

WHAT YOU NEED TO KNOW ABOUT PERSONAL INJURY LAWSUITS BY WORKSAFEBC

WORK SAFE BC

WORKING TO MAKE A DIFFERENCE
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INTRODUCTION

The *Workers Compensation Act* of British Columbia provides for the payment of compensation benefits if:

- (1) You are an injured worker or the dependant of a fatally injured worker; and
- (2) The injury or death in question has arisen out of and in the course of employment.

In exchange for this right to compensation, you cannot sue any employer or worker whose connection to the accident arose out of and in the course of employment at the time of the accident [see Part I of the *Workers Compensation Act* (the Act)].

A worker's injury or death may, however, result from the fault of a person who is not an employer nor a worker acting in the course of employment. We refer to such a person as a "third party." Injury may occur as a result of such things as a motor vehicle accident, an assault, a defective product, or a slip and fall.

This document describes the decisions you, as the injured worker or dependant, must make when a third party is involved.

Note: *It's not possible to fully describe every third-party situation in a document of this size. If you have questions, or wish to discuss your case, contact WorkSafeBC for assistance.*

THE RIGHT TO CHOOSE

Where injury or death is caused by or contributed to by a third party, you must make a choice (under Section 10 of the Act). You may either sue the third party for damages or claim compensation under the Act. You must make this choice within 90 days of the injury or death, although WorkSafeBC can extend this time period.

If you choose to claim compensation, you should complete the enclosed Election form. If you choose to sue, you can still protect your right to compensation in case your lawsuit is unsuccessful. To do so, file a Form 6 (Application for Compensation and Report

of Injury or Occupational Disease) within one year of the accident, along with a letter advising us that you are suing a third party.

If you require additional information to help you make this decision, please contact WorkSafeBC.

IF YOU CHOOSE TO CLAIM COMPENSATION

When you elect to claim compensation, your compensation claim will be adjudicated and, if accepted, you'll receive the benefits payable under the Act. If you elect to claim compensation, you transfer your right to sue to WorkSafeBC, which means that WorkSafeBC will determine whether or not to sue the third party. You cannot claim compensation and bring your own action against the third party. Should WorkSafeBC decide not to sue, your entitlement to compensation benefits will not be affected.

IF YOU CHOOSE TO SUE

When you decide to sue the third party, no compensation benefits are initially payable to you by WorkSafeBC. You may negotiate your own settlement, or hire a lawyer and instruct that lawyer on how the case is to be conducted. Any money you receive from the third party will belong to you, and your lawyer's legal fees will be your responsibility. If, however, you're unsuccessful in your action or you recover less money than the compensation benefits would have been, you may still receive compensation benefits, provided that you filed a Form 6 within one year of the injury or death. Any settlement between you and the third party must have the prior written approval of WorkSafeBC, if you want to apply for compensation benefits.

IF WORKSAFEBC CHOOSES TO SUE

If WorkSafeBC decides to sue, it normally uses a lawyer in WorkSafeBC's Legal Services Department. The legal processes undertaken by WorkSafeBC's lawyer are the same as those pursued by an independent lawyer. The difference

is that the WorkSafeBC lawyer takes instruction from WorkSafeBC and not from you. WorkSafeBC will control the decision to settle or press on with the lawsuit. You will, however, be a fully active participant in the proceedings and be kept informed of the progress of the action.

Deductions from amounts recovered from the third party

If the action is settled with the third party or proceeds are recovered through trial, the money will be paid directly to WorkSafeBC. Under the Act, WorkSafeBC is required to deduct certain amounts from those proceeds prior to paying any excess to you. The amounts deducted by WorkSafeBC may include:

- (1) Any wage-loss benefits paid by WorkSafeBC on your claim
- (2) Any medical aid paid by WorkSafeBC on your claim
- (3) Any pension reserve established on your claim
- (4) Any vocational rehabilitation costs paid by WorkSafeBC on your claim
- (5) Any miscellaneous costs (e.g., transportation paid by WorkSafeBC on your claim)
- (6) Any administration charges
- (7) Any payments made for the legal expenses of the lawsuit

Some of these items are self-explanatory. Items 3, 6, and 7, however, require some explanation.

The excess that remains after the various deductions are made is paid to you on the understanding that the payment is to be taken into account should you have any further entitlement to benefits under the claim. In other words, if the compensation claim is re-opened in the future, WorkSafeBC will pay additional benefits only after the value of those benefits equals the excess monies already received by you. Benefits on a new or separate claim are not affected.

Deductions for pension reserves

A pension may be paid by WorkSafeBC where a worker suffers a permanent disability as a result of a compensable injury or industrial disease. A pension

may also be paid to dependants when a worker dies of a compensable injury or industrial disease. A reserve is established by WorkSafeBC to fund future payments of such pensions. The amount of that reserve is deducted from any settlement or court award received by WorkSafeBC from the third party.

Deductions for administration costs

Under the *Workers Compensation Act*, where the amount of the out-of-court settlement or court award exceeds the amount of compensation paid by WorkSafeBC, WorkSafeBC must deduct an administration charge prior to paying the excess to the claimant. The administration charge is a percentage of the compensation benefits payable by WorkSafeBC on the claim, including the total amount of the pension reserve. The percentage is charged not against the entire settlement or court award but against only the compensation benefits. The administration charge also includes a minimum fee for smaller cases.

The percentage used in calculating the administration charge varies from year to year and is set by WorkSafeBC's Finance Department at the beginning of the year.

Deductions for legal costs

The legal expenses that WorkSafeBC deducts from the excess consist of the costs associated with suing, including the costs of issuing and serving legal documents, medical reports, witness fees, and so on. Most of these costs will be recovered from the third party to the action as part of the settlement or court award. You won't be required to pay for WorkSafeBC lawyer's time. However, if WorkSafeBC retains an external lawyer, that lawyer's legal fees will be deducted from the excess. Where the action brought by WorkSafeBC is unsuccessful, you are not liable for any of the costs.

TO CLAIM BENEFITS

If you wish to claim benefits from WorkSafeBC, complete the Election form that is included with the letter and submit it to WorkSafeBC.

