



Policy, Regulation and Research Division

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Update 2019 – 5

**TO: HOLDERS OF THE *PREVENTION MANUAL***

This update of the *Prevention Manual* contains amendments in the *Manual* implemented since update 2019 – 4.

The revised pages are amendments for:

- Item D1-107-1 *Application of the Act and Policies*

A summary is attached and the amended pages are included as part of the package effective **July 1, 2019**.

These amended pages and the complete manual are available at [http://www.worksafebc.com/regulation\\_and\\_policy/default.asp](http://www.worksafebc.com/regulation_and_policy/default.asp).

Ian Shaw  
Senior VP and General Counsel

Attachments

***PREVENTION MANUAL***  
**Transmittal Sheet for Update 2019 – 5**

<b>Check As Done</b>	<b>Remove Old Pages Numbered/Titled:</b>	<b>Insert New Pages Numbered/Titled:</b>
<input type="checkbox"/>	D1-107-1	Pages 1 to 3

**RE: Application of the Act and Policies****ITEM: D1-107-1**

## **BACKGROUND**

### **1. Explanatory Notes**

Decision-making at the Workers' Compensation Board is governed by the *Workers Compensation Act*.

Section 82(1)(a) of the *Act* authorizes the Board of Directors to set and revise the Board's policies. These policies are of broad general application and provide further direction to the Board in dealing with individual matters.

Section 99(2) of the *Act* requires the Board to make decisions based upon the merits and justice of the case, but in so doing to apply a policy of the Board of Directors that is applicable in the case.

The purpose of the POLICY in this Item is to provide direction regarding the interaction between the application of the *Act* and the policies made under the *Act* and the consideration of the individual circumstances of the case.

The POLICY does not comment on documents issued under the authority of the President/Chief Executive Officer of the Board. That is a matter for the President/Chief Executive Officer to address.

### **2. The Act**

Section 82(1)(a):

The board of directors must ... set and revise as necessary the policies of the board of directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety ....

Section 99(2):

The Board must make its decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in that case.

## **POLICY**

In making decisions, the Board must take into consideration:

1. the relevant provision or provisions of the *Act*,
2. the relevant policy or policies in this *Manual*; and
3. all facts and circumstances relevant to the case.

By considering the relevant provisions of the *Act*, the relevant policies, and the relevant facts and circumstances, the Board ensures that:

1. similar cases are adjudicated in a similar manner;
2. each participant in the system is treated fairly; and
3. the decision-making process is consistent and reliable.

Section 99(2) of the *Act* provides that:

The Board must make its decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in that case.

Section 99(2) requires the Board to make all its decisions based on the merits and justice of the case. In making decisions, the Board must take into account all relevant facts and circumstances relating to the case before it, including the worker's individual circumstances. This is required, among other reasons, in order to comply with section 99(2) of the *Act*. In doing so, the Board must consider the relevant provisions of the *Act*. If there are specific directions in the *Act* that are relevant to those facts and circumstances, the Board is legally bound to follow them.

Section 99(2) also requires the Board to apply a policy of the Board of Directors that is applicable to the case before it. The policies reflect the obligations and discretion delegated to the Board under the *Act*. Each policy creates a framework that assists and directs the Board in its decision-making role when certain facts and circumstances come before it. If such facts and circumstances arise and there is an applicable policy, the policy must be applied. Where the *Act* and policy provide for Board discretion, the Board is also required to exercise the discretion based upon the merits and justice of the case, in accordance with the *Act* and applicable policy.

All substantive and associated practice components in the policies in this *Manual* are applicable under section 99(2) of the *Act* and must be applied in decision-making. The term “associated practice components” for this purpose refers to the steps outlined in the policies that must be taken to determine the substance of decisions. Without these steps being taken, the substantive decision required by the *Act* and policies could not be made.

References to business processes that appear in policies are only applicable under section 99(2) of the *Act* in decision-making to the extent that they are necessary to comply with the rules of natural justice and procedural fairness. The term “business processes” for this purpose refers to the manner in which the Board conducts its operations. These business processes are not intrinsic to the substantive decisions required by the *Act* and the policies.

If a policy requires the Board to notify an employer, worker, or other workplace party before making a decision or taking an action, the Board is required to notify the party if practicable. “If practicable” for this purpose means that the Board will take all reasonable steps to notify, or communicate with, the party.

This policy is not intended to comment on the application of practice directives, guidelines and other documents issued under the authority of the President/Chief Executive Officer of the Board. The application of those documents is a matter for the President/Chief Executive Officer to address.

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<b>EFFECTIVE DATE:</b>	July 1, 2019
<b>AUTHORITY:</b>	ss. 82(1)(a) and 99(2), <i>Workers Compensation Act</i>
<b>CROSS REFERENCES:</b>	
<b>HISTORY:</b>	July 1, 2019 – Amendments to emphasize the obligation of the Board to base its decisions upon the merits and justice of the case and delete references to Board officers. Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
<b>APPLICATION:</b>	This policy applies to decisions on or after July 1, 2019.

