



Policy Amendment Proposal

EL-04 Recovery of Overpaid Compensation

This policy amendment proposal relating to the recovery of overpaid compensation will reflect the issues consulted on during the engagement for the *Workers' Safety and Compensation Act* (the 'Act') and will align the amendments made in the new legislation.

The new Act comes into force July 1, 2022. The intended effective date of the proposed policy amendments will be July 1, 2022.

The proposed amended Recovery of Overpaid Compensation policy will reflect minor changes to ensure consistency with the provisions of the Act.

A five-year policy review plan will be developed later in 2022. After July 1, 2022, all amended policies to align with the new Act will be prioritized for a more detailed review.

The purpose of this policy is to provide information on the principles that guide the Workers' Safety and Compensation Board in identifying and recovering overpayments made to workers and their dependants. The principles attempt to balance the board's fiscal responsibilities with the interests of workers, workers' dependants and employers.

Relevant sections of the Act

The following sections of the Act are relevant:

N/A

Proposed minor changes to this policy are highlighted in yellow

- changes to section references, language and definitions

Board Orders/Regulations

- N/A

Current policy

[EL-04 Recovery of Overpaid Compensation](#)



Policy Amendment Proposal EL-04 Recovery of Overpaid Compensation

The board of directors is providing this policy amendment proposal to stakeholders seeking their input, comments, questions and suggestions.

Some questions for consideration:

1. Are there any general comments about this policy proposal?
2. Are there any gaps in this policy proposal?
3. Additional comments?

The views of our stakeholders are important to us. All feedback will be considered prior to the board of directors approving any amendments.

Engagement on this policy proposal closes on **March 31, 2022**. Please provide your feedback by:

1. Downloading a [fillable form](#) on our website and sending it as an attachment to Policy.Feedback@wcb.yk.ca
2. Emailing comments directly to Policy.Feedback@wcb.yk.ca
3. Receipt in our building by March 31, 2022, by mail or drop off at
*Yukon Workers' Compensation Health and Safety Board
401 Strickland Street
Whitehorse, Yukon Y1A 5N8*

By the end of April a summary of all feedback on this policy amendment proposal will be published on our website at www.wcb.yk.ca



Policy Amendment Proposal

EL-04 Recovery of Overpaid Compensation

Preventing work-related injuries is the most important job in any workplace. The *Workers' Safety and Compensation Act* establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

Purpose

This policy provides information on the principles that guide the Workers' Safety and Compensation Board in identifying and recovering overpayments made to a worker or a dependant of a deceased worker. The principles attempt to balance the board's fiscal responsibilities with the interests of workers, dependants of a deceased worker and employers.

Definitions

board means the Workers' Safety and Compensation Board

deliberate misrepresentation means any action, inaction, omission or misinformation which, in the board's opinion, constitutes a willful attempt by a worker or a dependant of a deceased worker to obtain compensation benefits to which they are not entitled. This includes:

- a. knowingly providing false or misleading information;
- b. failing, without reasonable cause, to report a return to work or to report a material change in circumstances that may affect entitlement to compensation or other benefits;
or
- c. providing or withholding any other information with the intent to deceive.

overpayment means any payment of compensation by the board to a worker or to a dependant of a deceased worker that is more than the worker or dependant of a deceased worker is entitled to under the *Act*, regulations or board policy. This includes interest that may have been paid

Policy Statement

1. General

An overpayment of compensation occurs when a worker or dependant of a deceased worker is paid compensation to which they are not entitled.



Policy Amendment Proposal

EL-04 Recovery of Overpaid Compensation

2. Identification of Overpayment

A worker or a dependant of a deceased worker may receive an overpayment because of events or actions such as, but not limited to:

- a. entitlement change;
- b. receipt of other employment-related earnings;
- c. duplicate payments;
- d. misinformation;
- e. incomplete or incorrect wage information;
- f. receiving long-term compensation based on estimated earning capacity, when the worker's actual earnings are higher;
- g. worker or dependant of a deceased worker failing to provide relevant, accurate, complete or timely information;
- h. miscalculation, including administrative error;
- i. incorrect payment of survivors' benefits; or
- j. fraud or deliberate misrepresentation.

When an overpayment is detected, **the board** will notify the worker or dependant of a deceased worker of the amount and the cause of the overpayment.

If the worker or dependant of a deceased worker notices an overpayment, they must notify **the board** as soon as possible.

Reconsiderations and Appeals

Overturing a **board** decision, through a **reconsideration** or appeal, does not create an overpayment. If **the board** decides a worker is entitled to compensation, the payment, to the date of the **reconsideration** or appeal decision, is lawful and does not become an overpayment even if **the board on reconsideration or the Appeal Tribunal** arrives at a different decision. The exception is when **the board's** decision is based on incorrect or inaccurate information provided by the worker.

3. Decision to Recover

The board reviews each overpayment to determine whether to proceed with or waive recovery. **The board** considers all relevant factors, including, but not limited to:



Policy Amendment Proposal

EL-04 Recovery of Overpaid Compensation

- a. the amount of the overpayment;
- b. the cause;
- c. the presence of fraud or deliberate misrepresentation;
- d. the impact of the recovery on the worker or dependant of a deceased worker;
- e. the status of the claim; and
- f. the time that has elapsed since the overpayment.

In most cases of overpayments due to fraud or deliberate misrepresentation, the board will recover the overpayment. In these cases, the recovery will not affect the board's decision to proceed with criminal charges.

4. Situations When the Board May Not Recover

Overpayments in the following circumstances are not normally subject to recovery:

- a. The overpayment is fifty dollars or less.
- b. The board determines that recovery would result in severe, long-term financial hardship to the worker or dependant of a deceased worker. (The exceptions are with fraud or deliberate misrepresentation where, in most cases, the board will recover the overpayment.
- c. A decision is reversed as a result of new information that was not available at the time of the original decision, providing the decision was not induced by any misrepresentation or non-disclosure by the worker or dependant of a deceased worker.
- d. The overpayment is the result of an administrative error of which the worker or dependant of a deceased worker could not reasonably be expected to be aware.
- e. The board has paid the worker or dependant of a deceased worker provisional benefits under board policy [EL-01 Loss of Earnings Benefits](#). These are not considered overpayments.

5. Method of Recovery

The board may recover compensation overpayments by set-off, debt repayment or civil legal action. It will determine the method and repayment schedule on a case by case basis, in consultation with the worker or dependant of a deceased worker. The board will consider the financial circumstances of the worker or dependant of a deceased worker.



Policy Amendment Proposal

EL-04 Recovery of Overpaid Compensation

a. Set-off

Set-off is when **the board** withholds a portion of or all compensation payable to a worker or **dependant of a deceased worker** until **the board** has fully recovered the overpaid compensation. This is the preferred method of recovery when feasible.

b. Debt Repayment

Debt repayment is when a worker or **dependant of a deceased worker** repays money owed to **the board**, either in full or by installments.

c. Civil Legal Action

The board may commence a civil legal action against the worker or **dependant of a deceased worker** for the outstanding overpayment. This will be decided on a case by case basis.

6. Written Decisions

All **board** decisions concerning recovery and method of recovery of overpayments will be provided to the affected worker or **dependant of a deceased worker** in writing, with reasons, in compliance with the Act.

Related Policies

[EL-01 Loss of Earnings Benefits](#)
