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October 2020

Update 2020 – 5

TO: HOLDERS OF THE *PREVENTION MANUAL*

This update of the *Prevention Manual* contains amendments implemented since update 2020 – 04.

The revised pages are amendments for:

- Item P2-17-1, *Assignment of Board Authority*
- Item P2-17-3, *Certificate of Recognition Program*
- Item P2-97-1, *OHS Injunctions*

A summary is attached and the amended pages are included as part of the package, effective **October 21, 2020**.

These amended pages and the complete manual are available at <https://www.worksafebc.com/en/law-policy/occupational-health-safety/ohs-policies>

Ian Shaw
Head of Law & Policy

Attachments

PREVENTION MANUAL
Transmittal Sheet for Update 2020 – 5

Check As Done	Remove Old Pages Numbered/Titled:	Insert New Pages Numbered/Titled:
<input type="checkbox"/>	P2-17-1	Pages 3 to 4
<input type="checkbox"/>	P2-17-3	Pages 1 to 3
<input type="checkbox"/>	P2-97-1	Pages 1 to 2 and 5

Section 19(1):

Subject to sections 288 and 289 [*matters that may be appealed to appeal tribunal*], the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined under the OHS provisions, and the action or decision of the Board on those matters and questions is final and conclusive and is not open to question or review in any court.

Section 319:

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

Section 320(1):

The board of directors must set and supervise the direction of the Board.

POLICY

The Board of Directors will exercise the following powers and responsibilities as set out in the OHS provisions of the *Act*:

- make recommendations to the minister under section 17(2)(l);
- make inquiries into matters referred by the minister under section 17(2)(m);
- comply with directions of the Lieutenant Governor in Council under section 17(2)(o);
- enter into formal agreements and arrangements with other agencies and governments covered by section 18(2);
- make and amend Board regulations;
- grant exemptions from the application of the OHS provisions of the *Act* under section 13; and
- approve policies under the OHS provisions of the *Act* (section 319).

The President/Chief Executive Officer (CEO) has the authority to exercise the remaining powers and responsibilities described in the OHS provisions of the *Act* and authority over claims cost levies (section 251). The President/CEO also has the authority to assign these powers and responsibilities to divisions, departments, categories of officers or individual officers of the Workers' Compensation Board.

President/CEO assignments will state whether the assignee has the authority to further assign the power or responsibility or whether it must be exercised personally.

The powers and responsibilities described in the OHS provisions of the *Act* and section 251 must be exercised in accordance with the policies of the Board of Directors.

PRACTICE

The assignments of the President/CEO will be in writing and publicly available.

EFFECTIVE DATE:	October 21, 2020
AUTHORITY:	Sections 17, 19, 319, and 320 of the <i>Act</i> .
CROSS REFERENCES:	
HISTORY:	<p>October 21, 2020 – Amended to remove assignment of authority to approve prosecutions to the President/CEO, because of repeal of obligation in the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23 of 2020), in effect August 14, 2020.</p> <p>April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i>, R.S.B.C. 2019, c. 1.</p> <p>March 24, 2010 – Amended to address authority over claims cost levies and make other minor wording changes.</p> <p>March 3, 2003 – Consequential changes subsequently made to restatement of then section 113(1) to implement the <i>Workers Compensation Amendment Act (No. 2), 2002</i>.</p> <p>February 11, 2003 – References to Panel of Administrators replaced by references to Board of Directors to reflect the <i>Workers Compensation Amendment Act, 2002</i>.</p> <p>October 1, 1999 – Item developed to implement the <i>Workers Compensation (Occupational Health and Safety) Amendment Act, 1998</i>.</p>
APPLICATION:	Applies on or after October 21, 2020.

RE: Certificate of Recognition Program**ITEM: P2-17-3**

BACKGROUND

1. Explanatory Notes

The Certificate of Recognition Program is a voluntary employer certification program intended to motivate employers to take a proactive role in occupational health and safety.

2. The Act

Section 14, in part:

- (1) The purpose of the OHS provisions is to benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from work-related risks to their health and safety.
- (2) Without limiting subsection (1), the following are the specific purposes of the OHS provisions:
...
 - (f) to foster cooperative and consultative relationships between employers, workers and others regarding occupational health and safety, and to promote worker participation in occupational health and safety programs and occupational health and safety processes;...

Section 17, in part:

- (1) In accordance with the purposes of OHS provisions, the Board has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.
- (2) In carrying out its mandate, the Board has the following duties, functions and powers:
...

- (c) to provide services to assist joint committees, worker health and safety representatives, employers and workers in maintaining reasonable standards for occupational health and safety and occupational environment;

...

- (e) to encourage, develop and conduct or participate in conducting programs for promoting occupational health and safety and for improving the qualifications of persons concerned with occupational health and safety and occupational environment;

...

- (k) to cooperate and enter into arrangements and agreements with governments and other agencies and persons on matters relating to the Board's responsibilities under the OHS provisions;

...

Section 107:

- (1) The Board may charge a class or subclass with the cost of investigations, inspections and other services provided to the class or subclass for the prevention of injuries and illnesses.
- (2) A charge under subsection (1) may be levied on the class or subclass by way of an assessment.

Section 239, in part:

- (1) The Board must continue and maintain the accident fund
 - (a) for payment of compensation, outlays and expenses under the compensation provisions,
 - (b) for payment of expenses incurred in, the Board's administration of this Act, ...

...

Section 247, in part:

- (1) The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class, as the Board considers just.

- (2) If the Board considers that a particular industry or plant is circumstanced or conducted such that the hazard or cost of compensation differs from the average of the class or subclass to which the industry or plant is assigned, the Board
- (a) must establish a special rate, differential or assessment for that industry or plant to correspond with the relative hazard or cost of compensation of the industry or plant, and
 - (b) for the purpose referred to in paragraph (a), may also adopt a system of experience rating.

...

POLICY

See Item AP5-247-4 of the *Assessment Manual* for the policy.

EFFECTIVE DATE:	January 1, 2019
AUTHORITY:	Sections 14, 17, 107, 239, and 247 of the <i>Act</i> .
CROSS REFERENCES:	Item P2-95-1, <i>Criteria for Imposing OHS Penalties</i> , of the <i>Prevention Manual</i> ; Item AP5-247-4, <i>Certificate of Recognition Program</i> , of the <i>Assessment Manual</i> .
HISTORY:	October 21, 2020 – Housekeeping amendments to the <i>Act</i> portion of the Background section to reflect amendments to the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2019 – The revisions to the COR policy approved by BOD Resolution No. 2018/11/22-01 on November 22, 2018 apply to all decisions made on or after January 1, 2019, except for financial incentive decisions relating to a violation of the <i>Act</i> or <i>OHSR</i> that occurred before January 1, 2019. The interim policies continue to apply to those financial incentive decisions relating to violations of the <i>OHSR</i> occurring before January 1, 2019. November 22, 2017 – Interim policy extended to December 31, 2018. October 31, 2016 – Interim policy extended to December 31, 2017. February 15, 2016 – Interim policy in effect until October 31, 2016.
APPLICATION:	This policy applies to all decisions made on or after January 1, 2019, except for financial incentive decisions relating to a violation of the <i>Act</i> or <i>OHSR</i> that occurred before January 1, 2019. The interim policies continue to apply as if unexpired in respect of a financial incentive decision relating to a violation of the <i>Act</i> or <i>OHSR</i> that occurred before January 1, 2019.

RE: OHS Injunctions**ITEM: P2-97-1**

BACKGROUND

1. Explanatory Notes

Section 97 of the *Act* provides that the Board (operating as WorkSafeBC) can apply to the Supreme Court of British Columbia (the “Court”) for an injunction to: (a) restrain a person, including a corporation, from committing a violation; (b) require a person to comply with the *Act*, *OHSR* or an order; and (c) restrain a person from carrying on an industry, or an activity in an industry for an indefinite or limited period or until the occurrence of a specified event.

When WorkSafeBC applies to the Court for an injunction, a judge will decide whether or not to grant it.

If a person fails to comply with an injunction and is found to be in contempt of court, they may face a fine, jail sentence or other terms imposed by the Court.

2. The Act

Section 97:

- (1) On application of the Board and on being satisfied that there are reasonable grounds to believe that a person
 - (a) has contravened or is likely to contravene the OHS provisions, the regulations or an order, or
 - (b) has failed to comply with, or is likely to fail to comply with, the OHS provisions, the regulations or an order,the Supreme Court may grant an injunction,
 - (c) in the case of paragraph (a), restraining the person from continuing or committing the contravention,
 - (d) in the case of paragraph (b), requiring the person to comply, and
 - (e) in the case of paragraph (a) or (b), restraining the person from carrying on an industry, or an activity in an industry, within the scope of the compensation provisions for an indefinite or limited period or until the occurrence of a specified event.

- (2) If subsection (1)(e) applies and the person referred to in that provision is a company or corporation, under that provision may be made restraining the following persons:
- (a) an individual who is a member of the board of directors of a company as a result of having been elected or appointed to that position;
 - (b) a person who is a member of the board of directors or other governing body of a corporation other than a company, regardless of the title by which that person is designated;
 - (c) the chair or any vice chair of the board of directors or other governing body of a corporation, if that chair or vice chair performs the functions of the office on a full-time basis, regardless of the title by which that person is designated;
 - (d) the president of a corporation, regardless of the title by which that person is designated;
 - (e) any vice president in charge of a principal business unit of a corporation, including sales, finance or production, regardless of the title by which that person is designated;
 - (f) any officer of a corporation, whether or not the officer is also a director of the corporation, who performs a policy-making function in respect of the corporation and who has the capacity to influence the direction of the corporation, regardless of the title by which that person is designated;
 - (g) a person who is not described in any of paragraphs (a) to (f) of this subsection but who performs the functions described in any of those paragraphs, and who participates in the management of a company or corporation, other than a person who
 - (i) participates in the management of the company or corporation under the direction or control of a shareholder or a person described in any of paragraphs (a) to (f),
 - (ii) is a lawyer, accountant or other professional whose primary participation in the management of the company or corporation is the provision of professional services to the corporation,
 - (iii) is, if the company or corporation is bankrupt, a trustee in bankruptcy who participates in the management of the company or corporation or exercises control over its property, rights and interests primarily for the purposes of the administration of the bankrupt's estate, or

PRACTICE

The President's Assignment of Authority states that injunction applications must be approved by WorkSafeBC's President/Chief Executive Officer. WorkSafeBC lawyers apply to the Court for the injunction. The Court then decides whether to grant an injunction.

Applications Without Notice

WorkSafeBC's normal practice is to provide notice whenever possible before the application is made.

Although the *Act* states that injunction applications may be made without notice, this will be done rarely and generally only in circumstances of extraordinary urgency. Court decisions state that there must be a very significant reason to proceed without notice to the other party.

EFFECTIVE DATE:	December 1, 2011
AUTHORITY:	Section 97 of the <i>Act</i> .
CROSS REFERENCES:	Sections 21(1)(b), 89, 90, and 91 of the <i>Act</i> ; Section 2.4 of the <i>OHSR</i> .
HISTORY:	October 21, 2020 – Housekeeping amendments to the Explanatory Notes and <i>Act</i> portion of the Background section to reflect amendments to the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. May 27, 2015 – Housekeeping amendments to Background Section and explanatory note under the first (a) in the policy, to reflect changes to the <i>Act</i> . Policy in effect December 1, 2011.
APPLICATION:	This policy is applicable to all decisions to pursue an injunction made after the effective date.

