

## Workers' Compensation: *Understanding Your Rights*

WCB premiums are unavoidable--high assessments are not. Knowing how to manage WCB claims and costs and understanding your rights as a contractor can prevent you from being assessed costly premiums.

Workers' Compensation is the one payroll tax over which a measure of control is possible. Employers have no choice about WCB and pay assessments. But these assessments vary according to the employer's claims costs. This is where the element of control comes in. What follows is an overview of how the system works and how best to manage claims and costs.

What is an acceptable claim? The rules are complex, but here are some general guidelines which the WCB uses to determine eligibility. If these circumstances prevail, then the claim is probably acceptable:

- The injury occurred at the worksite
- The worker was carrying out the employer's instructions
- The worker was doing something for the benefit of the employer
- The worker was using the employer's equipment or material
- The worker was being paid for the activity

What starts a claim? The WCB system depends on forms for the information which will determine the outcome of a claim. Both the injured worker and the employer are required to complete WCB forms. Treat the Employer's Form like a million dollar cheque, because that is what a claim can cost. Take the time and trouble to fill out the Employers Form completely and accurately. If you do not think the claim is work-related, say so on the form. Attach a letter if you need more space. If your version of the injury or disease agrees with that of the worker, the claim will probably be paid. If you disagree with the worker's version and state this in writing, the WCB Claims Adjudicator must consider your information. The Adjudicator must also advise you in writing of the decision on the claim and the reasons for it. In the case of a disputed claim, it is best to have everything in writing.

Early investigation is important. All claims should be investigated immediately and thoroughly, when you first receive the report of the injury. This requires the following steps:

- Ensure that claims are reported promptly to the right person in management. Claims that are questionable in the early stages tend to become both controversial and expensive. Use the standard Employer's Report of Injury or Occupational Disease and pay close attention to the information requested.
- Arrange for the immediate investigation of all serious accidents and particularly those which are questionable accidents. The accident scene must be preserved and information gathered while the situation is still "fresh."

- If the claim seems odd, indicate on the form that you have concerns or don't agree with the worker's version. Print on the Form "This claim is protested." The WCB must then do its own enquiry.
- Carefully look into the worker's personnel file for information on previous pain or disability in the location of reported injury.
- Document any additional information gathered. • Submit the form promptly to avoid a possible WCB penalty.

#### How to investigate an accident

1. Have prepared a standard investigation kit that contains: Pencils and paper for sketching the accident scene and making notes • Measuring tape to measure distances • Polaroid camera
2. Visit the site of the accident. Use the simple tools in the investigation kit to record and preserve the "scene of the accident."
3. Interview the worker if possible. Ask: • What happened • When it happened • How it happened • Why it happened • Who was involved • Names of witnesses
4. Interview any witnesses. Ask them the same general set of questions and any others which follow logically.
5. Compare versions and follow up on relevant information.
6. Write up your report. Complete and send in the WCB Employer Form noting any concerns you have about the claim.
7. Send any additional information to the Claims Adjudicator. Stay active in the claim.
8. If you receive a decision that you do not agree with from the Claims Adjudicator, appeal. How to spot a problem claim Problem claims frequently have a number of common elements. You should watch for these kinds of situations:
  - Worker has multiple WCB claims. • Worker has poor performance record. • Worker is late in reporting the injury. • Worker has family problems which cause irregular attendance. • Worker has other personal problems. • Worker is difficult to contact while off on WCB. • Accident description does not seem plausible. • Poor relationship between worker and supervisor. • Poor labour relations on worksite. • Vague medical diagnosis.

The effectiveness of rehabilitation Early, effective rehabilitation can speed return to work, reduce associated wage loss costs and decrease the chance that a loss of earnings pension will be provided by the WCB. As these costs drop, so will your assessments. The goal of all rehabilitation is to return the worker to the worksite. Like any other business process, rehabilitation should be a planned activity. A California study of rehabilitation found that 84% of workers who completed

rehabilitation plans or programs returned to work, compared to only 45% who did not complete any programs.

How to facilitate return to work Current medical opinion recommends that the best treatment is the return to suitable work as soon as safely possible. A Graduated/Modified Return to Work refers to matching an injured worker's physical abilities with either a shorter work day, less strenuous work, or both. Depending on the circumstances, the worker either continues to be paid by the employer or receives payment from the WCB.

Using the appeal system The appeal system is under-used by employers. About 98% of all appeals are from workers. Employers have traditionally either not known about or not wanted to pursue claims appeals. This reluctance costs employers millions of dollars.

Appeal system roles As an employer you will either be the appellant--if you are appealing or the respondent --if you are responding to an appeal from a worker

When to appeal You should appeal if you think that a claim decision is wrong. Examples of claims you may wish to appeal are:

- The worker was hurt off the job
- The worker has only a minor injury and can work
- The wage loss has gone on for too long
- The worker is not cooperating with a return to work program
- A disability pension is unwarranted
- A loss of earnings pension is unwarranted
- A pension amount is too high

How to proceed with the appeal In Alberta, a claims appeal may be made to the Claims Services Review Committee or the Appeals Commission. The Claims Services Review Committee (CSRC) is an internal appeal body operated by the WCB. It hears appeals from the WCB's Claimant Services. The Appeals Commission is an external appeal body which hears appeals from the CSRC. There is a one year limit on appeals to both bodies. Advise the WCB you wish to appeal and they will send you the proper form. You need to ask for an oral hearing or request a documentary review which is usually faster. Understand the issues under appeal if a worker is appealing. Get the claim file and summarize your arguments in writing. Mark relevant pages so they can be found quickly. Depending on the complexity of the issues and the amount of money involved, you may wish to hire a consultant to help you prepare your case. Finally, learn about the WCB system before an urgent need arises so that you have enough basic knowledge to decide what you need to do in various common situations.

*Article by Grant MacMillan*

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## Claim Rights for Alberta Employers

The Workers' Compensation Act and approved policies provide employers with many rights to have their claims administered, often with limited or no benefits charged against their accident experience. Section 49 of the Act indicates that if an injured worker's actions or conduct introduce delays in the recovery process, then benefits can be reduced or suspended. This would apply in circumstances such as when recommended treatment or medical examinations have not been attended.

Even if benefits have been paid to an injured worker, the employer may request that the WCB provide cost relief for those specific benefits. Section 89(2) of the Act outlines the rights of an employer to have claims costs transferred to the account of another employer, when it was the negligence of that employer (or their workers) that led to an injury. For example, should an improperly erected scaffold be the cause of your employee's injury and if the scaffold erection was the responsibility of another contractor, then an application for cost transfer can be made. Complete information including the name of the responsible contractor will need to be provided.

There are many other opportunities to apply for cost relief, based on the WCB's policy statement ADJ-3. Examples include limiting costs charged to an accident experience, based on an employee's pre-existing conditions. This applies to all injuries. For example, a worker who sprains his back at work would be expected to return to work in just a few weeks. If the employer is aware, however, that the worker has had previous back surgery, it should be brought to the attention of the WCB Case Manager, who will have a Medical Advisor review the case and provide an opinion.

Cost relief may be available to the company beyond the normal recovery period. For example, if it is determined that the pre-existing condition extended the recovery period by two months, two months of claims costs would be removed from the employer's account. Cost relief is also applicable in circumstances such as second injuries incurred during treatment or should there be an extensive delay in admission to hospital.

Due to the significant impact claims experience has on premiums paid to the Board, employers should become aware of these rights. One dollar charged against an employer's accident experience can equate to several dollars paid to the Workers' Compensation Board in assessments over the three year period for which a claim is charged to an employer's account. For this reason, knowing and exercising your rights is important in these days when employer accountability is becoming more important than ever before.

Employers can further limit their claims costs through: pre-employment medical and functional screening; effective modified duties programs; accident management techniques; health and safety programs; and increased worker training, awareness and cooperation.

