

Section	Policy
30	35.40.50

Section Title: Finance, Assessments and Administration - *Payments*
Subject: Overpayment of Benefits
Effective Date: Overpayment decisions made on or after January 1, 2024

A. POLICY PURPOSE

The Workers Compensation Act (the Act) provides that the Workers Compensation Board (WCB) may recover overpayments when an injured worker (or their dependant) has been paid more in WCB benefits than they were entitled to under the Act. Overpayments are considered a debt that is due to the WCB.

This policy is a framework for preventing and recovering overpayments. It also outlines the effect of overpayments on an employer's assessment rates or claim costs experience.

B. POLICY

1. Prevention of Overpayments

The WCB seeks to prevent overpayments from occurring by verifying information and informing injured workers and employers of situations that can create overpayments. To that end, the WCB:

- Makes reasonable attempts to contact the injured worker and the employer to verify wage information and determine pay arrangements; and
- Notifies injured workers about situations that can typically create overpayments. For example, when the worker is receiving both workers compensation benefits and benefits under a policy of disability insurance for the same injury.

2. Overpayments Recovered

The WCB will pursue recovery of overpayments when:

- An injured worker has received duplicate benefits paid from another source for the same injury (e.g., CPP disability benefits);
- There is evidence that the injured worker engaged in fraud or deliberate misrepresentation, withheld key information, or engaged in other actions which affected benefit entitlements; or
- The overpayment is a result of an administrative error, and the injured worker was notified of the error within 30 days of it occurring (the WCB may still choose to pursue the overpayment after the 30-day period if it is determined that the injured worker should have been aware of the error).

3. Overpayments Not Recovered

The WCB will not attempt to recover overpayments that:

- Result from a reversal of an adjudicative or entitlement decision made at the primary level, Review Office or Appeal Commission; or
- The amount is less than \$50.

4. Special Overpayment Situations

In some circumstances, the WCB may decide not to pursue an overpayment, even when it ordinarily would. Examples of this are when:

- It is not cost-effective to pursue the recoverable amount;
- Recovery of the overpayment, in whole or in part, would create financial hardship for the injured worker or their dependant;
- The recipient has died and there are insufficient funds in the estate to cover the overpayment.

5. Overpayments Not Initially Recovered

The WCB may decide to pursue recovery action, even when it made an initial decision not to do so, in light of new information or changed circumstances. For example, the WCB may reverse its decision not to pursue recovery if:

- There is evidence of fraud, deliberate misrepresentation or withholding of key information;
- It becomes cost-effective to pursue recovery; or
- The conditions creating financial hardship for the injured worker or their dependant no longer exist.

The WCB keeps overpayments that are outstanding (i.e., have not yet been recovered) as a receivable, from which current or future WCB benefits may be set-off. Under *The Limitations Act*, the WCB has two years from the time the debt is discovered to pursue a legal action to recover the debt.

6. WCB Process for Pursuing Overpayments

When the WCB decides to pursue recovery of an overpayment they will:

- Notify the injured worker of the overpayment;
- Confirm the details in writing; and
- Set up a recovery plan.

Recovery methods may include a single payment, a series of regular payments, or deductions from ongoing or future WCB benefits. When these attempts are unsuccessful, the WCB may use the formal debt collection processes outlined in WCB Policy 31.10.50, *Collections* to recover the overpayment.

7. Employers Pursuing Overpayments

In situations where an overpayment has occurred while an employer has paid workers compensation benefits directly to the worker, the employer requires WCB approval to collect the overpayment themselves.

An employer collecting an overpayment directly from the worker is acting as the WCB's agent, and thus must follow this and other WCB policies, including Policy 22.30, *Agents of the WCB*. Employers must report to the WCB amounts recovered from the worker. The WCB reserves the right to audit an employer's recovery process to ensure compliance.

8. Reconsideration and Appeal

Decisions about the establishment, amount or requirement to pay back an overpayment are subject to reconsideration and appeal.

Recovery attempts will be suspended while a decision is under reconsideration or appeal, but may be reinstated if the WCB has evidence that the primary purpose of the reconsideration or appeal is to defer the recovery process.

9. Effects of Overpayments on Employers

For **Class E employers**, overpayments are removed from an employer's cost experience record. The cost of written-off overpayments is shared collectively by all Class E employers. The credit to the employer's claim costs experience that arises from an overpayment will be processed in one of the following ways:

- When the overpayment credit affects an employer's assessment rate for the upcoming rate-setting year(s), the revised claim costs experience is used to calculate the employer's assessment rate(s).
- When the overpayment credit affects the claim costs experience used to calculate an employer's assessment rate in current and prior rate-setting years, the revised claim costs experience is used to determine the financial impact, if any, on assessment rates.

For **individually-assessed employers**, overpayments are included as claim costs for the applicable employer, while overpayment recoveries are credited to the claim costs of the applicable employer.

C. REFERENCES

The Workers Compensation Act, Sections 109.2 and 109.3
The Limitations Act

Related WCB Policies:

WCB Policy 22.30, *Agents of the WCB*
WCB Policy 31.05.05, *Rate Setting Model for Class E Employers*
WCB Policy 31.10.50, *Collections*

History:

1. Recovery of Overpayment Policy originated by Board Order 150/89 on November 20, 1989.
2. Board Order 150/89 re-written as Policy 35.40.50 for incorporation into the Policy Manual approved by Board Order 9/91 on June 19, 1991.
3. Moratorium placed on initiating collection of overpayments, except in cases of fraud, effective March 12, 1993.
4. Board Order 150/89 rescinded and Policy 35.40.50 replaced on September 2, 1993 by Board Order 30/93, effective retroactively for all overpayments for which collection was not yet underway on March 12, 1993. Former policy re-issued as 35.40.50.01 to indicate it ceases effect on March 11, 1993.
5. Policy 35.40.50 replaced by Board Order 22/95 effective for initial decisions on or after January 1, 1996. Former policies re-issued as 35.40.50.01 (effective Mar 12/93 - Dec 31/95) and 35.40.50.02 (effective Nov 20/89-Mar 11/93).
6. Policy 35.40.50 revised by Board Order 5/2000 effective April 1, 2000. The revised policy is applicable to both existing and new overpayments on a going-forward basis from the effective date of implementation. There will be no retroactive adjustments under this policy.

7. Minor formatting and wording changes were made to the policy, June 27, 2012.
8. Policy amended by Board Order 4/16 on January 28, 2016 effective January 1, 2017. Changes included improving the policy's organization and clarity, enhancing stewardship by ensuring workers are paid benefits to which they are entitled, and collecting overpayments in a fair, consistent and cost-effective manner.
9. Policy 35.40.50 was amended by Board Order 4/16 on January 26, 2016, effective January 1, 2017. Subsequently, the policy was further amended by Board Order 43/16 on December 20, 2016 to change the effective date of the policy revisions to May 1, 2017. Changes made included improving policy's organization and clarity, enhancing stewardship by ensuring workers are paid the benefits they are entitled to and collecting overpayments in a fair, consistent and cost-effective manner. The April 19, 2017 revision further revised the policy to allow the WCB to proactively adjust future and post assessment rates when an overpayment exists. The former policy was re-issued as 35.40.50.01 for reference purposes.
10. Minor formatting changes made to the policy, January 2021.
11. In September 2022, policy revisions respond to a change in terminology that was introduced by amendments to the Act by *The Minor Amendments and Corrections Act* (MACA) 2022. The term "self-insured employer" was replaced with "individually assessed employer" wherever it occurs.
12. Policy 35.40.50, *Overpayments of Benefits* amended by Board Order 31/23 on September 28, 2023, effective, January 1, 2024. Changes seek to clarify situations where employers are continuing to pay wages, aligning it with policy 22.30 *Agents of the WCB*. Changes were also made to align the policy with the new *Limitations Act*.