



Policy Amendment Proposal EA-07 Super-Assessment

This policy amendment proposal relating to a super-assessment 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 Super-Assessment 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 regarding the criteria used by the board in determining whether to levy an additional assessment (super-assessment) on an employer and the ways in which a super-assessed employer can avoid future super-assessments.

Relevant sections of the Act

The following sections of the Act are relevant:

- 137 super-assessment

Proposed minor changes to this policy are highlighted in yellow

- changes to section references, language and definitions

Board Orders/Regulations

N/A

Current policy

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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 **April 30, 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 April 30, 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 May a summary of all feedback on this policy amendment proposal will be published on our website at www.wcb.yk.ca



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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 regarding the criteria used by the board in determining whether to levy an additional assessment (super-assessment) on an employer and the ways in which a super-assessed employer can avoid future super-assessments.

Definitions

assessment premium means the amount determined by the board that an employer is required to pay to the board each year

board means the Workers' Safety and Compensation Board

claims costs means an employer's claims costs that are the actual costs paid by the board for accepted claims in the most recent five complete calendar years. Claims costs include actual payments related to compensation (such as medical treatments, loss of earnings benefits, rehabilitation services and survivor pension awards) and other related expenses made on behalf of workers. Payments made on denied claims are not included

employer means every association, corporation, individual, partnership, person, society or unincorporated organization or other body having in their service one or more workers in an industry and as further defined in section 77 of the Act

expected range of claims costs means a range considered normal, set by the board, using actuarial data, that claims costs are expected to fall within based on the employer's industry and rate group. The expected range of claims costs will vary according to each rate group within the board rate setting system

higher than normal claims costs means claims costs that are higher than the expected range of claims costs

maximum annual earnings means the amount that is determined annually under section 77 of the Act

outlier means an employer whose claims costs are more than three times their rate group average



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rate group average means the average claims cost level, expressed as a percentage of accessible payroll, for the rate group the employer is assigned to under the board rate setting system. All employers and industries in the same rate group have the same rate group average

super-assessment means an assessment over-and-above an employer's ordinary annual assessment that covers, in whole or in part, their higher than normal claims costs

watch list means a list of employers who are being monitored by the board because their claims costs, while still within the expected range, are from two to three times their rate group average

Policy Statement

1. General

The Act provides that, if the board determines that an employer has failed to have adequate practices and procedures for the prevention of injuries and present higher than normal claim costs, the board may make an assessment that covers the employer's higher claim costs.

2. Criteria for super-assessment

Under the Act, **the board** has discretion to levy a super-assessment if both of the following criteria are met:

- a. The employer's claims costs are higher than normal. This is determined using actuarial data and expressed as a range that claims costs are expected to fall within. The range of expected costs will vary according to each rate group within **the board** rate setting system.
- b. The employer does not have adequate practices and procedures for prevention. This is determined using workplace health and safety criteria established by **the board**.

Only employers who have an annual payroll that exceeds six times the current annual maximum assessable earnings will be considered for super-assessment. Employers who have a payroll less than this are not subject to super-assessment; however, they are still subject to workplace health and safety intervention and monitoring.

3. The watch list

Focusing on preventing injury and disability, **the board** recognizes the importance of early intervention. The watch list identifies employers whose claims costs are still within the expected range, but their safety practices are being monitored for the purpose of early intervention and deciding whether a super-assessment will be levied in the future.



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The watch list functions as an early warning system, alerting **the board** of claims costs in the high end of the expected range, potentially due to deficiencies in safety management practices. Employers identified on this list will be given the opportunity to improve safety performance, which ultimately reduces claims costs, prevents disability, and helps employers avoid future super-assessment.

A new watch list is generated each year based on analysis of the previous five years of claims cost data. The process of evaluating claims cost data and monitoring safety performance of all employers on the watch list continues until an employer's claims costs have improved enough that they no longer appear on the watch list. If they fail to improve their safety performance, and claims costs climb higher than the expected range, they are at risk of super-assessment.

The board also determines whether any factors may warrant removing an employer from the watch list, such as recoveries through a third-party action or through the Interjurisdictional Agreement, a fraudulent claim, or negligence causing the work-related injury.

Level 1 intervention

If an employer's claims costs are between two and three times their rate group average, this is still within the expected range, but at the high end. **The board** will review all of the employer's relevant files (such as **workplace** health and safety, claims and assessments files) to determine their overall safety management practices based on factors such as, but not limited to:

- history of serious incidents or injuries;
- number and nature of injury claims;
- frequency and type of safety infractions; and
- compliance with orders and fines.

The review may include meetings and site visits to examine the employer's safety procedures and practices, evidence of equipment maintenance, appropriate training, and any other safety management system elements the employer is required to have under the Act and regulations. **The board** will recommend improvements to avoid super-assessment in the future.

Level 2 intervention

If an employer's claims costs are more than three times the rate group average, its costs have exceeded the expected range, and it is considered an outlier. The employer's costs to the safety and compensation system could potentially drive assessment rates up for all employers in that industry, and its health and safety practices are likely causing injury and disability to Yukon workers.



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The board will meet with each outlier employer to explain where its claims costs lie in comparison to the rest of their industry and rate group, and to discuss what prevention criteria the employer will have to meet to avoid super- assessment in the future.

The employer's progress will be monitored through scheduled reports and ongoing direct contact with the board. When the watch list is generated each year, if the employer's claims costs fall into the expected range, or it meets the prevention criteria it is required to meet, it will no longer meet super-assessment criteria. However, the employer will remain on the watch list until its costs are less than twice the rate group average.

4. Meeting prevention criteria

The board emphasizes that employers must improve safety performance to eventually see a reduction in claims costs. Prevention practices and procedures can be implemented immediately, while claims costs will take years to fall (because they are based on a rolling five-year average).

The quickest way for an employer to avoid super-assessment is to demonstrate it is meeting all of the legislative requirements of the Act.

Examples of legislative requirements include, but are not limited to:

- a demonstrated health and safety management system;
- documented safety procedures and risk mitigation practices for their workplace(s);
- evidence all employees have been appropriately trained for the work they are doing;
- existence of a joint health and safety committee and a safety representative at the worksite(s) as appropriate; and
- a return-to-work program for workers.

In addition to meeting all legislated requirements, to avoid future super- assessment the employer must have no outstanding administrative penalties or fines, nor any current or pending prosecutions.

5. Levying the super-assessment

When claims cost data is analyzed each year, any employer who continues to have outlier status and who fails to meet the legislative requirements of both the Act and regulations may have a super-assessment levied against it.



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Method for calculating the super-assessment

The super-assessment will be calculated based on actual paid claims costs. The super-assessment will be determined based on the difference between actual claims costs and three times the rate group average.

The first time **the board** levies a super-assessment on an employer, it will be calculated at a rate of 10% of the actual costs above the expected range over the previous five years.

For example, an employer's claims costs over five years are expected to be no higher than \$300,000. The actual costs are \$500,000, which is an average of \$200,000. The first super-assessment levied against this employer is at a rate of 10% of the overage, or \$20,000.

The second time an employer is super-assessed the rate is increased by 10 percentage points to 20% of the overage; the third time at 30%, and each time after the rate will increase by 10 percentage points.

These 10% increases will continue to a maximum of 100% of the costs above the expected range. There is no limit to the number of consecutive or cumulative years an employer can be super-assessed. **The board** will continue to levy super-assessments on an employer as long as both criteria for super-assessment are met.

6. Eliminating super-assessment

Both criteria for super-assessment – costs higher than the expected range and inadequate practices and procedures for prevention – must be met for **the board** to levy a super-assessment.

The board will continue to monitor the claims costs and prevention practices of a super-assessed employer and eliminate the super-assessment when its claims costs are no longer higher than the expected range, or, their prevention practices and procedures are considered adequate. To be considered adequate, the employer must:

- meet the minimum requirements of the Act;
- have no outstanding penalties or fines, prosecutions pending against it at the time of review; and
- pass a review of its safety management system, assessed in a manner acceptable to **the board**.



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7. Maintaining Improved Claims Costs and Prevention Practices

The board encourages and supports stakeholders to fully embrace a workplace culture of injury and disability prevention. To achieve this, sustained behavior change is essential.

If a super-assessed employer achieves elimination of its super-assessment, but fails to maintain claims cost improvements and prevention efforts, its super-assessment will be reinstated immediately at the same rate as the last super-assessment that was levied.

For example, an employer pays super-assessments for three years, then achieves elimination of the super-assessment. The company maintains a good safety record and claims costs are within normal range for a few years. Then, the company meets both criteria for super-assessment again due to a series of workplace health and safety infractions and serious injuries resulting in claims costs higher than the expected range. The super-assessment is reinstated at the same rate as the last super-assessment, which was 30% of the company's overage in claims costs.