

Practice Directive #C7-4

Interest (Interim)

General principles

Where the outcome of a Review Division ("RD") or Workers' Compensation Appeal Tribunal ("WCAT") decision results in a retroactive payment, the worker is entitled to interest on a portion of the retroactive payments(s) in certain circumstances.

In those circumstances where the RD or WCAT determine that a worker is entitled to compensation, interest is paid as of the effective date of the compensation benefit as long as the amount remains unpaid for 180 or more days.

Interest is also considered for any deferred compensation period pending an appeal.

Merits and justice

WorkSafeBC must make its decision based on the merits and justice of the case, but in so doing WorkSafeBC must apply policy that is applicable.

In making decisions, WorkSafeBC must take into account all relevant facts and circumstances relating to the case before it, including the worker's individual circumstances. In doing so, WorkSafeBC must consider the relevant provisions of the *Act* and the relevant policies.

If there are specific directions in the *Act* or policy that are relevant to those facts and circumstances, WorkSafeBC applies them.

Where the *Act* and policy provide for discretion, the officer is also required to exercise that discretion based upon the merits and justice of the case, in accordance with the *Act* and applicable policy.

Interest payable under section 231.1 of the Act

There are two conditions that must be met for interest to be payable under section 231.1 of the Act.

a) RD or WCAT determines entitlement to compensation

Under the first condition, the RD or WCAT must determine a worker's entitlement to compensation as part of a review or appeal.

b) Compensation amount unpaid for at least 180 days

Under the second condition, an amount of the compensation must remain unpaid for at least 180 days after the date on which entitlement to the payment of compensation arises.

Payment of interest is a decision, subject to review and appeal.

Decision on compensation benefit entitlement by Review Division or WCAT

When the RD or WCAT varies a decision regarding compensation benefits this may result in a benefit entitlement that the worker has not yet received compensation for. In such cases, all or a portion of the retroactive payment resulting from the implementation of the review/appeal decision may be subject to interest.

In some cases, the decision at review or appeal will be regarding a worker's eligibility for compensation benefits. For example, claim eligibility, injury eligibility, or a referral to consider vocational rehabilitation services or permanent disability benefits. In implementing such decisions, a worker may become entitled to additional benefits for which compensation will be owed. Where retroactive benefit entitlements reasonably flow from the review/appeal implementation, they may be subject to interest under section 231.1 of the Act.

Consider the situation where the worker requests a review of a WorkSafeBC decision to disallow their claim and the RD varies the decision. To implement the RD decision, the WorkSafeBC officer allows the claim and reviews the worker's entitlement to compensation benefits. Where the WorkSafeBC officer determines that the worker is entitled to retroactive wage-loss benefits, they also consider whether interest is payable on those retroactive wage-loss payments. In this scenario, it is most likely that the retroactive benefit entitlement reasonably flows from the RD's decision.

Refer backs

A decision referred back by the RD does not contain a decision regarding entitlement to compensation. Therefore, section 231.1 of the Act does not apply where the RD refers a matter back to WorkSafeBC.

Compensation amount unpaid for at least 180 days

Most retroactive payments represent a series of periodic payments, but are issued as a single amount. Once interest is determined to be payable, only the portion of the compensation that remains unpaid for at least 180 days from the effective date – the date the worker’s entitlement to the payment of compensation arises – accrues interest. This means that the entire retroactive payment may not attract interest.

Periodic payments

When the retroactive payment of the benefit entitlement is made up of a series of periodic payments, interest is only payable on that portion of the retroactive amount that has been owing for 180 or more days at the time the retroactive payment is issued.

This means interest could be payable on some of the earlier periodic payments, while the later payment periods may not meet the 180-days-owing condition.

Lump sum payments

A worker may receive their compensation as a lump sum payment as provided in policy, for example, with respect to permanent disability benefits. In these circumstances, only the portion of the lump sum that represents retroactive payment owing for 180 or more days will attract interest. The balance of the lump sum payment represents payments owing for less than 180 days and the present value of prospective payments, neither of which attract interest.

Interest payable under section 312 of the Act

Retroactive payments, representing entitlement to compensation benefits for a period of time prior to the RD decision are deferred for 40 days following the date of the RD decision. This mandatory deferral period cannot be waived even if the participants state their intention to not appeal the RD decision.

If any portion of the RD decision regarding compensation benefits is appealed to WCAT, the retroactive payments are further deferred until WCAT issues a final decision or the appeal is withdrawn. The deferral period is a requirement under section 275 of the Act and applies whether the issue appealed to WCAT is related to the retroactive payments or not.

Although the retroactive payment cannot be issued until 40 days have passed, the WorkSafeBC officer can take steps required to calculate the payment during the 40-day period. For example, in order to make the retroactive payment it may be necessary to gather additional earnings information. These steps can be undertaken during the 40-day deferral period. The WorkSafeBC officer will then be able to make the retroactive payment in a timely manner when the 40-day deferral period expires.

If the WCAT decision results in retroactive wage-loss benefits or a permanent disability lump-sum payment, interest is paid for the period of time commencing 41 days after the date of the RD decision under section 312 of the *Act*.

If interest is payable on an amount of compensation under section 312 of the *Act*, interest is not payable under section 231.1 of the *Act* on the amount of compensation for the same period.

Cross references

RSCM Policy	#50.00, <i>Interest</i>
	#100.83, <i>Implementation of Review Division Decisions</i>
Practice Directive	#C12-6, <i>Implementation of Appellate Decisions</i>

History: This Practice Directive was developed in response to section 231.1 of the *Act* made effective April 3, 2023 (*Workers Compensation Amendment Act (No.2), 2022* ("Bill 41")).

Application: This item is intended to provide guidance on the application of interest. Interest payable under section 231.1 of the *Act* applies to decisions made on or after April 3, 2023.