

Policy

The WSIB takes all necessary action against employers who are non-compliant with the provisions of the *Workplace Safety and Insurance Act, 1997* (WSIA) or who, through deceptive means, cause it real or potential loss. Actions that may be taken include, but are not limited to, one or more of the following

- levying the applicable administrative penalty
- levying administrative non-compliance charges and interest
- filing writs of seizure and sale (see 14-04-03, Writs of Seizure and Sale)
- laying charges and prosecution under the WSIA
- recommending charges under the *Criminal Code of Canada* (Criminal Code)
- initiating a civil action.

NOTE

This policy should be read in conjunction with 22-01-05, Offences and Penalties - General.

For adjustments in premiums see 14-02-06, Employer Premium Adjustments. To ensure that this policy is applicable with respect to registration non-compliance it must be read in conjunction with 14-02-15, Voluntary Registration which takes precedence if applicable.

Purpose

The purpose of this policy is to set out employer offences, the action the WSIB takes when an employer commits or is suspected of committing an offence, and the penalties that may be imposed.

Guidelines

Offences

The following are offences under section 149 of the WSIA

- to knowingly make a false or misleading statement or representation to the WSIB about a claim
- to knowingly make a false or misleading statement or representation in a declaration regarding registration, or
- to wilfully fail to inform the WSIB of a material change in circumstances in connection with the employer's obligation under the WSIA within ten days of the material change.

The following are offences under sections 150 to 157 of the WSIA

- to contravene the rules regarding confidential information
- to fail to register as an employer within 10 days
- to fail to provide the WSIB with the necessary information for classification
- to fail to properly close an account with the WSIB

Comment [OPB1]:

Description: Changed "Regulatory Services" to "Stakeholder Compliance Services" throughout.

Purpose: Reflect Regulatory Services' name change.

Comment [OPB2]:

Description: Removed sections entitled "Preliminary investigation", "Action following preliminary investigation", "Written notice", and "On-going management of employer's accounts".

Purpose: These sections mainly related to WSIB's internal processes. Some parts were also unclear and inaccurate.

Comment [OPB3]:

Description: Sentence re-worded.

Purpose: To improve clarity.

Comment [OPB4]:

Description: Added "levying administrative non-compliance charges and interest" and "filing writs of seizure and sale (see 14-04-03, Writs of Seizure and Sale)".

Purpose: Clarity - a section entitled "Response" was eliminated near the end of the policy and its actions merged with this list to create an updated list of potential actions housed in one section.

Comment [OPB5]:

Description: This information was previously included under the Guidelines.

Purpose: Improve readability and consistency across the policies in the Offences and Penalties suite of policies.

Comment [OPB6]:

Description: Minor amendments to the bulleted sentences to ensure they reflect the related statutory offences in the WSIA. Reference to fraud removed.

Purpose: Ensure alignment with the wording of the related statutory offences. Fraud is not an offence under the WSIA, but rather under the Criminal Code.

Comment [OPB7]:

Description: Minor amendments to several bulleted sentences to ensure they accurately reflect the related statutory offence in the WSIA.

Purpose: Ensure alignment with the wording of the related statutory offences.

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- to knowingly provide false or misleading information regarding registration or classification
- to fail to keep accurate statements of wages paid
- to fail to provide accurate statements of earned wages
- to fail to notify the WSIB of an accident
- to fail to provide information about the accident
- to obstruct or hinder an examination, investigation, or inquiry
- to obstruct or hinder an inspection of an employer's premises
- to fail to give the WSIB security for payment when required to do so
- to fail to meet the clearance certificate requirements in construction
- to deduct from workers, or require or permit workers to contribute toward indemnifying the employer against WSIB liabilities
- to contravene the prohibition against claim suppression
- to contravene a regulation
- if a corporation commits an offence under the WSIA, for a director or an officer to knowingly authorize, permit, or acquiesce in the commission of the offence, whether or not the corporation is prosecuted or convicted.

Certain acts may constitute fraud under the Criminal Code. Acts that may be fraudulent include, but are not limited to

- modifying a clearance certificate, or
- intentionally reporting lower than real earnings or premiums.

NOTE

To determine if an employer has failed to inform the WSIB of a material change in circumstances, the decision-maker refers to 22-01-01, Material Change in Circumstances - Employer.

Administrative action

Where any new information is obtained by Stakeholder Compliance Services through the review and/or investigation of an allegation against an employer, the decision-maker first consults with Stakeholder Compliance Services regarding any conflicts, and reviews the employer's account, including all division or branch accounts and those of any associated companies (see 22-01-05, Offences and Penalties - General).

After consultation with Stakeholder Compliance Services, the decision-maker may

- confirm, amend, or revoke any previous decisions regarding the employer's classification, payroll, premiums, non-compliance penalties, or eligibility for clearance certificates
- withhold any credit adjustments to the employer's account
- withhold refunds of any kind
- withhold clearance certificates until the WSIB receives the total amount owing

Comment [OPB8]:

Description: Added the offence of claim suppression.

Purpose: To reflect the offence of claim suppression added to the WSIA by Bill 109.

Comment [OPB9]:

Description: Moved section on fraud from under the Policy heading to the Offences section.

Purpose: Improve readability and consistency with Offences and Penalties - General (22-01-05).

Comment [OPB10]:

Description: Merged two sections - "Charges laid or civil action initiated" and "Charges not laid or civil action not initiated" - under new heading, "Administrative Action", and amended content by removing reference to charges and speaking to new information obtained.

Purpose: Accuracy and clarity - former wording suggested a decision-maker would only take administrative action where charges were laid or civil action was initiated, which is not accurate. Decision-makers may take administrative actions, where appropriate, based on information from Stakeholder Compliance Services obtained through a review or investigation of an allegation.

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- discontinue any payment arrangements in effect (see 14-04-04, Collections Based on Financial Hardship and 14-04-05, Alternative Payment Arrangements)
- where appropriate, levy the applicable administrative penalty or non-compliance charges and interest.

Relief from delayed premiums

The WSIB does not allow relief from unpaid premiums, interest, or associated non-compliance penalties that result from the commission of an offence, nor is action to recover such revenue suspended because of an appeal, the prosecution of an offence, or for any other reason.

Recovery measures

Reporting and payment of premiums

If the WSIB decides to penalize an employer for inaccurate reporting of earnings and premiums (s.152) or non-payment of premiums (s.89), the employer will be charged for premiums deliberately evaded or withheld, plus interest and any other non-compliance penalties.

The WSIB may make retroactive adjustments to an employer's account, in any year in which premiums were payable, if the adjustment results from Stakeholder Compliance Services finding that the employer has committed wrongdoing, whether or not charges are laid.

Recovery measures must not conflict with prosecution under the WSIA or the Criminal Code (see 22-01-05, Offences and Penalties - General).

Maximum fines imposed upon conviction under the WSIA

See 22-01-05, Offences and Penalties - General.

Time limits

The following chart shows

- the relevant time limits, and
- the date from when the relevant time limit applies.

Offence	Time limit	Date from when the time limit applies
s.149	No time limit	There is no time limit to lay charges.
s.150-157	Two years	The WSIB must lay charges within two years of the date that it becomes aware of the most recent occurrence of the offence.

For fraud

An individual or a corporation who commits a **fraudulent act** may also be charged and prosecuted under the Criminal Code, where no time limit for bringing an action applies.

Comment [OPB11]:

Description: Added "...under either the WSIA or the Criminal Code" in place of "...prosecution by Regulatory Services".

Purpose: Improve clarity and ensure accuracy - recovery must not conflict in either case.

Comment [OPB12]:

Description: Removed language regarding the time limits changes made in 2001 and references to specific dates for the offences under s.149 -157.

Purpose: Language no longer relevant for inclusion in policy given the passage of time.

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Application date

This policy applies to all incidents of suspected wrongdoing discovered by the WSIB on or after January 1, 2018, subject to the guidelines for **Time limits**.

Document history

This document replaces 22-01-08 dated January 2, 2014.

This document was previously published as:

22-01-08 dated April 7, 2008
22-01-08 dated October 29, 2007
22-01-08 dated October 12, 2004
11-02-05 dated May 24, 2002
11-02-05 dated August 18, 2000
01-03-04 dated March 4, 1997.

References

Legislative authority

Workplace Safety and Insurance Act, 1997, as amended
Sections 149(3),(4.1),(4.2),(4.3), 150, 151, 151.1, 151.2, 152, 153, 154, 155, 155.1, 156, 157, 158

Minute

Administrative

Comment [OPB13]:
Description: Added legislative reference to offence of claim suppression.
Purpose: Update legislative authority.