

Section Title: Board and Corporate Administration - Legal
Subject: Employer Obligation to Pay a Worker for the Day of the Accident
Effective Date: January 1, 2006

GENERAL INFORMATION

Under *The Workers Compensation Act* (the Act), an employer must pay a worker his or her regular wages and benefits for the day of an accident as if the accident had not occurred.

An employer may not charge that payment against a worker's sick leave or any other benefit entitlement.

If the employer fails to comply with those responsibilities, the Act allows the WCB to pay the worker the amount that should have been paid by the employer, recover that amount from the employer, and charge an administrative penalty to the employer.

This policy describes how the WCB will exercise its authority if the employer fails to comply with the Act.

A. POLICY

1. Employers must pay a worker's normal wages and benefits for the full day when a worker suffers a workplace accident and is unable to work during any part of the day of the accident. The payment should be made in the pay period when those wages would normally be paid. If the accident is subsequently determined not to be work-related, the employer may recover the payment from the worker.
2. The responsibility to pay normal wages and benefits applies only to the worker's *accident employer*. *Concurrent employers* are not obliged to pay for earnings lost on the date of an accident with another employer.
3. If a worker reports employer non-compliance, the WCB will request the employer to comply and will advise the employer of the penalty that may be imposed for non-compliance.
4. When the WCB believes that time loss on the day of the accident was caused by the accident, and the employer has not complied with the Act, the WCB may exercise its authority and impose an administrative penalty in accordance with the Act and accompanying Regulation, *unless* the employer agrees to pay the worker as required.
5. Any administrative penalty will be waived if the WCB is satisfied that the time loss on the day of the accident was not caused by the accident, or if it believes that there are reasonable circumstances to justify waiving the penalty.

6. The WCB may exercise its authority to pay the worker if the employer refuses to pay the worker, or in other exceptional circumstances (e.g. the employer is bankrupt or out of business and is, unable to fulfil its obligation to pay the worker).
7. The WCB will pay the worker when: (i) the accident is determined to be compensable; (ii) the WCB determines that the worker was unable to work on the day of the accident subsequent to the injury; (iii) all reasonable attempts to convince the employer to pay the worker have been unsuccessful, and (iv) the employer continues to refuse to pay the worker.

B. REFERENCES

The Workers Compensation Act, sections 4(1.1), 4(1.2), 4(1.3), 109.7(1), 109.7(3) and 109.7(4).

History:

1. Policy established by Board Order 30/05 on September 29, 2005, effective January 1, 2006.
2. Minor formatting and grammatical changes were made to the policy and the effective date was clarified, June 27, 2012.

C. ADMINISTRATIVE GUIDELINES

1. When the WCB requests that the employer comply with its obligation to pay the worker (see policy item #3), the WCB should attempt to encourage compliance by pointing out that failure to comply will result in the WCB paying the worker directly and charging that payment, plus an administrative penalty, back to the employer (see policy item #4). Those amounts will be collected from the employer by the WCB on the same basis as the annual assessments due to the WCB. GECA employers are exempt from the administrative penalty provisions.
2. The following examples of acceptable reasons/rationale for excusing an employer from an administrative penalty are suggested guidelines only; each situation must be evaluated based on its overall merit in relation to the intent of this policy in determining whether it is “reasonable” to waive the administrative penalty:
 - the absence from work may have been believed to be a recurrence of a previous injury (i.e., not a new accident).
 - the employer may have been unaware of its obligation to pay the worker and has agreed to pay after being informed of its obligation by the WCB.
 - the employer was unaware that the worker’s absence from work was due to a work-related accident.
 - the accident was caused (or believed to be caused) by employment with another employer
 - it was unclear whether the employment was the dominant cause of the accident.

3. Any appeals of decisions made under this policy should be directed to the Review Office for reconsideration.
4. In the event of a decision reversal by the Review Office or Appeal Commission, wages paid to the worker by the WCB (on the employer's behalf) will not be collected from the worker by the WCB. The employer may attempt to recover those wages from the worker. If the WCB had levied an administrative penalty upon the employer, it will be reversed.
5. When the WCB exercises its authority to pay the worker on the employer's behalf (see policy item #6), the amount paid will represent the WCB's best estimate of the regular gross earnings owed to the worker for that day.
6. The WCB will pay the regular gross amount due to the worker, without applying statutory or other deductions.