing Industry Regulations</i> gazetted as B.C. Reg. 364/2000. Amended parts of the then Item AP1-4-1 of the <i>Assessment Manual</i> approved on November 16, 2002. Specifically, inserted a new Part (b) to add factors for determining persons who should pay assessments on out-of-province and direct fish sales. Also amended Part (d) to require persons engaged in transmitting payments to commercial fishers to register with the Board to pay assessments. This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continued 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. Replaced Policy No. 40:20:10 of the <i>Assessment Policy Manual</i> . |
| APPLICATION: | This policy applies to all decisions made on or after April 1, 2006. |

RE: No Contribution from Workers**ITEM: AP3-118-1**

BACKGROUND

1. Explanatory Notes

The *Act* makes it an offence for employers to charge their workers with the cost of compensation coverage.

2. The Act

Section 118:

- (1) An employer must not, either directly or indirectly,
 - (a) deduct from the wages of a worker of the employer any part of an amount that the employer is or may become liable to pay into the accident fund or otherwise under a compensation provision, or
 - (b) require or permit a worker of the employer to contribute in any manner toward indemnifying the employer against a liability that the employer has incurred or may incur under a compensation provision.
- (2) A person who contravenes subsection (1)
 - (a) commits an offence, and
 - (b) is liable to repay to a worker any amount
 - (i) deducted from the worker's wages in contravention of subsection (1)(a), or
 - (ii) that the worker has been required or permitted to contribute in contravention of subsection (1)(b).

POLICY

None.

PRACTICE

When the Board makes a decision concerning the status of a worker for the purpose of section 118, the decision is in writing and outlines the facts on which it is based. Copies are provided to both the worker and the employer. The decision also outlines rights of appeal.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | January 1, 2003 |
| AUTHORITY: | Section 118 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP3-123-1, <i>Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions or Orders</i> , of the <i>Assessment Manual</i> . Policy item #47.20, <i>Contributions from Workers to Employer</i> , Appendix 5 – <i>Maximum Fines for Committing Offences under the Act</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2003 – The POLICY in this Item continued 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 BACKGROUND and PRACTICE sections of this Item addressed, in part, Policy No. 20:10:30 of the <i>Assessment Policy Manual</i> . |
| APPLICATION: | This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . |

RE: Attachment of Compensation**ITEM: AP3-120-1**

BACKGROUND

1. Explanatory Notes

Section 120 of the *Act* gives the Board the authority to attach compensation payments for any amount owed to the Board by the recipient.

2. The Act

Section 120:

- (1) The following apply to an amount payable as compensation or by way of commutation of a periodic payment in respect of compensation:
 - (a) the amount is not capable of being assigned, charged or attached;
 - (b) the amount must not pass by operation of law except to a personal representative.
- (2) A claim must not be set off against an amount referred to in subsection (1), except for money
 - (a) advanced by way of financial or other social welfare assistance owing to the government, or
 - (b) owing to the accident fund.

POLICY

If a proprietor or partner with Personal Optional Protection has sustained an injury or occupational disease in the course of the business and is entitled to wage-loss benefits or permanent disability benefits, and the business owes assessments to the Board, the Board may attach all or a portion of those benefits. This also applies to a director of a limited company who was personally responsible for the non-payment of assessments by the corporation.

Before compensation payments may be attached, the employer or affected individual must be given an opportunity to pay the outstanding amount. The amount of the compensation payment to be attached is determined after considering such factors as the marital status of the individual, the number of dependants and the amount of compensation available for attachment.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafefbc.com.

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|--------------------------|--|
| EFFECTIVE DATE: | January 1, 2003 |
| AUTHORITY: | Section 120 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-1-1, <i>Coverage under Act – Determining Workplace Status</i> ; Item AP1-4-3, <i>Personal Optional Protection</i> , of the <i>Assessment Manual</i> . Policy item #48.40, <i>Overpayments/Money Owed to the Board</i> ; Policy item #48.48, <i>Unpaid Assessments</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2003 – Replaced Policy No.70:20:80 of the <i>Assessment Policy Manual</i> . |
| 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. |

**RE: Reconsiderations, Reviews and Appeals –
Reconsiderations of Decisions or Orders**

ITEM: AP3-123-1

BACKGROUND

1. Explanatory Notes

The *Act* provides the Board may reconsider previous decisions or orders. Subject to certain restrictions, the Board may reconsider a decision or order under the compensation provisions of the *Act* during the period of 75 days subsequent to the decision or order being made; after 75 days, the Board may only reconsider a decision or order that contains an obvious error or omission.

2. The Act

Section 1, in part:

“**reconsider**” means to make a new decision in a matter previously decided such that the new decision confirms, varies or cancels the previous decision or order;

...

Section 123:

- (1) Subject to subsection (2), the Board may, on its own initiative, reconsider a decision or order made under a compensation provision by the Board or an officer or employee of the Board.
- (2) Subject to subsection (3), the Board may not reconsider a decision or order referred to in subsection (1) if any of the following apply:
 - (a) more than 75 days have elapsed since the decision or order was made;
 - (b) a request for review has been filed under section 270 [*making request for a review*] in respect of the decision or order;
 - (c) a notice of appeal has been filed under section 292 [*how to appeal*] in respect of the decision or order.

- (3) The Board may, on its own initiative, reconsider a decision or order after the 75 days referred to in subsection (2)(a) have elapsed, if the decision or order contains an obvious error or omission.

Section 244, in part:

- (2) The Board may do one or more of the following:
 - (a) establish 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 any of the following from a class and transfer it to another class or subclass or form it into a separate class or subclass:
 - (i) an employer, independent operator or industry;
 - (ii) a part of the class;
 - (iii) a subclass or a part of a subclass;
 - (f) withdraw any of the following from a subclass and transfer it to another class or subclass or form it into a separate class or subclass:
 - (i) an employer, independent operator or industry;
 - (ii) a part of the subclass;
 - (iii) another subclass or part of another subclass.
- (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 252:

- (1) The Board must notify each employer of the amount of each assessment due in respect of the employer's industry and the time when it is payable.

- (2) A notice under subsection (1) may be sent by mail to the employer, and is deemed to be given to the employer on the day the notice is mailed.

Section 344, in part:

- (1) A document that must be served on or sent to a person under this Act may be
 - (a) personally served on the person,
 - (b) mailed to the person's last known address, or
 - (c) transmitted electronically, by fax or otherwise, to the address or number requested by the person.
- (2) If a document is mailed, the document is deemed to have been received 8 days after it was mailed.
- (3) If a document is transmitted electronically, the document is deemed to have been received when the person transmitting the document receives an electronic acknowledgement of the transmission.

...

POLICY

(a) Definition of reconsideration

A reconsideration occurs when the Board considers the matters addressed in a previous decision or order anew to determine whether the conclusions reached were valid. Where the reconsideration results in the previous decision or order being confirmed, varied or cancelled, it constitutes a redetermination of those matters.

Decisions or orders that are reconsidered under section 123, which are subject to the restrictions in that section, are decisions or orders on individual matters. Examples of such decisions or orders include:

- the modification of an employer's assessment rate through experience rating;
- determinations regarding whether an individual is a worker, employer, or independent operator;
- the application of a penalty for failure to remit or report as required under the *Act*; and

- the charging of claims costs when an employer is in default and an injury or occupational disease occurs to one of its workers during the period of default.

Matters of general application, on the other hand, are not intended to be covered by section 123. Examples of such matters include:

- the allocation of income, compensation payments, outlays, expenses, assets, liabilities, surpluses or deficits to or from an account of a class or subclass, or to or from a reserve of the accident fund, with the exception of section 240(1)(b), (c) and (d), and section 249 decisions as they relate to a specific employer or independent operator; and
- the determination of an assessment rate for a class or subclass.

Section 244 of the *Act* establishes the Board's authority to make any changes to classes and subclasses that are considered necessary and appropriate as part of the management of the classification system. Changes in classification resulting from the exercise of this authority, or resulting from a firm's fraud or misrepresentation, do not constitute a reconsideration of a Board decision. Rather, the change constitutes a new decision pursuant to the exercise of the Board's normal classification authority under section 244(2). The restrictions, including the 75-day time limit, placed upon the Board's reconsideration authority under section 123 do not apply.

On a review or an appeal, the Review Division and the Workers' Compensation Appeal Tribunal ("WCAT") may make a decision that confirms, varies or cancels the decision under review or appeal. The Review Division and WCAT decisions are final and must be complied with by the Board.

Varying or canceling a decision may make invalid other decisions that are dependent upon or result from the decision under review or appeal. The reconsideration requirements under section 123 do not limit changes to previous decisions that are required in order to fully implement decisions of the Review Division or the WCAT.

(b) The purpose of section 123

The Board's authority to reconsider previous decisions and orders is found in section 123 of the *Act*. The purpose of this section is to promote finality and certainty within the workers' compensation system, while still allowing the Board to remedy obvious errors and omissions.

Part 6 of the *Act* establishes a right to request a review by a review officer, where a party disagrees with a decision or order made at the initial decision-making level. It is this review, rather than the application of the Board's reconsideration authority, which is intended to be the dispute resolution mechanism for initial decisions and orders of Board officers.

The use of the words “on its own initiative” in section 123, and the availability of a review mechanism under Part 6 of the *Act*, indicate that the Board is not intended to set up a formal application for reconsideration process to resolve disputes that parties may have with decisions or orders.

Rather, the Board’s reconsideration authority is intended to provide a quality assurance mechanism by the Board. The Board is given a limited opportunity to vary or cancel, on its own initiative, any incorrect decisions or orders it may have made.

However, this does not preclude the Board from basing a reconsideration on information that may be brought forward by a worker, employer or other party to a decision or order, provided the grounds for reconsideration have been met.

(c) Advice to parties

Parties to a decision or order will be advised at the time the decision or order is made of the right to request a review of the decision or order under section 268. The Board will take all reasonable steps to communicate a decision or order to a party. A party who requests the reconsideration of the decision or order will be reminded by the Board of the party’s right to request a review under section 268.

If the Board reconsiders a decision or order before the request for review is made, the Board will provide the parties to the decision or order with a reconsidered decision. The reconsidered decision, to confirm, vary or cancel the previous decision or order, gives rise to a new right to request a review under section 268.

(d) Restrictions on reconsideration

The *Act* places a number of express restrictions on reconsidering previous decisions and orders. It is noted, in this respect, that “reconsider” means the making of a new decision or order and not merely the starting of the reconsideration process leading to the new decision or order.

- The Board may not reconsider a decision or order under section 123(1), more than 75 days after the decision or order was made. In accordance with section 344, where a decision or order has been sent by either registered or regular mail, the document is deemed to have been received 8 days after it was mailed. If the decision or order is sent electronically, the document is deemed to have been received on the date the Board receives electronic acknowledgement of receipt. One exception to section 344 applies to decisions or orders mailed to employers in accordance with section 252 regarding the amount of assessment due in respect of the employer’s industry and the time when it is payable. This notice is deemed to be given to the employer on the day the notice is mailed.

- The Board may not reconsider a decision or order under section 123(1) or section 123(3) if a request for a review has been filed by an employer or an independent operator in respect of that decision or order under section 270. A request for review filed under section 270 immediately terminates the authority of the Board to reconsider a previous decision or order (even if 75 days has not passed since the decision or order was made for reconsiderations under section 123(1)).
- The Board may not reconsider a decision or order under section 123(1) or section 123(3) if an appeal has been filed in respect of that decision or order to WCAT under section 292. The filing of an appeal under section 292 immediately terminates the authority of the Board to reconsider the decision or order (even if 75 days has not passed since the decision or order was made for reconsiderations under section 123(1)).

There are, in addition, a number of implicit restrictions on reconsidering previous decisions and orders. The Board is not authorized to reconsider appellate decisions or findings of the following bodies:

- the former Appeal Division;
- the former Commissioners, who existed prior to June 3, 1991;
- the boards of review and the Workers' Compensation Review Board; and
- the Board of Review, which existed prior to January 1, 1974.

Section 310 of the *Act* provides for WCAT to reconsider its own decisions and decisions of the former Appeal Division under certain limited conditions.

(e) Grounds for reconsideration

- (i) Reconsiderations within 75 days under section 123(1) of the *Act*

Subject to the restrictions set out above, the Board may reconsider a decision or order on its own initiative under section 123(1) where the Board is satisfied reconsideration is appropriate based on applicable law and policy, and the merits and justice of the case. In reconsidering a decision or order under section 123(1), the Board may reweigh the evidence and substitute its judgment for that of the initial decision-maker.

Examples of circumstances that may warrant reconsideration include, but are not limited to, the following:

- there is new evidence indicating that a prior decision or order was made in error;
- there has been a mistake of evidence, such as:
 - material evidence was initially overlooked, or

- facts were mistakenly taken as established which were not supported by any evidence or by any reasonable inference from the evidence;
 - there has been a policy error such as:
 - applying an applicable policy incorrectly, or
 - not applying an applicable policy;
 - there has been an error of law, such as a failure by the Board to follow the express terms of the *Act*; or
 - one or more of the reasons for reducing or cancelling a penalty under the policy in Item AP5-261-1 are met.
- (ii) Reconsiderations after 75 days under section 123(3) of the *Act*

Subject to the restrictions set out above, and after the 75-day period has elapsed since the decision or order was made, the Board may reconsider a decision or order on its own initiative under section 123(3) only where the decision or order contains an obvious error or obvious omission. This means there must be an obvious error or omission in the application of law and/or policy; or an obvious error or omission in relation to a mistake of evidence.

An “error” is a mistake or something that is wrong or incorrect; an “omission” is the failure to do something that is required by law or policy.

An obvious error or omission is easily and plainly identifiable with minimal investigation. An obvious error or omission does not arise where one simply disagrees with the decision-maker’s exercise of judgment or weighing of the evidence.

Section 123(3) applies to obvious errors and omissions in a decision or order made by the Board other than review officer decisions.

(f) Authority of Board officers, Managers and Directors to reconsider

- (i) Reconsiderations within 75 days under section 123(1) of the *Act*

A Board officer, Manager or Director may only reconsider a decision or order where appropriate based on applicable law and policy, and the merits and justice of the case. A Board officer, Manager or Director may reweigh the evidence and substitute his or her own judgment for that of the initial decision-maker.

- (ii) Reconsiderations after 75 days under section 123(3) of the *Act*

A Board officer, Manager or Director may only reconsider a decision or order where there is an obvious error or obvious omission.

(g) Correction of administrative errors

The correction of an administrative error such as a clerical, typographical or mathematical error or a slip or omission does not result in a reconsideration of a previous decision or order. The ability to correct these types of errors would not be considered a reconsideration of the original decision or order, as it would not change the intent of the original decision or order made by the Board officer.

This process for correcting administrative errors, however, cannot be applied to change previous decisions or orders.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | January 1, 2023 |
| AUTHORITY: | Sections 1, 123, 244(2), 244(3), 252, and 344 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP5-261-1, <i>Penalties</i> ; Item AP3-124-1, <i>Reconsiderations, Reviews and Appeals – Fraud and Misrepresentation</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | January 1, 2023 – Consequential changes related to the consolidation of policies on determining workplace status were made effective. October 29, 2020 – Amended to reflect amendments to reconsideration provision in the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23 of 2020), in effect August 14, 2020, including title change. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. November 8, 2011 – Policy changes to reflect the removal of the annual classification cycle were made effective. October 2010 – Housekeeping amendment. January 1, 2010 – Housekeeping amendment. November 1, 2007 – Changes were approved to former Items AP1-37-3 and AP1-96-1 to clarify the types of changes in a firm's classification that did not constitute a reconsideration under the then section 96(4) of the <i>Workers Compensation Act</i> . As a result, the 75-day time limit on reconsidering a decision set out in the <i>Act</i> did not apply to the specified types of classification decisions. January 1, 2005 – Changes to policy to clarify that the correction of administrative errors and the implementation of Review Division and Workers' Compensation Appeal Tribunal decisions do not constitute a reconsideration effective January 1, 2005 and applied to all decisions on or after that date. March 3, 2003 – Consequential changes were made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> (Bill 63 of 2002) and applied to all reconsiderations on or after March 3, 2003, including a new title. |

January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continued 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.

Replaced Policy No. 10:40:00 of the *Assessment Policy Manual*.

Applies to all decisions made on or after January 1, 2023.

APPLICATION:

RE: Reconsiderations, Reviews and Appeals – ITEM: AP3-124-1
Fraud and Misrepresentation

BACKGROUND

1. Explanatory Notes

Section 124 allows the Board to set aside any decision or order under the compensation provisions of the *Act* that has resulted from fraud or misrepresentation.

2. The Act

Section 124:

The Board may at any time set aside a decision or order made under a compensation provision by the Board or an officer or employee of the Board if that decision or order resulted from fraud or misrepresentation of the facts or circumstances on which the decision or order was based.

POLICY

In order for a decision or order to be set aside as a result of misrepresentation, there must be more than innocent misrepresentation.

The misrepresentation must have been made, or acquiesced in, by the employer, independent operator or other person with evidence to provide, knowing it to be wrong or with reckless disregard as to its accuracy, and the decision or order must have been made in reliance on the misrepresentation. Misrepresentation would include concealing information, as well as making a false statement.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | March 3, 2003 |
| AUTHORITY: | Section 124 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP3-123-1, <i>Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions or Orders</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. October 2010 – Housekeeping amendment. March 3, 2003 – Changes were made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> (Bill 63 of 2002). |
| APPLICATION: | To all decisions on or after March 3, 2003. |

RE: Assessment Rates**ITEM: AP5-240/241-1**

BACKGROUND

1. Explanatory Notes

Assessment rates are set for each rate group. The intent is for each rate group to be self-sufficient with regard to costs. The cost of injuries and diseases that occur to the workers of employers in each group is paid by all the employers in that group.

2. The Act

Section 240(1):

For the purpose of an assessment under section 241, the Board must every year make an estimate of sufficient funds to do the following:

- (a) meet all amounts payable from the accident fund during the year;
- (b) provide a reserve in aid of industries or classes which may become depleted or extinguished;
- (c) provide a reserve to be used to meet the loss arising from a disaster or other circumstance that the Board considers would unfairly burden the employers in a class;
- (d) provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability;
- (e) provide in each year capitalized reserves sufficient to meet the periodic payments of compensation accruing in future years in respect of all injuries which occur during the year;
- (f) provide and maintain a reserve for payment of retirement benefits.

Section 241:

- (1) For the purpose of continuing and maintaining an adequate accident fund, the Board must every year assess and levy on and

collect from employers and independent operators in each class established under section 244 [*classification of industries*] sufficient funds as estimated for the year under section 240.

- (2) An assessment under this section must be rated on payroll, rated on a unit of production or made in another manner the Board considers proper.

POLICY

(a) General

The Board has adopted a modified collective liability system, under which self-sufficient groups of employers are created on the basis of similar cost rates. These groups must be large enough to provide for an adequate spread of the risk and stability in the assessment rate.

The costs of compensable injuries and diseases, along with the costs of administering claims and carrying out other statutory requirements, are collected from employers in the form of assessments. For this purpose, employers are classified into classification units, industry groups and rate groups. The costs incurred in relation to these groups determine the assessment rate paid by their members. The Board creates groups that are large enough to provide for an adequate spread of the risk and stability in the assessment rate.

The *Act* uses terms “classes”, “subclasses” and “industries”. For the purpose of describing the Board’s rate setting structure a rate group is equivalent to a subclass, industry groups are equivalent to industries, and classification units are equivalent to parts of industries. For the purposes of section 249 of the *Act*, classes and subclasses are equivalent to rate groups.

(b) Classification units

The Board assigns employers and independent operators to the classification unit that best describes the industry in which the employer or independent operators’ business undertaking is operating.

(c) Industry groups

Industry groups must be of sufficient size to be fairly regarded as having some predictability for future claims experience. The Board may place classification units that are large enough into their own industry group. Otherwise, the Board will combine classification units into industry groups on the basis of similarity of

industrial activity and a reasonable expectation of similar cost rates. The Board determines the minimum size for industry groups.

(d) Rate groups

Assessment rates are calculated at the rate group level. The Board may place industry groups that are large enough into their own rate group. Otherwise, the Board will place industry groups into specific rate groups (known as rate group bands) on the basis of their historical injury cost rates. Rate groups must meet a minimum size requirement as determined by the Board in order to be viable for statistical and insurance purposes.

Where the historical injury cost rate of the industry group falls outside the historical injury cost rate range of its rate group band for two consecutive years, the Board may move the industry group to a rate group band that better reflects its historical injury cost rate.

(e) Assessment Rates

Each year, the total cost for a particular rate group is estimated. The total is divided by the estimated total assessable payroll for the group to produce the base assessment rate for the group for that year. Rate group data is used to create a classification unit's base assessment rate, which is then modified by the employer's own experience rating adjustment if applicable. The rate is expressed as a dollar amount per one hundred dollars of payroll.

As a result of section 240(1), the estimated total annual cost for each rate group is made up of different costs. This cost includes:

- the estimated current costs of all injuries which occur during the year;
- capitalized reserves sufficient to meet the future payments of compensation on those injuries;
- the rate group's contribution to other reserves described in section 240;
- the rate group's share of the Board's administrative costs; and
- an amount to amortize the rate group's account balance if appropriate.

The Board reviews the assessment rate for each rate group annually. The assessment rates may be adjusted more frequently, but this will be avoided where possible.

PRACTICE

For detailed information on how assessment rates are set and the rates payable by each classification, readers should consult the WorkSafeBC website at <https://www.worksafebc.com/en/insurance/know-coverage-costs/industry-premium-rates>.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | September 1, 2022 |
| AUTHORITY: | Sections 240 and 241 of the <i>Act</i> . |
| CROSS REFERENCES: | Section 268(2)(h) of the <i>Act</i> . Item AP5-244-1, <i>Classification – Description of Terms</i> , with regard to classification units; Item AP5-247-1, <i>Experience Rating</i> , of the <i>Assessment Manual</i> . Policy item #113.00, <i>Introduction – Charging of Claim Costs</i> ; Policy item #113.20, <i>Occupational Diseases</i> ; Policy item #113.21, <i>Silicosis and Pneumoconiosis</i> ; Policy item #113.22, <i>Hearing-Loss Claims</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | September 1, 2022 – Policy change to reflect rate setting model adopted January 1, 2019. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective. October 1, 2007 – Updated to reflect the Board's authority to set assessment rates. March 3, 2003 – Consequential changes were subsequently made to the cross references in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002 (Bill 63 of 2002). January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continued 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: | Replaced Policy No. 30:30:00 of the <i>Assessment Policy Manual</i> . Applies to all decisions made on or after September 1, 2022. |

RE: Assessment Payments**ITEM: AP5-243-1**

BACKGROUND

1. Explanatory Notes

The requirements for when employers must pay assessments, and the manner of payment, are found in Part 5 of the *Act*. Section 245 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 243 and 253 are set out below.

2. The Act

Section 243:

- (1) Assessments
 - (a) may be made in the manner and form and by the procedure the Board considers adequate and expedient, and
 - (b) may be general as applicable to a class or subclass, or special as applicable to an industry or part or department of an industry.
- (2) If the Board considers this to be expedient, assessments may be collected in half-yearly, quarterly or monthly instalments, or otherwise.
- (3) If the Board considers that the funds in a class are sufficient for the time being, an instalment may be reduced or cancelled or its collection deferred.

Section 253(1):

If 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 the assessment is payable,

the notice constitutes an assessment under this Part, and the employer must, within the time frame set out 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 276:

- (1) The commencement of a review under this Part does not relieve an employer from paying an amount in respect of a matter that is the subject of the review.
- (2) If the decision on a review under this Part 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.

Section 313:

- (1) The commencement of an appeal under this Part respecting a matter described in section 268(1)(c) [*employer assessments, classifications, monetary penalties or compensation payments*] does not relieve an employer from paying an amount in respect of a matter that is the subject of the appeal.
- (2) If the decision on the appeal 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**

A firm will usually pay assessments annually or quarterly, depending on the size of the annual assessment or the industry in which the firm's business undertaking operates. Firms having an annual assessment of less than the threshold amount are usually assessed annually. Firms having an annual assessment of more than the threshold amount 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 a firm if:

- the firm and the Board agree on a different schedule;
- a firm's annual assessment regularly fluctuates above and below the threshold amount and the Board determines that the firm should remit either annually or quarterly regardless of the amount of the annual assessment; or

- a firm's account is not in good standing or the firm has a history of failing to remit on time, and the Board determines that the firm is required to remit more frequently until the firm 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 firm's business 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 unit when the employer identified the correct industry at the outset.
- An employer prepays an administrative penalty under the OHS provisions of the *Act* or a penalty assessment (including an experience rating demerit) pending a review under Part 6 or an appeal under Part 7 and is then successful in the review or appeal.
- An amount other than a prepayment covered by the bullet above is returned to an employer as a result of a successful review under Part 6 or a successful appeal under Part 7 respecting a matter described in section 268(1)(c) of the *Act*. In these cases, interest is payable from the date the employer 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

The annual assessment threshold for the purpose of determining a firm's remittance schedule for the purpose of part (a) of this policy is set out in Appendix "A" to this *Manual*.

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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|--------------------------|---|
| EFFECTIVE DATE: | January 1, 2020 |
| AUTHORITY: | Sections 124, 243, and 253(1) of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP5-245-2, <i>Assessable Payroll</i> ; Item AP5-246-1, <i>Maximum Wage</i> ; Item AP5-264-1, <i>Collection of Assessments</i> ; Item AP5-261-1, <i>Penalties</i> ; Item AP3-123-1, <i>Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions or Orders</i> , of the <i>Assessment Manual</i> . Item P2-95-1, <i>Criteria for Imposing OHS Penalties</i> , with regard to penalties under the OHS provisions of the <i>Act</i> , of the <i>Prevention Manual</i> . |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2020 – Changes made to move annual assessment threshold amount to Appendix "A" of this <i>Manual</i> were made effective. January 1, 2017 – Housekeeping amendment. January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective. February 1, 2011 – Housekeeping amendment in PRACTICE section. September 22, 2010 – On September 22, 2010, the Supreme Court of British Columbia released a decision in which it determined that the policy regarding the provision of interest on successful reviews or appeals is not a reasonable interpretation of section 259 of the <i>Workers Compensation Act</i> . In light of the Court decision, the Board of Directors of WorkSafeBC approved an amendment to the then Item AP1-39-2, <i>Assessment Payments</i> , in the <i>Assessment Manual</i> . |

March 3, 2003 – Consequential changes were subsequently made in accordance with the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63 of 2002).

January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continued 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.

Replaced 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 *Assessment Policy Manual* and Decision No. 351 in volumes 1 - 6 of the *Workers’ Compensation Reporter*.

APPLICATION:

This policy applies to all decisions made on or after January 1, 2020.

RE: Classification – Descriptions of Terms**ITEM: AP5-244-1**

BACKGROUND

1. Explanatory Notes

This policy describes the purpose and structure of the Board's classification system, and terms the Board uses when assigning a firm to one or more classification units.

2. The Act

Section 1, in part:

“**industry**” includes establishment, undertaking, work, trade and business;

...

Section 244(1):

The following classes are established for the purpose of assessment in order to maintain the accident fund:

Class 1: Primary resources

Class 2: Manufacturing

Class 3: Construction

Class 4: Transportation and warehousing

Class 5: Trade

Class 6: Public sector

Class 7: General sector

Class 8: Canadian Pacific Railway Limited, Teck Resources Limited

Class 9: BNSF Railway Company

Class 10: Air Canada, Canadian National Railway, Via Rail Canada Inc.

Class 11: British Columbia Assessment Authority, British Columbia Ferry Services Inc., Government of British Columbia, Workers' Compensation Board.

Section 247(1):

The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class, as the Board considers just.

POLICY

1. DESCRIPTIONS OF TERMS

The following descriptions assist in understanding the Board's classification system and how the Board assigns a firm to one or more classification units.

1.1 Terms Describing the Classification System

The following are terms used to describe the classification system.

Classification Unit

A classification unit is the basic grouping of the Board's classification system. The Board uses a classification unit to represent one or more industries, based on the products or services produced, and the processes, technology or materials used. Each classification unit is made up of firms that are considered by the Board to be peers or competitors, based on the similarity of their business undertakings.

For the purposes of section 244 of the *Act* and describing the Board's classification system, a classification unit is equivalent to a further subclass.

Subsector

A subsector is made up of classification units involved in similar industries.

For the purposes of section 244 of the *Act* and describing the Board's classification system, a subsector is equivalent to a subclass.

Sector

A sector is made up of subsectors that are involved in a similar area of the economy at the broadest level.

For the purposes of section 244 of the *Act* and describing the Board's classification system, a sector is equivalent to a class.

1.2 Terms Describing a Firm's Business

The following are terms used to describe a firm's business for the purpose of assigning a firm to one or more classification units.

Activity

An activity is a process that combines inputs, technology, skills, and labour to create a product or service. Generally an activity is a task or a group of tasks, and an activity may be a part of another activity.

Business Undertaking

A business undertaking is one or more activities carried out by a firm or enterprise's own workers, or by contracting with other firms, that produce a product or service for revenue. In circumstances where generating revenue is not the purpose of the activities, such as with a non-profit firm, a business undertaking will advance the firm or enterprise's goals.

A firm or enterprise's main business undertaking is the one that produces its usual and primary product or service, which is not for its own use.

Business Operations

Business operations are all of a firm's activities, and may include one or more business undertakings.

1.3 Other Terms in Classification Policy

The following are terms used to provide specific guidance in assigning a firm to one or more classification units.

Consulting Firm

For the purpose of classifying firms, a consulting firm performs impartial services for unaffiliated clients on a contractual basis.

Affiliated

Firms are affiliated where:

- one firm controls another firm, or both firms are controlled by the same person or group of persons, or

- the firms are controlled by family members, immediate, extended, or equivalent.

For the purposes of determining affiliation, control is the ability or power, actual or potential, direct or indirect through intermediaries, to direct or cause the direction of the management of a firm's business operations, through the ownership of voting securities, by contract, or by other means.

Where a firm has ceased to operate or exist, and its business undertakings are transferred to one or more successor firms, the Board determines affiliation based on the relationship between the firm that has ceased to operate or exist and each individual successor firm.

Enterprise

An enterprise exists where two or more affiliated firms engage in a cooperative and coordinated relationship to produce a product or service, not for its own use.

PRACTICE

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

| | |
|--------------------------|---|
| EFFECTIVE DATE: | January 1, 2013 |
| AUTHORITY: | Sections 1, 244(1), 244(2), and 247 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP5-240/241-1, <i>Assessment Rates</i> ; Item AP5-244-2, <i>Classification – Assignment</i> ; Item AP5-244-3, <i>Classification – Changes, of the Assessment Manual</i> . |
| HISTORY: | October 21, 2020 – Housekeeping amendments to the <i>Act</i> portion of the Background section to reflect amendments to the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2013 – Policy changes to consolidate the classification policies were made effective, including title change. November 8, 2011 – Policy changes to reflect the removal of the annual classification cycle were made effective. October 1, 2009 – Policy changes to reflect the adoption of an annual classification cycle were made effective. January 1, 2009 – Housekeeping amendment. October 1, 2007 – Updated to reflect the Board's authority to classify firms. |

March 3, 2003 – Consequential changes were subsequently made in accordance with the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63 of 2002).

January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continued 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.

Replaced in part Policies No. 30:10:00 and 30:20:10 of the *Assessment Policy Manual* and Decision No. 58 in volumes 1 - 6 of the *Workers' Compensation Reporter*.

APPLICATION:

This policy applies to all decisions made on or after January 1, 2013.

RE: Classification – Assignment**ITEM: AP5-244-2**

BACKGROUND

1. Explanatory Notes

Usually, when a firm is registered with the Board, the firm is assigned to a single classification unit based on the industry of its main business undertaking.

However, a firm's business operations may involve business undertakings in different industries, or the firm may, after the initial registration, become involved in another business undertaking in a different industry. In either of these situations, the Board determines the classification unit to which the whole of the firm's business operations should be assigned, or whether more than one classification unit is required.

2. The Act

Section 239:

- (1) The Board must continue and maintain the accident fund
 - (a) for payment of compensation, outlays and expenses under the compensation provisions,
 - (b) for payment of expenses incurred in the Board's administration of this Act, and
 - (c) for payment to the government required under section 283(2) [*appeal tribunal expenses*] or 350(4) [*workers' advisers and employers' advisers expenses*].
- (2) The Board is solely responsible for the management of the accident fund and must manage it with a view to the best interests of the workers' compensation system.

Section 244, in part:

- (2) The Board may do one or more of the following:
 - (a) establish 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 any of the following from a class and transfer it to another class or subclass or form it into a separate class or subclass:
 - (i) an employer, independent operator or industry;
 - (ii) a part of the class;
 - (iii) a subclass or a part of a subclass;
 - (f) withdraw any of the following from a subclass and transfer it to another class or subclass or form it into a separate class or subclass:
 - (i) an employer, independent operator or industry;
 - (ii) a part of the subclass;
 - (iii) another subclass or part of another subclass.
- (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 247(1):

The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class, as the Board considers just.

POLICY

1. GENERAL

The Board implements sections 239, 244, and 247 of the *Act* through its classification system. The following principles guide the application of the classification system.

- (a) The Board has established the classification system to maintain the accident fund and to set fair and equitable base rates for each industry.
- (b) The Board does not classify a firm's business operations based on the occupations of its workers. As a result, a classification unit includes all workers within the industry it represents.
- (c) The Board uses assessments to pay the costs of compensable injuries, diseases, and deaths, along with the costs of administering claims and carrying out other statutory requirements. As a result, the cost of producing a product or providing a service within an industry includes the cost of compensable injuries, diseases, and deaths incurred by all the workers in that industry, along with the costs of administering claims and carrying out other statutory requirements.
- (d) The Board assigns a firm to one or more classification units based on the industry of its main business undertaking and any other business undertakings which meet the criteria to be classified, regardless of whether the firm contracts out all or part of its business operations.
- (e) All of a firm's business operations within BC are assigned to one or more classification units. Where part of a firm's business operations are within BC and part are outside BC, the firm will be classified according to the business operations conducted within BC.
- (f) It is the responsibility of each firm to immediately inform the Board of any circumstance which may affect its status, classification or assessment rate, and to notify the Board of any changes to its business operations, assets or ownership which may affect its status, classification or assessment rate.
- (g) The classification system should not unreasonably differentiate between firms competing for the same business.

2. RULE FOR ASSIGNING A FIRM TO A CLASSIFICATION UNIT

The Board assigns a firm to the classification unit that the Board determines best describes its main business undertaking within BC, unless a policy exception applies.

In determining the main business undertaking, the Board first considers revenue. In cases where the Board considers that revenue may not best describe the firm's main business undertaking, the Board may also consider payroll, units of production, and/or any other measure which the Board determines best describes the firm's main business undertaking.

3. EXCEPTIONS

The following are the exceptions to the rule for assigning a firm to a classification unit. Where more than one exception may apply, the Board will make a determination as to which will apply, based on the principles set out in Section 1 of this Item.

3.1 Strategic or Administrative Business Undertaking

A firm performs a strategic business undertaking when it provides corporate direction to another firm or enterprise, integral to that firm or enterprise's achievement of goals and critical to their current and future business direction.

A firm performs an administrative business undertaking when it provides functions common to most business operations, such as accounting, information technology administration, human resources, sales, marketing, and general office administration, to another firm or enterprise.

Where a firm's main business undertaking is a strategic or administrative business undertaking for one other firm or enterprise, the Board will assign the firm to the same classification unit or units as that of the other firm or enterprise regardless of affiliation.

3.2 Assigning a Firm to Multiple Classifications

The Board may assign a firm to two or more classification units when either of the following apply:

- (a) the firm has two or more business undertakings operating in different industries that meet the criteria for multiple classification set out in Section 3.2.1; or
- (b) the specific circumstances listed in Section 3.2.2 apply to the firm.

Where a firm has business undertakings in more than one industry, but any or all of the firm's business undertakings do not meet the criteria or the specific circumstances for multiple classification, the firm is assigned to a classification unit as set out in Section 3.2.3.

3.2.1 Criteria for Multiple Classifications

For a firm to qualify for more than one classification unit, the business undertakings under consideration for a separate classification unit must be distinct and independent. To demonstrate this requirement, each business undertaking under consideration must satisfy the following criteria:

- (a) Each business undertaking must be separate so that it does not contribute to the risk of injury or occupational disease in another business undertaking of the firm. The Board may consider this requirement to be met for the purpose of this policy if the business undertaking under consideration is:
 - performed by specific workers and/or independent operators as their sole function, and who are not engaged in more than one business undertaking concurrently; or
 - conducted at a separate location from other business undertakings of the firm; or
 - conducted at the same location as other business undertakings of the firm, but at a different time.
- (b) The business undertaking in question cannot be a strategic or administrative business undertaking for the firm itself, and must do more than assist, support or service another business undertaking of the firm.
- (c) At least 50 percent of the product or service from the business undertaking, measured by the revenue of the annual output or the volume from the annual output, must be sold to unaffiliated customers or clients.
- (d) Each business undertaking must meet at least one of the following conditions:
 - generate an annual assessable payroll of at least four times the maximum wage rate; or

- generate an annual assessable payroll that is at least 25 percent of the gross annual assessable payroll of the firm's business operations; or
- generate an annual revenue that is at least 25 percent of the gross annual revenue of the firm's business operations.

3.2.2 *Specific Cases of Business Undertakings in Multiple Industries*

The Board may assign a firm's business operations to more than one classification unit where:

- A firm is the first commercial buyer or commercial recipient of fish acquired from a commercial fisher whose business undertaking is best reflected by one of the following six classification units:
 - 702005 Dive Fishing
 - 702006 Gillnet or Troll Fishing
 - 702007 Longline or Trap Fishing
 - 702008 Seine Fishing
 - 702009 Trawl Fishing
 - 702010 Fish Packing
- A firm not normally engaged in building construction activities hires workers for a construction or renovation project;
- An owner or occupier of a private residence employs a worker to work in or about his or her private residence, other than for the employer's trade or business, or employs a worker to serve the owner's or occupier's personal needs or those of the owner's or occupier's family;
- A firm is a management company, that is a separate limited company, that provides some degree of administrative or management services to one or more firms, a group of affiliated firms or an enterprise; and
- A firm is engaged in a business undertaking represented by a classification unit designated as a special hazard in the annual *Classification and Rate List*. A firm engaged in such a business undertaking will have the special hazard classification unit added to its account, where the annual assessable payroll for the business undertaking is in excess of four times the maximum wage rate for the year in which the special hazard activity is undertaken.

3.2.3 Classifying a Firm with One or More Business Undertaking that Does Not Qualify for Multiple Classifications

Where a firm has business undertakings in more than one industry, but any or all of the firm's business undertakings do not meet the criteria or the specific circumstances for multiple classification, the firm is assigned to a classification unit as set out below:

- (a) If one or more business undertakings make up at least 25 percent of the firm's business operations, any business undertaking that does not meet the multiple classification criteria will be assigned to the classification unit that has the highest base assessment rate and makes up at least 25 percent of the firm's business operations.
- (b) If no business undertaking makes up at least 25 percent of the firm's business operations, any business undertaking that does not meet the multiple classification criteria will be assigned to the classification unit that has the highest base assessment rate. However, if the firm's annual assessable payroll in the classification unit with the highest base rate is less than four times the maximum wage rate for the year in which the business undertaking is active, the Board may assign any business undertaking not meeting the multiple classification criteria to the classification unit with the next highest base rate.

In determining what constitutes 25 percent of the firm's business operations, the Board first considers revenue, however, payroll, units of production, and/or any other measure which best describes the firm's business operations may also be used.

3.3 Classifying Consulting Firms

A consulting firm provides services such as investigations, analysis, pre-planning, design, or compilation of a report, with no financial interest in the client's business operations.

If a consulting firm undertakes directly or indirectly to fabricate, manufacture or construct a product by any means, implement the recommendations of a report, or provide management or supervisory services, as part of its consulting services, the firm's main business undertaking is determined by the fabricating, manufacturing, constructing or implementing activities.

In determining whether a firm's main business undertaking is consulting, the Board considers factors such as:

- basis of payment for services;

- nature of services provided;
- whether recommendations are implemented in any way by the firm;
- affiliations with manufacturing, sales or construction firms;
- which party pays for materials; and
- degree of supervision or control over workers or subcontractors.

A consulting firm's main business undertaking may be considered construction management consulting when:

- the firm acts as agent for the owner, where the owner is not the general contractor;
- the firm's role is limited to one or more of the following: quantity surveying, specification writing, contract writing, tendering, recommending tenders, and ensuring that the contract between the owner and general contractor/subcontractors is being adhered to; and
- the firm has no affiliation with construction firms.

3.4 Classifying Labour Supply Firms

A labour supply firm hires workers directly and arranges for the workers to work under the direction and control of a client. Under these arrangements, the labour supply firm pays the wages of the worker.

The classification system includes labour supply classification units. A firm whose main business undertaking is best described in any of the labour classification units will be assigned to that classification unit. However, where a labour supply firm supplies workers to a client in an industry not in one of the labour supply classification units, the firm will be assigned to the client's classification unit or will have those classification unit(s) added to its account.

3.5 Firms in an Enterprise

While firms in an enterprise are registered separately, they are viewed as one for the purposes of classification. The Board generally assigns each firm in an enterprise to the classification unit that best describes the enterprise's main business undertaking. The multiple classification rules set out in Section 3.2 may also apply to one or more firms within an enterprise.

3.6 Personal Optional Protection

The multiple classification criteria do not apply to individuals with Personal Optional Protection. Instead, the classification rules set out in Section 3.2.3 of this policy apply.

4. EFFECTIVE DATES

The addition or deletion of a classification unit in accordance with this policy is a change in classification. For guidance concerning the effective date of a change in classification, see Item AP5-244-3.

5. NOTIFICATION

A firm must be informed when a classification unit has been added to or deleted from the firm's account.

PRACTICE

Practice Directives provide more information regarding the criteria by which an employer may be assigned to more than one classification. For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

A list of classification units which have been designated as special hazard classification units can be found online at www.worksafebc.com, under Rates/classifications.

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|--------------------------|---|
| EFFECTIVE DATE: | January 1, 2013 |
| AUTHORITY: | Sections 239, 244(2), and (3), and 247 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-4-1, <i>Exemptions from Coverage</i> ; Item AP1-8-1, <i>Fishing</i> ; Item AP1-244-1, <i>Classification – Descriptions of Terms</i> ; Item AP5-244-3, <i>Classification – Changes</i> , with respect to management/administrative payroll; Item AP5-245-2, <i>Assessable Payroll</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2017 – Housekeeping amendment. January 1, 2013 – Policy changes to consolidate the classification policies were made effective, including title change. January 1, 2010 – Housekeeping amendment. January 1, 2009 – Amended to clarify policy regarding the assignment of more than one classification unit when a firm that does not meet the multiple classification criteria, and the assignment of a single classification to firms operating in more than one industry. The 2009 amendments also removed the list of activities designated for special hazard classification and added a reference to the annual <i>Classification and Rate List</i> . January 1, 2004 – The policy changes with respect to Personal Optional Protection applied to all existing Personal Optional |

Protection accounts, all new Personal Optional Protection coverage registrants, and all registrants who reapplied for coverage, on or after January 1, 2004. The policy changes with respect to effective dates of classification changes, applied to all new decisions on or after January 1, 2004.

March 3, 2003 – Consequential changes to this Item made as a result of the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63 of 2002) were effective on March 3, 2003.

January 1, 2003 – This Item resulted from an editorial consolidation of the former *Assessment Policy Manual*.

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. 30:20:20, 30:20:21 and 30:20:30 in the former *Assessment Policy Manual* were replaced, in part, by this Item.

APPLICATION:

This policy applies to all decisions made on or after January 1, 2013.

RE: Classification – Changes**ITEM: AP5-244-3**

BACKGROUND

1. Explanatory Notes

This policy sets out the reasons for changing a firm's classification, the effective date of a change, and the impact of a change in classification on experience rating.

The Board may do one or more of the following with respect to all or part of the firm's business operation:

- (a) Change an existing classification unit;
- (b) Add a classification unit; or,
- (c) Delete a classification unit.

2. The Act

See Items AP5-244-1, AP5-244-2 and AP5-247-1.

POLICY

1. FIRM'S RESPONSIBILITY

It is the duty of each firm to provide timely, complete and accurate information to the Board regarding changes in the firm or enterprise's business operations, and to act promptly on information requests and information provided by the Board.

2. CHANGE IN CLASSIFICATION

The Board may change a firm's classification.

Set out below are possible reasons for a change in a firm's classification, with the associated effective date and the experience rating impact. However, if there has been fraud or misrepresentation, Section 2.4 of this Item will be used to determine the effective date and the experience rating impact.

Decisions in these cases do not constitute reconsiderations of existing classification decisions.

2.1 Classification Changes under Section 244(2)(f)

The purpose of the classification system is to classify firms into groups that can be used to set fair and equitable rates. The Board undertakes periodic reviews of the classification system to ensure that this purpose is met and that the classification system does not unfairly differentiate between firms competing for the same business.

Section 244(2)(f) outlines the Board's authority to 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.

Where a firm's classification changes as a result of the Board's exercise of this authority, the effective date is:

- the date the decision to change the firm's classification occurs, if the change will lead to a decrease in the base rate; or
- January 1st of the year following the date the decision to change the firm's classification occurs, if the change will lead to an increase in the base rate.

The general rule is that a firm's experience will transfer.

2.2 Change in Business Operations

If the firm's business operations have changed, and the firm is now misclassified, the change will be effective on the later of the date of the change in business operations or January 1st of the year in which the decision to change the firm's classification occurs. If the date of the change in business operations cannot be determined, the change in classification will be effective on January 1st of the year in which the decision to change the firm's classification occurs.

However, if an injustice would otherwise result, the Board may make the classification change effective on a date determined by the Board where the firm:

- informed the Board of the change in its business operations without delay; and
- provided the Board with sufficient information of that change to make its decision.

If there has been a distinct change in the firm's business operations, the firm's experience will not transfer. If the change in business operations has occurred incrementally or the firm's business operations have evolved over time, a firm's experience may transfer.

2.3 Policy Changes Which Result in Changes to Classification Units

The Board may make policy changes regarding classification units or the composition of classification units which may result in changes to a firm's classification.

A change to a firm's classification which occurs as a result of a policy change will be effective January 1st of the following year, unless otherwise specified by the Board.

The Board may transfer a firm's experience in this situation.

2.4 Fraud or Misrepresentation

A classification change may be necessary due to a firm's fraud or misrepresentation. For the purposes of determining a firm or enterprise's classification, misrepresentation includes failure to provide timely, complete, and accurate information to the Board regarding the firm or enterprise's business operations or changes to the firm or enterprise's business operations, and a failure to act promptly on information requests or information provided by the Board.

If the need to change the classification is the result of fraud or misrepresentation, the effective date of the change will be determined by the Board based on the reason for the fraud or misrepresentation.

If the Board changes a firm's classification because of fraud or misrepresentation, the general rule is that a firm's experience will not transfer. However, the Board may transfer experience if the firm could benefit from a failure to transfer.

PRACTICE

If a classification is being added to a firm's existing classification, the criteria for multiple classification must be met before the classification change policy is applied.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | January 29, 2021 |
| AUTHORITY: | Sections 1, 239, 244(2), and (3), and 247 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP5-244-1, <i>Classification – Descriptions of Terms</i> ; Item AP5-244-2, <i>Classification – Assignment</i> ; Item AP5-247-3, <i>Transfer of Experience Between Firms</i> ; Item AP3-123-1, <i>Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions or Orders</i> ; Item AP3-124-1, <i>Reconsiderations, Reviews and Appeals – Fraud and Misrepresentation</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | <p>January 29, 2021 – Policy changes to include an exception to the general rules for the effective date for classification changes due to a change in business operations.</p> <p>April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i>, R.S.B.C. 2019, c. 1.</p> <p>January 1, 2013 – Policy changes to consolidate the classification policies were made effective.</p> <p>October 11, 2012 – Policy changes to change the effective date for classification changes under section 37(2)(f) were made effective and applied to all decisions, including appellate decisions, made on or after that date.</p> <p>November 8, 2011 – Policy changes to reflect the removal of the annual classification cycle were made effective and applied to all decisions, including appellate decisions, made on or after that date.</p> <p>October 1, 2009 – Policy changes to reflect the adoption of an annual classification cycle were made effective and applied to all decisions, made on or after that date.</p> <p>November 1, 2007 – Changes were approved to former Items AP1-37-3 and AP1-96-1 to clarify the types of changes in a firm's classification that did not constitute a reconsideration under the then section 96(4) of the <i>Workers Compensation Act</i>. As a result, the 75-day time limit on reconsidering a decision set out in the <i>Act</i> did not apply to the specified types of classification decisions.</p> <p>January 1, 2004 – Policy changes to provide three general reasons for classification changes, with corresponding effective dates and direction on the transfer of experience rating were made effective January 1, 2004 and applied to all new decisions on or after that date.</p> <p>March 3, 2003 – Consequential changes to this Item were made as a result of the <i>Workers Compensation Amendment Act (No. 2), 2002</i> (Bill 63 of 2002).</p> <p>January 1, 2003 – This Item resulted from an editorial consolidation of the former <i>Assessment Policy Manual</i>. 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. Policy No. 30:20:40 in the former <i>Assessment Policy Manual</i> was replaced by this Item.</p> |

APPLICATION:

Applies to all decisions, including appellate decisions, made on or after January 29, 2021.

RE: Classification – Deposit Accounts**ITEM: AP5-244-4**

BACKGROUND

1. Explanatory Notes

For historical and other reasons, several large employers listed in classes 8 to 11 of section 244(1) of the *Act* have their own classifications which are not shared with other employers. These deposit accounts include the Government of British Columbia, Air Canada and certain railways. These employers are sometimes referred to as “self-insured employers”.

2. The Act

See Item AP5-244-1.

POLICY

Deposit accounts are required to pay to the Board the cost of all compensation benefits distributed to their workers plus a share of the administration costs rather than an assessment rated on payroll. These employers are required to maintain a credit balance in their account from which amounts for claim costs and administration are drawn monthly.

There have been no additions to the group of employers made deposit accounts by the *Act*. It is the policy of the Board not to add further deposit accounts in the future.

1. TRANSFERS FROM A DEPOSIT ACCOUNT TO THE CLASSIFICATION SYSTEM

There are three types of transfers from a deposit account to the classification system:

- (a) The transfer of a deposit account employer into the classification system.

A deposit account employer may request that the employer be transferred into the classification system. In this situation, the Board will classify the deposit account employer into the appropriate classification unit, industry group and rate group, or create a new classification unit.

The appropriate assessment rate is applied prospectively from the date that the employer is transferred into the classification system.

Any outstanding deposit account liabilities are not to be transferred into the employer's rate group. The transferring employer remains responsible for all unfinalled claims and other liabilities. The payment plan for these liabilities will be determined through an agreement between the Board and the employer. The Federal or Provincial governments may guarantee these liabilities.

- (b) The transfer of a deposit account employer's operations to a new or existing employer in the classification system.

A deposit account employer's operations may be transferred to either a new employer or an existing employer in the classification system. For transfers to a new employer, the transfer is effective the date the new employer becomes an employer under the *Act*. The appropriate assessment rate will be applied prospectively from the date that the transfer is effective.

For existing employers in the classification system, the transfer is effective the date the existing employer took ownership of the deposit account employer's operations. In these situations, the Board may review the existing employer's classification to determine whether a classification change is required.

Any outstanding deposit account liabilities are not to be transferred into the rate group of the new or existing employer in the classification system. The Board will determine how the outstanding deposit account liabilities will be recovered. The Federal or Provincial governments may guarantee these liabilities.

- (c) The Board may transfer a deposit account employer into the classification system where the employer is unable to maintain credit worthiness.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE: January 1, 2013
AUTHORITY: Section 244(1) of the *Act*.

CROSS REFERENCES:

Item AP5-240/241-1, *Assessment Rates*, of the *Assessment Manual*.

HISTORY:

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

January 1, 2013 – Policy changes to consolidate the classification policies were made effective, including renumbering from the former AP1-37-5 and retitling.

July 14, 2009 – Notwithstanding the policy direction that was set out under the then item AP1-37-5, deposit accounts were permitted to be established for each of those non Canadian rights holding broadcasters set out in Appendix B of the Resolution who elected to pay premiums in this manner.

June 17, 2003 – Former item AP1-37-5 was amended to provide guidance on transfers of deposit account employers, or deposit account employer's operations, into the classification system.

January 1, 2003 – This Item resulted from the 2002 "editorial" consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continued 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.

Former AP1-37-4 replaced Policy No. 20:40:40 of the *Assessment Policy Manual*. Former AP1-37-5 replaced Policies No. 30:40:00 and 40:30:70 of the *Assessment Policy Manual*.

APPLICATION:

This policy applies to all decisions made on or after January 1, 2013.

RE: Registration of Employers**ITEM: AP5-245-1**

BACKGROUND

1. Explanatory Notes

All employers must register with the Board unless exempt from the scope of the compensation provisions of the *Act*. The exemptions include certain home owners employing persons in or about the home, individuals employing their spouses in their unincorporated business, certain non-resident employers in the province for short periods and certain personal financial holding companies. More information about exemptions is set out in Item AP1-4-1.

2. The Act

Section 245, in part:

- (1) An employer must do the following:
 - (a) keep at all times at a place in British Columbia complete and accurate particulars of the employer's payrolls;
 - (b) notify the Board of the current location of the place referred to in paragraph (a);
 - (c) provide to the Board an estimate of the probable amount of the payroll of each of the employer's industries within the scope of the compensation provisions, together with any further information required by the Board,
 - (i) when the employer becomes an employer within the scope of those provisions, and
 - (ii) at other times as required by Board regulation of general application or by an order of the Board limited to a specific employer;
 - (d) provide to the Board certified copies of reports of the employer's payrolls, on or after the end of each calendar year and at the other times and in the manner required by the Board.

...

POLICY

(a) General

Every employer must contact the Board to determine if it is required to register, and if so required, must register with the Board. An employer is not registered until sufficient information to effect registration is received by the Board. The Board may register a firm on its own initiative if it becomes aware of a firm that is required to be registered.

The determination whether an applicant for registration is an employer, independent operator, or worker is based on the facts available at the time the determination is made. The responsibility to provide full and accurate initial information and to update this information, by advising the Board of any material changes to the applicant's business operations, rests with the applicant.

Shortly after a new registration has been established, the Board advises the employer or independent operator of the new account number, the classification unit in which the employer or independent operator has been registered, the assessment rate and remittance requirements, and the monthly cost of any Personal Optional Protection requested. Information is also sent to the employer, giving details about the rights and responsibilities of an employer under the *Act*.

If the employer is exempt from coverage under the *Act*, the employer is advised that registration is not required and, in most cases, the employer is offered voluntary coverage.

The effective date of registration is the date from which the employer will be assessed by the Board. Except where stated otherwise in this *Manual*, this is the date the employer first employed workers. If the firm was employing workers, so that the registration with the Board would have been required in a previous year, the effective date will only go back as far as January 1st of three years prior to the current year. However, if there is evidence that the employer deliberately avoided registration by such means as misrepresentation, false statements or ignoring registration requests, a prior date may be used.

The Board does not provide rulings or information on ways to structure a business to avoid or minimize employer obligations under the *Act*.

(b) Corporations

Occasionally, a firm is registered which is inadvertently or deliberately misrepresented as an incorporated company. Alternatively, a properly incorporated and registered company may be struck from the register by the Registrar of Companies but may continue to operate as if it still has the status of a corporation. The status of such firms'

accounts with the Board is changed to that of a proprietorship or partnership. The effective date of the change will be when the correct legal status of the firm is discovered. For the period up to that date, the proprietor or partners will be treated as if they were workers of the limited company, and will be provided compensation coverage and their earnings assessed. Collection of assessments owed will proceed under the proprietorship or partnership name(s) regardless of when the liability was incurred.

(c) Divisions

The term “employer” refers to the legal entity conducting the business such as a proprietorship, partnership or limited company. An employer may have one or more trade names, but the legal entity behind the name has the obligations and receives the benefits under the *Act*. The employer is generally considered one and indivisible for purposes of registration, classification, experience rating, assessment payment and all other employer obligations.

Registration of separate divisions of an employer will be considered:

- if the division is of sufficient size to warrant the administrative burden for a separation; and
- it is in the Board’s best interest to allow the separation for the purpose of reporting of accurate payroll, auditing of physical payroll records and the payment of assessment.

For the purpose of this policy, “division” means a business undertaking of a firm that:

- operates as a profit centre (responsible for revenue and expenses - not a cost centre);
- has separate staff assigned solely to that division;
- is physically separate from any other business undertakings of the company;
- maintains its own payroll records for all personnel (excluding senior management and/or executive payroll which is usually reported by the company head office) and payment records for contractors employed by the division;
- maintains the records separate from the records of any other part of the limited company; and
- carries on business in its division or trade name.

Even though divisions may be registered separately, they will be viewed as one for the purpose of classification and experience rating. Additionally, the debt of a division is the

debt of the firm and any collections action will be taken against the legal entity without regard to divisional registrations.

(d) Cancellation of registration

Registration with the Board is cancelled when the firm ceases to be an employer under the *Act*. The effective date of cancellation is when the employer ceased operating the business or ceased to employ workers. It is the employer's responsibility to notify the Board of this.

If a receiver-manager is appointed subsequent to the cancellation of a firm placed into receivership, a new registration must be established for the receiver-manager.

PRACTICE

For detailed information on how to register with WorkSafeBC, readers should consult the WorkSafeBC website at www.worksafebc.com.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

| | |
|--------------------------|--|
| EFFECTIVE DATE: | January 1, 2023 |
| AUTHORITY: | Section 245(1) of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-1-1, <i>Coverage under Act – Determining Workplace Status</i> ; Item AP1-4-1, <i>Exemptions from Coverage</i> ; Item AP1-4-2, <i>Requesting a Variance from a General Exemption</i> ; Item AP1-4-3, <i>Personal Optional Protection</i> ; Item AP1-5/6/7-1, <i>Extending Application of the Act</i> ; Item AP1-8-1, <i>Fishing</i> ; Item AP3-123-1, <i>Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions or Orders</i> ; Item AP5-247-3, <i>Transfer of Experience Between Firms</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | January 1, 2023 – Consequential changes related to the consolidation of policies on determining workplace status were made effective. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective. June 1, 2012 – Amendments were made effective to clarify eligibility for the registration of separate divisions. October 1, 2009 – Housekeeping amendments. January 1, 2007 – Changes extending the registration retroactivity limit to January 1 of three years prior to the current year applied to all decisions made on or after January 1, 2007 concerning the effective date of registration of employers. |

March 3, 2003 – Consequential changes were subsequently made in accordance with the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63 of 2002).

January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continued 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.

Replaced in part Policies No. 20:20:00, 20:30:10, 20:30:20, 20:30:30, 20:30:31, 40:40:00, 40:60:00 and 70:30:00 of the *Assessment Policy Manual* and Decision No. 255 of volumes 1 - 6 of the *Workers' Compensation Reporter*.

APPLICATION:

The amended policy applies to all decisions on or after January 1, 2023.

RE: Assessable Payroll**ITEM: AP5-245-2**

BACKGROUND

1. Explanatory Notes

Assessments are based on payroll. Section 245 imposes an obligation on employers to report the amount of their payroll to the Board.

The POLICY in this Item provides guidance on how assessable payroll is determined.

2. The Act

Section 241:

- (1) For the purpose of continuing and maintaining an adequate accident fund, the Board must every year assess and levy on and collect from employers and independent operators in each class established under section 244 [*classification of industries*] sufficient funds as estimated for the year under section 240.
- (2) An assessment under this section must be rated on payroll, rated on a unit of production or made in another manner the Board considers proper.

Section 245:

See Item AP5-245-1.

POLICY

1. GENERAL

Generally, assessable payroll is the total earnings paid to individuals or firms, including cash and benefits, for work done. Assessable payroll excludes excess earnings, and earnings paid to unaffiliated firms.

2. DESCRIPTIONS OF TERMS

The following descriptions assist in understanding how the Board determines what is included in assessable payroll, i.e. what payments are “assessable”. These descriptions must be read in the context of the *Act* and this *Manual*.

Affiliated Firms

A firm is any person or entity carrying on a business.

Firms are affiliated where:

- one firm controls another firm, or both firms are controlled by the same person or group of persons, or
- the firms are controlled by family members, immediate, extended, or equivalent.

For the purposes of determining affiliation, control is the ability or power, actual or potential, direct or indirect through intermediaries, to direct or cause the direction of the management of a firm's business operations, through the ownership of voting securities, by contract, or by other means.

Excess Earnings

Excess earnings are the amount by which an individual's earnings exceed the maximum wage as adjusted annually by the Board.

Principal

A principal is a person who has the direct or indirect power or ability to control or influence the business operations of a corporation or similar entity, through the ownership of voting securities, by contract, or otherwise. An officer, director or shareholder active in the business operations of a corporation or similar entity is presumed to be a principal of that firm. However, the Board may find that such a person is not a principal where it is shown that the person does not possess direct or indirect power or ability to control or influence the firm's business operations.

3. DETERMINING ASSESSABLE PAYROLL – CATEGORIES

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

- standard employment earnings;
- principals' earnings;
- contractors' earnings; and

- Personal Optional Protection amount (covered in Item AP1-4-3).

3.1 Standard Employment Earnings

These earnings include any means or manner by which an individual is paid for work or piecework, such as cash and anything easily converted into cash, wages, salaries, commissions, holiday pay, allowances, and bonuses. 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.

(a) Reimbursements

Reimbursements to workers for expenses incurred in the performance of their duties are not assessable so long as the expenses are reasonable and supported by records.

(b) Self-funded leaves of absence

Deductions for a self-funded leave of absence are assessable in the year the deductions are made. During the leave of absence, the individual is not a worker of the employer, nor is the payment to the individual assessable during this period.

(c) Severance or termination pay

The Board does not assess firms for payments made as a result of severance, whether by collective agreement or other obligations.

3.2 Principals' Earnings

The total remuneration paid to each active principal, including a shareholder, director, or officer of a corporation, is assessable. Remuneration can be any payment made to the principal regardless of the label attached to the payment. In the context of principal's earnings, remuneration 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.

(a) Directors' fees

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.

(b) Family members' earnings

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.

(c) Earnings from more than one registered firm

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) Dividends

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

3.3 Contractors' Earnings

The earnings paid to contractors are assessable and must be included in a firm's assessable payroll, unless the contractor is not a worker of the firm.

(a) Deductions for excess earnings

A deduction for excess earnings may not be made from gross payments to contractors unless supported by the contractors' payroll records.

(b) Labour-only contracts

For labour-only contracts, the gross value of each contract is included in the paying firm's assessable payroll.

(c) Contracts involving labour and equipment

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. The amount of any allowance deducted must be 15%, 40% or 75% of the cost of the contract.

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

(d) Goods and Services Tax (GST)

Where GST has not been indicated as a separate amount in payments made under contracts or on a piecework basis, the total payment is assessable.

(e) Mistaken payments regarding subcontracting firms

Sometimes a prime contractor will mistakenly include payments to a subcontracting firm in its assessable payroll. Such payments may be retroactively excluded from the prime contractor's assessable payroll. This retroactive exclusion, however, may not go back further than the effective date of the registration of the subcontracting firm.

4. ADMINISTRATION/MANAGEMENT PAYROLL

The assessable payroll attributed to administrative, management, or other personnel who regularly move back and forth between activities in different classification units or affiliated firms is called common payroll. Common payroll must be prorated between classification units or firms with different net rates. There are two ways this proration is calculated:

- When a firm is assigned to more than one classification unit, common payroll is allocated to each classification unit based on the relative proportion of assessable payroll directly attributable to each specific classification unit.
- When a firm provides some degree of administrative or management service to an affiliated firm, or shares its personnel with an affiliated firm, common payroll is allocated to each firm based on the relative proportion of assessable payroll directly attributable to each firm.

Where a separate limited company provides some degree of administrative or management services to two or more unaffiliated firms, the payroll of the

company providing the services is prorated based on the relative proportion of assessable payroll directly attributable to each of the other firms.

Where an employer maintains formal cost accounting procedures that allocate the overhead payrolls to cost or profit centres, and this allocation is reasonable, it is acceptable as an alternative to prorating common payroll as described above.

(a) Payments to non-registered affiliated firms

It is common for an affiliated firm to provide administrative or management support to a principal firm. Regardless of the sorts of services these affiliated firms provide, all payments to non-registered, affiliated firms that provide services to the principal firm are included in the principal firm's assessable payroll unless documentation is provided to show which payments are not earnings for work done. A deduction for excess earnings is not allowed unless there is documentary proof of the affiliated firm's payroll structure.

5. VOLUNTEER FIREFIGHTERS

Except where section 213 applies, the earnings of volunteer firefighters are fixed for assessment purposes at \$75.00 per month, per member or their actual earnings as a member of the fire brigade, whichever is greater.

The employer may increase the \$75.00 figure if the Board agrees and the same amount is used for each person.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

| | |
|--------------------------|---|
| EFFECTIVE DATE: | January 1, 2023 |
| AUTHORITY: | Sections 241 and 245 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-1-1, <i>Coverage under Act – Determining Workplace Status</i> ; Item AP1-4-3, <i>Personal Optional Protection</i> ; Item AP1-5/6/7-1, <i>Extending Application of the Act</i> ; Item AP1-8-1, <i>Fishing</i> ; Item AP5-244-2, <i>Classification – Assignment</i> ; Item AP5-246-1, <i>Maximum Wage</i> , of the <i>Assessment Manual</i> . Policy item #7.10, <i>Coverage for Volunteer Firefighters</i> ; Policy item 67.32, <i>Volunteer Firefighters</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |

HISTORY:

January 1, 2023 – Consequential changes related to the consolidation of policies on determining workplace status were made effective.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

May 16, 2019 – Bill 18 of 2019 amended the definition of firefighter in section 1 of the *Act*, removing the reference to firefighters serving a municipality, a regional district, or an improvement district.

January 1, 2017 – Updated to combine and clarify policy from former Items AP1-38-2 and AP1-38-3 on the calculation of assessable payroll; retitled.

October 23, 2014 – Part 2 of BOD Resolution Number 2013/12/11-01, made on December 11, 2013, was repealed.

April 1, 2013 – Updated to reflect the adoption of the Provincial Sales Tax and the Goods and Services Tax.

January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective.

October 2010 – Housekeeping amendment.

August 1, 2010 – Updated to reflect the adoption of the Harmonized Sales Tax.

April 1, 2005 – A clarification to the payroll amendment limitations in part (d) was made effective.

December 31, 2003 – A housekeeping change was made to the PRACTICE section of this policy, effective.

March 3, 2003 – Consequential changes to this item were made as a result of the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63 of 2002).

January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continued 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.

Former AP1-38-2 replaced in part Policies No. 40:10:10, 40:10:30, 40:10:40 and 50:50:00 of the *Assessment Policy Manual*. Former AP1-38-3 replaced in part Policies No. 40:10:10, 40:10:11, 40:10:50, 40:10:60, 40:20:50 and 40:20:70 of the *Assessment Policy Manual*.

APPLICATION:

The amended policy applies to all decisions made on or after January 1, 2023.

**RE: Payroll – Out-Of-Province Employers
and Operations**

ITEM: AP5-245-3

BACKGROUND

1. Explanatory Notes

Some out-of-province employers are exempt from coverage under the *Act* and therefore do not have to register with the Board. Others may have to register and pay assessments while they are working in the province. Sections 147 and 335 of the *Act* address these issues.

Under these sections, the Board has entered into the Interjurisdictional Agreement on Workers' Compensation with the other provinces and territories of Canada. This agreement took effect in October 1993, except for Quebec (January 1, 1995) and Nunavut (April 1, 1999). The agreement has the following purposes:

- to avoid the double payment of assessments for the same work;
- to help workers or dependants where more than one workers' compensation authority may be involved in a claim;
- to create a system to permit one workers' compensation authority to help the claimants of another workers' compensation authority; and
- to provide a system which will try to solve disputes between workers' compensation authorities.

2. The Act

See Item AP5-245-2.

Section 147:

- (1) This section applies if
 - (a) a worker is injured while working outside British Columbia, and
 - (b) the injury would entitle the worker or the worker's dependants to compensation under this Part if the injury occurred in British Columbia.

- (2) The Board must pay compensation under this Part only if all of the following apply:
 - (a) a place of business of the worker's employer is located in British Columbia;
 - (b) the worker's residence and usual place of employment are located in British Columbia;
 - (c) the employment is such that the worker is required to work both in and outside British Columbia;
 - (d) the worker's employment outside British Columbia
 - (i) has immediately followed the worker's employment in British Columbia by the same employer, and
 - (ii) has lasted less than 6 months.

Section 335:

- (1) The Board may enter into agreements or make arrangements with Canada, a province or a territory, or with the appropriate authority of Canada, a province or a territory, respecting the following:
 - (a) administrative cooperation and assistance between jurisdictions in all matters under this Act and corresponding legislation in other jurisdictions;
 - (b) the provision of compensation, rehabilitation and health care to workers in accordance with the standards established under this Act or corresponding legislation in other jurisdictions;
 - (c) avoidance of duplication of assessments on workers' earnings.
- (2) An agreement or arrangement under this section may
 - (a) waive or modify a residence or exposure requirement for eligibility for compensation, rehabilitation or health care, or
 - (b) provide for payment to an appropriate authority of Canada or an appropriate authority of a province or a territory for compensation, rehabilitation costs or health care costs paid by the authority.

POLICY

(a) BC employers sending workers out of province

Where a BC employer assigns an employee to work outside of British Columbia, that worker is covered for compensation for up to six months while working outside British Columbia, and the worker's earnings are assessed for that period, if the criteria set out in section 147 of the *Act* are met.

If the BC employer assigns an employee to work in another jurisdiction that requires the employer to register and is a party to the Interjurisdictional Agreement, only that worker's BC earnings are assessable in this province. The employer may also claim as a deduction a portion of that worker's excess earnings (if applicable) over the maximum wage, according to the relationship between BC earnings and total earnings. The excess earnings deduction is calculated as follows:

$$\frac{\text{BC Earnings}}{\text{Total Earnings}} \times \frac{\text{Total Earnings in excess of BC maximum wage rate}}{\text{Total Earnings in excess of BC maximum wage rate}} = \text{Claimable excess}$$

(b) Out-of-province employers operating in BC

If an employer from outside the province operates in BC and is required to register with this Board, the employer must pay an assessment to this Board that is based only on the earnings of workers while employed in BC.

If an employer from one of the other provinces participating in the Interjurisdictional Agreement is registered with this Board, the employer is permitted to prorate excess earnings over the maximum wage according to the formula set out in (a) above. However, if the employer is outside the scope of the agreement, the BC earnings are fully assessable up to the current maximum, with no proration of the excess.

(c) Jurisdictions where principals of corporations have voluntary coverage

In certain jurisdictions, active principals of a limited company are not covered and assessed as workers of the company, but instead must purchase optional coverage. If a principal works in BC and in a jurisdiction where this is the case, BC earnings are fully assessable in this province and excess earnings over the maximum wage may not be prorated, since this type of coverage is not listed in the Interjurisdictional Agreement as a proratable item.

Where the principal is a resident of BC, earnings while working in a jurisdiction with the optional type of principals' coverage are assessable for up to six months due to the provisions of section 147 of the *Act*.

Assessment liability is not affected by whether optional coverage in the other province has been obtained.

(d) Air carriers

When determining the assessable payroll for Canadian air carriers that have flight crews based in BC and in other provinces or territories, the Board considers their workers in two distinct groups: ground personnel and flight crews.

The rules for assessing ground personnel are identical to other out-of-province operations and employers discussed above.

The assessable payroll for flight crews is determined differently from ground crews. The BC payroll is extracted from the employer's total payroll for flight crews according to the ratio of miles flown in BC (plus a share of the foreign miles) to the total miles flown by employer's flight crews. This ratio is determined as follows:

$$\frac{\text{BC miles} + \text{Share of foreign miles}}{\text{Total miles}} \times 100 = \% \text{ of Total flight crew payroll assessable in BC}$$

The BC miles figure includes all scheduled and charter miles flown in BC. The share of foreign miles is calculated as follows:

$$\frac{\text{No. of air crew residing in BC} \times \text{Total foreign miles}}{\text{Total number of air crew}} = \text{Share of foreign miles}$$

Miles flown in a Canadian jurisdiction in which the airline is not required to be registered for flying and is not registered are prorated on the same basis as the share of foreign miles.

Excess earnings may be deducted for flight crews. The deduction is calculated by taking the total earnings of all individuals who earned more than the BC maximum wage, subtracting the number of individuals multiplied by the maximum, and then multiplying the result by the percentage of total payroll ratio determined above.

The assessment of foreign air carriers is based on the gross payroll for any ground personnel residing in BC (less a deduction for excess earnings if applicable), plus the calculated assessable flight crew payroll. The assessable payroll for the non-resident flight crews is calculated according to the following formula:

$$\text{Assessable Payroll} = \frac{H1 \times M}{12 \times H2}$$

Where: H1 = actual block hours credited to flight crews for time worked over or in BC in hours.

M = current maximum assessable wage in BC.

H2 = the carrier's total flight crew block hours per month.

PRACTICE

A copy of the Interjurisdictional Agreement on Workers' Compensation may be obtained on request from any Employer Service Representative in the Assessment Department.

For more information on interjurisdictional trucking, readers should consult the WorkSafeBC website at www.worksafebc.com.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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|--------------------------|--|
| EFFECTIVE DATE: | January 1, 2003 |
| AUTHORITY: | Sections 147 and 335 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-1-1, <i>Coverage under Act – Determining Workplace Status</i> ; Item AP1-4-1, <i>Exemptions from Coverage</i> , with respect to exemptions for non-residents; Item AP5-246-1, <i>Maximum Wage</i> , of the <i>Assessment Manual</i> . Policy item #113.30, <i>Interjurisdictional Agreements</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2008 – Housekeeping change in PRACTICE section. April 1, 2005 – Housekeeping change made to formula in section (a). January 1, 2003 – Replaced Policies No. 40:20:20 and 40:20:40 of the <i>Assessment Policy Manual</i> . |
| 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. |

RE: Payroll Estimates**ITEM: AP5-245-4**

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 245(1), and to levy and collect an assessment on that estimate.

2. The Act

Section 245, in part:

- (2) If an employer fails to comply with subsection (1),
 - (a) the employer must pay, as a penalty for the failure, the percentage of the assessment prescribed by Board regulation or determined by the Board, and
 - (b) the Board may make its own estimate of the payrolls and make its assessment and levy based on that estimate, in which case the employer is bound by the estimate, assessment and levy.

POLICY

There are two main situations when an estimate may be made under section 245(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.

The employer will be advised of the estimated assessment and how to have the estimate reconsidered.

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 WorkSafeBC website at www.worksafebc.com.

| | |
|--------------------------|---|
| EFFECTIVE DATE: | September 1, 2022 |
| AUTHORITY: | Section 245(2) of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP5-243-1, <i>Assessment Payments</i> ; Item AP5-261-1, <i>Penalties</i> ; Item AP8-347-1, <i>Audits</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | September 1, 2022 – Policy changes to facilitate the implementation of the Accounts Receivable system. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. February 28, 2006 – Consequential change to reflect the then newly tiered penalty system. January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continued 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. Replaced Policy No. 50:60:10 of the <i>Assessment Policy Manual</i> . |
| APPLICATION: | This policy applies to all decisions made on or after September 1, 2022. |

RE: Maximum Wage**ITEM: AP5-246-1**

BACKGROUND

1. Explanatory Notes

The earnings of workers are assessable up to a maximum wage per individual in any given year while working for the same employer. The amount by which an individual's earnings exceed the maximum wage is known as "excess earnings", which may be deducted from total earnings to arrive at the assessable payroll. This maximum wage is adjusted annually by a formula stipulated in the *Act*.

2. The Act

Section 209:

- (1) Before the end of each calendar year, the Board must determine the maximum wage rate applicable for the following calendar year.
 - (1.1) As an exception to subsection (1), the maximum wage rate for 2021 is \$100 000.
- (2) The maximum wage rate to be determined under this section must be an amount, which may be rounded to the nearest \$100, that the Board considers represents the same relationship to the amount of \$100 000 as
 - (a) the annual average of wages and salaries in British Columbia for the year preceding the year in which the determination is being madebears to
 - (b) the annual average of wages and salaries in British Columbia for the year 2019.
- (3) For the purpose of determining annual average of wages and salaries under this section, the Board may use data published or supplied by Statistics Canada.

Section 227:

In relation to a worker injured before January 1, 1986, section 209(2) [*maximum wage rate*] is to be read as if

- (a) the reference to \$100 000 were a reference to \$11 200, and
- (b) the reference to 2019 were a reference to 1972.

Section 246:

- (1) In computing the amount of the payroll for the purpose of assessment, regard must be had only to that portion of the payroll that represents workers and employment within the scope of the compensation provisions.
- (2) If a worker's wages are greater than the maximum wage for the year as determined under section 209, a deduction may be made where practical in respect of the portion in excess of that rate.
- (3) If the wages of a worker are shown to be greater than the maximum wage rate referred to in subsection (2), the Board may make a deduction where practical in respect of the portion in excess of that rate.
- (4) If a worker works at a nominal wage or no wage, the Board may fix the amount of the worker's average earnings for purposes of the compensation provisions.

POLICY

The maximum wage and excess earnings deduction applies to all earnings included in payroll and to workers of all firms as well as principals of limited companies.

A deduction for excess earnings may not be made from gross payments to contractors unless supported by the contractors' payroll records.

All earnings up to the maximum are fully assessable and the maximum wage figure may not be prorated on a monthly or other basis.

Except for related companies with shared employees, excess earnings will not be prorated or transferred between employers. When two or more companies amalgamate and continue as one company under the applicable company law so that the amalgamated company holds and possesses all of the property, rights

and interests and is subject to all of the debts, liabilities and obligations of each amalgamating company, excess earnings will be transferred.

PRACTICE

The maximum wage rate 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 WorkSafeBC website at www.worksafebc.com.

| | |
|--------------------------|--|
| EFFECTIVE DATE: | January 1, 2003 |
| AUTHORITY: | Sections 209, 227, and 246 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-8-1, <i>Fishing</i> ; Item AP5-245-2, <i>Assessable Payroll</i> ; Item AP5-245-3, <i>Payroll – Out-of-Province Employers and Operations</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | October 21, 2020 – Housekeeping amendments to the <i>Act</i> portion of the Background section to reflect amendments to the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2017 – Housekeeping amendment. January 1, 2003 – Replaced Policy No. 40:10:20 of the <i>Assessment Policy Manual</i> . |
| 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. |

RE: Experience Rating**ITEM: AP5-247-1**

BACKGROUND

1. Explanatory Notes

Experience rating is a means of adjusting individual employers' assessment rates to reflect their actual claims cost experience. Employers whose experience is better than their rate group average receive a discount. Employers whose experience is worse than their rate group average pay a surcharge.

The experience rating program attempts to promote positive safety attitudes and to provide equity through a system of recognition and accountability for claims costs. The goal is to encourage employers with high injury costs to reduce them, and to encourage employers with low injury costs to keep them low. The desired outcome is a reduction in the social and economic costs of work-related injuries and diseases.

2. The Act

Section 247, in part:

- (1) The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class, as the Board considers just.
- (2) If the Board considers that a particular industry or plant is circumstanced or conducted such 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 Board
 - (a) must establish a special rate, differential or assessment for that industry or plant to correspond with the relative hazard or cost of compensation of the industry or plant, and
 - (b) for the purpose referred to in paragraph (a), may also adopt a system of experience rating.

...

POLICY

(a) The Experience Rating Plan

The main features of the experience rating (“ER”) plan are:

- (1) The ER plan applies to all employers and independent operators in rated classification units.
- (2) The ER plan is prospective in application. ER adjustments are calculated on the basis of past claims costs and payroll and are applied to employers’ assessments. Thus, a firm’s experience is a measure of a firm’s performance relative to its rate group based on information derived by the Board from appropriate past claims costs and payroll.
- (3) ER adjustments are based solely on claims costs. The costs used are those directly associated with compensation claims. The cost used for fatal claims is the five-year moving Board-wide average rather than the actual cost of each claim. Costs incurred in fatal claims that fall under section 134(2) of the *Act* are not included in an employer’s ER.
- (4) The Board’s administrative costs are not included in the ER calculation.
- (5) The ER plan uses claims costs arising from claims commenced in the three calendar years prior to the year in which the calculation is made (the “ER Window”). This includes all costs of those claims up to and including June 30th of the year of calculation.
- (6) The costs included are subject to maximum limits for each claim as follows:
 - 100% of the first \$70,000;
 - 50% of the next \$50,000; and
 - 10% of all costs above \$120,000.
- (7) An employer’s cost to assessable payroll ratio is compared to the cost to assessable payroll ratio of the rate group to which the employer is assigned.
- (8) The payroll used is the total assessable payroll used to calculate employers’ assessments in the ER Window. This amount excludes

earnings above the maximum wage, and includes Personal Optional Protection amounts.

- (9) In determining the cost to assessable payroll ratio in the ER Window, the most recent year is weighted at 50%, the prior year at 33.3%, and the most distant year at 16.7%.
- (10) The calculation involves combining an employer's cost experience in the ER window with its ER factor for the previous year. The ER factor reflects the fact that employers participate at different levels, based on the size of the employer's assessment before the ER adjustment. The higher an employer's base assessment, the higher its level of participation in the plan. A higher level of participation means an employer's ER adjustment is more responsive to its claims costs experience in the current ER window.
- (11) The minimum participation level is set at 10%.
- (12) The maximum ER discount is 50%. The maximum ER surcharge is 100%, except where an excess cost surcharge applies.
- (13) Employers enter the plan for the first time when they have had some payroll within the current ER window.
- (14) Where any part of an employer's payroll has been estimated, any resulting discount will not be applied. If a surcharge results, it will be applied. If an estimate is replaced by the actual payroll information, the experience rating will be recalculated.
- (15) The employer for experience rating purposes is the legal entity operating the business. If an employer operates divisions, whether they are separately registered with the Board or not, the employer's combined experience determines the rating for all the employer's business operations.
- (16) Employers registered voluntarily under sections 5 to 7 of the *Act* or by a variance from a general exemption order under section 4(1) of the *Act* are excluded from participating in the experience rating plan.
- (17) For simplicity, ER discounts or surcharges are generally expressed as percentage adjustments to employers' base assessment rates.

(b) The Excess Cost Surcharge

The excess cost surcharge is a component of the ER plan allowing the Board to more properly rate firms with ongoing high costs. A firm qualifies for an excess cost surcharge where:

- the firm is active and its average claim cost to payroll ratio, as calculated by the Board, is three or more times that of its rate group for three consecutive assessment years;
- the firm has a calculated ER surcharge adjustment of 90 percent or more; and,
- the firm has had 50 or more non-health care only claims in the five consecutive years ending with the most recent year in the ER window.

The Board will determine a required rate for a qualifying firm to enable calculation of the firm's excess cost surcharge. The required rate will be set annually based on the following:

- (1) In the first year a firm qualifies for an excess cost surcharge, the Board will determine the required rate using claims costs arising from claims commenced in a period of up to 15 calendar years prior to the year in which the calculation is made.
- (2) After the first year the required rate will be the lower of:
 - (i) a rate set as described in Section (1), above; or
 - (ii) a rate set using a weighting determined by the Board that blends a rate using:
 - claims costs arising from claims commenced in the five years prior to the year in which the calculation is made, and,
 - a rate set as described in Section (1), above, where the five-year rate is lower than the rate set as described in Section (1).
- (3) Since the required rate is set annually, subsequent changes in claim cost or payroll information will be reflected in the next year's required rate calculation.
- (4) The required rate is capped at 500 percent of a firm's yearly-established classification base assessment rate.

Once qualified for an excess cost surcharge, a firm is stepped toward the required rate over four years, and will be charged premiums at the required rate

in the fifth and subsequent years. The progression toward the required rate functions as follows:

| | (A) Starting Rate | (B) Yearly Calculated Required Rate | (C) ECS Calculation | (D) ECS Adjusted Net assessment rate Calculation For Year |
|--|--|---|---------------------------|---|
| Year 1 | Firm's net assessment rate from the prior year as calculated under the ER plan | Required rate for Year 1 | $\frac{(B) - (A)}{5}$ | (A) + (C) |
| Year 2 | Excess cost surcharge adjusted net assessment rate from prior year | Required rate for Year 2 | $\frac{(B) - (A)}{4}$ | (A) + (C) |
| Year 3 | Excess cost surcharge adjusted net assessment rate from prior year | Required rate for Year 3 | $\frac{(B) - (A)}{3}$ | (A) + (C) |
| Year 4 | Excess cost surcharge adjusted net assessment rate from prior year | Required rate for Year 4 | $\frac{(B) - (A)}{2}$ | (A) + (C) |
| Year 5 (and subsequent years) | Excess cost surcharge adjusted net assessment rate from prior year | Required rate for Year 5 | $\frac{(B) - (A)}{1}$ | (A) + (C) (equals the yearly calculated required rate) |

Once qualified, a firm will be subject to an excess cost surcharge until, for two consecutive years:

- the firm's ER surcharge as calculated under the conventional ER plan is below 90 percent; or,
- the firm's claim cost to payroll ratio, as calculated by the Board within the ER window, is less than three times that of its rate group.

Policies concerning classification changes and experience rating transfers apply to firms subject to an excess cost surcharge. If a firm changes classifications, the Board determines the firm's qualification for, and/or the amount of, an excess cost surcharge within the new classification.

(c) Net Rate Transitioning for Classification Changes

A firm qualifies for net rate transitioning where:

- the firm has had a change in classification for a reason other than a change in operations, fraud or misrepresentation;
- the firm is facing a net rate increase of more than 33.3% to the prior year's net rate as a result of the classification change; and

- the firm has met its reporting and payment requirements as set out in the Act and policy.

A qualified firm is transitioned toward its net rate as calculated under the ER plan, or “target rate”, over a period of up to three years. The progression towards the target rate functions as follows:

| | (A) Target Rate | (B) Starting Rate | (C) Net Rate Transitioning Calculation | (D) Transitioned Net Rate |
|--------|-------------------------------|---|---|--|
| Year 1 | Firm’s target rate for Year 1 | Firm’s net rate from the prior year as calculated under the ER plan | $\frac{(A) - (B)}{3}$ | If (C) less than or equal to 33.3% increase in the starting rate, then firm pays (B) X 1.333 |
| | | | | If (C) more than 33.3% increase in the starting rate, then firm pays (C) + (B) |
| Year 2 | Firm’s target rate for Year 2 | Transitioned net rate from Year 1 | $\frac{(A) - (B)}{2}$ | If (A) – (B) less than 33.3% increase in the starting rate, then firm pays (A) |
| | | | | If (A) – (B) is equal to or greater than 33.3% increase in the starting rate, then: <ul style="list-style-type: none"> If (C) less than or equal to 33.3% increase in the starting rate, then firm pays (B) X 1.333 If (C) more than 33.3% increase in the starting rate, then firm pays (C) + (B) |
| Year 3 | Firm’s target rate for Year 3 | | | |

PRACTICE

For further information on the experience rating system and any other relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives and other materials available on the WorkSafeBC website at www.worksafebc.com.

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|--------------------------|---|
| EFFECTIVE DATE: | June 1, 2022 |
| AUTHORITY: | Section 247 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-4-2, <i>Requesting a Variance from a General Exemption</i> ; Item AP1-4-3, <i>Personal Optional Protection</i> ; Item AP1-5/6/7-1, <i>Extending Application of the Act</i> , with respect to sections 5 to 7 of the <i>Act</i> ; Item AP5-244-3, <i>Classification – Changes</i> ; Item AP5-245-1, <i>Registration of Employers</i> ; Item AP5-245-4, <i>Payroll Estimates</i> ; Item AP5-246-1, <i>Maximum Wage</i> ; Item AP5-247-2, <i>Experience Rating Cost Inclusions/Exclusions</i> ; Item AP5-247-3, <i>Transfer of Experience Between Firms</i> , of the <i>Assessment Manual</i> . Item C3-14.10, <i>Serious and Wilful Misconduct</i> ; Policy item #115.30, <i>Experience Rating Cost Exclusions</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | June 1, 2022 – policy change to exclude from ER all costs incurred in fatal claims that fall under section 134(2) of the <i>Act</i> . April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. November 22, 2017 – Updated to no longer include the capitalized values of permanent disability awards in ER determinations. Firms’ ER determinations for rate years before 2018, which had included these capitalized values, were not affected by the change. January 1, 2017 – 14 firms identified by WorkSafeBC as having experience deterioration in their 2017 experience rating, owing solely to the change in their industry’s rate group membership, had their 2017 experience calculated in such a manner as to adjust their net premium rates to a level consistent with what was envisioned when the experience rating plan was implemented. January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective. October 11, 2012 – Updated to add Net Rate Transitioning. January 1, 2009 – Updated to add the Excess Cost Surcharge. January 1, 2008 – Employers identified by WorkSafeBC as having experienced a greater than 10% deterioration in their 2008 experience rating, owing solely to the change in the criteria for the minimum size of rate groups within the Employer Classification System, had their 2008 and 2009 experience rating calculated based on comparing the employer’s cost to assessable payroll ratio to the cost to assessable payroll of a simulated rate group that replicated the employer’s 2007 rate group. June 1, 2005 – Updated to define “experience”. January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continued 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.

Replaced Policies No. 30:50:10 and 30:50:41 of the *Assessment Policy Manual* and Decision No. 401 in Volumes 1 - 6 of the *Workers' Compensation Reporter*.

APPLICATION:

Applies to all decisions, including appellate decisions, made on or after June 1, 2022, regarding rate determinations for the 2018 and later rate years.

**RE: Experience Rating Cost
Inclusions/Exclusions****ITEM: AP5-247-2**

BACKGROUND

See Item AP5-247-1.

POLICY

As a general rule, all acceptable claims coded to a particular firm are counted for experience rating purposes. Whether the firm was at fault is not considered.

There are however, some types of claims costs that are excluded from consideration for experience rating purposes. These are detailed in policy item #115.30, *Experience Rating Cost Exclusions* of the *Rehabilitation Services & Claims Manual*, Volume II (RS&CM).

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | February 1, 2015 |
| AUTHORITY: | Section 247 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP5-247-1, <i>Experience Rating</i> , of the <i>Assessment Manual</i> ; Item C3-14.10, <i>Serious and Wilful Misconduct</i> ; Item C3-16.00, <i>Pre-Existing Conditions or Diseases</i> ; Item C11-88.40, <i>Vocational Rehabilitation — Training-On-The Job</i> ; Item C11-88.50, <i>Vocational Rehabilitation — Formal Training</i> ; Policy item #113.10, <i>Investigation Costs</i> ; Policy item #113.20, <i>Occupational Diseases</i> ; Policy item #114.10, <i>Transfer of Costs from One Class to Another</i> ; Policy item #114.40, <i>Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability</i> ; Policy item #115.30, <i>Experience Rating Cost Exclusions</i> ; Policy item #115.31, <i>Injuries or Aggravations Occurring in the Course of Treatment, Surgery, and Board-related Appointments or Travel Thereto</i> ; |

HISTORY:

Policy item #115.32, *Claims Involving a Permanent Disability and a Fatality*; in the *Rehabilitation Services & Claims Manual*, Volume II.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

February 1, 2015 – Amended to redirect users to policy item #115.30 of the *Rehabilitation Services & Claims Manual*, Volume II.

February 1, 2011 – Housekeeping amendment in PRACTICE section.

July 1, 2010 – As a result of the re-write of Chapter 3 of the *Rehabilitation Services & Claims Manual*, Volume II there were consequential amendments to AP1-42-2 effective.

June 1, 2005 – CROSS REFERENCES section updated effective.

January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continued 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.

Replaced in part Policy No. 30:50:52 of the *Assessment Policy Manual* and Decision No. 49 of Volumes 1 - 6 of the *Workers' Compensation Reporter*.

APPLICATION:

This policy applies to all decisions made on or after February 1, 2015.

RE: Transfer of Experience Between Firms**ITEM: AP5-247-3**

BACKGROUND

1. Explanatory Notes

Firms may sell or otherwise transfer all or part of their business operations to another person or entity. When changes of this nature occur, the question arises whether there should be a transfer of the experience of the firm.

2. The Act

See Item AP5-247-1.

POLICY

1. DESCRIPTIONS OF TERMS

The following terms assist in interpreting policy:

Affiliation

Firms are affiliated where:

- one firm controls another firm, or both firms are controlled by the same person or group of persons, or
- the firms are controlled by family members, immediate, extended, or equivalent.

Where an original firm's business operations or assets are split between multiple successor firms, affiliation is determined on the basis of the relationship between the original firm and each individual successor firm.

Control

Control is the ability or power, actual or potential, direct or indirect through intermediaries, to direct or cause the direction of the management of a firm's business operations, through the ownership of voting securities, by contract, or by other means.

Firm

A firm is any person or entity carrying on a business. An "original firm" is one that moves assets or all or part of its business operations to one or more other firms. A "successor firm" is one receiving any assets, or all or part of the original firm's business operations.

Activity

An activity is a process that combines inputs, technology, skills, and labour to create a product or service. Generally an activity is a task or a group of tasks, and an activity may be a part of another activity.

Business Undertaking

A business undertaking is one or more activities carried out by a firm or enterprise's own workers, or by contracting with other firms, that produce a product or service for revenue.

In circumstances where generating revenue is not the purpose of the activities, such as with a non-profit firm, a business undertaking will advance the firm or enterprise's goals.

A firm or enterprise's main business undertaking is the one that produces its usual and primary product or service, which is not for its own use.

Business Operations

Business operations are all of a firm's activities, and may include one or more business undertakings.

2. OVERVIEW

Principles to consider in experience transfer include:

- Experience rating is a measure of a firm's "hazard or cost of compensation" within the workers' compensation system.
- A firm has control over the way it conducts its business operations, which in turn may impact claims costs.
- The Board applies experience rating to a firm, and maintains each firm's earned experience, to promote continuity and premium equity.

Therefore, when all or part of a firm's business operations or assets move to another firm, the Board must determine whether or not it is appropriate to transfer the original firm's experience history to the successor firm.

3. EXPERIENCE TRANSFER GUIDELINES

The following guidelines are used when considering whether experience should transfer between firms:

- a) Generally, experience will not transfer where all or part of a firm's business undertakings or assets move to another firm and the firms do not meet the description of affiliation. Experience may transfer where an original firm's business operations or a significant portion or aspect of an original firm's business operations move to an affiliated successor firm.

As an exception, experience may transfer between unaffiliated original and successor firms where both are publicly traded companies, and it is anticipated that the successor firm will continue the business operations unchanged by preserving the original business undertaking, management, staff, plant, equipment, location and customers/clients.

Where experience transfer is considered between firms, generally the classification of the business undertaking should remain the same. If the classification of the business undertaking changes, the provisions of Item AP5-244-3 are considered in conjunction with this policy.

- b) Generally, a firm's experience will remain with the firm if it undergoes a change in ownership through a share purchase or other means, as the same firm remains in operation.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | June 1, 2005 |
| AUTHORITY: | Section 247 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-1-1, <i>Coverage Under Act – Determining Workplace Status</i> ; Item AP5-244-3, <i>Classification – Changes</i> ; Item AP5-247-1, <i>Experience Rating</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective. January 1, 2009 – Housekeeping amendment. June 1, 2005 – Changes to the criteria by which experience transfers are adjudicated were made effective. |

January 1, 2004 – This Item resulted from an editorial consolidation of the former *Assessment Policy Manual*, 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.

March 3, 2003 – Consequential changes to this Item were made as a result of the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63 of 2002).

January 1, 2003 – This Item resulted from an editorial consolidation of the former *Assessment Policy Manual*. 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.

Policy No. 30:50:50 in the former *Assessment Policy Manual* was replaced by this Item.

APPLICATION:

The amended policy applies to all decisions made on or after June 1, 2005.

RE: Certificate of Recognition Program**ITEM: AP5-247-4**

BACKGROUND

1. Explanatory Notes

This policy sets out the framework for the Certificate of Recognition Program (the “Program”). The Program is a voluntary employer certification program intended to motivate employers to take a proactive role in occupational health and safety.

2. The Act

Section 14, in part:

- (1) The purpose of the OHS provisions is to benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from work-related risks to their health and safety.
- (2) Without limiting subsection (1), the following are the specific purposes of the OHS provisions:
...
 - (f) to foster cooperative and consultative relationships between employers, workers and others regarding occupational health and safety, and to promote worker participation in occupational health and safety programs and occupational health and safety processes;...

Section 17, in part:

- (1) In accordance with the purposes of the OHS provisions, the Board has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.
- (2) In carrying out its mandate, the Board has the following duties, functions and powers:
...

- (c) to provide services to assist joint committees, worker health and safety representatives, employers and workers in maintaining reasonable standards for occupational health and safety and occupational environment;

...

- (e) to encourage, develop and conduct or participate in conducting programs for promoting occupational health and safety and for improving the qualifications of persons concerned with occupational health and safety and occupational environment;

...

- (k) to cooperate and enter into arrangements and agreements with governments and other agencies and persons on matters relating to the Board's responsibilities under the OHS provisions;

...

Section 107:

- (1) The Board may charge a class or subclass with the cost of investigations, inspections and other services provided to the class or subclass for the prevention of injuries and illnesses.
- (2) A charge under subsection (1) may be levied on the class or subclass by way of an assessment.

Section 239, in part:

- (1) The Board must continue and maintain the accident fund
- ...
- (b) for payment of expenses incurred in the Board's administration of this Act,

...

See also Item AP5-247-1 for section 247.

POLICY

1. DESCRIPTION OF TERMS

Certificate of Recognition (“COR”)

A COR is a certificate issued by the Board to an employer who has successfully implemented an effective occupational health and safety management system (“OHSMS”) and has passed a certification audit to the standards set out by the Board in the Program’s practice materials.

Certifying Partner

A certifying partner is an agency approved and contracted by the Board to implement various aspects of the Program and to monitor employer and auditor compliance with program certification requirements.

OHSMS

An OHSMS is a structured approach to managing occupational health and safety and improving the management of workplace hazards and risks which is based on a “plan-do-check-act” cycle. It requires the employer’s commitment to the system, worker participation, effective allocation of resources, and a process of continual improvement.

2. GENERAL

The Program is a voluntary employer certification program designed to recognize and reward employers who commit to a high standard of occupational health and safety through implementation and maintenance of an effective OHSMS.

The principles of the Program are to:

- Support the OHS provisions of the *Act* and the *Occupational Health and Safety Regulation (“OHSR”)* by serving as a mechanism to help promote occupational health and safety.
- Encourage employers to build a culture of health and safety in workplaces across BC.
- Recognize meaningful worker participation as integral to an employer’s OHSMS.
- Meet the specific needs and resources of different-sized employers.
- Encourage continual improvement in an employer’s OHSMS.

The Board has responsibility for implementing and overseeing the Program.

There are two parts to the Program. The first is determining eligibility through program certification, and the second is providing eligible employers with a financial incentive.

3. PROGRAM CERTIFICATION

The Board issues a COR to an employer who has met the following requirements:

- registers with the Board and maintains an active account;
- registers with a certifying partner;
- implements an OHSMS to the standards set by the Board; and
- passes a certification audit as determined by the Board.

An employer's COR is valid for three years. Once an employer receives a COR in a given year, annual maintenance audits are required for the following two years to maintain certification.

The Board will issue a COR to an employer at its account level. An employer who is assigned multiple classification units may include one or more of its classification units in its certification audit. The same classification units are included in the employer's maintenance audits.

(a) Equivalency

The Board may recognize a COR or other OHSMS certification awarded by another jurisdiction in Canada or internationally if it determines the employer has met minimum requirements identified in the Program.

(b) Effective measurement of an OHSMS

The effectiveness of an OHSMS is measured through an audit. The Board develops audit standards, ensures audit tools meet these standards, and establishes audit scope requirements.

The Board sets the minimum criteria for auditor qualification, basic auditor training, and quality assurance over auditors. The Board is responsible for reviewing and approving curricula for auditor training.

(c) Decertification

The Board may decertify an employer where there has been a failure of their OHSMS.

Failure of an OHSMS is determined by way of a WorkSafeBC Initiated Verification Audit ("WIVA"). In determining if a WIVA is required, the Board considers various indicators that may include, but are not limited to:

- repeat or frequent prevention orders;
- program orders issued under Part 3 of the *OHSR*;
- orders issued under section 50 of the *Act*;
- suppressed claims for compensation or suppressed claims costs;
- orders issued under section 73 of the *Act*;
- any incident resulting in the serious injury or death of a worker;
- the employer being convicted by a Court of a violation of the *Act* and/or *OHSR*; or
- the imposition of any administrative penalty.

Employers who are decertified are ineligible to certify again until the following calendar year.

4. COR FINANCIAL INCENTIVE

An employer with a valid COR is eligible to receive a financial incentive for each year they hold a COR and where none of the exceptions to COR financial incentive eligibility apply. Financial incentives are calculated using 10% of the employer's base assessment premiums for each classification unit included in the employer's COR.

The minimum annual financial incentive is the lesser of \$1,000 or 75 percent of the premiums paid by the employer for the financial incentive year being calculated.

If an employer has an outstanding balance for more than 30 days related to its account the financial incentive will be applied to the amount owed to the Board, and any balance paid to the employer.

(a) Exceptions to COR financial incentive eligibility

Failure to report payroll

The Board will notify the employer of the deadline to submit payroll for the purposes of the annual COR financial incentive. An employer will lose its financial incentive for an eligibility year if it fails to report payroll by this deadline.

Convictions and administrative penalties

An employer will not receive a financial incentive for any year in which a violation occurs that results in:

- the employer being convicted by a Court of a violation of the *Act* and/or *OHSR*; or
- the employer receiving an administrative penalty issued under section 95 of the *Act*.

The above exceptions are determined for each classification unit separately. This means an administrative penalty would only affect an employer's financial incentive eligibility for that one classification unit. In these circumstances, the employer's other certified classification unit(s) would be eligible for a financial incentive.

An employer may have the same classification unit in two or more of its divisional accounts. For these employers, those classification units will be considered together when determining financial incentive eligibility. This means an administrative penalty received in one classification unit will affect the financial incentive eligibility for that same classification unit in all of the employer's divisional accounts.

Where the Board is considering enforcement action against a certified employer, or where the Board is investigating a workplace incident involving the certified employer, the Board will not make a decision on the employer's financial incentive for the incident year.

An employer's eligibility for a financial incentive will not be determined until the applicable review and appeal periods expire or the applicable review and appeal process is completed.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | January 1, 2019 |
| AUTHORITY: | Sections 14, 17, 107, 239, and 247 of the <i>Act</i> . |
| CROSS REFERENCES: | Item P2-95-1, <i>Penalties – Criteria for Imposing OHS Penalties</i> ; Item P2-17-3, <i>Certificate of Recognition Program, of the Prevention Manual</i> . |
| HISTORY: | October 21, 2020 – Housekeeping amendments to the <i>Act</i> portion of the Background section to reflect amendments to the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act, R.S.B.C. 2019, c. 1</i> . January 1, 2019 – Retitled; the revisions to the COR policy approved by BOD resolution 2018/11/22-01 on November 22, 2018 applied to all |

decisions made on or after January 1, 2019, except for financial incentive decisions relating to a violation of the *Workers Compensation Act* or *Occupational Health and Safety Regulation* that occurred before January 1, 2019. The interim policies continued to apply to those financial incentive decisions relating to violations of the *Workers Compensation Act* or *Occupational Health and Safety Regulation* occurring before January 1, 2019.

November 22, 2017 – Interim policy was extended to December 31, 2018.

October 21, 2016 – Interim policy was extended to December 31, 2017.

February 15, 2016 – Interim policy was in effect until October 31, 2016.

APPLICATION:

This policy applies to all decisions made on or after January 1, 2019, except for financial incentive decisions relating to a violation of the *Workers Compensation Act* or *Occupational Health and Safety Regulation* that occurred before January 1, 2019.

The interim policies continue to apply as if unexpired in respect of a financial incentive decision relating to a violation of the *Workers Compensation Act* or *Occupational Health and Safety Regulation* that occurred before January 1, 2019.

RE: Penalties Related to Notice of Assessment ITEM: AP5-253-1

BACKGROUND

1. Explanatory Notes

See Item AP5-261-1.

2. The Act

Section 253:

- (1) If 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 the assessment is payable,

the notice constitutes an assessment under this Part, and the employer must, within the time frame set out in the notice,
 - (c) make a return on the form provided or prescribed by the Board, and
 - (d) remit the amount of the assessment.
- (2) An employer who neglects or refuses to comply with subsection (1) is liable for the penalty prescribed by Board regulation or determined by the Board, and that penalty is enforceable as an assessment under this Part.

POLICY

See the POLICY in Item AP5-261-1.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafefbc.com.

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|--------------------------|---|
| EFFECTIVE DATE: | January 1, 2003 |
| AUTHORITY: | Section 253 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP5-261-1, <i>Penalties</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continued 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. Replaced in part Policies No. 40:50:05 and 40:50:10 of the <i>Assessment Policy Manual</i> and Decision No. 351 of volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> . |
| APPLICATION: | This Item provides direction on penalties for failure to make a return or remit an assessment. |

RE: Contractor Liability**ITEM: AP5-258-1**

BACKGROUND

1. Explanatory Notes

Section 258 of the *Act* provides that, if a contractor employs a subcontractor to perform work within the scope of the *Act*, both are liable for the assessment in respect of the work. However, in the absence of a term in the contract to the contrary, the subcontractor is primarily liable. This section ensures that the collection of an assessment for work performed is not affected by contracts between contractors, subcontractors and persons engaging their services.

2. The Act

Section 258:

- (1) The following applies if work within the scope of the compensation provisions is undertaken for a person by a contractor:
 - (a) both the contractor and the person for whom the work is undertaken are liable for the amount of an assessment in respect of the work;
 - (b) the assessment may be levied on and collected from either of them, or partly from each;
 - (c) in the absence of a term in the contract for the work to the contrary, the contractor is, as between the contractor and the person for whom the work is performed, primarily liable for the amount of the assessment.
- (2) The following applies if work within the scope of the compensation provisions is performed under subcontract:
 - (a) both the contractor and the subcontractor are liable for the amount of an assessment in respect of the work;
 - (b) the assessment may be levied on and collected from either of them, or partly from each;

- (c) in the absence of a term in the subcontract for the work to the contrary, the subcontractor is, as between the subcontractor and the contractor, primarily liable for the amount of the assessment.
- (3) The workers of a contractor or subcontractor may, at the discretion of the Board, be deemed to be workers of another person if
 - (a) the contractor or subcontractor is doing work in or for the purposes of an industry carried on by another person,
 - (b) the industry is within the scope of the compensation provisions, and
 - (c) the contractor or subcontractor is not assessed with respect to the work.
- (4) For the purposes of this section, a person, contractor or subcontractor includes an employer within the scope of the compensation provisions.

Section 258.1:

- (1) Subject to this section, if a corporation has failed to pay an amount owed to the Board under this Act, the directors of the corporation at the time the corporation was required to pay the amount are jointly and severally liable with that corporation to pay that amount.
- (2) A director is not liable under subsection (1) unless one of the following has occurred:
 - (a) a certificate has been filed under section 108 (1) (b) or 264 (3) with respect to the amount the corporation is liable to pay and execution for that amount has been returned unsatisfied in whole or in part;
 - (b) the corporation has been dissolved or has commenced liquidation proceedings in any jurisdiction;
 - (c) the corporation has, under the *Bankruptcy and Insolvency Act* (Canada),
 - (i) made an assignment in bankruptcy,
 - (ii) filed a notice of intention to make a proposal with the official receiver, or
 - (iii) made a proposal under Division 1 of Part III of that Act;
 - (d) a bankruptcy order has been made against the corporation under the *Bankruptcy and Insolvency Act* (Canada);

- (e) the corporation has obtained a court order granting a stay of proceedings under section 11.02 of the *Companies' Creditors Arrangement Act* (Canada);
 - (f) the corporation has been or is subject in any jurisdiction to a proceeding similar in nature to a proceeding referred to in paragraphs (c) to (e) of this subsection.
- (3) A director is not liable under subsection (1) if the director exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances to prevent the corporation's failure to pay an amount owed to the Board.
- (4) No action lies and no proceeding may be commenced to recover an amount payable by a director under subsection (1) after 2 years have elapsed since the date that the director ceased to be a director of the corporation.
- (5) If a director pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings,
- (a) the director is entitled to the same priority to which the Board would have been entitled if the amount had not been paid, and
 - (b) if a certificate that relates to that amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, and the Board may make that assignment.
- (6) If a director is liable for an amount under subsection (1),
- (a) the Board may enforce recovery of the amount as if it were an unpaid assessment owed to the Board by the person, and
 - (b) sections 108 and 264 apply to the recovery of that amount.

POLICY

(a) General

Section 258 of the *Act* establishes that where work is performed under contract, each party to the contract is liable for the amount of any assessment premiums in respect of the work performed. The Board will usually collect any unpaid assessment premiums owed from a subcontractor or contractor for work performed. Where a subcontractor or contractor fails to pay assessment premiums as required, the Board may collect these premiums from the contractor and/or person for whom the work is performed.

When the Board finds that a third party may have a section 258 liability, it informs the third party of the possible liability and requests information about the nature of the contract, the gross amount paid to the debtor firm and the disposition of “holdback” funds. If the third party claims to have no liability, and no information to the contrary is known, the Board will confirm to the third party that it does not have a section 258 liability.

If the third party has a liability, the amount of the liability is the lesser of the actual assessment outstanding on the account of the delinquent subcontractor or the assessment based on the labour component of the contract. The labour component is determined by subtracting an appropriate allowance for materials and equipment from the gross contract amount. This allowance depends on the nature of the work performed. The labour component is then multiplied by the assessment rate(s) of the contractor for the year(s) in question to arrive at the liability amount. The third party is advised of this amount.

If the third party has retained holdback funds, the Board requests the third party to remit the lesser of the holdback funds up to the amount of the section 258 liability or the outstanding assessment of the delinquent contractor’s account. The Board may also issue a garnishing order for any holdbacks retained by the third party in excess of the section 258 liability. If the third party has not retained holdback funds, and all collection avenues with regard to the debtor firm have been exhausted, the Board will request payment of the section 258 liability from the third party.

The Board considers any holdback or third party payment agreements between contractors and subcontractors to be private agreements between those two parties, which do not affect either party’s reporting and remitting responsibilities.

(b) Clearance Letters

In order to reduce the uncertainty resulting from a section 258 liability, the Board has established a system through which it provides clearance letters. A section 258 clearance letter provides the addressee of the letter with the clearance date for a registered subcontractor or contractor. The Board will not collect any liability owed by a subcontractor or contractor for work performed up to the clearance date from an addressee who was the contractor or person for whom the work was done. Please note that the clearance date is in the text of the letter; it is not the date of the letter.

PRACTICE

For information on how to obtain a clearance letter, see WorkSafeBC’s website at http://www.worksafebc.com/online_services/clearance_letters/default.asp

For any other relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | June 1, 2010 |
| AUTHORITY: | Section 258 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP5-245-2, <i>Assessable Payroll</i> ; Item AP5-264-1, <i>Collection of Assessments</i> ; Item AP5-265-1, <i>Statutory Lien</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | October 21, 2020 – Housekeeping amendments to the <i>Act</i> portion of the Background section to reflect amendments to the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2017 – Housekeeping amendment. February 1, 2011 – Housekeeping amendment in PRACTICE section. June 1, 2010 – Policy changes to remove reference to the minimum exemption amounts for contractors and homeowners made effective. May 1, 2007 – Amendments to clarify the purpose and function of the clearance system. January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continued 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. Replaced Policies No. 70:20:50 and 70:40:00 of the <i>Assessment Policy Manual</i> . |
| APPLICATION: | Applies to all decisions made on or after June 1, 2010. |

RE: Penalties**ITEM: AP5-261-1**

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 245, 253, 261, and 263 of the *Act* provide for the following types of penalties and other charges used by the Board:

- Penalties may be charged under sections 245, 253 or 261 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 261 of the *Act* to employers who pay less than they actually owe.
- A continuing penalty may be charged under section 261 to an employer when an amount remains overdue after the original default.
- Claims costs are charged under section 263 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 AP1-263-1.

2. The Act

Section 245(2):

If an employer fails to comply with subsection (1),

- (a) the employer must pay, as a penalty for the failure, the percentage of the assessment prescribed by Board regulation or determined by the Board, and
- (b) the Board may make its own estimate of the payrolls and make its assessment and levy based on that estimate, in which case the employer is bound by the estimate, assessment and levy.

Section 253(2):

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

Section 261, in part:

- (1) Subject to subsection (3), if an assessment levied under the compensation provisions is not paid at the time when it becomes payable, the defaulting employer must pay, as a penalty for the default, the applicable percentage of the following, as prescribed by Board regulation or determined by the Board:
 - (a) the amount unpaid;
 - (b) the assessment for the preceding year;
 - (c) the projected assessment for the current year.
- (2) A penalty under subsection (1)
 - (a) may be added to the amount of the assessment and become a part of the assessment, and
 - (b) if the penalty is 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 245(2), 253(2) and 261(1)**

In general, unless the Board determines otherwise, the following penalties will apply under section 253(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:

| Tier | Annual Assessment Due | Penalty Amount |
|-------------|------------------------------|-----------------------|
| 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:

| Tier | Quarterly Assessment Due | Penalty Amount |
|-------------|---------------------------------|-----------------------|
| 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 245(2) and 261(1) to charge 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 253(2), apply penalties under sections 245(1) or 261(1) at 8 percent of the amount due, or estimated to be due.

(b) Penalties for paying less than owed under section 261(1)

A penalty under section 261(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 261(2)

A penalty under section 261(1) is charged when an employer has an overdue account of any type beyond the stated due date. The penalty is a percentage rate, charged at the end of each month, on the outstanding balance of the initial amount, until that amount is paid in full. This penalty is in addition to any penalty, interest or other charge that is imposed by the Board.

There is no minimum or maximum amount for this penalty.

(d) Reducing or Cancelling Penalties

A penalty decision may not be reconsidered where one of the limitations set out under section 123 of the *Act* exists, unless section 124 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;
- (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 Board 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) where the penalty is charged as a result of an employer’s reasonable belief in a mistaken set of facts, which if true, would render a specific individual not its worker, and where the employer took the reasonable steps to verify this belief; or
- (10) 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 WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | January 1, 2023 |
| AUTHORITY: | Sections 245(2), 253(2) and 261(1) of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP3-123-1, <i>Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions or Orders</i> ; Item AP5-263-1, <i>Charging Claim Costs to Employers</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | January 1, 2023 – Amended to add a new circumstance in which a penalty may be reduced or cancelled. |

September 1, 2022 – Policy changes to facilitate the implementation of the Accounts Receivable system.

October 29, 2020 – Amended to reflect amendments to reconsideration provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

February 28, 2006 – Changes to adopt the then newly tiered penalty system.

March 3, 2003 – Consequential changes were subsequently made in accordance with the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63 of 2002).

January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continued 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.

Replaced 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*.

APPLICATION: Applies to all decisions made on or after January 1, 2023.

RE: Charging Claim Costs to Employers**ITEM: AP5-263-1**

BACKGROUND

1. Explanatory Notes

The costs of an injured worker's claim are normally allocated to the classification to which the worker's employer belongs. However, section 263 of the *Act* states that the employer must pay the full costs of a worker's claim if, at the time of the injury or occupational disease, the employer had failed to register or provide payroll information to the Board under section 245(1) or has failed to pay an assessment or part of an assessment. Section 263(4) gives the Board some discretion to reduce or cancel this liability.

2. The Act

Section 263:

- (1) This section applies if an employer
 - (a) refuses or neglects to make or provide a payroll estimate or other record required to be provided by the employer under section 245(1) [*employer obligation to provide payroll estimates and reports*], or
 - (b) refuses or neglects to pay
 - (i) an assessment,
 - (ii) the provisional amount of an assessment, or
 - (iii) an instalment or part of an assessment or a provisional amount of an assessment.
- (2) Subject to subsection (4), the employer must, in addition to any penalty or other liability to which the employer may be subject, pay the Board the full amount or capitalized value, as determined by the Board, of the compensation payable in respect of an injury or occupational disease to a worker in the employer's employ that happens during the period of the default referred to in subsection (1).
- (3) The payment of an amount required to be paid under subsection (2) may be enforced in the same manner as the payment of an assessment may be enforced.

- (4) If satisfied that the default was excusable, the Board may in a specific case relieve the employer in whole or in part from liability under this section.

Section 123:

- (1) Subject to subsection (2), the Board may, on its own initiative, reconsider a decision or order made under a compensation provision by the Board or an officer or employee of the Board.
- (2) Subject to subsection (3), the Board may not reconsider a decision or order referred to in subsection (1) if any of the following apply
 - (a) more than 75 days have elapsed since the decision or order was made;
 - (b) a request for review has been filed under section 270 *[making request for a review]* in respect of the decision or order;
 - (c) a notice of appeal has been filed under section 292 *[how to appeal]* in respect of the decision or order.
- (3) The Board may, on its own initiative, reconsider a decision or order after the 75 days referred to in subsection (2)(a) have elapsed, if the decision or order contains an obvious error or omission.

Section 268(1), in part:

Subject to subsection (2), a person referred to in the applicable provision of section 269 may request a review officer to review the following in a specific case:

...

- (c) a Board decision under the compensation provisions respecting
 - (i) an assessment or classification matter,
 - (ii) a monetary penalty, or
 - (iii) an employer payment to the Board under any of the following:
 - (A) section 251 *[levy of contribution from specific employer]*;

- (B) section 262(2) [*employer assessment in relation to injury not reported as required*];
- (C) section 263 [*employer payment for compensation in relation to injuries during period of default*].

POLICY

The Board determines if any charges imposed under section 263(1) or 263(2) may be reduced or cancelled under section 263(4) of the *Act*. The Board does not charge claim costs to employers in the following circumstances:

- there has been a Board error;
- the employer contacted the Board prior to the injury with a view to registration, and the employer supplied the information required to proceed with registration within 30 days of the original contact;
- the employer is already registered as a different legal entity;
- the costs associated with the claim are less than the minimum set by the Board;
- there is sufficient evidence that the employer mailed a registration form prior to the date of injury; or
- any other circumstances which the Board considers are consistent with the *Act* and the purpose of this charge.

Pursuant to section 123 of the *Act*, the Board may, on its own initiative, reconsider a charge imposed under section 263(1) or 263(2).

Where an employer disagrees with a decision of the Board regarding section 263(2) or a decision not to relieve that employer either in whole or in part from the liability, under section 263(4), Part 6 of the *Act* establishes a right to request a review of a decision, by a review officer.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | January 1, 2023 |
| AUTHORITY: | Sections 123 and 263 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP3-123-1, <i>Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions or Orders</i> ; Item AP5-245-1, <i>Registration of Employers</i> , of the <i>Assessment Manual</i> . Policy item #115.10, <i>Failure to Register as an Employer at the Time of Injury</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | January 1, 2023 – Consequential changes related to the consolidation of policies on determining workplace status were made effective. October 29, 2020 – Amended to reflect amendments to reconsideration provision in the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. June 1, 2010 – Amendments concerning the circumstances where the Board does not charge claim costs to employers were made effective. March 3, 2003 – Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> (Bill 63 of 2002). January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continued 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. Replaced Policy No. 40:50:50 of the <i>Assessment Policy Manual</i> and Decision No. 111 of volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> . |
| APPLICATION: | Applies to all decisions made on or after January 1, 2023. |

RE: Collection of Assessments**ITEM: AP5-264-1**

BACKGROUND

1. Explanatory Notes

The *Act* contains several provisions for the Board to collect assessments from employers or independent operators who do not voluntarily pay.

2. The Act

Section 120:

- (1) The following apply to an amount payable as compensation or by way of commutation of a periodic payment in respect of compensation:
 - (a) the amount is not capable of being assigned, charged or attached;
 - (b) the amount must not pass by operation of law except to a personal representative.
- (2) A claim must not be set off against an amount referred to in subsection (1), except for money
 - (a) advanced by way of financial or other social welfare assistance owing to the government, or
 - (b) owing to the accident fund.

Section 258:

- (1) The following applies if work within the scope of the compensation provisions is undertaken for a person by a contractor:
 - (a) both the contractor and the person for whom the work is undertaken are liable for the amount of an assessment in respect of the work;
 - (b) the assessment may be levied on and collected from either of them, or partly from each;
 - (c) in the absence of a term in the contract for the work to the contrary, the contractor is, as between the contractor and the person for

whom the work is performed, primarily liable for the amount of the assessment.

- (2) The following applies if a work within the scope of the compensation provisions is performed under subcontract:
 - (a) both the contractor and the subcontractor are liable for the amount of an assessment in respect of the work;
 - (b) the assessment may be levied on and collected from either of them, or partly from each;
 - (c) in the absence of a term in the subcontract for the work to the contrary, the subcontractor is, as between the subcontractor and the contractor, primarily liable for the amount of the assessment.
- (3) The workers of a contractor or subcontractor may, at the discretion of the Board, be deemed to be workers of another person if
 - (a) the contractor or subcontractor is doing work in or for the purposes of an industry carried on by another person,
 - (b) the industry is within the scope of the compensation provisions, and
 - (c) the contractor or subcontractor is not assessed with respect to the work.
- (4) For the purposes of this section, a person, contractor or subcontractor includes an employer within the scope of the compensation provisions.

Section 258.1:

- (1) Subject to this section, if a corporation has failed to pay an amount owed to the Board under this Act, the directors of the corporation at the time the corporation was required to pay the amount are jointly and severally liable with that corporation to pay that amount.
- (2) A director is not liable under subsection (1) unless one of the following has occurred:
 - (a) a certificate has been filed under section 108 (1) (b) or 264 (3) with respect to the amount the corporation is liable to pay and execution for that amount has been returned unsatisfied in whole or in part;
 - (b) the corporation has been dissolved or has commenced liquidation proceedings in any jurisdiction;

- (c) the corporation has, under the *Bankruptcy and Insolvency Act* (Canada),
 - (i) made an assignment in bankruptcy,
 - (ii) filed a notice of intention to make a proposal with the official receiver, or
 - (iii) made a proposal under Division 1 of Part III of that Act;
 - (d) a bankruptcy order has been made against the corporation under the *Bankruptcy and Insolvency Act* (Canada);
 - (e) the corporation has obtained a court order granting a stay of proceedings under section 11.02 of the *Companies' Creditors Arrangement Act* (Canada);
 - (f) the corporation has been or is subject in any jurisdiction to a proceeding similar in nature to a proceeding referred to in paragraphs (c) to (e) of this subsection.
- (3) A director is not liable under subsection (1) if the director exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances to prevent the corporation's failure to pay an amount owed to the Board.
- (4) No action lies and no proceeding may be commenced to recover an amount payable by a director under subsection (1) after 2 years have elapsed since the date that the director ceased to be a director of the corporation.
- (5) If a director pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings,
- (a) the director is entitled to the same priority to which the Board would have been entitled if the amount had not been paid, and
 - (b) if a certificate that relates to that amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, and the Board may make that assignment.
- (6) If a director is liable for an amount under subsection (1),
- (a) the Board may enforce recovery of the amount as if it were an unpaid assessment owed to the Board by the person, and

- (b) sections 108 and 264 apply to the recovery of that amount.

Section 264:

- (1) If an assessment or part of an assessment is not paid in accordance with the terms of the assessment and levy, the Board has a right of action against the defaulting employer in respect of the amount unpaid, together with costs of the action.
- (2) If default is made in the payment of an assessment or part of an assessment, the Board may issue a certificate stating
 - (a) that the assessment was made,
 - (b) the amount remaining unpaid on account of the assessment, and
 - (c) the person by whom the amount was payable.
- (3) A certificate under subsection (2), or a copy of it certified by the secretary of the Board under the seal of the Board to be a true copy, may be filed with any district registrar of the Supreme Court.
- (4) On filing under subsection (3), the certificate becomes an order of the Supreme Court and may be enforced as a judgment of that court against the person named in the certificate for the amount stated in the certificate.

Section 265:

- (1) Despite anything contained in any other Act, the amount due by an employer to the Board or, where an assignment has been made under subsection (7), its assignee, on an assessment made under this Act, or in respect of an amount which the employer is required to pay to the Board under this Act, or on a judgment for it, constitutes a lien in favour of the Board or its assignee payable in priority over all liens, charges or mortgages of every person, whenever created or to be created, with respect to the property or proceeds of property, real, personal or mixed, used in or in connection with or produced in or by the industry with respect to which the employer was assessed or the amount became payable, excepting liens for wages due to workers by their employer and liens under section 50 (1) of the *Temporary Foreign Worker Protection Act*.
- (2) A lien under subsection (1) for the amount due the Board or its assignee continues to be valid and in force with respect to each assessment until the expiration of 5 years from the end of the calendar year for which the assessment was levied.

- (3) The exception in subsection (1) respecting liens for wages due to workers by their employer does not apply in respect of a lien for wages that is, by section 87 (5) of the *Employment Standards Act*, postponed to a mortgage or debenture.
- (4) The exception in subsection (1) respecting liens under section 50 (1) of the *Temporary Foreign Worker Protection Act* does not apply in respect of a lien for wages that is, by section 50 (4) of the *Temporary Foreign Worker Protection Act*, postponed to a mortgage or debenture.
- (5) Where the employer is a corporation, the word “**property**” in subsection (1) includes the property of any director, manager or other principal of the corporation where the property is used in, or in connection with, the industry with respect to which the employer was assessed or the amount became payable, or was so used within the period in respect of which assessments are unpaid.
- (6) Without limiting subsection (1), the Board may enforce its lien by proceedings under the *Court Order Enforcement Act*.
- (7) The Board may assign its lien rights to a person, contractor or subcontractor who has fully discharged their liability for the amount of an assessment under section 258 by payment of it.

POLICY

When attempting to collect an outstanding assessment from a delinquent employer, it will become apparent at some point that the employer cannot or will not pay the outstanding balance as required. At this time, the Board will send the “final notice” to the employer allowing 10-15 days to satisfy the account.

(a) Payment proposals

Payment proposals from a delinquent employer may only be considered when the account is cancelled, or when the account is active and current assessments are being paid when due. In all cases, payment proposals should be considered with the purpose of satisfying the outstanding amount in the least time possible. However, in cases where the account is cancelled and is otherwise a possible write-off, or where the Board’s position is well secured, an extended payment period may be accepted.

Proposals must meet the following conditions:

- post-dated cheques or equivalent are provided wherever possible in advance of a payment proposal being accepted;

- current remittance requirements, where applicable, are maintained;
- monthly overdue penalty charges accrue while the proposal is in effect (The exception to this is when the defaulting employer is a corporation, and a principal of the company is undertaking payment of the outstanding balance after the company's account with the Board has been cancelled. Under those circumstances, the balance will not accrue overdue penalty charges.); and
- the accepted proposal is strictly adhered to.

When a proposal has been accepted, the payment arrangements and conditions are confirmed in writing.

(b) Bankruptcy and receivership

When the Board is notified by a trustee that a firm has filed an assignment in bankruptcy, and the account has already been cancelled and the outstanding balance is below the minimum that the Board considers worth pursuing, the balance is written off and the trustee is notified that the Board has no claim. The same applies where a firm has gone into receivership.

(c) Writ of seizure and sale

If the "final notice" has been sent to the delinquent employer and the period specified has elapsed without a satisfactory payment or payment proposal, and an asset search indicates that the employer owns seizable assets other than land, the Board will file its certificate under sections 264(2) and 264(3) of the *Act* and have a writ of seizure and sale issued. The Board may not issue the writ if it determines the outstanding balance is below the minimum it considers worth pursuing. Once the Board has issued a writ, the collection of the balance is the sole responsibility of the bailiff.

Before a writ is issued, the Board will review the possibility of the writ causing the firm to close down. Writs will not be withheld simply on the grounds that equipment seizure will put the firm out of business.

If the asset of a delinquent employer was purchased under a conditional sales agreement, a writ of seizure and sale with respect to the asset will not be issued unless the agreement has been paid or is almost paid.

(d) Land judgements

A land judgment is issued if an asset search has indicated that the debtor owns land and no other seizable assets and the balance of the account is over the minimum the Board considers worth pursuing. The same conditions must exist before a land judgment may be issued as those previously listed for a writ of seizure and sale; the

employer must have received the “final notice” and a certificate must have been filed with the registrar of the appropriate court.

(e) Garnishing orders

If a garnishing order is to be issued for the wages of a delinquent employer, the employer must

- have been uncooperative;
- have received written warning of the Board’s intention to garnish wages; and
- have been given an opportunity to satisfy the account before such action is taken.

Consideration must also be given to the marital status and number of dependants of the delinquent employer. A garnishing order will not be issued if the available evidence indicates that the funds in question are otherwise attached.

(f) Write offs

If an account is cancelled and all attempts to collect the outstanding balance have been unsuccessful, the Board may “write off” the balance as uncollectable. When a balance is written off, it does not mean that the balance is eliminated, but that attempts to collect the balance have been suspended. Should the circumstances change in the future to allow further collection efforts, or should the employer revive the account with the Board, the balance is immediately reinstated.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | January 1, 2003 |
| AUTHORITY: | Sections 120, 258, 264, and 265 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP3-120-1, <i>Attachment of Compensation</i> ; Item AP5-258-1, <i>Contractor Liability</i> ; Item AP5-265-1, <i>Statutory Lien</i> , of the <i>Assessment Manual</i> . Policy item #34.40, <i>Pay Employer Claims</i> ; Policy item #48.40, <i>Overpayments/Money Owed to the Board</i> ; Policy item #48.48, <i>Unpaid Assessments</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | October 21, 2020 – Housekeeping amendments to the <i>Act</i> portion of the Background section to reflect amendments to the <i>Act</i> by the <i>Workers</i> |

APPLICATION:

Compensation Amendment Act, 2020 (Bill 23 of 2020), in effect August 14, 2020.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

January 1, 2003 – Replaced in part Policies No. 70:20:20 to 70:20:45, 70:20:70, 70:20:90 and 70:30:00 of the *Assessment Policy 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.

RE: Statutory Lien**ITEM: AP5-265-1**

BACKGROUND

1. Explanatory Notes

Section 265 of the *Act* creates a statutory lien in favour of the Board that attaches to property or the proceeds arising from the sale of property.

2. The Act

Section 265:

- (1) Despite anything contained in any other Act, the amount due by an employer to the Board or, where an assignment has been made under subsection (7), its assignee, on an assessment made under this Act, or in respect of an amount which the employer is required to pay to the Board under this Act, or on a judgment for it, constitutes a lien in favour of the Board or its assignee payable in priority over all liens, charges or mortgages of every person, whenever created or to be created, with respect to the property or proceeds of property, real, personal or mixed, used in or in connection with or produced in or by the industry with respect to which the employer was assessed or the amount became payable, excepting liens for wages due to workers by their employer and liens under section 50 (1) of the *Temporary Foreign Worker Protection Act*.
- (2) A lien under subsection (1) for the amount due the Board or its assignee continues to be valid and in force with respect to each assessment until the expiration of 5 years from the end of the calendar year for which the assessment was levied.
- (3) The exception in subsection (1) respecting liens for wages due to workers by their employer does not apply in respect of a lien for wages that is, by section 87 (5) of the *Employment Standards Act*, postponed to a mortgage or debenture.
- (4) The exception in subsection (1) respecting liens under section 50 (1) of the *Temporary Foreign Worker Protection Act* does not apply in respect of a lien for wages that is, by section 50 (4) of the *Temporary Foreign Worker Protection Act*, postponed to a mortgage or debenture.
- (5) Where the employer is a corporation, the word “**property**” in subsection (1) includes the property of any director, manager or other

principal of the corporation where the property is used in, or in connection with, the industry with respect to which the employer was assessed or the amount became payable, or was so used within the period in respect of which assessments are unpaid.

- (6) Without limiting subsection (1), the Board may enforce its lien by proceedings under the *Court Order Enforcement Act*.
- (7) The Board may assign its lien rights to a person, contractor or subcontractor who has fully discharged their liability for the amount of an assessment under section 258 by payment of it.

POLICY

(a) General

Section 265 of the *Act* provides that where an employer does not pay assessments as required, the Board has a statutory lien in favour of the Board in respect of the unpaid assessments. Such a lien may attach:

- (1) to the employer's property, or to proceeds arising from the sale of the employer's property used in, or produced in, the industry for which the assessment arose; or
- (2) if the employer is a corporation, to the property of any director, manager, or other principal of the corporation where the property was used in, or in connection with the employer's business operations.

If the Board determines that a third party may have a section 265 liability, the Board notifies the third party of the priority of the Board's lien on property or proceeds of property used in or produced by the industry of the debtor firm.

(b) Clearance Letters

In order to reduce the uncertainty resulting from a section 265 liability, the Board has established a system through which it provides clearance letters. A section 265 clearance letter informs the person requesting the letter of the clearance date in respect of a registered employer. The clearance date is the date to which the Board will waive its right to enforce a lien in respect of any unpaid assessments owed to the Board where there has been a transfer of assets. A section 265 clearance letter does not provide information concerning outstanding prevention matters under the OHS provisions of the *Act*. Please note that the clearance date is in the text of the letter; it is not the date of the letter.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | May 1, 2007 |
| AUTHORITY: | Section 265 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP5-264-1, <i>Collection of Assessments</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | October 21, 2020 – Housekeeping amendments to the <i>Act</i> portion of the Background section to reflect amendments to the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. December 1, 2019 – Housekeeping changes reflecting consequential amendments made to the <i>Workers Compensation Act</i> by the <i>Temporary Foreign Worker Protection Act</i> , which came into effect October 1, 2019. January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective. May 1, 2007 – Amendments to clarify the purpose and function of the clearance system. January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continued 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: | Replaced Policy No. 70:20:60 of the <i>Assessment Policy Manual</i> . Applies to all clearance letter requests on and after May 1, 2007. |

RE: Assignment of Board Authority**ITEM: AP8-319/320/323-1**

BACKGROUND

1. Explanatory Notes

Part 5 of the *Act* sets out the compensation provisions giving powers and responsibilities to the Board regarding the accident fund and employer assessment. The “Board” for this purpose is the corporation known as the Workers’ Compensation Board. It is necessary to determine which persons should exercise the Board’s authority in various areas or provide a mechanism for making that determination. The Board of Directors does this through policy under section 319 of the *Act*. Section 122 sets out the Board’s privative clause with respect to the exercise of authority under the compensation provisions of the *Act*.

2. The Act

Section 319:

The board of directors must set and revise as necessary the policies of the board of directors, including policies respecting occupational health and safety, compensation, rehabilitation and assessment.

Section 320(1):

The board of directors must set and supervise the direction of the Board.

Section 323(2):

The president is responsible to the board of directors and

- (a) must attend and participate as a non-voting director at meetings of the board of directors,
- (b) must implement the policies of the board of directors with respect to the administration of the Board and this Act,
- (c) is responsible for all functions related to staff, other than the staff appointed by and reporting directly to the board of directors, and
- (d) must carry out other duties and functions assigned to the president by the board of directors.

Section 122:

Subject to sections 288 and 289 [*appeals to appeal tribunal*], the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined under the compensation provisions, and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court.

Section 340:

Proceedings by or before the Board must not be

- (a) restrained by injunction, prohibition or other process or proceeding in any court, or
- (b) removed by certiorari or otherwise into any court.

Section 332:

An action may not be maintained or brought against the Board or a director, officer or employee of the Board in respect of any act, omission or decision

- (a) that was within the jurisdiction of the Board, or
- (b) that the Board, director, officer or employee believed was within the jurisdiction of the Board.

POLICY

The Board of Directors will exercise the following powers and responsibilities as set out in the compensation provisions of the *Act* relating to the payment of assessments:

- setting assessment rates;
- creating and rearranging employer classes and subclasses;
- approving changes to the *Classification and Rate List*;
- adopting the experience rating system;
- making and amending regulations;
- granting exemptions from the application of the compensation provisions of the *Act* under section 4(1);

- entering into formal agreements and arrangements with other agencies and governments covered by section 335; and
- setting and revising policies under the *Act* (section 319).

The President/Chief Executive Officer (CEO) has the authority to exercise the remaining powers and responsibilities in the compensation provisions of the *Act* in relation to the payment of assessments. The President/CEO also has the authority to assign these powers and responsibilities to divisions, departments, categories of officers or individual officers of the Board. President/CEO assignments will state whether the assignee has the authority to further assign the power or responsibility or whether it must be exercised personally.

“Payment of assessments” for the purpose of this policy includes the registration and classification of employers or other persons, determining payroll, assessment rates and assessments owed by employers, auditing records, collecting amounts owing to the Board and all activities incidental to these functions.

The Board’s powers and responsibilities relating to the payment of assessments in the compensation provisions of the *Act* must be exercised in accordance with the policies of the Board of Directors.

PRACTICE

For any other relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | January 1, 2003 |
| AUTHORITY: | Sections 122, 319, 320, 323, 332, and 340 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP1-4-1, <i>Exemptions from Coverage</i> ; Item AP5-244-1, <i>Classification – Description of Terms</i> ; Item AP5-240/241-1, <i>Assessment Rates</i> ; Item AP5-247-1, <i>Experience Rating</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. October 2010 – Housekeeping amendment. February 28, 2006 – Housekeeping change to remove statement in the Practice section on the President/CEO’s assignment of authority. March 3, 2003 – Consequential changes were subsequently made to the restatement of the <i>Act</i> in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> (Bill 63 of 2002). January 1, 2003 – Replaced Policies No. 10:20:00, 50:10:00 and 70:20:00 of the <i>Assessment Policy Manual</i> . |

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.

**RE: Coverage under Federal Statutes or
Agreements Between the Provincial and
Federal Governments**

ITEM: AP8-336-1

BACKGROUND

1. Explanatory Notes

The *Act* authorizes the Board to exercise authority under federal statutes and federal-provincial agreements.

2. The Act

Section 336:

The Board may exercise any power or duty conferred or imposed on it by or under a statute of Canada or an agreement between Canada and British Columbia.

POLICY

The Board administers coverage for Provincial Emergency Program and Federal Government workers on behalf of the Provincial and Federal Governments, who are assessed on a cost plus administration basis.

Members of the Federal Police Force (RCMP) and Armed Forces are not covered by this Board but by the Federal Government directly.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE: January 1, 2003
AUTHORITY: Section 336 of the *Act*.
CROSS REFERENCES: Item AP1-1-1, *Coverage under Act – Determining Workplace Status*;
Item AP5-244-4, *Classification – Deposit Accounts*, of the *Assessment Manual*.

HISTORY:

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

July 2004 – Housekeeping amendment.

January 1, 2003 – Replaced in part Policy No. 20:10:30 of the *Assessment Policy Manual*.

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.

RE: Audits**ITEM: AP8-347-1**

BACKGROUND

1. Explanatory Notes

Section 347 of the *Act* gives the Board the authority to examine the books and accounts of every employer and make any other inquiry that is considered necessary to determine 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 341:

The Board may act

- (a) on the report of any of its officers, and
- (b) in relation to an inquiry under this Part, on the report of the person making the inquiry as to the result of that inquiry.

Section 346:

- (1) If the Board considers that an inquiry is necessary, the inquiry may be made by an officer of the Board or by another person appointed by the Board to make the inquiry.
- (2) For the purposes of an inquiry under this section, the person making the inquiry has the powers conferred on the Board under section 342 [*authority to compel witnesses and production of evidence*].

Section 347:

- (1) The Board, an officer of the Board or a person authorized by the Board for this purpose may examine the books and accounts of an employer and make any other inquiry the Board considers necessary to determine any of the following:
 - (a) whether an industry or person is within the scope of the compensation provisions;

- (b) the amount of the payroll of the employer;
 - (c) whether a statement provided to the Board under section 245 *[employer to provide estimate of payroll]* is an accurate statement of the matters that are required to be stated in it.
- (2) For the purpose of an inquiry under this section, the Board or person authorized to make the inquiry may give notice in writing to an employer or agent of an employer requiring the employer to bring or produce before the Board or person, at a time and place specified in the notice, all records in the possession, custody or power of the employer touching or in any way relating to or concerning the subject matter of the inquiry referred to in the notice.
- (3) The time specified in a notice under subsection (2) must be at least 10 days after the notice is given.
- (4) An employer or agent named in and served with a notice under subsection (2) must, at the time and place specified in the notice, produce all records in accordance with 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 business 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 347(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 Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

| | |
|--------------------------|---|
| EFFECTIVE DATE: | April 1, 2005 |
| AUTHORITY: | Sections 341, 346, and 347 of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP5-245-2, <i>Assessable Payroll</i> ; Item 5-245-3, <i>Payroll – Out-of-Province Employers and Operations</i> ; Item 5-245-4, <i>Payroll Estimates</i> ; Item 5-246-1, <i>Maximum Wage</i> , of the <i>Assessment Manual</i> . |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective. April 1, 2005 – Amendments concerning policy application in audits were made effective. March 3, 2003 – Consequential changes were subsequently made to the restatement of the <i>Act</i> in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> (Bill 63 of 2002). January 1, 2003 – This Item resulted from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continued 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. Replaced Policy No. 50:40:00 of the <i>Assessment Policy Manual</i> . |
| APPLICATION: | The amended policy applies to all decisions on or after April 1, 2005. |

RE: Disclosure of Assessment Information**ITEM: AP8-349-1**

BACKGROUND

1. Explanatory Notes

For the purpose of administering the *Act*, the Board collects and maintains information on employers who are required to register and pay assessments, or employers or independent operators who have voluntarily registered under section 4 of the *Act*. The Board also disseminates information in its possession to stakeholders and others for this purpose.

Provincial legislation, the *Freedom of Information and Protection of Privacy Act* (“*FIPPA*”) provides access for the public to the information maintained by the Board while at the same time protecting personal privacy.

2. The Act

Section 349(1):

Officers of the Board and persons authorized to make an inquiry under this Division must not, except in the performance of their duties or under the authority of the Board, disclose or allow to be disclosed information obtained by them or which has come to their knowledge in making or in connection with an inquiry under this Division.

POLICY

(a) General

This policy is intended to ensure that the Board complies with *FIPPA* and to reflect its commitment to ensuring the openness of the Workers’ Compensation system as well as the protection of personal privacy.

FIPPA differentiates between “personal information”, information relating to third party business interests, and other types of information in the possession of a public body such as the Board. “Personal information” means recorded information about an identifiable individual. This policy reflects these differences.

Freedom of information and protection of privacy can be competing principles in many situations. The Board considers that, until it is advised otherwise by the Information and

Privacy Commissioner appointed under section 37 of *FIPPA*, openness should prevail as far as possible in the area of assessments. Where there is ambiguity, it should be resolved in favour of access. Exceptions to access should be narrowly construed.

The balance of this policy discusses common situations where information is requested.

The Board does not charge a fee for the disclosure of assessment information except to the extent this is permitted by *FIPPA*.

(b) Disclosure of assessment records to employers

Copies of the employer's or independent operator's assessment record will be sent to the employer or independent operator and any person or organization having their written approval as soon as possible after the Board has received a request.

The record or a copy of the record will also be made available for inspection by the employer or independent operator and any person or organization having their written approval during normal work hours at the nearest Board office.

The Board will apply mandatory exceptions from disclosure under *FIPPA* and may apply discretionary exceptions, if necessary.

The Board will generally accept the verbal advice of lawyers, accountants or similarly accredited professionals that they represent an employer or independent operator and are authorized to obtain information about the employer or independent operator. The name of the individual lawyer, accountant or similarly accredited professional will be recorded.

(c) Disclosure of claims cost information to employers

The Board may regularly send to employers pursuant to section 247 or other provisions of the *Act* a listing of claims of their workers showing the claim number, the claimant's name and the amount of compensation paid by the Board.

Where an employer has been granted relief of claims costs or the costs of the claim have been transferred to another classification, only the direct claims information which is related to the relief or transfer will be discussed with the employer or independent operator concerned.

(d) Disclosure to third parties with regard to sections 258 and 265 of the Act

Material information will be released to third parties without authorizations where they have a potential liability under sections 258 and 265 of the *Act*. In particular, clearances on any registered employer or person with Personal Optional Protection will be provided on request for this purpose.

Requests for personal information regarding individuals that is not directly related to the business must be accompanied by written authorization of those individuals.

(e) Disclosure to the public of information about a firm

The classification and basic assessment rate for the classification of an employer or an independent operator will be made available to anyone upon request.

The Board will also generally disclose to any person the experience rated assessment rate of an individual firm, the total assessment charged to a firm, and the total claim costs charged to a firm for assessment purposes. However, the particular circumstances of the case may require all or part of this information to be withheld under the provisions of *FIPPA*.

(f) Ombudsperson, Employers' Advisers, Workers' Advisers, Workers' Compensation Appeal Tribunal, MLAs

The Board will release information about a firm to anyone having statutory authority to obtain the information such as the Ombudsperson, Employers' and Workers' Advisers, the Workers' Compensation Appeal Tribunal and MLAs.

(g) Legal Actions

Information will be provided to affected parties where required by law.

PRACTICE

The Board's FIPP Office oversees the Board's organizational compliance with *FIPPA*. Generally, if disclosure is granted in the normal course of business, it need not be referred to the FIPP Office. The department that holds the information can usually decide whether information is of a type that can be released in the normal course of business. In any case where information cannot clearly be released under the normal course of business, the matter is referred to the FIPP Office.

Requests within the Assessment Department for disclosure of the experience rated assessment rate of an individual firm, the total assessment charged to a firm, and the total claims costs charged to a firm for assessment purposes must be directed to the Manager, Assessment Policy.

Under section 75 of *FIPPA*, a fee may be charged where more than three hours is required to locate and retrieve a record of which disclosure has been requested.

Disclosure in the context of legal actions is usually handled by the Board's Records Management Office.

If a requestor objects to the decision of the FIPP Office, they have a right to request a review to the Information and Privacy Commissioner under section 52 of *FIPPA*.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

| | |
|--------------------------|--|
| EFFECTIVE DATE: | January 1, 2003 |
| AUTHORITY: | Section 349(1) of the Act; Sections 3(2), 21, 22(3), 33, 37, and 52 of the <i>Freedom of Information and Protection of Privacy Act</i> . |
| CROSS REFERENCES: | Item AP1-4-3, <i>Personal Optional Protection</i> ; Item AP5-240/241-1, <i>Assessment Rates</i> ; Item AP5-244-1, <i>Classification – Description of Terms</i> ; Item AP5-247-1, <i>Experience Rating</i> ; Item AP5-258-1, <i>Contractor Liability</i> ; Item AP5-265-1, <i>Statutory Lien of the Assessment Manual</i> . |
| HISTORY: | April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. July 2004 – Housekeeping amendment. January 1, 2003 – Replaced Policy No. 10:20:10 of the <i>Assessment Policy Manual</i> . |
| 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. |

APPENDIX “A”**AMOUNTS REFERRED TO IN POLICIES THAT ARE
ADJUSTED FROM TIME TO TIME****AP1-4-2 – Requesting a Variance from a General Exemption**

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

AP1-4-3 – Personal Optional Protection

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

The Board has designated \$2,700 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.

AP5-246-1 – Maximum Wage

The maximum wage rate in 2022 is \$108,400.00 and in 2023 is \$112,800.00

AP5-243-1 – Assessment Payments

The annual assessment threshold for the purpose of determining a firm’s remittance schedule for the purpose of part (a) of this policy is \$2,000.

AP5-261-1 – Penalties

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

APPENDIX “B”**INDEX OF RETIRED DECISIONS FROM
VOLUMES 1 – 6 (DECISIONS NO. 1 – 423) OF THE
*WORKERS’ COMPENSATION REPORTER*****EXPLANATORY NOTE:**

The Board of Directors Bylaw re: Policies of the Board of Directors lists the policy manuals and other documents that are policies for purposes of the *Workers Compensation Act*. Included in the list are Decisions No. 1 – 423 in volumes 1 – 6 of the *Workers’ Compensation Reporter*. These Decisions consist, for the most part, of decisions made by the former commissioners on various matters between 1973 and 1991.

In order to reduce the number of sources of policies, a strategy was approved for consolidating Decisions No. 1 – 423 into the various policy manuals, as appropriate, and “retiring” the Decisions over time.

“Retire” for this purpose means that, as of the “retirement date”, the Decision is no longer current policy under the Board of Directors Bylaw.

“Retiring” does not affect a Decision’s status as policy prior to the date it was “retired”. A “retired” Decision therefore applies in decision-making on historical issues to the extent it was applicable prior to the “retirement date”. “Retiring” also does not affect the disposition of any individual matters dealt with in a Decision.¹

All of the Decisions from volumes 1 - 6 have been “retired” from current policy status. This Index sets out each Decision’s “retirement date”. The final Decision to be retired from policy status was retired December 11, 2013.

Please note that policy decisions of the former Governors and the former Panel of Administrators still in effect immediately before February 11, 2003 are numbered similarly to Decisions No. 1 – 423. Many decisions of the former Governors and the former Panel of Administrators remain policies of the Board of Directors, and have not been retired.

¹ Decisions or parts of Decisions may have been replaced, either expressly or impliedly, by subsequent policies in the policy manuals or other policy documents. Under the Board of Directors Bylaw, where there is a conflict between policy in Decisions No. 1 - 423 and policy in a policy manual listed in the Bylaw, the policy in the manual is paramount. In the event of any other conflict between policies, the most recently approved policy is paramount.

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 01 | Publication of Decisions | May 1, 2000 |
| 02 | An Injured Person | February 24, 2004 |
| 03 | A Claim For Industrial Disease | February 24, 2004 |
| 04 | The Replacement of Eyeglasses | October 21, 2003 |
| 05 | Partial Commutation of a Pension | June 17, 2003 |
| 06 | The Enforcement of Accident Prevention Regulations | October 21, 2003 |
| 07 | The Determination of Disability | October 21, 2003 |
| 08 | The Measurement of Partial Disability | May 1, 2000 |
| 09 | Publication of the Permanent Disability Evaluation Schedule | June 17, 2003 |
| 10 | A Claim for Dependents Benefits | February 24, 2004 |
| 11 | Communications with Unions in Matters of Safety and Health | October 21, 2003 |
| 12 | A Claim to a Solicitor's Lien | June 17, 2003 |
| 13 | The Provision of Rehabilitation Services | June 17, 2003 |
| 14 | Rehabilitation and Re-training | May 1, 2000 |
| 15 | Industrial Hygiene and Cominco Ltd. | October 21, 2003 |
| 16 | <i>The Criminal Injuries Compensation Act</i> | October 21, 2003 |
| 17 | Disablement Following Unauthorized Surgery | February 24, 2004 |
| 18 | Dependent's Allowances | June 17, 2003 |
| 19 | Industrial Hygiene and Cominco Ltd. | June 17, 2003 |
| 20 | The Payment of Claims Pending Appeals by Employers | October 21, 2003 |
| 21 | The Re-opening of a Commuted Pension | October 21, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|--|------------------------|
| 22 | The Measurement of Partial Disability | May 1, 2000 |
| 23 | A Penalty Assessment | October 21, 2003 |
| 24 | The Revision of Appeal Procedures | May 1, 2000 |
| 25 | Boards of Review | June 17, 2003 |
| 26 | Coverage of Workmen's Compensation | January 1, 2003 |
| 27 | An Application for Re-Opening | June 17, 2003 |
| 28 | Oral Enquiries on Appeals to the Commissioners | May 1, 2000 |
| 29 | The Re-Opening of Decisions | October 21, 2003 |
| 30 | A Claim for Death by Suicide | June 17, 2003 |
| 31 | Unemployment Insurance Benefits | June 17, 2003 |
| 32 | The Employment Relationship (Taxis) | January 1, 2003 |
| 33 | The Measurement of Partial Disability and Proportionate Entitlements | May 1, 2000 |
| 34 | The Accident Prevention Regulations and the Prosecution of Workers | October 21, 2003 |
| 35 | Procedure on Appeals | June 17, 2003 |
| 36 | Industrial Hygiene | June 17, 2003 |
| 37 | The Replacement of Eyeglasses | June 17, 2003 |
| 38 | Compensation for Loss of Hearing | June 17, 2003 |
| 39 | The Coverage of Workmen's Compensation | October 21, 2003 |
| 40 | The Calculation of Compensation and Recurrence of Disability | June 17, 2003 |
| 41 | The Composition of a Medical Review Panel | February 24, 2004 |
| 42 | Changes in the <i>Workmen's Compensation Act</i> | June 17, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 43 | <i>The Workmen's Compensation Amendment Act</i> | May 1, 2000 |
| 44 | The Recurrence of Disability | October 21, 2003 |
| 45 | Claims for Silicosis | June 17, 2003 |
| 46 | The Consumer Price Index | May 1, 2000 |
| 47 | The Commencement of the <i>Workmen's Compensation Amendment Act, 1974</i> | June 17, 2003 |
| 48 | The Coverage of Workers' Compensation | February 24, 2004 |
| 49 | The Coverage of Workers' Compensation | January 1, 2003 |
| 50 | The Coverage of Workers' Compensation | February 24, 2004 |
| 51 | A Penalty Assessment and Northwood Properties Ltd. | June 17, 2003 |
| 52 | Evidence and the Standard of Proof | October 21, 2003 |
| 53 | Fire Fighting and Hair | June 17, 2003 |
| 54 | The Reimbursement of Expenses | October 21, 2003 |
| 55 | Rehabilitation and Re-training | May 1, 2000 |
| 56 | Rehabilitation Provisions for a Surviving Dependent Spouse | June 17, 2003 |
| 57 | The Termination of Benefits at a Future Date | June 17, 2003 |
| 58 | Industries and Classifications | January 1, 2003 |
| 59 | Lump Sums in Fatal Cases | October 21, 2003 |
| 60 | Appeals to Boards of Review | October 21, 2003 |
| 61 | Employers' Reports of Injuries | June 17, 2003 |
| 62 | Rehabilitation and Re-training | October 21, 2003 |
| 63 | The Supply of In-File Information | June 17, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|--|------------------------|
| 64 | Pensions for Widows aged 40 to 49 years | June 17, 2003 |
| 65 | Cost Shifting Between Classes | February 24, 2004 |
| 66 | Boards of Review | June 17, 2003 |
| 67 | The Commutation of Pensions | May 1, 2000 |
| 68 | The Maximum Wage Rate | May 1, 2000 |
| 69 | Legal Fees | February 24, 2004 |
| 70 | Boards of Review | October 21, 2003 |
| 71 | The Industrial Hygiene Regulations | June 17, 2003 |
| 72 | The Reinstatement of Pensions | June 17, 2003 |
| 73 | Transcripts of Interviews | May 1, 2000 |
| 74 | Unborn Children | June 17, 2003 |
| 75 | Canada Pension Plan Benefits | June 17, 2003 |
| 76 | Dependents Resident Abroad | June 17, 2003 |
| 77 | Criminal Injuries Compensation | February 24, 2004 |
| 78 | Multiple Disabilities and the Determination of the Maximum | June 17, 2003 |
| 79 | Time Limit on Appeals | May 1, 2000 |
| 80 | Safety Head Gear | October 21, 2003 |
| 81 | The Recurrence of Disability | June 17, 2003 |
| 82 | The Consumer Price Index | May 1, 2000 |
| 83 | Cost of Living Increases and Commutations | October 21, 2003 |
| 84 | Industrial Noise | June 17, 2003 |
| 85 | Funeral Expenses | June 17, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 86 | Disablement from Vibrations | October 21, 2003 |
| 87 | A Common-Law Wife | October 21, 2003 |
| 88 | The Application of Consumer Price Index Increases to Re-Instated Pensions under section 25A | June 17, 2003 |
| 89 | Personal Care Allowances | May 1, 2000 |
| 90 | A Common-Law Wife | June 17, 2003 |
| 91 | Boards of Review and the Pension Plan | May 1, 2000 |
| 92 | Allowances to Claimants | May 1, 2000 |
| 93 | Industrial Diseases | June 17, 2003 |
| 94 | Industrial Diseases | May 1, 2000 |
| 95 | The Measurement of Partial Disability | October 21, 2003 |
| 96 | Appeal Procedures | June 17, 2003 |
| 97 | The Charging of Costs for Injuries Occurring in Connection with Treatment | October 21, 2003 |
| 98 | Remarriage Allowances | May 1, 2000 |
| 99 | Degeneration of Spine | January 1, 2010 |
| 100 | Inspection Visits | June 17, 2003 |
| 101 | Contagious Diseases | February 24, 2004 |
| 102 | Disablement Through Exhaustion | February 24, 2004 |
| 103 | Safety Awards | June 17, 2003 |
| 104 | The Commutation of Pensions | June 17, 2003 |
| 105 | The Future Employment of a Worker Disabled by a Compensable Injury of Industrial Disease | June 17, 2003 |
| 106 | A One-Man Company | May 1, 2000 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 107 | Termination Pay | February 24, 2004 |
| 108 | The Violation of Safety Regulations by a Worker | February 24, 2004 |
| 109 | The Dual System of Measurement for Injuries Involving the Spinal Column | June 17, 2003 |
| 110 | Emphysema and Bronchitis | October 21, 2003 |
| 111 | A Penalty for Non-Registration | January 1, 2003 |
| 112 | The Consumer Price Index | May 1, 2000 |
| 113 | Hearing Aids | June 17, 2003 |
| 114 | Cost Shifting Between Classes | October 21, 2003 |
| 115 | Employment Injuries and Natural Causes | October 21, 2003 |
| 116 | The Coverage of Independent Operators | January 1, 2003 |
| 117 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 118 | Remarriages Allowances | May 1, 2000 |
| 119 | Medical Information | May 1, 2000 |
| 120 | The Coverage of Workers' Compensation and Participation in Competitions | June 17, 2003 |
| 121 | Employment Injuries and Natural Causes | February 24, 2004 |
| 122 | Industrial Disease | June 17, 2003 |
| 123 | Changes in the <i>Workers Compensation Act</i> | May 1, 2000 |
| 124 | Intoxication and Claims | October 21, 2003 |
| 125 | The Commencement of <i>Workers Compensation Amendment Act, 1975</i> | May 1, 2000 |
| 126 | Compensation Coverage and a Captive Road | October 21, 2003 |
| 127 | Boards of Review | October 21, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 128 | Bronchitis and Emphysema | February 24, 2004 |
| 129 | Injuries and "Specific Incidents" | February 24, 2004 |
| 130 | The Review of Old Disability Pensions | June 17, 2003 |
| 131 | <i>The Criminal Injuries Compensation Act</i> | October 21, 2003 |
| 132 | <i>The Criminal Injuries Compensation Act</i> | October 21, 2003 |
| 133 | <i>The Criminal Injuries Compensation Act</i> | October 21, 2003 |
| 134 | The Payment of Damages to a Worker and Subsequent Compensation Benefits | October 21, 2003 |
| 135 | Compensation Decisions and the Death of the Worker | June 17, 2003 |
| 136 | Compensation for Hearing Loss | May 1, 2000 |
| 137 | Compensation for Hearing Loss | June 17, 2003 |
| 138 | The Employment Relationship | January 1, 2003 |
| 139 | Medical Aid Contracts | June 17, 2003 |
| 140 | The Time Limit for Claiming Compensation | October 21, 2003 |
| 141 | A One-Man Company | May 1, 2000 |
| 142 | Employment Injuries and Natural Causes | October 21, 2003 |
| 143 | The Maximum Wage Rate | May 1, 2000 |
| 144 | The Management Role in Health and Safety | October 21, 2003 |
| 145 | Employment Injuries and Natural Causes | February 24, 2004 |
| 146 | An Unmarried Mother and Child | October 21, 2003 |
| 147 | Health and Safety Awards | June 17, 2003 |
| 148 | The Course of Employment | June 17, 2003 |
| 149 | Commercial Stock Audits | January 1, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|--|------------------------|
| 150 | Compensation for Compulsory Lay-off to Prevent the Carriage of Infection | October 21, 2003 |
| 151 | The Apportionment of Dependents' Allowances | June 17, 2003 |
| 152 | Injuries Arising out of Treatment and Other Appointments | February 1, 2004 |
| 153 | Compensation Coverage for Volunteers | May 1, 2000 |
| 154 | Legal Services for Rehabilitation Purposes | May 1, 2000 |
| 155 | The Commutation of Pensions | May 1, 2000 |
| 156 | The Review of Old Disability | June 17, 2003 |
| 157 | Sexual Impotence | October 21, 2003 |
| 158 | The Uses and Limitations of Sanctions in Industrial Health and Safety | October 21, 2003 |
| 159 | The Consumer Price Index | May 1, 2000 |
| 160 | The Calculation of Projected Loss of Earnings | May 1, 2000 |
| 161 | Compensation Coverage for Volunteers | January 1, 2003 |
| 162 | Personal Acts for an Employer | October 21, 2003 |
| 163 | The Fishing Industry | January 1, 2003 |
| 164 | Compensation for Hearing Loss | June 17, 2003 |
| 165 | Compensation Coverage for Trainees | January 1, 2003 |
| 166 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 167 | Industrial Hygiene | June 17, 2003 |
| 168 | The Disclosure of Information on Claim Files | May 1, 2000 |
| 169 | An Employer or Independent Operator | January 1, 2003 |
| 170 | The Fishing Industry | January 1, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|--|------------------------|
| 171 | Allowances to Claimants | May 1, 2000 |
| 172 | <i>The Criminal Injury Compensation Act</i> | February 24, 2004 |
| 173 | <i>The Criminal Injury Compensation Act</i> | October 21, 2003 |
| 174 | Time for Appeals | May 1, 2000 |
| 175 | The Reimbursement of Expenses | May 1, 2000 |
| 176 | The Binding Effects of Medical Review Certificates | October 21, 2003 |
| 177 | Medical Research | June 17, 2003 |
| 178 | <i>The Criminal Injury Compensation Act</i> | February 24, 2004 |
| 179 | <i>The Criminal Injury Compensation Act</i> | October 21, 2003 |
| 180 | Pollution | June 17, 2003 |
| 181 | <i>The Criminal Injury Compensation Act</i> | October 21, 2003 |
| 182 | The Course of Employment | February 24, 2004 |
| 183 | An Employer or an Independent Operator | January 1, 2003 |
| 184 | Application of the Dual System | May 1, 2000 |
| 185 | Disability Assessment | October 21, 2003 |
| 186 | Industrial Hygiene and Cominco Ltd. | June 17, 2003 |
| 187 | The Fishing Industry | January 1, 2003 |
| 188 | The Course of Employment | June 17, 2003 |
| 189 | Broken Glass Claims | June 17, 2003 |
| 190 | The Coverage of Workers Compensation | June 17, 2003 |
| 191 | The Consumer Price Index | May 1, 2000 |
| 192 | Industrial Hygiene and Cominco Ltd. | June 17, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 193 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 194 | Horseplay | February 24, 2004 |
| 195 | Compensable Consequences of Work Injuries | February 24, 2004 |
| 196 | Boards of Review | May 1, 2000 |
| 197 | The Re-Opening of Board of Review Decisions | June 17, 2003 |
| 198 | <i>The Criminal Injury Compensation Act</i> | February 24, 2004 |
| 199 | The Review of Old Disability Pensions | June 17, 2003 |
| 200 | Subsistence | October 21, 2003 |
| 201 | Payments of Claims Pending Appeals to the Commissioners | May 1, 2000 |
| 202 | Dual System of Measuring Disability | May 1, 2000 |
| 203 | Legal Services for Rehabilitation Purposes | June 17, 2003 |
| 204 | The Maximum Wage Rate | May 1, 2000 |
| 205 | Rheumatoid Arthritis | October 21, 2003 |
| 206 | Allergy Due to Red Cedar Dust | October 21, 2003 |
| 207 | Bronchitis and Emphysema | February 24, 2004 |
| 208 | The Awarding of Costs | October 21, 2003 |
| 209 | Lunch Breaks | June 17, 2003 |
| 210 | Re-Openings and New Evidence | June 17, 2003 |
| 211 | The Reimbursement of Expenses | May 1, 2000 |
| 212 | Commutation of Pensions | May 1, 2000 |
| 213 | Bunkhouses | June 17, 2003 |
| 214 | Travelling Employees | February 24, 2004 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 215 | Consulting Firms | January 1, 2003 |
| 216 | The Consumer Price Index | May 1, 2000 |
| 217 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 218 | Commutation of Pensions | May 1, 2000 |
| 219 | Medical Review Panels | February 24, 2004 |
| 220 | Proportionate Entitlement and the Dual System | May 1, 2000 |
| 221 | Bronchitis and Emphysema | October 21, 2003 |
| 222 | Compensable Consequences of Work Injuries | October 21, 2003 |
| 223 | The Fishing Industry | January 1, 2003 |
| 224 | The Fishing Industry | January 1, 2003 |
| 225 | The Fishing Industry | April 1, 2006 |
| 226 | The Fishing Industry | January 1, 2003 |
| 227 | Broken Eyeglasses | October 21, 2003 |
| 228 | Multiple Sclerosis | June 17, 2003 |
| 229 | Industries and Employment | January 1, 2003 |
| 230 | Unauthorized Activities | October 21, 2003 |
| 231 | Osteoarthritis of the First Carpo-Metacarpal Joint in Both Thumbs of Physiotherapists | December 11, 2013 |
| 232 | Cancer of Gastro-Intestinal Tract | June 17, 2003 |
| 233 | Security and Investigation Services | May 1, 2000 |
| 234 | Occupational Hygiene and Cominco Ltd. | June 17, 2003 |
| 235 | Manpower Supply Agencies | January 1, 2003 |
| 236 | Interim Adjudication | June 17, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 237 | Complaints to the Commissioners in Respect of Compensation Claims | May 1, 2000 |
| 238 | Bronchitis and Emphysema | October 21, 2003 |
| 239 | Ganglia | October 21, 2003 |
| 240 | Training Allowances | June 17, 2003 |
| 241 | Inmates on Work Release Programmes | January 1, 2003 |
| 242 | Supply of Appliances | October 21, 2003 |
| 243 | Industrial Diseases | June 17, 2003 |
| 244 | The Consumer Price Index | May 1, 2000 |
| 245 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 246 | Pulmonary Disease and "Hard Metal" Grinding | June 17, 2003 |
| 247 | Workers Undergoing Custodial Care | June 17, 2003 |
| 248 | Class 11 | May 1, 2000 |
| 249 | Recurrence of Disability | May 1, 2000 |
| 250 | Industrial Diseases | June 17, 2003 |
| 251 | Penalties under Section 61(2) | October 21, 2003 |
| 252 | Scope of Employment | October 21, 2003 |
| 253 | Replacement of Eyeglasses and Wage Loss | June 17, 2003 |
| 254 | Payment of Claims Pending Appeals to the Commissioners | May 1, 2000 |
| 255 | Registration of Labour Contractors as Employers | January 1, 2003 |
| 256 | Scope of Employment | June 17, 2003 |
| 257 | The Maximum Wage Rate | May 1, 2000 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 258 | The Reimbursement of Expenses | May 1, 2000 |
| 259 | Common-Law Spouses – “Re-Marriage Allowance” | June 17, 2003 |
| 260 | Enhancement Factors and Multiple Disabilities | October 21, 2003 |
| 261 | Temporary Partial Disability | June 17, 2003 |
| 262 | Disability and Unemployability | June 17, 2003 |
| 263 | Appeals to Medical Review Panels | October 21, 2003 |
| 264 | Compensation Payable when Company Unregistered | May 1, 2000 |
| 265 | The Consumer Price Index | May 1, 2000 |
| 266 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 267 | Section 7A: Compensation for Non-Traumatic Hearing Loss | February 24, 2004 |
| 268 | Industrial Hygiene and Cominco Ltd. | June 17, 2003 |
| 269 | Appeal Against Penalty Levy Amounting to \$13,649.37 | June 17, 2003 |
| 270 | Subsection 6(5) Proportionate Entitlement | February 24, 2004 |
| 271 | Re: Subsection 37(1)(e) – Charging of Costs for Enhanced Disabilities | March 1, 2005 |
| 272 | Commutations | May 1, 2000 |
| 273 | School Teachers and Scope of Employment | October 21, 2003 |
| 274 | Industrial Hygiene and Cominco Ltd. | June 17, 2003 |
| 275 | Claim for Dependent Benefits | June 17, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|--|------------------------|
| 276 | Compensation for Unauthorized Surgery | June 17, 2003 |
| 277 | The Consumer Price Index | May 1, 2000 |
| 278 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 279 | Average Earnings and Projected Loss of Earnings | October 21, 2003 |
| 280 | Appeals & Referrals to the Commissioners | May 1, 2000 |
| 281 | Re-Opening of Decisions & Time Limits on Appeals | June 17, 2003 |
| 282 | Sections 50 and 52 | October 21, 2003 |
| 283 | Scope of Employment | June 17, 2003 |
| 284 | The Maximum Wage Rate | May 1, 2000 |
| 285 | The Reimbursement of Expenses | May 1, 2000 |
| 286 | Section 6(1): Injuries Arising out of Employment | February 24, 2004 |
| 287 | Proportionate Entitlement and Dual System | May 1, 2000 |
| 288 | The Review of Old Disability Pensions | June 17, 2003 |
| 289 | Permanent Partial Disability and Devaluation | October 21, 2003 |
| 290 | The Consumer Price Index | May 1, 2000 |
| 291 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 292 | Scope of Employment and Sports Professionals | June 17, 2003 |
| 293 | Section 54 and Refusal of Medical Examination or Treatment | October 21, 2003 |
| 294 | Payment of Costs for Medical Review Reports and Examinations | June 17, 2003 |
| 295 | Section 54(2)(a) Insanitary or Injurious Practices | June 17, 2003 |
| 296 | Section 8 – Employment out of Province | June 17, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|--|------------------------|
| 297 | Dual System and Non-Spinal Injuries | May 1, 2000 |
| 298 | Appeals to Medical Review Panels | June 17, 2003 |
| 299 | Hearing Aids | June 17, 2003 |
| 300 | Section 52 - "Special Circumstances" | May 1, 2000 |
| 301 | Single Trauma and Cancer | June 17, 2003 |
| 302 | Termination and Wage Loss Benefits | June 17, 2003 |
| 303 | Access to Claim Files | May 1, 2000 |
| 304 | The Consumer Price Index | May 1, 2000 |
| 305 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 306 | Selective Employment | October 21, 2003 |
| 307 | The Fishing Industry | January 1, 2003 |
| 308 | The Maximum Wage Rate | May 1, 2000 |
| 309 | The Reimbursement of Expenses | May 1, 2000 |
| 310 | Commutation of Hearing Loss Pensions | May 1, 2000 |
| 311 | Commutation of Pensions | May 1, 2000 |
| 312 | Transportation Costs for Physiotherapy and the Reimbursement of Expenses | June 17, 2003 |
| 313 | Overpayments | June 17, 2003 |
| 314 | The Consumer Price Index | May 1, 2000 |
| 315 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 316 | Herniae | October 21, 2003 |
| 317 | Industrial Hygiene and Cominco Ltd. | June 17, 2003 |
| 318 | Stress Testing | February 24, 2004 |
| 319 | Clothing Allowances | May 1, 2000 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|--|------------------------|
| 320 | Continuity of Income and Assessment for Permanent Disability | February 24, 2004 |
| 321 | <i>Workers Compensation Act</i> | May 1, 2000 |
| 322 | The Consumer Price Index | May 1, 2000 |
| 323 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 324 | Personal Care Allowances | February 24, 2004 |
| 325 | The Review of Old Disability Pensions | June 17, 2003 |
| 326 | Industrial Diseases | October 21, 2003 |
| 327 | The Maximum Wage Rate | May 1, 2000 |
| 328 | The Reimbursement of Expenses | May 1, 2000 |
| 329 | Industrial Health and Safety Regulations | June 17, 2003 |
| 330 | Scope of Employment | February 24, 2004 |
| 331 | The Consumer Price Index | May 1, 2000 |
| 332 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 333 | Certain Industrial Diseases | February 24, 2004 |
| 334 | Boards of Review | June 17, 2003 |
| 335 | Principals of Limited Companies | January 1, 2003 |
| 336 | The Consumer Price Index | May 1, 2000 |
| 337 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 338 | Disclosure of Claim Files | May 1, 2000 |
| 339 | The Maximum Wage Rate | May 1, 2000 |
| 340 | The Reimbursement of Expenses | May 1, 2000 |
| 341 | Industrial Hygiene and Cominco Ltd. | June 17, 2003 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 342 | Assessment of Employers | May 1, 2000 |
| 343 | Scope of Employment | June 1, 2004 |
| 344 | The Consumer Price Index | May 1, 2000 |
| 345 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 346 | Payment of Interest | May 1, 2000 |
| 347 | Oral Hearings on Appeals to the Commissioners | May 1, 2000 |
| 348 | Alcoholism | February 24, 2004 |
| 349 | Industrial Health and Safety Regulations | October 21, 2003 |
| 350 | Commissioners' Decisions | May 1, 2000 |
| 351 | Assessment of Employers | January 1, 2003 |
| 352 | The Consumer Price Index | May 1, 2000 |
| 353 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 354 | Industrial Hygiene and Cominco Ltd. | June 17, 2003 |
| 355 | Industrial Health and Safety Inspections | October 21, 2003 |
| 356 | Bilateral Herniae | October 21, 2003 |
| 357 | Subsistence and the Reimbursement of Expenses | June 17, 2003 |
| 358 | The Maximum Wage Rate | May 1, 2000 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 359 | The Reimbursement of Expenses | May 1, 2000 |
| 360 | Out of Province Injury and Travelling to Work | October 21, 2003 |
| 361 | Coverage of the Farming Industry | May 1, 2000 |
| 362 | The Maximum Wage Rate | May 1, 2000 |
| 363 | The Review of Old Disability Pensions | October 21, 2003 |
| 364 | Retraining of Surviving Spouses | May 1, 2000 |
| 365 | The Consumer Price Index | May 1, 2000 |
| 366 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 367 | Hearing Aids | June 17, 2003 |
| 368 | Appeals | June 17, 2003 |
| 369 | Appeals to Boards of Review | October 21, 2003 |
| 370 | Disclosure of Board Files | May 1, 2000 |
| 371 | Publication of Board Manuals | January 1, 2003 |
| 372 | The Consumer Price Index | May 1, 2000 |
| 373 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 374 | Appeals to the Commissioners | May 1, 2000 |
| 375 | The Maximum Wage Rate | May 1, 2000 |
| 376 | The Reimbursement of Expenses | May 1, 2000 |
| 377 | Fraudulent Claims | June 17, 2003 |
| 378 | Proportionate Entitlement | October 21, 2003 |
| 379 | Time Limit on Application for Compensation | February 24, 2004 |
| 380 | The Consumer Price Index | May 1, 2000 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 381 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 382 | The Commutation of Pensions | February 24, 2004 |
| 383 | Application of Dual System | June 17, 2003 |
| 384 | Interest Payments on Retroactive Pensions | October 21, 2003 |
| 385 | The Consumer Price Index | May 1, 2000 |
| 386 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 387 | Chiropractic Treatment | June 17, 2003 |
| 388 | Assignments, Charges, or Attachments of Compensation | June 17, 2003 |
| 389 | Refusals of Certificates of Fitness Under the Mines Act | May 1, 2000 |
| 390 | The Maximum Wage Rate | May 1, 2000 |
| 391 | The Reimbursement of Expenses | May 1, 2000 |
| 392 | The Consumer Price Index | May 1, 2000 |
| 393 | Appeals | May 1, 2000 |
| 394 | The Dual System of Measuring Disability | October 21, 2003 |
| 395 | Payments Pending Appeals | June 17, 2003 |
| 396 | The Consumer Price Index | May 1, 2000 |
| 397 | The Maximum Wage Rate | May 1, 2000 |
| 398 | The Consumer Price Index | May 1, 2000 |
| 399 | Appeals to Workers' Compensation Review Board | June 17, 2003 |
| 400 | The Consumer Price Index | May 1, 2000 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 401 | Experience Rating | January 1, 2003 |
| 402 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 403 | Appeals to Workers' Compensation Review Board | May 1, 2000 |
| 404 | The Maximum Wage Rate | May 1, 2000 |
| 405 | The Consumer Price Index | May 1, 2000 |
| 406 | Recurrence of Disabilities | October 21, 2003 |
| 407 | Assessment of Permanent Disabilities | February 24, 2004 |
| 408 | The Consumer Price Index | May 1, 2000 |
| 409 | The Maximum Wage Rate | May 1, 2000 |
| 410 | Disclosure of Board Files | May 1, 2000 |
| 411 | The Consumer Price Index | May 1, 2000 |
| 412 | The Consumer Price Index | May 1, 2000 |
| 413 | The Maximum Wage Rate | May 1, 2000 |
| 414 | The Consumer Price Index | May 1, 2000 |
| 415 | The Consumer Price Index | May 1, 2000 |
| 416 | The Maximum Wage Rate | May 1, 2000 |
| 417 | Adjustments According to the Consumer Price Index | May 1, 2000 |
| 418 | The Consumer Price Index | May 1, 2000 |
| 419 | Schedule B | June 17, 2003 |
| 420 | The Consumer Price Index | May 1, 2000 |
| 421 | The Maximum Wage Rate | May 1, 2000 |

| DECISION NO. | TITLE | RETIREMENT DATE |
|---------------------|---|------------------------|
| 422 | The Consumer Price Index | May 1, 2000 |
| 423 | Adjustments According to the Consumer Price Index | May 1, 2000 |