Section Title: Finance, Assessments and Administration - Accounting and Finance
Subject: Recoveries from Third Parties
Effective Date: May 1, 2023

A. POLICY PURPOSE

The Workers Compensation Act (the Act) permits the WCB, in some circumstances, to bring a legal action against a third party who is responsible for the workplace accident. A third party is an individual or organization that is not covered by the WCB.

If in the action the WCB recovers an amount that is less than the amount of the claim costs already incurred, the WCB sets that amount off against the claim costs. In this case, the worker remains entitled to benefits under the Act but does not receive any excess payment. If the WCB recovers an amount that is more than the amount of the claim costs, the WCB pays the excess amount to the worker or their dependant(s).

This policy describes the process for calculating and paying those excess amounts to workers or their dependant(s) in different situations.

B. POLICY

To determine the amount of excess funds payable, the WCB deducts all claim costs, including external legal costs, from the amount recovered.

1. Payment of Excess When There are No Ongoing Claim Costs

If there is an excess and there are no ongoing claim costs, the WCB pays the excess to the worker or their dependant(s).

If the worker or their dependant(s) become entitled to additional WCB compensation on the claim *after* the excess has been paid, the WCB will reduce the amount of compensation payable to them, by the amount of the excess that has been paid. The WCB may adjust the rate of this reduction so as not to cause unreasonable financial hardship to the worker or their dependant(s).

2. Payment of Excess When There Are Ongoing Claim Costs

If it is likely that additional claim costs will be paid by the WCB in the future (i.e., claim costs are ongoing), the WCB generally defers paying out the excess funds until there are no further claim costs.

However, the WCB may exercise its discretion to pay some or all of the excess funds to the worker or their dependant(s) even when there are ongoing claim costs. This may occur, for example, if future claim costs are sufficiently certain or there is a very large recovery. In such situations, the WCB calculates the past claim costs and the present value of all expected future claim costs, which together are deducted from the recovered amount. The amount remaining constitutes the excess, which may be paid to the worker or their dependant(s).

If the worker or their dependant(s) become entitled to additional WCB compensation *after* the excess has been paid, the WCB will continue to pay compensation until such time as the amount paid reaches the amount withheld for the payment of future claim costs. At such time, the WCB will reduce the amount of compensation payable to the worker or dependant(s) by the amount of

excess that has been paid. The WCB may adjust the rate of this reduction so as not to cause unreasonable financial hardship to the worker or their dependant(s).

Third party recoveries are applied to the firm cost experience to which the claim costs were initially charged.

C. REFERENCES

The Workers Compensation Act, sections 9(2), and 10.

History:

1. Policy on payment of excess third party recoveries to claimants approved by the Board of Commissioners on January 22, 1976.
2. Policy re-written and approved for issue to the Policy Manual as Policy 31.10.40, by Board Order 9/91 on June 19, 1991.
3. Policy amended by Board Order 14/02 on April 30, 2002, to clarify it also applies to accidents on or after January 1, 1992, and to incorporate that financial hardship will be considered when deducting further benefits from an excess recovery already paid out (previously included in Procedural Guidelines).
4. Minor formatting and grammatical changes were made to the policy, June 27, 2012.
5. Minor formatting changes were made to the policy, October 2020.
6. Policy amended by Board Order 15/23 on April 19, 2023 to clarify the process for calculating and paying excess amounts, particularly when the WCB exercises its discretion under the policy.