

COMPENSATION PRACTICE AND QUALITY DEPARTMENT

PRACTICE DIRECTIVE # C12-2

TOPIC:	Violations of the Act: Agreements to Forego Benefits and Employers Preventing Reporting
ISSUE DATE:	December 17, 2001 (formerly PD#26) (Amended April 26, 2013)

Objective

This practice directive is intended to provide guidance to WorkSafeBC officers, specifically officers who adjudicate or administer claims, on how to deal with complaints arising from a suspected violation of the *Workers Compensation Act* (the “Act”) when an employer persuades or attempts to persuade a worker into giving up their right to claim compensation benefits or to not report an injury, disease, death, or hazardous condition to WorkSafeBC.

Law & Policy

Section 13(1), *Compensation Cannot be Waived*, in Part 1 of the *Act* states that a worker may not agree with his or her employer to waive the right to make a claim or to waive his or her right to compensation benefits that he or she may become entitled to, and any such private agreement is invalid.

Section 177, *Employer or supervisor must not attempt to prevent reporting*, found in Part 3 of the *Act*, prohibits an employer from engaging in claim suppression activities. Specifically, it provides that an employer or a supervisor must not, in any way, attempt to prevent a worker from reporting an injury, disease, death or hazardous condition to the Board. This section is not concerned with whether the injury, disease, or death, was one arising out of and in the course of employment or is otherwise compensable.

Rehabilitation Services and Claims Manual, Volume II (“RSCM Vol. II”) Policy items #47.11, *Agreements to Waive or Forego Benefits* and #94.20, *Employer or Supervisor Must Not Attempt to Prevent Reporting*, provide further guidance.

For example, policy item #47.11, *Protection of and Deductions from Benefits*, found in Chapter 7 of the RSCM Vol. II references Section 13 of the *Act*, and states in part that it:

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“... is applicable whether a contract [or an agreement to waive or forego benefits] provides in express terms that no benefits under the *Act* are payable to a worker of the employer, or whether it seeks to achieve the same objective by more subtle means, such as by describing the parties as independent contractors in circumstances in which the relationship is, in substance, one of employment. ... Where there is any suggestion that section 13 has been violated, the claim should be referred immediately to a Director.”

Procedures

Investigations of complaints arising under either Section 13(1) or Section 177 of the *Act* are the responsibility of WorkSafeBC's Field Investigations, and specifically the Fraud Prevention and Awareness Department.

Adjudication of section 177 complaints is the responsibility of the Investigations Section of Worker and Employer Services Division (WES), assisted by the Compliance Section. All other provisions under Part III are the responsibility of the Investigations Division.

When a WES claims officer receives a complaint or encounters a situation that may involve a violation of either section, the officer should report the details of the suspected violation to his or her Director and Manager. If it appears to the Director and/or the Manager that the matter relates to:

- **fraud** (including Section 13(1) and Section 177 violations as well as claim costs suppression), then he or she should:
 - **email** the Fraud Prevention and Awareness Department at 'FRAUDINFO (SM)' or FRAUDINFO@worksafebc.com; or
 - **call** the Fraud Tip Line at (604) 276-3229 (or local 1211); or call toll-free 1 (877) 523-3315.

The Fraud Prevention and Awareness Department will review the information and will investigate the matter. If the matter does not concern an issue within the Field Investigations Department mandate, the information will be directed accordingly.

- **any other potential Part III violation**, it should be referred to **Prevention Services** for investigation. The Director or Manager can either:

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- **call** the 'Prevention Line' at (604) 276-3100 (or local 3100), and speak with the Prevention Officer of the day who will log the enquiry into the 'Action Request' system. A "call back" can be requested by the Director or Manager;
- **e-mail** the 'Action Requests (SM)' with the pertinent details of the (suspected) violations, including the name and location of the employer;
- **contact** the responsible Regional Prevention Manager's administrative assistant; the administrative assistant will then complete a 'E074 - Action Request' form with the pertinent details provided by the Director or Manager.

Alternatively, the WES claims officer, after speaking with their Director and/or Manager, can complete the 'E074 – Action Request' themselves (which should include the officer's contact details and the pertinent details of the suspected violations).

If it is determined by Prevention Services that the matter should be investigated, an Occupational Safety Officer or Occupational Health Officer will be assigned and, if necessary, liaise with the WES claims officer.

CROSS REFERENCES:

See RSCM Vol. II, Policy item #47.11, *Agreements to Waive or Forego Benefits* and #94.20, *Employer or Supervisor Must Not Attempt to Prevent Reporting*.

HISTORY:

This practice directive replaced Practice Directive #26, *Part 3 Violations-Guidelines for Claims Staff* which was amended on December 17, 2001 (housekeeping changes only) whereby all numbered practice directives were consolidated under the relevant *Rehabilitation Services and Claims Manual* ("RSCM") chapter. This practice directive was further amended on April 26, 2013 to update policy references and reflect current corporate practice.

APPLICATION:

This item is intended to clarify existing corporate practice.