

Client Services Policy Manual

Policy Number: **EL-04 (B)**
Subject: **Overpayments**
Chapter: **Earnings Loss**

Definition

Overpayment

An overpayment occurs when WorkplaceNL receives information establishing that benefits, expenses or fees have been paid to workers, dependents, employers, or service providers in error or outside legislative authority.

Policy Statement

WorkplaceNL will make every reasonable effort to recover overpayments, although care must be taken not to inflict financial hardship. Only those overpayments that are identified by WorkplaceNL within one year from the date that they occur are recoverable. For example, if WorkplaceNL makes an error in calculating the rate of compensation payable, but only identifies the error two years after it is made, the overpayment is not recoverable. However, the rate will be corrected from that date forward.

An overpayment will also arise when a worker notifies WorkplaceNL that his or her Canada Pension Plan (CPP) disability benefits have been approved retroactively for a period when he/she was also receiving compensation. Since an overpayment only occurs when WorkplaceNL has the necessary information to identify it, WorkplaceNL can consider the entire retroactive CPP amount in establishing the overpayment, even if the CPP retroactive amount covers a period of more than one year.

Workers must advise WorkplaceNL within 10 days of a change in circumstance which may affect their entitlement to compensation. The one-year time limit does not apply where there is nondisclosure or misrepresentation to WorkplaceNL.

Amounts paid as a result of a discretionary decision, which is later reversed or amended as a result of new evidence or a reconsideration of existing evidence, shall not constitute an overpayment, providing the decision was not induced by any misrepresentation or nondisclosure by the recipient.

In the case of fraud, misrepresentation or nondisclosure, recovery will not be limited to the one-year recovery time limit, nor will it be limited by financial hardship. Full repayment is expected and the guidelines under the GENERAL part of this policy do not apply. Where it is determined appropriate by WorkplaceNL, cases will be referred for criminal prosecution.

Client Services Policy Manual

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General

Recovery Process

Where an overpayment to a worker or an employer results from a change made to the earnings paid during early and safe return to work and WorkplaceNL was not advised of the change prior to issuing the compensation payment, the overpayment shall be recovered in full from the next compensation payment, or where no further compensation is payable, recovered in full from the overpaid party.

Overpayments other than those resulting from earnings adjustments paid during early and safe return to work may be recovered through:

1. direct full repayment or reasonable instalments;
2. appropriate deductions from further benefits or expenses to be paid to an injured worker on the claim in which the overpayment occurred or on a future claim by the same worker;
3. further fees payable to a service provider; and
4. legal action.

When an overpayment is identified by WorkplaceNL, the worker will be advised in writing, within 60 days of the date it is identified, regarding the amount and cause of overpayment. Workers will also be given the opportunity to respond and be advised of their right to appeal should they disagree with the overpayment amount or recovery plan.

For employer assessment purposes, more precisely for setting employers' base rates, the unrecovered amount of an overpayment is included in the rate group's historical costs. However, overpayments are not included when calculating the experience-rated rate for an individual employer.

Overpayment Waived

Except where the conditions of fraud, nondisclosure or misrepresentation apply, collection of an overpayment to a worker or dependent shall be waived where:

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1. the worker or dependent was not notified in writing within 60 days of WorkplaceNL having identified the overpayment;
2. the overpayment is identified by WorkplaceNL more than one year after it occurred;
3. WorkplaceNL determines that repayment of the overpayment will result in financial hardship due to circumstances which are unlikely to change. [In cases where the inability to repay is temporary, WorkplaceNL will consider flexible recovery arrangements]; or,
4. bankruptcy or death of the worker or dependent occurs.

*This policy applies to overpayments identified on or after the policy Effective Date.

Overpayments identified prior to the Effective Date of this policy amendment are not subject to the provisions of this policy. Overpayments identified prior to the Effective Date of this policy are subject to the provisions of Policy EL-04(A) [Effective Date 1996 02 22].

Reference: *Workplace Health, Safety and Compensation Act (the Act), Sections 19, 64, 83.1, 89 and 125.*

Amendment History

<i>Original Effective Date</i>	1998 09 09
<i>Revision #1</i>	2002 03 25