

2010

**WCB facts**

Workers Compensation Board of Manitoba

## **OVERPAYMENT TO WORKERS**

### **What is an overpayment?**

Once your claim is accepted, you are entitled to a certain level of benefits from us. If you receive benefits above that level, you have been overpaid.

Although we do our best to prevent overpayments from happening, they sometimes do occur.

### **How do overpayments happen?**

An overpayment can happen for different reasons. For example, an overpayment may occur if:

- you return to work without telling us, and we continue to pay you
- you don't return to work when your doctor says you are able to
- you neglect to provide the WCB or your attending doctor with relevant information
- you do not tell us about a change of circumstance soon enough to prevent an overpayment of benefits
- the information we receive about your earnings (from you or your employer) is not correct
- you receive CPP disability benefits or some other disability insurance for the same injury, and you do not tell us in time to prevent an overpayment
- we underestimate your future earning capacity and later learn that your actual earnings were greater than the estimate
- we make a mistake in calculating your benefits.

### **How can I help prevent an overpayment?**

You can help minimize or prevent overpayments if you promptly call your adjudicator or case manager when:

- you return to work
- you receive other benefits or income while receiving WCB benefits; your adjudicator or case manager will tell you whether other benefits or income will affect your WCB benefits
- there is a change in your circumstances that may affect the benefits paid to you
- you think your WCB benefits are greater than you expected; wage replacement benefits are usually paid based on 90% of your net earnings. (Unless your earnings before the accident are less than or equal to the minimum annual earnings established by the WCB. In this case, your benefits would be based on 100% of your net earnings. See the “Calculation of Wage Loss Benefits” Fact Sheet for more information.)

Your adjudicator or case manager can explain how your benefits are being calculated and make any changes to minimize or prevent an overpayment.

### **What happens after an overpayment is identified?**

As soon as we discover an overpayment, we will notify you to tell you how it happened and the amount of the overpayment. We will work with you to set up a repayment schedule.

Your employer will also be informed about the overpayment.

### **What if I don't believe I was overpaid?**

If after having received an explanation for the overpayment you do not believe you were overpaid, you may appeal in writing. If you appeal within 30 working days of when we told you about the overpayment, we may temporarily suspend collection until after the appeal is decided. Where, in the opinion of the WCB, your appeal issues do not give reasonable cause for a change in your overpayment of benefits, collection efforts will continue.

If you need help to appeal, contact your union or the Worker Advisor Office.

**Why do I have to repay an overpayment that is not my fault?**

We do our best to pay you the correct amount. If you are overpaid, you have to pay us back because this is a benefit you were not entitled to receive in the first place.

The benefits you should receive are set out in *The Workers Compensation Act* and WCB policies. We must make sure that we follow these rules.

**How does the WCB recover overpayments?**

Usually, we attempt to recover the full amount of the overpayment within one year, depending on the amount owed.

If you are continuing to receive benefits after the overpayment is discovered, we will arrange to deduct repayment from your weekly benefit amount. Your adjudicator or case manager will consult with you to determine how much you can repay each week.

If you are no longer receiving benefits when the overpayment is discovered, you can repay the overpayment in a lump sum or you can make arrangements to repay it in installments. Repayment arrangements will depend on the amount owing and your ability to pay.

## OVERPAYMENTS TO WORKERS PAGE 4

Overpayments can also be recovered from any amounts that we may owe, such as:

- future benefits on your current claim
- future benefits on a different claim
- permanent impairment awards
- reimbursement for WCB expenses you paid like prescriptions, travel costs, etc.
- special additional compensation or long term wage loss benefits
- amounts held by the WCB for retirement annuities (including your voluntary contributions).

### **What happens if my employer continued my salary while I was off work?**

If your employer continued your salary and we reimbursed your employer (for the amount of your WCB benefit), we will recover the overpayment from the employer. Your employer may then recover the overpayment from you.

If your employer is self-insured and continued your salary (we do not reimburse self-insured employers), your employer may recover the overpayment from you.

In both cases, the employer is recovering the overpayment on behalf of the WCB and must conduct the recovery process much the same as the WCB would. This includes not pursuing recovery of any amounts that the WCB would not pursue.

**What if I can't afford to repay the overpayment?**

If you can't afford to pay back the money now, call your adjudicator or case manager or our Collection Department. They will discuss your financial situation with you and try to work out some satisfactory repayment plan.

If we consider that repaying the overpayment would cause you severe financial hardship, we will temporarily defer collection until your financial position improves. We do expect you to eventually repay us and we will periodically contact you to discuss whether you are now in a position to begin repayment.

**Are there any overpayments that the WCB does not pursue?**

Generally we recover most overpayments. However, there are several situations where we may not ask you to repay an overpayment.

The overpayment will usually be written off and not recovered from you in the following situations:

1. Where we make a decision to pay you benefits and later we reconsider that decision and determine that you should not have received some or all of those benefits. Your adjudicator or case manager, the Review Office or the Appeal Commission may make the reconsideration decision that determines you should not have received the benefits that were paid. In this circumstance, we will not ask you to repay the overpayment (unless the second decision results from information that the WCB was not aware of earlier, and could not have reasonably been expected to ask about).
2. Where an overpayment of benefits results from something that happened 3 or more years before we recognize that all or part of the benefits should not have been paid to you.

**OVERPAYMENT TO WORKERS**  
**PAGE 6**

3. Where the overpayment is less than \$50.00.
4. Where you have relied on our benefits as your main source of income and additional information causes us to discover that you were not entitled to some or all of those benefits and you have now lost your chance to get benefits from some other income replacement source.

Other income replacement sources can include, but are not limited to, Employment Insurance, Canada Pension Plan disability benefits, group insurance or personal insurance plans.

For example, we pay you benefits for 3 years and later discover that we should have only paid you for 1 year. We may expect you to repay the benefits you received for the last 2 years. However, if you can show us (this is your responsibility) that you would have been entitled to some other benefit if we had made our decision earlier, but you have now lost that opportunity; we will not ask you for repayment.

If you are still eligible for other benefits we expect you to apply for them and to use them to repay us. If you were not eligible for any other benefits (that is, our decision did not cause you to lose opportunity to claim from some other source), we may expect you to repay us.

The WCB may suspend recovery of the overpayment in the following situations:

1. Where the overpayment is caused by incorrect information that your employer has sent to the WCB.
2. Where we might have reasonably prevented the overpayment but failed to do so.

## **OVERPAYMENT TO WORKERS**

### **PAGE 7**

Normally, recovery will be suspended if we believe the overpayment was not something that would have been obvious to you. Where we believe the payment of excess benefits should have been obvious to you, recovery would continue. In these cases, you should have reported your concerns about a possible overpayment to the WCB.

When recovery has been suspended, we may in some cases reinstate recovery efforts. This will happen when the WCB receives later information (within a period of 6 years), that shows the initial overpayment had likely been obvious to you.

You should know that recovery action will be taken for the full amount of an overpayment resulting from either of the following situations, without exception:

1. Where the overpayment results from misrepresentation, deliberate failure to inform the WCB of relevant information, or fraudulent activity.
2. Where the overpayment results from duplicate benefits you received from some other source, in reference to your work-related injury.

### **What happens if I do not pay back the money?**

If you are unwilling to participate in developing a suitable repayment plan within a reasonable amount of time, or if you do not repay money when you said you would, or if you just ignore us, we will use other means to collect the overpayment from you. These can include:

1. Obtaining a court judgment. This allows us to garnish your wages or bank accounts. In extreme cases, we may apply to the courts to seize assets, such as your vehicle. If we have to resort to a judgment, we will add the costs of obtaining the judgment to your over-payment. You then become responsible for repaying this amount as well.

**OVERPAYMENT TO WORKERS**  
**PAGE 8**

2. Using a collection agency. This can adversely affect your credit rating.
3. Putting a lien against your personal property.

We also keep a record of outstanding overpayments for at least 6 years. If you have another WCB claim in the future, we may deduct the unpaid overpayment from those benefits.