



LATE PAYMENT FEES FOR ADDITIONAL PREMIUMS RESULTING FROM WAGE AUDITS

This operational instruction sets out procedures for charging late payment fees on Premiums due and payable that have been identified as a result of an audit of an Employer's Wage records for one or more Policy periods. Under WorkCover's Premium compliance program, Wage audits are conducted on only the three most recent Policy periods and are only extended beyond this period if serious non-compliance issues have been identified.

This document supplements the *Premium and Debt Collection Manual* in relation to the recovery of late payment fees on Premiums due and payable from Wage audits.

Section 175 of the 1987 Act commenced on 1 January 2001 and applies to any underpaid Premium from that date, irrespective of whether the periods of insurance are before or after that date. Late payment fees are chargeable irrespective of the date on which the Wage audit was requested or commenced.

Until further notice – and subject to the completion of changes to the definition of a Worker – this operational instruction does not apply to Wage audits processed from 1 January 2003 where a Premium is increased following a Wage audit because of the inclusion of a deemed Worker/contractor, working beneficiary of a trust and/or working director. WorkCover has adopted a Moratorium on the charging of late payment fees following these Wage audits. For further information, see operational instruction 2.11.

Principles to be applied in the determination of the late payment fee payable

This operational instruction instructs a Scheme Agent on how to recoup the revenue lost to the Scheme through an Employer's under-declaration of Wages identified in a Wage audit.

Calculating the amount of the late payment fee is based on the following principles:

- (a) a Scheme Agent must charge a late payment fee to an Employer if a Wage audit and the application of the calculation methodology outlined in this instruction indicates that there is a net late payment fee owing to the Scheme
- (b) the amount of Premium due on which the late payment fee is chargeable must be offset by any premium refunds due to the Employer.

No interest payable to the Employer on overpaid Premium identified after a Wage audit

The legislation makes no provision for interest to be paid for Policy periods for which the Employer is entitled to a refund of Premium. It is the responsibility of the Employer to ensure that they have accurately declared their Wages and the loss of any interest revenue foregone through over-declaration of Wages is borne by the Employer. However, if an Employer pays a Premium that they dispute and, subsequently, successfully appeal under section 170, the Employer may recover interest on the overpaid Premium under section 170(4).

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Calculation of late payment fees which can be recovered by the Scheme Agent

Section 174 provides for audits to be conducted for a period of up to seven years after the performance of the work to which the audits relate. Agents should note that audits are now only conducted for the three most recent policy periods unless serious non-compliance issues have been identified in which case the audit can be extended. Experience indicates that a large proportion of audits reveal a mixture of demands for additional Premium and Premium refunds, from one Policy period to another. Amounts of additional Premiums payable that have been identified by Wage audits are offset by any amounts of Premiums refundable that have also been identified through the same Wage audits. Therefore, in calculating a late payment fee payable by the Employer, the Employer is effectively only charged for the net revenue which has been lost by the Scheme.

In the following examples, the date on which Premium would have been payable allows for the statutory two-month period that the Employer has to lodge their Wage declarations plus another month in which to pay the Premium Demand issued by the Scheme Agent at the end of this period. Where a Scheme Agent can readily identify the exact date when Premium would have been payable for previous Policy periods, then that date must be used to calculate the late payment fee.

Examples

The following examples do not apply to calculations made under section 175(4). Section 175(4) applies if the Employer has provided false or misleading information and, in this case, an amount equal to the Premium may be recovered in addition to the late payment fee. For illustration purpose only, the examples show the audit results over a five-year period, however, audits are currently only to be conducted for a three-year period and can only be extended with the approval of WorkCover.

Example 1

The Policy period is from 30 June to 30 June. Late payment fee charges commence at the end of the third month of the new Policy period. The Premium would have been payable on 30 September for each period.

The cumulative balance for each period is calculated by adding the total outstanding from the previous period and the amount outstanding for the current period, then applying the late payment fee.

	1999/00	2000/01	2001/02	2002/03	2003/04
Additional Premium owing	500	500	500	500	500
Cumulative balance with late payment fees	577	1,243	2,011	2,897	3,920

Additional Premium is payable for all Policy periods. The cumulative calculation of late payment fees results in an additional late payment fee of \$1,420.

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Example 2

The Policy period is from 31 August to 31 August. Late payment fee charges commence at the end of the third month of the new Policy period. The Premium would have been payable on 30 November for each period.

	1999/00	2000/01	2001/02	2002/03	2003/04
Additional Premium owing	500	500	- 500	- 500	500
Cumulative balance with late payment fees	577	1,243	857	412	1,052

The balance on which late payment fees are chargeable is reduced for the 2001/02 and 2002/03 Policy periods by the amount of Premium that was refundable for these periods. The net result is an additional late payment fee of \$552.

Example 3

	1999/00	2000/01	2001/02	2002/03	2003/04
Additional Premium owing	- 500	- 500	500	500	500
Cumulative balance with late payment fees	- 500	- 1,000	- 500		577

The Employer is due a refund for the first two Policy years audited and owes additional Premium for the remaining three periods. Premiums outstanding for the 2001/02 and 2002/03 Policy periods are offset against the amount owed to the Employer for the two earlier periods. Consequently, the Employer has no additional Premium owing until the final Policy period. Only at this time does the additional Premium begin to attract late payment fees.

Example 4

The Policy period is from 31 August to 31 August. Late payment fee charges commence at the end of the third month of the new Policy period. The Premium would have been payable on 30 November for each period. The employer has held a Policy with three different Scheme Agents during the period of the audit and has over-declared Wages for the 2001 to 2003 Policy periods.

For multiple Scheme Agent audits, each Scheme Agent should obtain a report summary sheet for the full period of the audit detailing the results for each Policy period and the relevant Scheme Agent on risk for the Policy period from the Wage auditor. If the audit summary report shows that there has been an under-declaration of Wages identified in any of the Policy periods audited – ie. a Premium refund is payable – each Scheme Agent should then calculate and process the Premium payable for each period of the audit for which they were on risk, together with the late payment fee owing from the date it became due to the current date.

If the audit summary report shows that there has been an over-declaration of Wages identified in any of the Policy periods audited (which would indicate a premium refund is payable), each Scheme Agent should then contact the relevant Scheme Agent to confirm the amount of the refund. The Scheme Agent should then calculate the Premium payable for each period of the audit for which they were on risk, together with the late payment fee owing from the date it became due to the current date taking into account the Premium refund where appropriate.

The objective of this example is to ensure that the amount of Premium due on which the late payment fee is chargeable is offset by any Premium refunds due to the Employer.

	1999/00	2000/01	2001/02	2002/03	2003/04
Additional Premium owing Scheme Agent A	500	500			
Cumulative balance	577	1,243	1234	1224	1412
Additional Premium owing Scheme Agent B			- 200	-200	
Cumulative balance			- 200	- 400	- 400
Additional Premium owing Scheme Agent C					500
Balance with late payment fee					577

In this example, Scheme Agent A processes audit results for the 1999 to 2001 periods together with late payment fees up 30 November 2002. Total debt is reduced by \$200 as at 30 November 2002 and late payment fees are calculated on the balance up until 30 November 2003. Total debt is further reduced by \$200 as at 30 November 2003 and ongoing late payment fees are calculated on the balance, up until the date the audit results were processed and charged, resulting in a total additional late payment fee of \$412.

Scheme Agent B charges no late payment fee, as Premium was overpaid for both Policy periods.

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Scheme Agent C charges the late payment fee for the year following the end of the Policy period.

Approval for not charging late payment fees

A Scheme Agent should contact the WorkCover Appeals Branch for advice where the circumstances of an individual Employer may be such that WorkCover approves not to charge the late payment fee. Such matters are assessed on a case-by-case basis. The terms of the *Premium and Debt Collection Manual* apply where an Employer seeks to waive any late payment fees.

Advice to Employer of late payment fees

To ensure that an Employer is aware of the potential additional debt prior to the receipt of a demand for additional Premium, a Scheme Agent must advise the Employer that late payment fees may be recoverable after their Wage records are audited.

The following wording must be incorporated into a letter of demand in respect of late payment fees:

‘The recent audit of your Wages has revealed that additional Premium is owing for the following Policy years: **(list Policy years)**. I advise that as a result of section 175 of the 1987 Act, a late payment fee of 1.2% per month, compounded monthly on all amounts of additional Premium which have not been paid, is payable.

The calculation of this late payment fee is based on the date on which this additional Premium first became due and payable. The total amount of the late payment fee owing is **(amount)**. The basis for the calculation of this fee is outlined below...’

Procedure where Employer fails to pay the late payment fee

In the event that an Employer fails to pay the late payment fee following the issue of a Premium Demand, a Scheme Agent is required to contact WorkCover’s Compliance Improvement Branch and request the issue of a certificate under section 175 of the 1987 Act, certifying the amount of late payment fee payable. This certificate can be used in any civil debt proceedings as proof of the debt.

Scheme Agents should also give consideration to offering an Employer extended payment arrangements to repay the Premium debt where circumstances are appropriate.

The charging of late payment fees is governed by the terms of the *Premium and Debt Collection Manual*.

References

Workers Compensation Act 1987, sections 172, 174, 174A, 175

Premium and Debt Collection Manual

Wage Audit Agreement

Operational instruction 2.11

Deed, Schedule 2, clauses 2.1.2, 2.1.3, 2.1.4

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