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## VOLUME I CHAPTER 1

### SCOPE OF VOLUME I OF THIS MANUAL

#### #1.00 INTRODUCTION

~~This manual sets out the provisions of the *Workers Compensation Act*, regulations made under the Act, and the policies of the Governors in relation to claims for compensation for employment injuries and diseases. The manual covers the major issues discussed below.~~

Effective June 30, 2002, the *Workers Compensation Act* was amended by the *Workers Compensation Amendment Act, 2002* (“*Amendment Act, 2002*”). The amendments changed the law in relation to compensation benefits for injured workers. For convenience, the law and policy as they were immediately before being changed will be called the former provisions and the law and policy after the changes will be called the current provisions. Volume I of this Manual sets out the former provisions. Volume II of this Manual sets out the current provisions.

Unless otherwise stated, “*Act*” in Volume I of this Manual refers to the *Workers Compensation Act*, as it read immediately before June 30, 2002. The *Interpretation Act*, RSBC 1996, Chapter 238, applies to the *Act*, unless a contrary intention appears in either the *Interpretation Act* or the *Act*.

Section 35.1 of the *Act*, as amended by the *Amendment Act, 2002*, contains the following transitional rules:

1. Except as noted in items 3, 4, and 5, the former provisions apply to an injury that occurred before June 30, 2002.
2. The current provisions apply to an injury that occurs on or after June 30, 2002.
3. Subject to the transition rule respecting recurrences (item 4), if an injury occurred before June 30, 2002, but the first indication that it is permanently disabling occurs on or after June 30, 2002, the current provisions apply to the permanent disability award with two modifications:

- (i) 75% of average earnings (former provisions) is used for calculating the award rather than 90% of average net earnings (current provisions), and
- (ii) no deduction is made for disability benefits under the Canada Pension Plan (former provisions).

Under this transitional rule, for an injury that occurred before June 30, 2002, where the first indication of permanent disability also occurs before June 30, 2002, the permanent disability award will be adjudicated under the former provisions. Where the first indication of permanent disability is on or after June 30, 2002, the award will be adjudicated under the current provisions, using the modified formula described in items (i) and (ii) above. The determination of when permanent disability first occurs will be based on available medical evidence.

An example of when this transitional rule applies is where a worker, injured before June 30, 2002, shows no signs of permanent disability before that date. However, on or after June 30, 2002, the worker has surgery, which first causes permanent disability. The permanent disability award will be adjudicated under the current provisions, using the modified formula.

- 4. If an injury occurred before June 30, 2002, and the disability recurs on or after June 30, 2002, the current provisions apply to the recurrence.

This transitional rule only applies to a recurrence. A recurrence is to be distinguished from a deterioration. An example of a recurrence is where there has been total recovery from a disability and wage-loss payments have been terminated. Subsequently, there is a recurrence of the disability and the claim is reopened. An example of a deterioration is where a disability award has been assessed and the disability subsequently worsens.

- 5. Regardless of the date of injury or death, the current provisions on indexing apply to compensation paid on or after June 30, 2002. In the case of fatalities, the current provisions are the same as the former provisions. Indexing of retroactive awards payable before June 30, 2002, will be based on the former provisions.

Volume I of this Manual covers the major issues discussed below.

## **#1.10 The Persons Covered by the Act Act**

Not everyone is entitled to compensation under the ~~Act~~ **Act**, even if injured at work. To qualify for compensation, a person must be a "worker" employed by an employer covered by the ~~Act~~ **Act**. (1) Where a compensable injury or disease results in the worker's death, certain of the worker's relatives are entitled, but they must usually have been "dependants" during the worker's lifetime. (2)

## **#1.20 The Conditions under which Compensation is Payable**

Not all injuries or diseases are compensable. The ~~Act~~ **Act** prescribes the type of injuries (3) and diseases (4) and the circumstances in which they are compensable. (5) Thus, for example, in the case of injuries, compensation is limited to personal injuries arising out of and in the course of employment. (6)

## **#1.30 The Type and Amount of Compensation**

There are a variety of types of compensation provided under the ~~Act~~ **Act**:

1. payments to compensate the injured worker for loss of earnings caused by a temporary disability; (7)
2. ~~pensions~~**permanent disability awards** for actual or estimated loss of earnings; (8)
3. pensions to dependants for loss of support by a deceased worker; (9)
4. health care benefits; (10)
5. rehabilitation assistance. (11)

## **#1.40 Charging of Claims Costs**

The cost of compensation is normally charged to the employer rate group to which the worker's employer belongs. The cost may also affect the employer's experience rating. There are special provisions which relieve the rate group and/or the employer in certain situations. (12)

## **#2.00 WORKERS' COMPENSATION BOARD**

The Workers' Compensation Board is a corporation set up under the ~~Act~~ **Act** to administer the provisions of the ~~Act~~ **Act**. (13) The ~~Act~~ **Act** defines the word "Board" as the Workers' Compensation Board. (14) The use of the word "Board" throughout this ~~Manual~~ means the Workers' Compensation Board.

The Governors of the Board consist of one governor who is the Chairman, five governors representative of workers, five governors representative of employers, and two governors representative of the public interest. In addition, the Chief Appeal Commissioner and the President/C.E.O. are non-voting governors. (15) Both the Chief Appeal Commissioner, who is responsible for the operation of the Appeal Division, and the President/C.E.O., who is responsible for the day-to-day operation of the Board, are appointed by the Governors of the Board. The use of the word "Governors" throughout this manual means the Governors of the Board.

The Governors approve and superintend the policies of the Board, including policies respecting compensation, assessment, rehabilitation and occupational safety and health. (16)

## **#2.10 Jurisdiction over Claims Adjudication**

The Board has exclusive jurisdiction to inquire into, hear, and determine all matters and questions of fact and law arising under the ~~Act~~ **Act**, and the action or decision of the Board thereon is final and conclusive and is not open to review in any Court. (17) Thus, the Board has sole jurisdiction over the adjudication of claims for compensation under the ~~Act~~ **Act**. This jurisdiction is primarily exercised through the Board's Claims Adjudicators, Claims Officers, Disability Awards Officers, and Adjudicators in Disability Awards, (18) with appeals being available to the review board, the Appeal Division, and, in cases where a medical decision is made, to a Medical Review Panel. (19)

The ~~Act~~ **Act** authorizes the Board to issue rules, regulations, orders, and directives for its due administration. These rules, regulations, orders, and directives are promulgated by the Governors, and they constitute the working rules of the system. These rules are reviewed from time to time by the Governors.

## ~~#2.20 Other Functions of the Board~~

~~A brief summary of the Board's functions other than claims adjudication is set out below.~~

### ~~#2.21 Assessments of Employers~~

~~The economic theory underlying workers' compensation is that the risk of economic loss through personal injury or occupational disease resulting from employment should be borne by industry, and the cost considered as part of the costs of production. Thus, the funds which the Board needs to make compensation payments and meet its other obligations under the Act are provided from assessments levied on employers by the Assessment Department of the Board.~~

~~Employers covered by the Act are divided into sectors and rate groups. The assessment rate for each rate group is fixed according to the principles of collective liability. This means that the cost of all the claims in each rate group is spread over all the employers in that rate group with each firm contributing to that cost in the ratio borne by its payroll to that of the group. (20) This basic principle is however modified by a system involving assessment adjustments based on each firm's individual experience rating.~~

### ~~#2.22 Prevention~~

~~A primary function of the Board is the prevention of injuries and occupational diseases. To this end, the Act authorizes the Board to make regulations for the prevention of injuries and occupational diseases in employments and places of employment. (21)~~

~~The regulations place primary responsibility on employers to develop, implement, and maintain a program which prevents injuries and diseases in the workplace. The Prevention Division enforces the regulations and promotes health and safety at work. Its main job is to inspect work premises throughout the province to check compliance~~

with the regulations. A breach of these regulations may be met by an order to remedy the breach, (22) a penalty assessment against the employer, (23) or prosecution of the employer and/or the employer's workers.

The Board also issues and enforces regulations relating to first aid. (24)

### ~~#2.23 — Criminal Injury Compensation~~

Under the ~~Criminal Injury Compensation Act~~ victims of crimes or their immediate family members are entitled to apply to the Board for compensation. (25) While the adjudication of claims under the ~~Criminal Injury Compensation Act~~ is performed by the Workers' Compensation Board, it is different from the adjudication of claims under the ~~Workers Compensation Act~~. Information relating to criminal injury compensation benefits can be obtained from any office of the Board.

There may be cases where the crime is also a work injury or death. Where victims or immediate family members seek benefits under both Acts, they cannot claim under the ~~Criminal Injury Compensation Act~~ benefits to which they are entitled under the ~~Workers Compensation Act~~. (26) To the extent that there is duplication, benefits are payable under the ~~Workers Compensation Act~~.

## NOTES

- (1) Chapter 2
- (2) Chapter 8
- (3) Chapter 3
- (4) Chapter 4
- (5) Chapters 3 and 4
- (6) Chapter 3
- (7) Chapter 5
- (8) Chapter 6
- (9) Chapter 8
- (10) Chapter 10
- (11) Chapter 11
- (12) Chapter 17
- (13) S.1 S.80
- (14) S.1
- (15) S.81
- (16) S.82
- (17) S.96(1)
- (18) Chapter 12
- (19) Chapter 13
- ~~(20) Chapter 17~~
- ~~(21) S.71(1)~~
- ~~(22) S.71(2)~~
- ~~(23) S.73; #115.20~~
- ~~(24) S.70~~
- ~~(25) S.2(1), *Criminal Injury Compensation Act*~~
- ~~(26) Ibid, S.5(3)~~