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COCA Update on WorkSafeBC Activities #493 November 3, 2010

WorkSafeBC Releases Draft Policy Workplan for 2011-2013

The activities of WorkSafeBC are determined --in large part -- by legislation, regulation and policy. The costs of the system, which are entirely paid for by employers, are also largely determined by these three factors.

Legislation is changed infrequently – the last substantive changes were made in 2003. There are Regulation changes made every 12 to 15 months (including the ones described in COCA Update #492).

This COCA Update describes the Draft Policy Workplan for the period 2011-2013. The purpose in describing the Workplan is to give an overview of emerging issues.

The Draft 2011 – 2013 Compensation, Occupational Disease and Assessment Policy Priorities Workplan from WorkSafeBC is attached as a pdf file.

Each of the items described will result in a Discussion Paper. COCA will summarize each Discussion Paper as it is available and will include a recommended response.

WorkSafeBC has written that the items outlined in the Draft Workplans were identified from a number of sources, including:

- Board of Directors;
- Senior Executive Committee of WorkSafeBC;
- Stakeholders;
- WorkSafeBC Operating Divisions;
- Review Division and Workers' Compensation Appeal Tribunal (“WCAT”) decisions;
- Other jurisdictions; and
- Others.

Two of the items in the Workplan are the result of COCA's requests for a change of policy.

Item 7 of the Compensation and Occupational Disease Policy Workplan – 2011 will consider additional Cost Relief for Compensable Consequences of Work-Related Injuries and Diseases. Under consideration will be cost relief to employers where “a further injury, increased disablement, disease or death occurs as a consequence of an accident during treatment, surgery, a WorkSafeBC-related medical assessment, or claim-related travel, for a compensable injury or disease.” COCA wants this additional relief of cost.

Item 13 of the Assessment Policy Workplan will consider the Inclusion of Shareholder Dividends in Assessable Payroll. Dividends paid to shareholders are sometimes treated as assessable payroll by the WorkSafeBC Assessment Department. COCA wants the dividend payments to be excluded.

An initial round of consultation on this project was completed in 2009. Work on this project has been suspended pending the outcome of the Workplace Status and Exemption of Principals projects.

These and the other items will be moving ahead in the 2011-2013 time frame. More information will be sent out as it becomes available.

The items within the 2011-2013 Workplan will have a significant financial impact – positive or negative, depending upon the outcome – on the Construction Industry.

DISCUSSION PAPER

1. TITLE

Draft 2011 – 2013 Compensation, Occupational Disease and Assessment Policy Priorities Workplan

2. ISSUE

At issue is the draft 2011 – 2013 compensation, occupational disease and assessment policy priorities workplan for stakeholder review and comment.

3. OVERVIEW

3.1 2010 Workplan Overview

As of September 2010, the Compensation and Assessment Policy Department of the Policy and Research Division (“PRD”) completed the following projects related to compensation, occupational disease and assessments:

- Notification of Decisions – Policy item #99.20 of the *Rehabilitation Services & Claims Manual*, Volume II (“*RS&CM*”)
- Reopenings Over Three Years – Policy item #70.20 of the *RS&CM*
- Retirement of *Workers Compensation Reporter* Decision No. 99
- Chapter 3 of the *RS&CM* Re-write
- Enhancement/Devaluation – Policy items #39.12 and #39.13 of the *RS&CM*
- Provisional Rate – Policy item #65.04 of the *RS&CM*
- Room & Board – Policy item #68.22 of the *RS&CM*
- Cost Relief for Subsequent Non-Compensable Incidents – Policy items #34.55, #115.30, and #115.33 of the *RS&CM*
- Compensation for Bronchogenic Carcinoma in Asbestos Exposed Workers
- Procedure for Applying Sections 47(2) and (3) of the *Act* – Item AP1-47-2
- Minimum Exemptions for Contractor Liability – Item AP1-51-1

It is anticipated that the following projects will be referred to the Board of Directors (“BOD”) for approval to consult in the last quarter of 2010.

- Classification Policy Review
- Coverage for Spouses of Proprietors – AP1-2-2

Considerable work has also been undertaken during 2010 on the following projects, which are scheduled for referral to the BOD for approval to consult in 2011:

- Re-write of the Health Care Policies, Chapter 10 of the *RS&CM*

- Duration of Permanent Disability Periodic Payments – Policy item #41.00 of the *RS&CM*
- Permanent Disability Evaluation Schedule (“PDES”) Review
- Review of the Policies on Nerve Entrapments and Tendinopathies of the Arm, Neck and Shoulder
- Forest Firefighter Status Under the *Act* – Item AP1-1-5

Significant work was undertaken in 2010 on three projects that are now on hold pending the outcomes of legal actions:

- Mental Stress and the *Government Employees Compensation Act* (“*GECA*”). Two applications to the BC Human Rights Tribunal are scheduled to be heard in early 2011.
- Interest – Policy item #50.00 of the *RS&CM*. The Supreme Court of BC conducted a hearing in March 2010 and has yet to issue a decision.
- Chronic Pain – Policy items #22.35 and #39.02 of the *RS&CM*. WorkSafeBC has leave to appeal to the Supreme Court of Canada. The hearing date is set for March 2011.

Two projects were removed from the 2010 workplan during the course of the year:

- Aggravation of a Disease – Policy item #26.55 of the *RS&CM*. After discussion with the Worker & Employer Services Division and the Review Division, it was expected that the issue identified in the project would be addressed upon the implementation of Chapter 3 of the *RS&CM* in July 2010.
- Experience Rating Cost Inclusions and Exclusions – Item AP1-42-2. Policy in Item AP1-42-2 of the *Assessment Manual* mirrors that in policy item #115.30 of the *RS&CM*. At issue was whether one of the policies should be deleted. After discussion with the Worker & Employer Services Division, it was determined that having duplicate policies was beneficial to the different users of each manual; no change was therefore required.

A third project is also proposed to be removed from the workplan:

- Whole Body Vibration – Policy item #26.50 of the *RS&CM*. Retiring *Workers’ Compensation Reporter* Decision No. 99, *Re Degeneration of the Spine*, from policy status had originally formed part of the Whole Body Vibration project. It was separated out and retired at the BOD’s December 2009 meeting, as mentioned above. It is proposed that the remainder of the project be removed from the workplan, because after reviewing the available scientific and medical literature, there is not enough scientific evidence on which to proceed with a review of the policy.

The Research Secretariat sent out a request to external experts for a systematic review of the scientific literature on whole body vibration. In response, some of the scientists indicated that a number of such reviews had been undertaken in recent years and that the science had not changed.

WorkSafeBC's Evidence Based Practice Department then undertook a comprehensive review of the systematic reviews cited by the external scientists. The Department determined that while the systematic reviews identified by the external scientists did provide positive conclusions on the *association* between whole body vibration and low back pain, a review of the underlying science showed insufficient evidence to establish a *causal* relationship. As a result, it is considered that there is not enough scientific evidence on which to proceed with a review of current policy.

Claims related to a whole-body-vibrating work activity will continue to be adjudicated under section 6 of the *Act* and policy items #26.50, *Natural Degeneration of the Body*, and #26.55, *Aggravation of a Disease*. WorkSafeBC will continue to assess whether it was the whole body vibration of the work activity that rendered the worker disabled, and pay compensation if the conditions set out in policy item #26.55 are met. If a specific event or trauma, or series of events or traumas, is involved, claims will continue to be adjudicated as personal injuries under section 5 of the *Act* and using the corresponding policies in Chapter 3 of the *RS&CM*.

3.2 2011 – 2013 Workplan Priorities

Appendix A of this paper contains the draft 2011 – 2013 compensation and occupational disease policies' workplan. Appendix B contains the draft assessment policies' workplan.

The items outlined in the draft workplans were identified from a number of sources, including:

- Board of Directors;
- Senior Executive Committee of WorkSafeBC;
- Stakeholders;
- WorkSafeBC Operating Divisions;
- Review Division and Workers' Compensation Appeal Tribunal ("WCAT") decisions;
- Other jurisdictions; and
- Others.

The 2011 key priorities for the Compensation and Assessment Policy Department of the PRD include the following:

- Completion of the Re-write of the Health Care Policies, Chapter 10 of the *RS&CM*;
- Classification Policy Review;
- Review of the PDES;
- Duration of Permanent Disability Periodic Payments – Policy item #41.00 of the *RS&CM*;
- Nerve Entrapments and Tendinopathies of the Arm, Neck and Shoulder; and

- Workplace Status.

It is anticipated that as in prior years, issues will arise during the year that will require immediate attention and will result in a shifting of work priorities.

4. CONSULTATION

Stakeholders are invited to provide feedback on the draft workplans, and any additional comments that may be relevant to the issue.

Stakeholder comments will be accepted until November 16, 2010. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

By e-mail: policy@worksafebc.com

By mail: Susan Hynes
Director, Compensation & Assessment Policy Department
Policy and Research Division
WorkSafeBC
PO Box 5350, Stn. Terminal
Vancouver, BC V6B 5L5

By fax: (604) 279-7599

WorkSafeBC's governing body, the Board of Directors, will consider the opinions expressed by stakeholders before it adopts the proposed workplan.

Please note that all comments become part of the Policy and Research Division's database and may be published, including the identity of organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

APPENDIX A

Policy and Research Division

2011 – 2013 Policy Priorities

Compensation and Occupational Disease Policy Workplan

1. Re-write of the *RS&CM* Chapter 10 Policies on Health Care – 2011

This project involves a review of the 87 policies contained in Chapter 10 of the *Rehabilitation Services and Claims Manual*, Volume II ("*RS&CM*"). The re-write of the Chapter 10 policies includes putting the policies into the new *RS&CM* format and addressing various issues that have been raised, such as:

- Other Health Care Providers – re-writing policy to reflect changes to health care services provided to workers, such as physiotherapy, acupuncture and massage therapy.
- The Prescription of Narcotics and Other Drugs of Addiction – reviewing the current policy to ensure that it reflects the latest medical and scientific information.
- Respite Care – providing guidance on the provision of respite care.
- Reviewing discretionary allowances and benefits provided to injured workers, such as those:
 - (i) provided to seriously injured workers;
 - (ii) regarding travel expenses and subsistence, related to workers' receipt of health care; and
 - (iii) related to childcare and homemaker services.

The key objectives of this project are to: improve decision-making, ensure that health care policies reflect the latest science and latest contracts with health care providers, ensure that WorkSafeBC provides appropriate health care services to aid in recovery and return to work, and improve customer service in the delivery of health care services.

Considerable work has been undertaken on this project and the first round of internal stakeholder consultation was completed on June 30, 2010. It is scheduled to be presented to the Board of Directors for approval to consult in the first quarter of 2011.

2. Suspension of Benefits – 2011

Sections 57(2) and 57.1(2) of the *Act* give WorkSafeBC the authority to reduce or suspend compensation to a worker in certain situations of worker non-compliance.

At issue is whether further policy direction is required to:

- provide guidance in determining whether the resumption of full benefits (after a suspension is lifted) includes retroactive entitlement to the benefits that were reduced or suspended, and
- address the type or extent to which compensation is to be reduced or suspended.

Work on this project has been incorporated into the Chapter 10 project.

3. Duration of Permanent Disability Periodic Payments – Policy Item #41.00 of the *RS&CM*– 2011

On January 1, 2008, amendments were made to the *Human Rights Code* to eliminate mandatory retirement in British Columbia. A new provision was also added that allows for distinction on the basis of age, where the distinction is permitted or required by another Act or Regulation. An example of this is section 23.1 of the *Workers' Compensation Act*, which contains statutory limits on the duration of compensation payments based on age.

Policy item #41.00, *Duration of Permanent Disability Periodic Payments*, of the *RS&CM* provides guidance on the evidence required to determine whether a worker would have continued to work past age 65. At issue is a review of the policy language to ensure that it is appropriate given the changes to the *Human Rights Code*.

Work on this project has commenced and will continue into 2011.

4. Permanent Disability Evaluation Schedule (“PDES”) – 2011

At issue is the ongoing review of the percentages listed on the PDES.

The goals of this project are to:

- ensure that the PDES remains current with emerging medical and scientific knowledge,
- confirm whether the Additional Factors Guidelines (“AFG”) are medically current and clear enough to ensure consistency in application, and
- reduce the number of disputes and appeals that arise on the percentages of disability granted under the PDES.

This issue is complex and requires considerable research and analysis, including significant cross-jurisdictional analysis of schedules, methods of application and scientific bases.

It is anticipated that a draft revised PDES will be referred to the Board of Directors for approval to consult in the second quarter of 2011.

5. Nerve Entrapments and Tendinopathies of the Arm, Neck and Shoulder – 2011

Activity related soft tissue disorder (“ASTD”) claims are difficult to adjudicate. Certain ASTDs are recognized under Schedule B of the *Act*, for example shoulder bursitis, while others are set out in policy, such as carpal tunnel syndrome.

At issue is a review of the ASTD policies relating to the arm, neck and shoulder to ensure that they are consistent with medical science and to improve consistency in decision-making.

The PRD has received a systematic review of the medical and scientific literature on this issue, as well as the peer review reports. Policy review is now underway.

6. Overpayments

Policy item #48.41, *When Does an Overpayment of Compensation Occur?*, of the *RS&CM* distinguishes between recoverable overpayments and excess payments that are not recoverable. It distinguishes erroneous payments on the basis of administrative error, fraud or misrepresentation, decisions not within the statutory authority of WorkSafeBC, and decisions made as a result of decisional errors. The policy

provides limited guidance on the meanings of these types of errors and as a result, decision makers often have difficulty determining when an error falls into which category.

At issue is a review of the policy in order to determine whether:

- the current distinctions between recoverable and non-recoverable errors are appropriate, and how to classify an error when it appears to contain elements of more than type;
- it is consistent with WorkSafeBC's 75-day time limitation for reconsidering past decisions; and
- clarification is required for determining when claim costs related to overpayments will and will not be charged to an employer for experience rating purposes.

7. Cost Relief for Compensable Consequences of Work-Related Injuries and Diseases – 2011

The Council of Construction Associations (“COCA”) has requested that policy be reviewed to determine whether cost relief should be provided to employers where a further injury, increased disablement, disease or death occurs as a consequence of an accident during treatment, surgery, a WorkSafeBC-related medical assessment, or claim-related travel, for a compensable injury or disease.

Policy item #115.30, *Experience Rating Cost Exclusions*, of the *RS&CM*, provides a list of situations in which claim costs will not count toward an employer's experience rating. In addition, the following policy items provide for cost relief in limited situations related to the types of situations for which COCA seeks cost relief:

- Item C11-88.10, *Vocational Rehabilitation Work Assessments*,
- Item C11-88.40, *Vocational Rehabilitation Training-on-the-Job*,
- Item C11-88.50, *Vocational Rehabilitation Formal Training*, and
- Policy item #115.31, *Injuries or Aggravations Occurring in the Course of Treatment or Rehabilitation*.

At issue is whether any cost relief should be granted, and if so, whether it should be applied to an employer's experience rating alone or to the employer's experience rating and its rate group.

Work on this project will commence in 2011.

8. Tinnitus – Policy item #31.00 of the *RS&CM* – 2011

Policy item #31.00, *Hearing Loss*, of the *RS&CM* provides that tinnitus alone is not considered a condition for which a permanent disability award can be granted. However, tinnitus in combination with a permanent degree of hearing loss may have an impact on a worker's employability and affect the amount of the resulting award.

At issue is a review of the current medical and scientific literature related to this condition to determine whether the current policy is appropriate. The PRD has received a systematic review of the medical and scientific literature on this issue, as well as the peer review reports. The PRD is in the process of obtaining further input from the systematic reviewer, based on the results of the peer reviews. Subject to the final results of the systematic review, policy development may be required.

9. Average Earnings, Chapter 9 of the *RS&CM* – 2011/2012

This project is part of the overall plan to redevelop the *RS&CM* on a chapter by chapter basis. This project will involve putting the policies into the new *RS&CM* format, conducting a review of the Chapter 9 policies on average earnings as a whole, and addressing various issues that have been raised, such as:

- Reviewing policy item #65.02, *Workers with Two Jobs*, to determine if clarification is required with respect to calculation of wage rates for persons with two jobs. In addition, a review of policy item #35.22, *Calculation of Earnings for Workers with Two Jobs*, is required to ensure that the two policies are consistent.
- Considering whether additional policy guidance is required with respect to calculation of long-term average earnings for workers with multiple employment where more than one of the average earnings exceptions appears to be applicable.
- Examining whether there are ways to simplify the policies and the decision-making process.

Work on this project will commence in 2011 following the release of the Chapter 10 re-write.

10. Skin Cancer – 2012

Skin cancer is the most commonly diagnosed form of cancer. Schedule B item #4(g) provides a presumption of work causation in favour of a worker who has developed a primary site skin cancer where there is prolonged contact with coal tar products, arsenic, cutting oils or prolonged exposure to solar ultraviolet light.

An issue is whether this description is accurate and supportable based on the most current medical and scientific literature. Another issue is whether specific types of skin cancer should be set out in Schedule B.

A systematic review of the medical and scientific literature is underway. Subject to the final results of the systematic review, policy development may be required.

11. Multiple Sclerosis as a Compensable Consequence – Item C3-22.40 of the *RS&CM* – 2012

Section B of Item C3-22.40, *Compensable Consequences – Certain Diseases and Conditions*, of the *RS&CM* includes the following statements, “While the cause of multiple sclerosis is unknown, there has been much medical literature on factors which may precipitate the onset of the disease in an already predisposed person. One of these factors is traumatic injury.”

An issue is whether multiple sclerosis may be caused by a traumatic injury. A systematic review of the current medical and scientific literature is underway. Subject to the final results of the systematic review, policy development may be required.

12. Osteoarthritis of the First Carpo-Metacarpal Joint in Physiotherapists – Policy Item #26.02 of the *RS&CM* – 2011/12

Policy item #26.02, *Recognition under Section 6(4.2)*, of the *RS&CM* addresses the recognition of an occupational disease under section 6(4.2) of the *Act* as a “disease that is peculiar to or characteristic of a particular process, trade or occupation”. To date, only one disease has been recognized in this manner – osteoarthritis of the first carpo-metacarpal joint in physiotherapists who perform deep friction massage. This recognition is limited to factual situations substantially the same as those applied to the worker in *Workers’ Compensation Reporter* (“*WCR*”) Decision No. 231, dated February 9, 1977.

Two matters are at issue:

- A review of the scientific and medical literature related to this disease is required to determine whether the heightened recognition in policy is current and supportable.
- WCR Decision No. 231 is the last remaining WCR Decision that has yet to be retired from policy status. Policy item #26.02's reliance upon it is problematic, as accessibility to old WCR Decisions is limited. The old WCR has not been published in over ten years, nor is it available electronically.

A systematic review of the medical and scientific literature review is underway by WorkSafeBC's Evidence Based Practice Group. Subject to the final results of the systematic review, policy development may be required.

13. Interest – Policy item #50.00 of the *RS&CM* – 2011

On September 9, 2009, the Supreme Court of B.C. ordered that the "blatant Board error" test for interest entitlement in policy is patently unreasonable, and that WorkSafeBC must reconsider the interest policy. WorkSafeBC has appealed the Supreme Court's decision to the B.C. Court of Appeal.

The court heard the appeal in March 2010 and has yet to issue a decision. Subject to the final results of the legal proceeding, policy development may be required.

14. Mental Stress and the *Government Employees Compensation Act* ("GECA") – 2011/2012

GECA provides direction on the provision of workers' compensation for federal government employees. Under *GECA*, compensation is paid to employees who are caused personal injury by an accident arising out of and in the course of employment or who are disabled by reason of an industrial disease due to the nature of the employment. *GECA* does not include a specific entitlement provision on mental stress.

Recent appeal court decisions from the Atlantic Provinces have concluded that the ordinary reading of the definition of accident under *GECA* is sufficiently broad enough to include gradual onset stress. WorkSafeBC's Review Division has considered the issue of *GECA* and gradual onset stress in four recent reviews. In all cases, the Review Division supported the views taken in the appeal courts' decisions referenced above.

At issue is whether specific policy direction is required to guide the adjudication of *GECA* claims for gradual onset stress.

This project is currently on hold pending the outcome of two Human Rights Tribunal challenges to the mental stress legislation and policy, which are scheduled for hearing in January 2011.

15. Tendinosis – 2013

This project is being undertaken as part of a larger review of the ASTD policies.

Schedule B lists "Hand-wrist tendinitis, tenosynovitis (including deQuervain's tenosynovitis)" and "Shoulder tendinitis" as occupational diseases. Policy item #27.12, *Tendinitis and Tenosynovitis*, of the *RS&CM* confirms that a claim made by a worker diagnosed with hand-wrist tendinitis/tenosynovitis or with shoulder tendinitis where no specific event or trauma, or series of events or traumas, has occurred, will be treated as a disease and adjudicated in accordance with all the policies in Chapter 4 of the *RS&CM*. The policy provides the guiding principles when interpreting Schedule B. As well, the policy details risk factors typically associated with these conditions to assist in determining whether it is biologically plausible that the hand-wrist tendinitis/tenosynovitis has resulted from the work activities.

It appears that there is a growing acceptance of the condition “tendinosis” in the medical community. As a result, WorkSafeBC is receiving an increasing number of medical reports where the diagnosis is tendinosis. An ‘itis’ condition is characterized by inflammation and typically will heal within 6 weeks. However, tendinosis is considered a chronic deterioration of the tendon and does not necessarily have the same risk factors or treatment protocols as tendinitis.

The issue is whether WorkSafeBC should recognize tendinosis as an occupational disease and whether policy should be developed to provide guidance on the risk factors and treatment protocols for tendinosis.

A set of six field studies sponsored by the American National Institute of Occupational Safety and Health (“NIOSH”) examining the association between workplace physical risk factors and upper limb musculoskeletal disorders is underway. The pooled results are not expected until 2012. As these studies are expected to directly address the questions the PRD would use to sponsor a systematic review of the scientific and medical literature, the PRD is awaiting the results of the NIOSH studies before proceeding with this project.

16. Chronic Pain – Policy Items #22.35 and #39.02 of the *RS&CM*– 2012/13

The policies with respect to chronic pain have been in effect since January 1, 2003. A review of these policies is required in order to evaluate their effectiveness and to improve consistency in the adjudication and management of chronic pain. To date, the following issues have been identified for clarification:

- (i) whether the current fixed 2.5% loss of function award for chronic pain is appropriate;
- (ii) how compensation should be provided when chronic pain occurs at multiple sites on the body;
- (iii) whether a Pain Disorder diagnosed under the Diagnostic and *Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* (“DSM-IV-TR”) should be adjudicated as a claim for chronic pain, or as a distinct psychological disability, using the permanent psychological disability schedule; and
- (iv) whether the terminology used in the current policies is appropriate.

Work on this project was begun; however, as WorkSafeBC has recently received leave to appeal to the Supreme Court of Canada on three Human Rights Tribunal complaints regarding the chronic pain policy, the project is on hold pending the outcome of the legal proceedings.

APPENDIX B

Policy and Research Division

2011 – 2013 Policy Priorities

Assessment Policy Workplan

1. Classification Policy Review – Consistent Language – 2011

Since 2003, the PRD has completed six reviews of specific classification policies. A review of all five classification policies is required to ensure consistency in the description and usage of terms among the policies.

The aim of this project is to improve the interpretation and application of the policies, by ensuring that the language used in the classification policies is clear.

Work on this project has commenced and it is anticipated that it will be referred to the BOD for approval to consult in December 2010.

2. Coverage for Spouses of Proprietors – AP1-2-2 – 2011

The Assessment Department's practice has been to deny coverage to the spouse of a proprietor when the spousal coverage had not been applied for and granted, including situations where the proprietor is registered and reporting earnings and paying assessments on the wages of his or her spouse. Denial of coverage in these circumstances is not explicitly provided for in policy.

A recent decision of the Workers' Compensation Appeals Tribunal noted this gap in the policy framework and held that the current practice is not supported.

At issue is whether it is more in keeping with the general purposes of the *Act*, and the original intentions of the spousal exemptions, to extend or deny coverage to an application for compensation in these situations.

Work on this project has commenced and it is anticipated that external consultation will take place in the first quarter of 2011.

3. Assessing Employers' Administration/Management Payroll and Payments to Management Companies – 2011

Current policy in section (f) of Item AP1-38-3, *Payroll – Principles for Determining*, is unclear in providing guidance concerning the assessment of administration/management payroll, and payments made to management companies.

At issue is a review of the policy to:

- review the principles for what is included in payroll when considering payments made to management companies or other affiliated firms;
- consider assessments for payments made to unregistered, affiliated firms, regardless of the corporate structure or type of legal entity; and

- ensure the language of policy is broad enough to accommodate complex, modern corporate structures.

Work on this project will commence in 2011.

4. Prioritizing Reasons for a Classification Change– Item AP1-37-3 – 2011/2012

Item AP1-37-3, *Classification – Changes*, sets out four reasons why WorkSafeBC may make a new decision concerning a firm’s classification. Current policy is silent on how to determine which reason for change prevails when more than one reason exists. This silence has resulted in overturns on review when the Review Division prefers a different reason for changing a firm’s classification than was chosen by the Assessment Department.

At issue is whether further direction can be provided on how decision makers should exercise their discretion and establish the most appropriate effective date for a classification change, when more than one reason for the change exists.

Work on this project will commence in 2011.

5. Clarifying the Obligation of Firms to Maintain and Furnish Records – 2011/2012

An issue that has arisen on review and appeal is the failure of some firms to keep complete and accurate payroll information and to supply such information to WorkSafeBC. This includes financial data and information regarding the workplace status of subcontractors, all of which is required to determine assessable payroll figures.

Section 38(1) of the *Act* provides that maintaining and furnishing this information is the responsibility of all employers. However, on review and appeal, some firms have argued that WorkSafeBC has power of inquiry under the *Act* and therefore is responsible for performing its own investigation to obtain the required information.

A review of the *Assessment Manual* policies concerning payroll reporting and audits is required to clarify WorkSafeBC’s power of inquiry and a firm’s responsibility to keep and supply payroll records as required by the *Act*. At issue is whether there is adequate guidance in policy with respect to the following:

- an employer’s duty to compute and furnish an estimate of the probable amount of its assessable payroll;
- an employer’s duty to maintain necessary records;
- WorkSafeBC’s authority with respect to audit and inquiry; and
- the nature and scope of WorkSafeBC’s audit function.

Work on this project will commence in 2011.

6. Allocation of Claim Costs – 2011/2012

At issue is a review of policy to clarify WorkSafeBC’s jurisdiction to withdraw claim costs from a firm and transfer the costs to the firm that was the employer of the injured worker, or to transfer costs between classifications on an employer’s account where appropriate. The issue is of significance, as the correct allocation of claim costs affects employers’ rates and experience rating calculations.

Work on this project will commence in 2011.

7. Forest Firefighter Status Under the *Act* – AP1-1-5 – 2011/2012

The language and direction of Item AP-1-1-5, *Coverage under Act – Workers*, which guides the determination of the status of forest firefighters under the *Act*, is inconsistent with the British Columbia *Wildfire Act* and *Regulations*. This project would bring the policy in line with the current statutory framework.

Work on this project has commenced and it is anticipated that external consultation will take place in the first quarter of 2011.

8. Transfer of Experience Between Firms – 2012

At issue is a review of Items AP1-42-1, *Experience Rating*, AP1-42-2, *Experience Rating Cost Inclusions/Exclusions*, and AP1-42-3, *Transfer of Experience Between Firms*, to:

- determine whether affiliated firms acting in concert in business should share a common experience rating, and if so, for how long; and
- clarify the exception in the experience transfer policy concerning publicly traded companies.

Work on this project will commence in 2011.

9. Determining Net Assessable Payroll – Item AP1-38-3 – 2012

Section (f) of Item AP1-38-3, *Payroll – Principles for Determining*, provides that “net assessable payroll” is the payroll that is directly applicable to a specific classification, including the earnings of *any* labour contractors, after deducting any excess earnings that are attributable to the individuals included. It is the Assessment Department's practice to include the earnings of unregistered labour contractors, and exclude the earnings of registered labour contractors when calculating a firm's “net assessable payroll”.

A recent decision of the Review Division has calculated a firm's net assessable payroll by including the earnings of *all* labour contractors, including those who are registered. A review of the policy is required to address this inconsistency.

Work on this project will commence in 2011.

10. Workplace Status – 2011

In 2007 the Board of Directors' approved changes to the workplace status policies in the *Assessment Manual* that guide the determination of whether an individual is a worker, employer or independent operator. These policy changes were scheduled to come into effect on January 1, 2010.

Employer stakeholders continued to express significant concerns regarding the impact of the policy changes on business relationships and activities. In addition, the Assessment Department raised significant concerns regarding the challenges in implementing the policy changes.

Given these concerns, as well as concerns that assessment policy is not well positioned to address workplace health and safety issues, the Board of Directors decided at their September 15, 2009 meeting to rescind the policy changes. The PRD was directed to undertake additional analysis on the issues and develop a discussion paper and draft policy to address the assessment issues. Specifically, challenges relating to the labour contractor policy are to be addressed as part of this project, as well as an extensive review of other jurisdictions' approaches to this issue.

In conjunction with this review, the status policies will also be reviewed to ensure consistent language and compliance with developments in the common law, throughout.

Work on this project has commenced and will continue into 2011.

11. Property Managers and Registration Requirements for Building Owners – Item AP1-1-4 – 2011

Section (f), “Property managers,” in Item AP1-1-4, *Coverage under Act -- Employers*, was developed before January 1, 1994: a time when certain industries, including property management, were not subject to compulsory registration and coverage under the *Act*. With the registration and coverage changes made to the *Act* in 1994, clarification is now needed to update policy so that the registration requirements of building owners and the duties of property managers are clearly set out.

Work on this project has been incorporated into the Workplace Status project.

12. Exemption of Principals – 2012

WorkSafeBC policy applies the rule of corporate law that a corporation is a separate legal entity from its shareholders and principals. Employer stakeholders have expressed concern that application of this rule may result in inequities in the workers’ compensation system. At issue is a review of the implications of WorkSafeBC’s treatment of principals as workers.

It is anticipated that this review would consider whether principals of corporations should be treated the same as unincorporated proprietors or partners, and whether an exemption under the authority of section 2(2) of the *Act* is possible or warranted.

Work on this project will follow the outcome of the Workplace Status project.

13. Inclusion of Shareholder Dividends in Assessable Payroll – AP1-38-2 – 2012

Item AP1-38-2, *Payroll – Categories*, provides that dividends are not considered part of payroll unless paid for services rendered to the company. Current practice of the Assessment Department, however, is to include dividend payments in assessable payroll where they exceed T4 amounts, without regard to the value of the shareholders’ activities. A review of the policy is required to address this inconsistency.

An initial round of consultation on this project was completed in 2009. Work on this project has been suspended pending the outcome of the Workplace Status and Exemption of Principals projects.

14. Section 4 of the Act and the Fishing Industry Regulations – 2012/13

Following the review of the Workplace Status policies, a review of the *Fishing Industry Regulations* may be required in order to clarify fishing industry workplace roles and responsibilities, and assessment obligations.

15. Meaning of “24 Working Hours” – Item AP1-2-1 – 2013

Section b(1)(ii) Item AP1-2-1, *Exemption from Coverage*, provides a general exemption from coverage where “the individual is employed to do a specific job or jobs involving a temporary period of less than 24 working hours.” This language is ambiguous and may be interpreted to mean that the individual must have been in service for a minimum of 24 working hours, or that the job or jobs involved must take less than 24 person hours, regardless of the number of individuals who undertake the work.

Assessment Department practice, a recent Review Division decision, and a provision of the *Occupational Health and Safety Guidelines* would support adoption of the latter interpretation. A review of the policy is required to address this ambiguity.