

 <p>Yukon Workers' Compensation Health and Safety Board</p>	<b>Part:</b>	<b>Earnings Loss</b>		
	<b>Board Approval:</b>	Original signed by Chair	<b>Effective Date:</b>	January 1, 2016
	<b>Number:</b>	EL-04	<b>Last Revised:</b>	
	<b>Board Order:</b>		<b>Review Date:</b>	

## [RECOVERY OF OVERPAID COMPENSATION](#)

### GENERAL INFORMATION

An overpayment of compensation occurs when a worker or worker's dependent is paid compensation to which they are not entitled.

Section 123 of the *Workers' Compensation Act, S.Y. 2008, c.12* (the *Act*) states the Yukon Workers' Health and Safety Board (YWCHSB) may recover overpayments of compensation.

### PURPOSE

The purpose of this policy is to communicate the principles that guide YWCHSB in identifying and recovering overpayments made to workers and their dependents. The principles attempt to balance YWCHSB's fiscal responsibilities with the interests of workers, workers' dependents and employers.

### DEFINITIONS

1. **Deliberate misrepresentation:** any action, inaction, omission or misinformation which, in YWCHSB's opinion, constitutes a willful attempt by a worker or a worker's dependent 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.
  
2. **Overpayment:** any payment of compensation by YWCHSB to a worker or to a worker's dependent that is more than the worker or dependent is entitled to under the *Act*, regulations or YWCHSB policy. This includes interest that may have been paid. (See YWCHSB policy EL-03, "Payment of Interest on Compensation Benefits.")

## PREVENTION

Everyone in the workplace is responsible for preventing workplace injuries. When injured, a worker must do everything reasonable to reduce the impact of the injury, including co-operating fully with health care treatment. During the recovery process, the worker, employer and YWCHSB must focus on returning the worker to safe, suitable work as soon as it is medically possible.

YWCHSB also administers the *Occupational Health and Safety Act* and *Regulations*. All workplace parties are legally obligated to know how this legislation applies to their work.

## POLICY STATEMENT

### 1. Identification of Overpayment

A worker or worker's dependent may receive an overpayment because of events or actions such as, but not limited to:

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

When an overpayment is detected, YWCHSB will notify the worker or worker's dependent of the amount and the cause of the overpayment.

If the worker or worker's dependent notices an overpayment, they must notify YWCHSB as soon as possible.

### *Reviews and Appeals*

Overtaking a YWCHSB decision, through a review or appeal, does not create an overpayment. If YWCHSB decides a worker is entitled to compensation, the payment, to the date of the review or appeal decision, is lawful and does not become an

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overpayment even if a review or appeal body arrives at a different decision. The exception is when the YWCHSB decision is based on incorrect or inaccurate information provided by the worker.

## 2. Decision to Recover

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

- 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 worker's dependent;
- 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, YWCHSB will recover the overpayment. In these cases, the recovery will not affect YWCHSB's decision to proceed with criminal charges.

## 3. Situations When YWCHSB May Not Recover

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

- a) The overpayment is fifty dollars or less.
- b) YWCHSB determines that recovery would result in severe, long-term financial hardship to the worker or worker's dependent. (The exceptions are with fraud or deliberate misrepresentation where, in most cases, YWCHSB will recover the overpayment, as stated in paragraph 2.)
- 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 worker's dependent.
- d) The overpayment is the result of an administrative error of which the worker or worker's dependent could not reasonably be expected to be aware. Or,
- e) YWCHSB has paid the worker or worker's dependent provisional benefits under YWCHSB policy EL-01, "Loss of Earnings Benefits." These are not considered overpayments.

## 4. Method of Recovery

YWCHSB 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

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basis, in consultation with the worker or worker's dependent. YWCHSB will consider the financial circumstances of the worker or dependent.

**a) Set-off**

Set-off is when YWCHSB withholds a portion of or all compensation payable to a worker or worker's dependent until YWCHSB 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 worker's dependent repays money owed to YWCHSB, either in full or by installments.

**c) Civil Legal Action**

YWCHSB may commence a civil legal action against the worker or worker's dependent for the outstanding overpayment. This will be decided on a case by case basis.

**5. Written Decisions**

All YWCHSB decisions concerning recovery and method of recovery of overpayments shall be made to the affected worker or worker's dependent in writing, with reasons, in compliance with section 58 of the *Act*.

**ROLES AND RESPONSIBILITIES**

**Workers**

Workers are responsible for providing the YWCHSB with complete, accurate and timely information required for their claim for compensation. They are responsible for informing YWCHSB about any change in circumstances that affects their claim, in accordance with sections 14 and 40 of the *Act*. This includes a change in the condition of their work-related injury or a change in income, including receiving notification of eligibility to receive CPP/QPP disability benefits. Workers or workers' dependents are responsible for notifying YWCHSB if they notice they are receiving overpayments of compensation.

**Employers**

Employers are responsible for providing the YWCHSB with complete, accurate and timely earnings information, as well as any information on changes in circumstances that affects a worker's claim, in accordance with sections 10, 40 and 83 of the *Act*.

**YWCHSB**

YWCHSB decision-makers are responsible for determining compensation based on the best information available and for accurately documenting calculations of compensation on the worker's claim file. Decision-makers are also responsible for notifying a worker, the dependents of a deceased worker, or the worker's employer of any decision affecting the claim for compensation, including any decision concerning recovery of overpayments, as soon as practicable, in accordance with section 16 of the *Act*.

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YWCHSB decision-makers have authority for decisions on recoveries up to the following limits:

Director of Claimant Services	up to \$10,000
Chief Financial Officer	up to \$20,000
President	greater than \$20,000

## APPLICATION

This policy applies to the Board of Directors, President/CEO and staff of the YWCHSB; to the Workers' Compensation Appeal Tribunal; and to employers, workers and workers' dependents covered by the *Act*.

## EXCEPTIONAL CIRCUMSTANCES

When the circumstances of a case are such that this policy cannot be applied or doing so would bring an unfair or an unintended result, YWCHSB will decide the case based on YWCHSB policy, EN-02, "Merits and Justice of the Case". Such a decision will be for that case only and will not be precedent setting.

## APPEALS

Workers or employers may request a hearing officer to review YWCHSB decisions made under this policy, as provided by subsection 53(1) of the *Act*. They may further appeal hearing officer decisions to the Workers' Compensation Appeal Tribunal, under section 54(1) of the *Act*. Requests for review and notices of appeal must be filed within 24 months of the date of the decision being reviewed or appealed, in accordance with section 52 of the *Act*.

## ACT REFERENCES

*Act* sections 10, 14, 16, 40, 52, 53, 54, 58, 83, 123.

## POLICY REFERENCES

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

EL-03, "Payment of Interest on Compensation Benefits"

## HISTORY

EL-04, "Recovery of Overpaid Compensation," effective January 1, 2012, revoked January 1, 2016

EL-04, "Recovery of Overpaid Compensation," effective July 1, 2008, revoked December 31, 2011

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

Chair