

### Late Filing - Procedures & Penalties

This T.I.P.S. article will review the late filing policies, procedures and penalties. Although there are no changes to the legislation or policy, this article will provide a refresher on when to apply the policy and the process involved in levying penalties to the employer.

#### The Legislation

Section 21 of the Workplace Safety and Insurance Act sets out the reporting obligations of the employer as follows:

21. (1) An employer shall notify the Board within three days after learning of an accident to a worker employed by him, her or it if the accident necessitates health care or results in the worker not being able to earn full wages.  
(Note changes were made to the reporting obligation as outlined in Operational Policy 15-01-02, Employers' Initial Accident Reporting Obligations (Link to Policy) to include a reporting obligation if the worker required modified work for more than 7 days but did not seek health care.)
- (2) The notice must be on a form approved by the Board and the employer shall give the Board such other information as the Board may require from time to time in connection with the accident.

(3) An employer who fails to comply with this section shall pay the prescribed amount to the Board. This payment is in addition to any penalty imposed by a court for an offence under subsection 152(3).

(4) The employer shall give a copy of the notice to the worker at the time the notice is given to the Board.

Employers who are in breach of this legislation are liable to a penalty under subsection 152(3).

Section 152(3) states the following:

*An employer who fails to comply with section 21 is guilty of an offence.*

#### The Penalty

At the entitlement stage of a claim, three penalties may be levied: the first for late reporting, the second for incomplete reporting and the third for failing to provide a copy of the form 7 to the worker.

The WSIB may again levy these penalties if the employer fails to respond to subsequent requests for information or at the time of a recurrence.

Each failure is subject to a \$250.00 fine.

Failure to comply with reporting obligations is also a provincial offence and employers may be prosecuted.

**Notice:** This document is intended to assist WSIB decision-makers in reaching consistent decisions in similar fact situations and to supplement applicable WSIB policies and guidelines as set out in the Operational Policy Manual (OPM). This document is **not a policy** and in the event of a conflict between this document and an OPM policy or guideline, the decision-maker will rely on the latter.

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If convicted, employers are liable for the following penalties:

- \$25,000 fine or up to six months in jail, or both, for individuals, and
- \$100,000 fine for persons who are not individuals (i.e., corporate entities).

## Procedures

There are two WBS screens used to facilitate the handling of 152(3) charges.

The ECHR screen is used by the Adjudicator to process a late filing penalty. The adjudicator indicates whether they are applying an initial charge or if the charge is for a recurrence by keying in an “I” or “R” in the INT-I/REO-R field.

To apply a charge a “Y” is keyed in the Penalty field next to the reason. This screen allows for three reasons for late filing:

1. Late Reporting
2. Incomplete Information
3. Not an approved form 7

The system will only allow a “Y” in two of these fields in keeping with the policy of only two charges per offence.

The adjudicator must then send out the PEN via FORR advising the employer of the charge.

The ECAN screen is used by the Adjudicator to rescind a late filing penalty.

To cancel a charge a cancellation code is typed in the TRANS TYPE field.

The possible codes are:

“C” **Cancellation** – used when the adjudicator rescinds the penalty.

“A” **Appeal** – used to rescind the charge as a result of an appeal decision.

A CANPEN form letter must then be issued via system 35.

## Summary

This T.I.P.S. article reviews the legislation, policies and procedures involved in applying and processing late filing charges under Section 152(3).

The attached case samples will further provide examples of when late filing charges should be applied.

## Case Samples

In each of the following scenarios please indicate whether a late filing fee can be applied and for what reason.

On May 24, 2000 Rhonda injured her left hand while slicing a loaf of bread. She required 3 stitches on her left index finger but did not lose any time from work. The adjudicator received a form 8 but did not receive a form 7. Finally a form 7 was submitted June 21, 2000.

On March 30, 2000 the adjudicator received a letter from ABC Construction indicating that one of its workers experienced a back strain while picking up a 30 lbs. block of cement. The worker was off work for two weeks. The adjudicator requested this information on a form 7 but the employer did not wish to resubmit the information stating that they notified the WSIB therefore they met their reporting obligations.

A claim was established for Mary who injured her wrists due to recent job changes. The employer completed a form 7 but did not provide any earnings information even though Mary was off work. The adjudicator called several times for the earnings information, however the employer did not provide the earnings. The adjudicator allowed the claim using a temporary rate but still required the earnings information. Mary was able to dig up a pay stub and the earnings were adjusted using the pay stub. The employer never submitted the earnings information.

Dan injured his back on April 12, 2000 when he fell 3 feet off a ladder. He was placed on modified duties for 10 days and then returned to his regular work. He did not seek medical attention but did contact the WSIB to let them know of the incident “just in case” his back became worse. The adjudicator set up a claim but did not receive a form 7.

Bob tripped on an oil patch in the parts factory and broke his left leg on June 26, 2000. His employer took him to the hospital for x-ray and casting. A form 7 arrived on July 7, 2000 but it was dated June 27, 2000. The new secretary forgot to mail it in.

Liz sprained her wrist on April 1, 2000 while picking up a 20lb pot of coffee. She saw her doctor on April 2, 2000 and was told to stay off work for two weeks. She did not report her accident to her employer until April 5 which was her next scheduled shift as she worked part-time. The form 7 was dated April 8 and arrived at the WSIB office on April 14.

## Answers

1. Yes – the form 7 was not submitted within 7 business days as is required by policy. The reason used would be late filing.
2. Yes – not an approved form 7.
3. Yes – incomplete information.
4. Yes – the employer was obligated to report the accident, as the worker required more than 7 calendar days of modified work. The claim itself would be abandoned X-87 as the worker not did not seek medical attention.
5. Yes – late filing.
6. No – as her employer was not aware of the accident and the form 7 was submitted within 7 business days of becoming aware of the accident.