



## To all Members and Chairpersons of Employment Insurance Boards of Referees

### **Subject: Revised National Policy on False or Misleading Statements Knowingly Made**

We are writing to inform you that the Commission has revised its penalty policy pursuant to Sections 38 and 39 of the *Employment Insurance Act*. The revised policy came into effect on June 1, 2005.

The major changes in the policy are summarized below. Regional Consultants will discuss and review the policy in more detail during the 2005/2006 annual information sessions.

#### **Background**

In response to concerns expressed by the Federal Court of Appeal, Umpires and Boards of Referees as well as the interested public, the Employment Insurance Commission undertook a two-year review of its policy on false or misleading statements knowingly made. The courts in particular had indicated that the penalties imposed were harsh and not commensurate with the seriousness of the act or omission. The revised policy came into effect on June 1, 2005 and the Commission will be quality monitoring its implementation for a year.

This revised policy is intended to create a balance between the seriousness of the misrepresentation and the penalty while deterring abuse of the Employment Insurance Program. The amount of the penalty will be calculated based on the net amount of all overpayments and underpayments arising from misrepresentations knowingly made rather than on the number of those misrepresentations.

On a number of occasions, the Federal Court of Appeal has upheld the Commission's policy of using penalty levels (percentages) to ensure a degree of consistency across the country and to avoid arbitrary decisions. The new method of calculating the amount of the penalty:

- retains this policy approach;
- reduces the percentages that are used; and
- sets a ceiling for the maximum penalty that can be imposed in a benefit period, while complying with legislative limitations with regard to maximum penalties.

The revised policy also allows for progressive or increasing levels of penalty for repetitive misrepresentation for both claimants and employers. A "repetitive misrepresentation" occurs when a second misrepresentation occurs after a person was notified that a penalty was imposed, a warning letter was issued or the person was prosecuted and found guilty, provided it is discovered within six years of the initial misrepresentation.

### Penalties for Claimants

<b>Misrepresentation</b>	<b>Penalties Prior to June 1, 2005</b>	<b>Penalties Effective June 1, 2005</b>
<b>First</b>	100% of benefit rate multiplied by number of false statements minus mitigating circumstances*	50% of net overpayment minus mitigating circumstances* to a maximum \$5,000.00 per benefit period
<b>Second</b>	200% of benefit rate multiplied by number of false statements minus mitigating circumstances*	100% of net overpayment minus mitigating circumstances* to a maximum \$8,000.00 per benefit period
<b>Third or more</b>	300% of benefit rate multiplied by number of false statements minus mitigating circumstances*	150% of net overpayment minus mitigating circumstances* to a maximum \$10,000.00 per benefit period

\* Mitigating circumstances defined as “circumstances which lessen the seriousness of a misrepresentation due to unusual or out of the ordinary events existing before or at the time the misrepresentations was knowingly made or at the time the Commission renders the decision.”

### Penalties for Employers effective June 1, 2005

<b>Misrepresentation</b>	<b><u>Not related</u></b> to fulfillment of conditions for qualification/entitlement (e.g. issues record of employment with more insurable hours/earnings).	<b><u>Related</u></b> to fulfillment of conditions for qualification / entitlement (e.g. issuing or selling a false record of employment).
<b>First</b>	3 x maximum weekly benefit rate*	\$4,000.00*
<b>Second</b>	6 x maximum weekly benefit rate*	\$8,000.00*
<b>Third or more</b>	9 x maximum weekly benefit rate *	\$12,000.00*

\* minus mitigating circumstances in all cases

This change of Commission policy does not affect the role of the Board of Referees. The penalty section in the Board of Referees Quick Reference Tool continues to apply including the legal test of demonstrating that a false statement must be knowingly made.

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