

Client Services Procedure Manual

Procedure: 42.00

Subject: Re-employment Penalties and Payments

42.00 Introduction

Employers and workers may be subject to various penalty provisions for non-cooperation and non-compliance with the re-employment obligation.

Penalties against the employer for non-compliance with the re-employment obligation are prescribed in the Workplace Health, Safety and Compensation Act, Section 89.1(13), and in detail in Policy RE-09, Re-employment Penalties and Payments.

The Case Manager will communicate verbally and in writing to the worker regarding entitlement to payments related to the re-employment obligation. The employer will be advised verbally, where possible, and in writing of the penalties in relation to those payments made to the worker. Refer to Policy RE-08, Compliance with the Re-employment Obligation and RE-02, The Goal of Early & Safe and the Roles of the Parties, for additional information regarding communication to the workplace parties.

42.01 Amount of Penalty

The employer penalty will be the amount of the worker's net average earnings for the 12 months immediately preceding the loss (not subject to the compensable maximum insurable earnings). The net average earnings must be in relation to the worker's salary for the pre-injury job with the injury employer, and not include other income (e.g. Employment Insurance benefits or income from concurrent employment) in the employer's penalty amount.

The penalty may be reduced if the employer subsequently re-employs the worker.

The penalty may be waived where the penalty has been issued and the employer offers to re-employ immediately or within two weeks of the penalty being levied, and the worker and employer agree to sever the employment relationship.

Re-employment - Suitable work at no wage loss or with a wage loss

The appropriate penalty will be applied even where a worker who is cleared for the essential duties of the pre-injury job accepts suitable employment at no wage loss. Eliminating the wage loss is not the goal of re-employment; but rather to return the worker to the pre-injury job or a comparable job when the worker is cleared to do so.

42.02 Reporting Re-employment

Case Managers need to be aware of the specifics of reporting re-employment where re-employment obligations exist to ensure compliance. (See Procedure 41.00, Compliance with the Re-employment Obligation).

42.03 Re-employment Payments to the Worker

A re-employment payment is not a benefit resulting from wage loss entitlement but rather paid solely for the reason that the employer is non-compliant with the re-employment obligation. Re-employment payments are not included in the calculation of assessment rates.

When a re-employment penalty has been levied against the employer, the Case Manager may approve re-employment payments to the worker for up to a period of one year or to the end of the obligation period whichever is the shorter period. Full re-employment payments to the worker are based on 85 per cent of the worker's net pre-injury earnings (subject to the maximum insurable earnings limit). Partial re-employment payments are based on the difference between the worker's net earnings from suitable work with the injury employer and full re-employment payments.

Re-employment payments for seasonal workers are based on the net average earnings for the period of the employer's season of operation. Concurrent earnings or earnings from other sources recognized for the 13-week rate review may be included in the calculation of re-employment payments.

To issue a re-employment payment to the worker, the Case Manager will complete a cheque requisition form for the Finance Department and payments will be issued through a direct deposit system to the worker's account. The Finance Department will set up the direct deposit for one year or less as indicated by the Case Manager on the cheque requisition. The Case Manager must advise Finance of any adjustment of the re-employment payment.

42.04 Levying the Penalty to the Employer

When the Case Manager makes the decision to levy the re-employment penalty, the Client Service Assistant will calculate the amount of the penalty and notify the Assessment Services Department. The penalty will be collected from the employer in accordance with current assessment procedures on outstanding accounts

42.05 The Role of the Entitlement Division

Re-employment penalty and payment decisions will be made within the Entitlement Division where a claim is paid and closed with no referral required to Case Management. They will be responsible for all aspects of the process, including setting up the re-employment payment and penalty. Any subsequent follow up on re-employment issues will be referred to the Case Manager (e.g. the employer subsequently re-employs and a change is needed to the re-employment payment to the worker).

Reference: The Workplace Health, Safety and Compensation Act, Section 89.1

Policies: RE-09 Re-employment Penalties and Payments
RE-08 Compliance with the Re-employment Obligation
RE-02 The Goal of Early & Safe and the Roles of the Parties

Amendment History

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