

2022/05/25-02

**WORKERS' COMPENSATION BOARD
("WorkSafeBC")**

RESOLUTION OF THE BOARD OF DIRECTORS

RE: Accounts Receivable System Implementation

WHEREAS:

Pursuant to section 319 of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 (*Act*), the Board of Directors of WorkSafeBC must set and revise as necessary the policies of the Board of Directors, including policies respecting occupational health and safety, compensation, rehabilitation and assessment;

AND WHEREAS:

Section 239 of the *Act* requires WorkSafeBC to maintain the accident fund and manage it with a view to the best interests of the workers' compensation system;

AND WHEREAS:

Pursuant to section 241 of the *Act*, WorkSafeBC must assess and collect from employers sufficient funds to maintain an adequate accident fund, and such assessments are based on an employer's payroll;

AND WHEREAS:

Section 245 of the *Act* requires employers to provide WorkSafeBC with payroll estimates and certified copies of their payroll reports each calendar year, and WorkSafeBC has discretion to estimate an employer's payroll where this information is not provided;

AND WHEREAS:

Section 252 of the *Act* requires WorkSafeBC to notify employers of the amount of their assessment due and the time when it is payable, and section 253 of the *Act* requires employers to pay any assessment due at the time when it is payable;

AND WHEREAS:

Item AP5-245-4, *Payroll Estimates*, of the *Assessment Manual*, sets out the circumstances under which WorkSafeBC may estimate an employer's payroll, and amend the estimate, and Item AP5-261-1, *Penalties*, of the *Assessment Manual*, sets out penalties, including overdue penalties where employers fail to pay an assessment at the time when it becomes payable;

AND WHEREAS:

WorkSafeBC is upgrading its accounts receivable system in order to ensure the security and integrity of WorkSafeBC's financial transactions;

AND WHEREAS:

WorkSafeBC's Assessment Department has advised policy changes are required to facilitate the development of the new accounts receivable system;

AND WHEREAS:

WorkSafeBC's Policy, Regulation and Research Department (PRRD) has developed changes to Item AP5-245-4, *Payroll Estimates*, of the *Assessment Manual*, to ensure consistency with the *Act* and practice under the new accounts receivable system;

AND WHEREAS:

The PRRD has developed changes to Item AP5-261-1, *Penalties*, of the *Assessment Manual*, to remove prescriptive and outdated guidance regarding how overdue penalties are calculated and charged to facilitate the implementation of the accounts receivable system;

AND WHEREAS:

The PRRD has undertaken stakeholder consultation on this issue and has advised the Board of Directors on the results of the consultation;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The amendments to Items AP5-245-4, *Payroll Estimates*, and AP5-261-1, *Penalties*, of the *Assessment Manual*, as set out in Appendix 1 attached to

this resolution, are approved, and apply to all decisions made on or after September 1, 2022.

2. This resolution is effective September 1, 2022.
3. This resolution constitutes a policy decision of the Board of Directors.

I, Jeff Parr, hereby certify for and on behalf of the Board of Directors of WorkSafeBC that the above resolutions were duly passed at a meeting of the Board of Directors hosted in British Columbia on May 25, 2022.

Original signed by Jeff Parr

JEFF PARR

Chair, Board of Directors

Workers' Compensation Board



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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.

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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** ~~amended and of rights of appeal~~.

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

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

PRACTICE

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

EFFECTIVE DATE:	February 28, 2006 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 new tiered penalty system. January 1, 2003 – 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

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changes since the policies and items referred to in the history were issued. Replaces Policy No. 50:60:10 of the *Assessment Policy Manual*.

APPLICATION:

This policy applies to all decisions made on or after February 28, 2006 **September 1, 2022**.

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.



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

~~The penalty is a percentage rate per month, calculated on a per diem basis on a 28 or 35 day cycle, depending on the number of weeks in the calculation period. The penalty is calculated on the amount outstanding, or estimated to be outstanding, at the end of the cycle. The penalty is added to the outstanding amount and becomes part of it under section 261(2). The Board may estimate the amount due from the amount the employer paid in the previous remittance period, or by any other method the Board considers appropriate.~~

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

There is no minimum or maximum amount for this penalty.

(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) in exceptional cases, for any other reason that the Board determines is consistent with the *Act* and the purpose of this policy.



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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.

EFFECTIVE DATE:	October 29, 2020 September 1, 2022
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</i> ; Item AP5-263-1, <i>Charging Claim Costs to Employers</i> , of the <i>Assessment Manual</i> .
HISTORY:	<p>September 1, 2022 – Policy changes to facilitate the implementation of the Accounts Receivable system.</p> <p>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.</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>February 28, 2006 – Changes to adopt new tiered penalty system.</p> <p>March 3, 2003 – Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i>.</p> <p>January 1, 2003 – 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.</p> <p>Replaces Policies No. 40:50:05 to 40:50:30 of the <i>Assessment Policy Manual</i> and Decision No. 351 of volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i>.</p>
APPLICATION:	Applies to all decisions made on or after October 29, 2020 September 1, 2022 .