

Operational
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ComplianceSubject
Offences and Penalties - Employer

Policy

The WSIB aggressively pursues all employers who, through non-compliance with the provisions of the *Workplace Safety and Insurance Act, 1997* (WSIA) or through deceptive means, cause it real or potential loss. If an employer commits an offence, the WSIB takes all necessary action, including any of the following

- levying appropriate administrative penalties
- laying charges under the WSIA
- recommending charges under the Criminal Code of Canada (Criminal Code)
- initiating civil action.

Fraud

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.

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

Other policies that relate to offences which may be prosecuted under the WSIA are 22-01-05, Offences and Penalties - General, 22-01-06, Offences and Penalties - External Supplier of Goods and Services, and 22-01-07, Offences and Penalties - Worker.

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.

Action on s.149 offences or possibly fraudulent activities

The following are offences under section 149 of the WSIA

- to knowingly make a false or misleading statement about a claim
- to knowingly make a false or misleading statement or representation in a declaration regarding registration
- to wilfully fail to inform the WSIB of a material change in circumstances in connection with the employer's obligation under the WSIA, or
- to commit an act that may be fraudulent.

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Action on offences under s.150 to s.157

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
- to knowingly make a false or misleading statement 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 inspection of an employer's books or accounts or 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 a regulation,
- for a director and officer to knowingly authorize, permit, or acquiesce in the commission of an offence under the WSIA, whether or not the corporation is prosecuted or convicted.

Preliminary investigation

The decision-maker recommends how the account is to be managed. Recommendations may include, but are not limited to

- gathering necessary information by examining management reports and documentation in firm files, or making a referral for a field audit
- validating earnings, premiums and business operations
- making any relevant operational decisions (e.g., reclassifying an operation).

NOTE

WSIB field auditors conduct regular audits to verify employers' industry classifications, proper method of reporting earnings and premiums, and compliance with reporting and payment obligations.

For s.149(3)(4.1) and (4.3) offences, to determine if an employer has failed to inform the WSIB of a material change in circumstances the decision-maker refers to policy 22-01-01, Material Change in Circumstances - Employer.

Action following preliminary investigation

If, after reviewing the information gathered, the decision-maker finds no evidence of wrongdoing, the affected operating area applies its established policies and procedures to address and correct the situation where required.

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However, if evidence of wrongdoing is found, the decision-maker advises Regulatory Services (see 22-01-05, Offences and Penalties - General).

Ongoing management of employer's accounts

While awaiting the findings and recommendations of Regulatory Services, the decision-maker may review the employer's classification, payroll records, premiums, and non-compliance penalties that have occurred to date and, after consultation with Legal Services, may take administrative action.

Such action must not conflict with prosecution by Regulatory Services (see 22-01-05, Offences and Penalties - General).

Written notice

The WSIB notifies the employer in writing of any adjustments.

No charges laid or no civil action initiated

If charges under the WSIA or the Criminal Code are not laid and civil action is not recommended to Legal Services by Regulatory Services, the decision-maker

- reviews the employer's account
- confirms, amends, or revokes any previous decisions regarding the employer's classification, payroll, premiums, non-compliance penalties, or eligibility for clearance certificates.

Charges laid or civil action initiated

If charges are laid or civil action is recommended, the decision-maker first consults with Regulatory 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).

If charges are laid or civil action is recommended, the decision-maker may

- 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
- discontinue any payment arrangements in effect (see 14-04-04, Collections Based on Financial Hardship and 14-04-05, Alternative Payment Arrangements).

Response

The WSIB may respond in any or all of the following ways

- charge the relevant administrative penalty, where applicable
- negotiate a settlement with the employer
- file writs of seizure and sale (see 14-04-03, Writs of Seizure and Sale), or
- institute civil action for the recovery of unpaid premiums

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- lay charges under the WSIA or recommend that the police lay charges under the Criminal Code.

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 Regulatory Services finding that the employer has committed wrongdoing, whether or not charges are laid.

Recovery measures must not conflict with prosecution by Regulatory Services (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	For all s.149 offences that the WSIB became aware of from June 29, 1999, forward, there is no time limit to lay charges.
s.150-156	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. This two-year time limit applies to all offences committed on or after December 29, 2000.

Exception - An employer's failure to produce wage records under s.152 only became an offence as of June 29, 2001. For this type of offence, as of June 29, 2001, the WSIB has two

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years from the date that it becomes aware of the most recently committed offence to lay charges.

For fraud

A person or 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.

Application date

This policy applies to all incidents of suspected wrongdoing discovered by the WSIB as of January 1, 2014, subject to the guidelines for **Time limits**.

Document history

This document replaces 22-01-08, dated April 7, 2008.

This document was previously published as:

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, 156, 157, 158

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