

 Yukon Workers' Compensation Health and Safety Board	Part:	Earnings Loss		
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RECOVERY OF OVERPAID COMPENSATION

GENERAL INFORMATION

This policy establishes the principles that will guide the Yukon Workers' Health and Safety Board (YWCHSB) in its recovery of overpayments to injured workers. The principles attempt to strike a fair balance between the YWCHSB's fiscal responsibilities and the interests of injured workers, dependents and employers. The YWCHSB strives to prevent overpayments.

POLICY STATEMENT

1. Overpayment

Overpayments occur when workers or dependents are paid benefits of fifty dollars (\$50.00) or more exceeding their entitlement according to the *Workers' Compensation Act* S.Y. 2008 (the "Act"), policies or procedures.

Overpayments can be caused by:

a) The injured worker/dependent

Examples:

- (i) *the information supplied by the injured worker or dependent is either intentionally or unintentionally inaccurate;*
- (ii) *the claim is found fraudulent by YWCHSB;*
- (iii) *the worker has returned to work and no longer has loss of earnings but has failed to advise the YWCHSB; or*
- (iv) *the worker has recovered from his/her work-related injury and has failed to inform the YWCHSB.*

b) The YWCHSB

Examples:

- (i) *payments are made in error when eligibility for compensation does not exist, or has ended;*

(ii) *advances beyond entitlement are made on wage loss and pension benefits; or*

(iii) *a clerical error is made in the calculation of compensation.*

c) The employer:

Example:

(i) *the employer provides inaccurate payroll information regarding the worker.*

d) Other involved parties:

Example:

(i) *health care providers, Canada Revenue Agency, another WCBs under the Interjurisdictional Agreement.*

2. Appeals

The overturning of a YWCHSB decision-maker's decision, through the appeal process, does not create an overpayment.

If a YWCHSB decision-maker concludes, on the evidence available at the time of the decision, that a worker is entitled to receive compensation, the payment of that compensation is lawful and does not become an overpayment, even if evidence may become available later that justifies a different decision. The exceptions to this occur when the YWCHSB decision-maker's decision has been based upon incorrect or inaccurate information provided by the worker.

3. Decision to Recover

Once an overpayment more than fifty dollars (\$50.00) has been identified, it will be recovered from the injured worker when:

- a) It is legal – the overpayment recovery must be in accordance with the law.
- b) The overpayment was caused by the injured worker or dependent.
- c) The overpayment was caused by the YWCHSB, employer or another third party and the injured worker knew or reasonably ought to have known that he/she was overpaid.

Example:

The worker took home one thousand dollars (\$1,000.00) per week pre-injury and, due to an administrative error, was paid two thousand dollars (\$2,000.00) in weekly benefits following a work-related injury. In this case,

the worker should reasonably have known that he/she was overpaid and reported it to the YWCHSB.

- d) It is timely -- if, in the opinion of the YWCHSB, the discovery of an overpayment, not caused by the worker or dependent, occurs within two years of the start of the overpayment.
- e) There is fraud: If it is determined by the YWCHSB that the overpayment resulted from fraud, misrepresentation, or failure to report an obvious error, the overpayment will be recovered notwithstanding any other provisions, unless the YWCHSB determines that another approach would be more beneficial to the YWCHSB's achievement of desired outcomes in a fraud situation.

4. Method of Recovery

The recovery of overpaid compensation may be through a) set-off, or b) debt repayment on either a lump sum or installment basis, in whole or in part. The method of recovery of overpaid compensation will be dealt with on a case by case basis.

The YWCHSB may withhold payment or portion of compensation benefits until recovery of the overpaid compensation is made.

YWCHSB may recover the amount owed through set-off of compensation benefits regardless of the dollar amount owed.

a) Set-off

"Set-off" is when the YWCHSB sets aside a portion of the compensation payable to a worker as payment against a debt owed to the YWCHSB. Set-off is the preferred method of recovery when feasible. The schedule for recovery by set-off or debt repayment will be made by the decision-maker in consultation with the debtor taking into consideration the financial circumstances of the debtor. Unilateral set-off will only be used when debt recovery could not be agreed to by both parties, and the debtor is entitled to compensation benefits. Set-off will not be done in a way that leaves the debtor destitute.

b) Debt Repayment

"Debt Repayment" is when a debtor makes arrangements to repay money owed to the YWCHSB. Overpayments made beyond the period of injury or entitlement to compensation benefits are recovered through debt repayment.

5. Overpayment Waived

Except where the conditions of fraud, nondisclosure or misrepresentation apply, or where the worker knew or reasonably ought to have known that he/she was overpaid, collection of an overpayment to a worker or dependent may be waived where:

- a) the worker or dependent was not notified in writing within 90 days of the YWCHSB identifying the overpayment;
- b) the overpayment is identified by the YWCHSB more than two years after it occurred;
- c) the YWCHSB determines that repayment of the overpayment will result in financial hardship due to circumstances which are unlikely to change. (In cases where the inability to repay is temporary, the YWCHSB will consider flexible recovery arrangements); or
- d) bankruptcy or death of the worker or dependent occurs.

The authority to waive collections of overpayments rests with the Director of Claimant Services for amounts up to the maximum of his or her signing authority under the *Financial Administration Act*, R.S.Y 2002. For amounts above the director's signing maximum, the authority to waive overpayments rests with the President\CEO of the YWCHSB.

6. Legal Action

In the event the debt is not repaid voluntarily, the YWCHSB may pursue collection through any legal means available, or the debt will be written off.

If the YWCHSB does not collect the outstanding debt the employer will be cost relieved through a Yukon employer collective liability account.

Legal action against the debtor will be determined on a case by case basis taking into consideration the amount of debt outstanding, and the period of time the debt has been outstanding.

EXCEPTIONAL CIRCUMSTANCES

In situations where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or an unintended result, the YWCHSB will decide the case based on its individual merits and justice in accordance with YWCHSB's policy, "Merits and Justice of the Case". Such a decision will be considered for that specific case only and will not be

Chair

precedent setting. Exceptions to this policy may be made by the Director of Claimant Services.

ACT REFERENCES

Section 123
Financial Administration Act, R.S.Y. 2002

POLICY REFERENCE

EN-02, "Merits and Justice of the Case"

HISTORY

CL-43, "Recovery of Overpaid Compensation", effective November 17, 1993, revoked July 1, 2008.