

POLICY NUMBER: POL-27

Chapter:
CLAIMS

Subject:
OVERPAYMENTS TO WORKERS

Effective Date:
November 15, 1994

Last Update:
December 16, 2024

REFERENCE:

Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1, Sections 6, 16, 40(5)(d)
Workers Compensation Board Policy, POL-41, Collateral Benefits
Workers Compensation Board Policy, POL-80, Fraud Prevention & Investigation
Workers Compensation Board Policy, POL-86, Temporary Wage Loss Benefits

DEFINITION:

In this policy:

“Collateral benefit” means:

(i) any periodic benefit the worker is entitled to receive under the Canada Pension Plan, the Quebec Pension Plan, the Employment Insurance Act (Canada); and (ii) any benefit the worker is entitled to receive as a result of the accident that is provided wholly or partially at the expense of the employer.

“Cost Relief” means a reduction in or removal of claim costs, from an employer’s account, that are used for purposes of establishing an employer’s assessment rate.

“Overpayment” means the result of paying a worker, employer, or service provider, more than what they are entitled to under the *Workers Compensation Act*

“Set-off” means the amount payable to a worker or service provider set aside, by the Workers Compensation Board, as payment against a debt owed to the Workers Compensation Board.

POLICY:

1. The Workers Compensation Board (WCB) makes every effort to prevent overpayments to workers. If an overpayment happens, the WCB will notify the worker in writing and set up a reasonable repayment plan based on the worker's financial situation.
2. The WCB will not charge interest on overpayments that are made to workers.

Repayment

3. The WCB will seek full repayment if the overpayment to a worker is due to any of the following situations:
 - A worker receives earnings from employment and WCB benefits for the same period of time.
 - A worker who receives a lump sum retroactive payment of Canada Pension Plan Disability (CPPD) benefits.
 - A worker obtained benefits through abuse or fraud under WCB policy, POL-80, Fraud Prevention & Investigation.
 - An administrative error, such as a miscalculation, mathematical error, or inaccurate data entry, where the worker could have reasonably been aware of the error. Once identified, the administrative error will be corrected.

Repayment Not Collected

4. The WCB will not collect an overpayment to a worker if it is due to:
 - A previous entitlement decision which has been overturned due to a reconsideration or appeal decision.
 - An administrative error where the worker could not have reasonably been aware of the error. Once identified, the administrative error will be corrected.

- The WCB has not notified the worker in writing or taken any steps to recover the overpayment within 6 years of the date the WCB became aware of the overpayment.

Repayment Plans

5. The WCB will make every effort to create a repayment plan that works for the worker and the WCB. If a repayment plan cannot be established within 30 days, the WCB will set up a repayment plan to recover the overpayment and communicate it in writing.

Generally, full repayment must be made within 36 months, however, the WCB will consider financial hardship in the determination of the length of the repayment plan.

Lump Sum Retroactive Payment of CPPD Benefits

If a worker does not immediately repay the portion owed to WCB of their lump sum retroactive CPPD benefit, any compensation benefits owing to the worker will be used to reduce the overpayment until it has been fully satisfied.

6. The repayment plan may include the following options:

Set-off Against Established Benefits

The WCB may deduct a portion of a worker's benefits to recover an overpayment, including a worker's:

- Impairment award.
- Wage loss benefits.
- Expense reimbursement.
- Annuity benefit; or
- Some combination of benefits as set out in the repayment plan.

With the exception of withholding a lump sum CPPD benefit, the amount deducted will not exceed 50% of the worker's wage loss benefits unless the worker agrees to deduct more.

Repayment When Wage Loss Benefits Have Ended

If the worker is no longer receiving benefits, they will be required to either pay in full or

follow an established repayment schedule.

Recovery of Overpayment

7. If a worker fails to meet the obligations in the repayment plan, the WCB may send the outstanding overpayment to an external collection agency.

Prior to referring the overpayment to collections, the WCB will advise the worker in writing.

8. If the WCB is unable to collect the overpayment, the worker will be advised in writing that any outstanding debt may be recovered from any future compensation payments to the worker.

Recovery of Overpayment Through Court Action

9. If a worker fails to meet the obligations outlined in the repayment plan, the WCB may take legal action against the worker for the outstanding overpayment.

Personal Bankruptcy

10. When a worker declares personal bankruptcy, the overpayment due and owing to the WCB is a provable overpayment. As the holder of an overpayment provable in bankruptcy, the WCB has the same rights and obligations as the worker's other unsecured creditors with provable claims.

Repayment plans will continue through bankruptcy with payments deducted from the worker's benefits.

Deceased Workers

11. Upon the death of a worker, the WCB will not pursue recovery of any overpayment, unless further benefits are payable to the worker, such as an annuity benefit.
12. If an overpayment is made after the worker's death because the deceased worker's dependant(s) or estate did not inform the WCB of the worker's death, the WCB may pursue recovery of the overpayment.

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Cost Relief to Employer

13. If the worker does not repay the overpayment, the WCB will provide cost relief to the employer in the amount of the overpayment.
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HISTORY:

December 16, 2024 – Non-substantive changes made as a result of 60-month review.

December 10, 2020 - Non-substantive changes to reflect revisions to policy, POL-86, Temporary Wage Loss Benefits.

February 13, 2013 - The policy was reviewed as a result of the 60-month policy review process. No substantive changes were made to the policy during this review.

November 29, 2007 - Amended to change the reference to “fraud” to “deliberate misrepresentation” and added a new #11.

May 24, 2007 - Amended to update the guidelines of overpayment repayment.

October 20, 2003 - Amended to ensure the definition “Overpayment” and “Set-off” are consistent with those used in other Workers Compensation Board policies.

February 20, 2003 - Amended to include cost relief for employers as a result of an overpayment being established.

June 27, 2002 - Amended to clarify situations where overpayments may occur and to eliminate subjective references to a determination of financial hardship for write off of an overpayment.

April 4, 2002 - Changed name to “Overpayments to Workers” and changed the use of the term “claimants” to “workers”.

July 19, 2001 - Revised “Overpayments to Workers” policy. Changed name to “Overpayments to Claimants”.

Board of Directors Approval Date: November 15, 1994