

# What is a Workplace Injury?

*Clearing up misconceptions about compensable WorkSafeBC injuries*

# Purpose

- I. To describe the circumstances when a member should file a claim for compensation with WorkSafeBC
- II. To describe the different types of injuries and other medical conditions which may be eligible for compensation from WorkSafeBC
- III. To describe other circumstances where compensation may be payable even if the member is not engaged in conventional work duties at the time of accident
- IV. To provide a high level overview of appeals
- V. Know when to contact WCB Advocate

# WorkSafeBC



- WorkSafeBC is an Crown agency falling under provincial jurisdiction and under the Ministry of Labour.
- No fault-insurance system providing coverage for most workers in British Columbia.
- Mandated to promote and enforce occupational health & safety, provide rehabilitation and compensation to the injured.
- WorkSafeBC enabled under the *Workers' Compensation Act* (British Columbia). A broad legal framework.
- The provincially-appointed Board of Directors create and change the binding policies of WorkSafeBC which form the *Rehabilitation Services and Claims Manual* (RSCM) Vol. I, II.

# When should you report an injury to WorkSafeBC?

## **A worker/employer should report to WorkSafeBC if a worker:**

- Is taken from or leaves the jobsite for treatment at a medical facility.
- Misses time from work after the day of the injury.
- Loses consciousness.
- Is diagnosed with a work-related disease.
- Develops symptoms of a mental health disorder related to work or the work environment.
- Suffers broken eyeglasses, dentures, hearing aid or artificial limb due to a work-related incident.
- Employers must immediately report serious incidents and fatalities.
- Note: Workers must report within one year of date of injury or diagnosis of disease or you may lose your right to claim compensation.

# Compensation vs. Prevention

- The WCB Advocate provides advice, assistance and representation to BCTF members on compensation matters.
- E.g. teacher involved in a workplace accident and suffers an injury, will complete and file a form 6 & 6A. Employer will complete and file a form 7. Physician will complete a form 8, 11.
- An Entitlement Officer or Case Manager will adjudicate whether to accept compensation claim or not.
- Compensation in the form of a financial or health care benefit, or both.
- Different from Prevention. Prevention Department has responsibility for matters such as refusal of unsafe work, Occupational Health & Safety Regulation, investigating fatalities and serious injuries, and worksite inspections.

# Compensation vs Prevention Cont.

- Every compensation decision of WorkSafeBC must apply a policy from the *Rehabilitation Services and Claims Manual (RSCM) Vol. II* (for injuries occurring on or after June 30, 2002).
- Binding, descriptive policies passed by the Board of Directors.

# Personal Injury

- Compensation is paid where a personal injury or death arising out of and in the course of the employment is caused to a worker.
- “Personal injury” is defined as any physiological change resulting from some cause. It may result from a specific incident or a series of incidents occurring over a period of time.

# Personal Injury Cont.

## **Examples**

- Wounds
- Fractures
- Concussions
- Physiological changes caused by explosion
- Sprains and strains
- Damaged cartilage or ligaments
- Dislocation of the bones at a joint
- Burns caused by a single incident of a chemical spilled on the skin



# Personal Injury Cont.

## “Arising Out of the employment”

- The focus is on whether the worker’s employment was of causative significance in the occurrence of the injury or death.

## “In the Course of the Employment”

- Refers to whether the injury or death happened at a **time** and **place** and during an **activity** consistent with the employment.

# Personal Injury Cont.

## **Factors**

1. On Employer's Premises
2. For Employer's Benefit
3. Instructions From the Employer
4. Equipment Supplied by the Employer
5. Receipt of Payment or Other Consideration from the Employer
6. During a Time Period for which the Worker was Being Paid or Receiving Other Consideration
7. Activity of the Employer, a Fellow Employee or the Worker
8. Part of Job
9. Supervision

# Mental Disorders

- Section 5.1 of the *WCA* sets out that a worker may be entitled to compensation for a mental disorder that does not result from an injury. This is distinct from a worker's entitlement under section 5(1) for psychological impairment that is a compensable consequence of an injury.

# Mental Disorders Cont.

- **Does the worker have a DSM diagnosed mental disorder?**
- **Was there one or more events, or a stressor, or a cumulative series of stressors?**
- **Was the event “traumatic” or the work-related stressor “significant”?**
- **Causation**
- **WCA Section 5.1(1)(c) Exclusions**

# Occupational Diseases

- Section 6 of the *WCA* provides that compensation is payable for occupational disease that is due to the nature of a worker's employment. Section 7 provides that compensation is payable for a certain level of non-traumatic noise-induced hearing loss that results from a worker's employment.
- Workers' compensation does not extend to all diseases, rather only to those that are due to a worker's employment. Determining the extent to which a worker's employment had a role in producing the disease becomes a critical or central issue.

# Occupational Diseases Cont.

## Examples

- A disability caused by the gradual absorption of a chemical through the skin, by inhalation, or otherwise.
- Cancer.
- Respiratory disease such as asbestosis.
- Contagious disease such as tuberculosis.
- Hearing loss that results from exposure to noise over a period of time or by infection is classified as a disease.
- A gradual deterioration in a worker's condition that results from exposure to vibrations over a period of time is classified as a disease.

# Compensable Consequences

- Once it is established that an injury arose out of and in the course of the worker's employment, the question arises as to what consequences of that injury are compensable.
  
- See: *RSCM Vol. II* Policy Item #22.00; 22.10; 22.20.; 22.30; 22.40

# Compensable Consequences Cont.

Looking at the matter broadly and from a "common sense" point of view, the Board considers whether the compensable injury, or the worker's condition resulting from the compensable injury, was of causative significance in the further injury, increased disablement, disease, or death. If the compensable injury, or the worker's condition resulting from the compensable injury, was of causative significance in the further injury, increased disablement, disease, or death, then the further injury, increased disablement, disease, or death is sufficiently connected to the compensable injury so that it forms an inseparable part of the compensable injury and is therefore also compensable.



# Other Compensable Events

- **Accident – Section 5(4) Presumption\***
  - **Pre-Existing Conditions or Diseases\*\***
  - **Replace or repair workers' artificial appliances, eyeglasses, dentures and hearing aids damaged or broken at work\*\*\***
- See: *RSCM Vol. II* Policy Item: \*14.20; \*\*16.00, 16.10; \*\*\*23.00; 23.10; 23.20;

# Case Study 1: Teachers' Participation in Extra-Employment Activities

## General Principle

*Workers' compensation coverage extends to extra-employment activities where the activities are connected to the worker's employment to such a degree they are considered part of that employment.*

- See: **RSCM Vol. II Policy Item #21.00** "Extra-Employment Activities"; **Practice Directive #C3-6** "Teachers' Participation in Extra-Employment Activities"

# Case Study 1 Cont.

## Factors to Consider

1. Did the injury occur on the employer's premises?
2. Did the injury occur while the worker was doing something for the benefit of the employer or the employer's business?
3. Did the injury occur in the course of action taken in response to instructions from the employer?
4. Did the injury occur while the worker was using equipment or materials supplied by the employer?
5. Did the injury occur while the worker was in the process of receiving payment or other consideration from the employer?
6. Did the injury occur during paid working hours?
7. Was the injury caused by an activity of the employer or a fellow employee?
8. Did the injury occur while the worker was performing activities that were part of the worker's job?
9. Did the injury occur while the worker was being supervised by the employer?

# Case Study 1 Cont.

## **Summary**

*A teacher's employment can extend beyond his or her primary task of teaching a particular subject. WorkSafeBC officers should consider and weigh all of the relevant factors to determine whether the teacher was in the course of employment while participating in an extra-employment activity.*

# Case Study 1 Cont.

- Scenario
- Please refer to handout(s) 1





# Case Study 2 Cont.

- 1. Was the parking lot provided by the employer?**
- 2. Was the parking lot controlled by the employer?**
- 3. Was the injury or death caused by a hazard of the parking lot?**
- 4. Did the injury or death occur on a parking lot that was contiguous to the place of employment?**
- 5. Did the injury or death occur proximal to the start or stop of a worker's shift?**

# Case Study 2 Cont.

- Scenario
- Please refer to handout(s) 2





# Caveats

- When making a decision to accept or deny a compensation claim for personal injury, the Board must apply a policy from the binding *Rehabilitation Services and Claims Manual Vol. II* (for injuries after June 30, 2002).
- The principal policy item is 14.00 “Arising Out of and in the Course of Employment”.
- Board officers less likely to consider other policies, such as 21.00 “Extra-Employment Activities”.
- Do not usually apply the non-binding Practice Directives when adjudicating.
- What are the repercussions of this?

# Appealing WorkSafeBC Decisions

- Every compensation decision of WorkSafeBC must apply a policy from the *Rehabilitation Services and Claims Manual (RSCM) Vol. II* (for injuries occurring on or after June 30, 2002).
- To resolve disagreements over financial and health care entitlements, an administrative tribunal system is established under the *WCA* with two levels of appeal. Lower appeal, the Review Division, and final level of appeal, the Workers Compensation Appeal Tribunal (WCAT)
- A WorkSafeBC claimant or their representative has the right to appeal most decisions of WorkSafeBC respecting entitlement to financial and health care benefits within the prescribed statutory time limits.

# Appealing WorkSafeBC Decisions Cont.

- You must file a Request for Review of a WorkSafeBC decision with the Review Division within 90 days of the decision date\*, otherwise you lose your right to appeal\*\*
- You must file a Notice of Appeal of a Review decision with WCAT within 30 days of the decision date\*, otherwise you lose your right to appeal\*\*
- Decisions of WCAT are final and binding, with few exceptions; may be reconsidered in limited circumstances or subject to judicial review in limited circumstances (e.g. see *Fraser Health Authority* decision (2014 BCCA 499)).
- \*With the 8-day mailing rule, the deadline is extended to 98 days & 38 days, respectively.
- \*\*Leave to file late may be granted if special circumstances exist and an injustice would otherwise result

# When to Contact the WCB Advocate

- ✓ Members are advised to contact office when they get a decision letter on claim acceptance or denial
- ✓ Any compensation-related questions or issues: e.g. whether to file a compensation claim, GRTW, advice on financial or health care entitlements, when you receive a decision letter, if you need to see a specialist or have a specialist opinion reviewed
- ✓ Always contact the WCB Advocate as soon as practicable when you receive a decision letter or Review decision that you do not understand, and/or which may require an appeal
- ✓ Member claimant will be requested to complete authorization forms so that I may access the claim file, review it, and provide appropriate advice on next steps.

# References

- *Rehabilitation Services and Claims Manual, Volume II*: <https://www.worksafebc.com/en/law-policy/claims-rehabilitation/compensation-policies/rehab-claims-volumeii>
- Practice Directives: <https://www.worksafebc.com/en/law-policy/claims-rehabilitation/practice-directives>
- Review Division: <https://www.worksafebc.com/en/review-appeal>
- WCAT: <http://www.wcat.bc.ca/>
- Report a workplace injury or disease: <https://www.worksafebc.com/en/claims/report-workplace-injury-illness>
- Report an unsafe workplace: <https://www.worksafebc.com/en/contact-us/departments-and-services/health-safety-prevention>
- BCTF WCB Advocacy: <https://bctf.ca/HealthAndSafety.aspx?id=4318>

# Contact

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Questions from the Audience?

