WORK SAFE BC

Policy, Regulation and Research Division

Mailing Address
PO Box 5350 Stn Terminal
Vancouver BC V6B 5L5

Location
6951 Westminster Highway
Richmond BC

Telephone 604 276-5160
Fax 604 279-7599

March 10, 2021 Update 2021 – 3

TO: HOLDERS OF THE *REHABILITATION SERVICES & CLAIMS MANUAL* – VOLUME II

This update of the *Rehabilitation Services & Claims Manual* contains amendments in the *Manual* implemented since update 2021 – 2.

This update contains minor formatting changes as well as housekeeping amendments to non-policy sections of the following policies:

- Table of contents
- Policy item #8.10, *Admission of Federal Government Employees*
- C3-12.00, *Personal Injury*
- C3-12.10, *Entitlement for Federal Government Employees*
- C3-12.20, *Commencement and Termination of the Employment Relationship*
- C3-14.10, *Serious and Wilful Misconduct*
- C3-14.20, *Accident – Section 134(3) Presumption*
- C3-14.30, *Hazards Arising from Nature*
- C3-17.00, *Deviations from Employment*
- C3-18.10, *Clothing and Footwear*
- C3-19.00, *Work-Related Travel*
- C3-19.10, *Worker-Owned Tools and Equipment*
- C3-20.00, *Employer-Provided Facilities*
- C3-22.10, *Compensable Consequences – Travel*
- C3-22.30, *Compensable Consequences – Psychological Impairment*
- C3-23.00, *Replacement and Repair of Personal Possessions – Section 161(1)*
- C3-23.10, *Section 161(1)(a) – Artificial Appliances*
- C3-23.20, *Section 161(1)(b) – Eyeglasses, Dentures and Hearing Aids*
- C3-23.30, *Section 161(1) – Wage-Loss Benefits During the Replacement or Repair Period*
- C4-27.00, *Activity-Related Soft Tissue Disorders ("ASTDs") of the Limbs*

- C4-27.10, *Establishing Work Causation for ASTDs of the Limbs*
- C4-32.00, *Other Matters*
- Policy item #49.13, *Application of Section 231(2) in Cases of Temporary Disability*
- C8-53.10, *Compensation on the Death of a Worker − Definitions − Meaning of "Spouse"*
- C11-88.10, *Vocational Rehabilitation − Work Assessments*
- C11-88.20, *Vocational Rehabilitation − Work Site and Job Modification*
- C13-101.00, *Reviews and Appeals – Review Division – Practices and Procedures*
- C13-102.00, *Reviews and Appeals – Workers' Compensation Appeal Tribunal*
- C14-102.01, *Changing Previous Decisions – Reopenings*
- C14-104.01, *Changing Previous Decisions – Fraud and Misrepresentation*
- Policy item #111.50, *Third Party Claims - Federal Government Employees*
- Policy item #112.40, *Injuries Occurring Outside British Columbia - Federal Government Employees*
- Policy item #113.20, *Occupational Diseases*
- Policy item #114.40, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*

A summary is attached and the amended pages are included as part of the package effective **March 10 2021**.

These amended pages and the complete manual are available at http://www.worksafebc.com/regulation_and_policy/default.asp.

Ian Shaw
Head of Law & Policy

Attachments

Rehabilitation Services & Claims Manual, **Volume II**

SUMMARY OF AMENDMENTS – Update 2021 – 3

Table of Contents	Pages i to ii and xvii to xx	Updated
Chapter 2	Pages 7 to 8	Policy item #8.10, housekeeping amendment
Chapter 3	Pages 3 to 4	C3-12.00, housekeeping amendment
	Pages 1 to 4	C3-12.10, housekeeping amendment
	Pages 1 to 2	C3-12.20, housekeeping amendment
	Page 3	C3-14.10, housekeeping amendment
	Pages 1 to 2	C3-14.20, housekeeping amendment
	Pages 1 to 2	C3-14.30, housekeeping amendment
	Page 5	C3-17.00, housekeeping amendment
	Pages 1 to 2	C3-18.10, housekeeping amendment
	Pages 7 to 8	C3-19.00, housekeeping amendment
	Pages 1 to 2	C3-19.10, housekeeping amendment
	Pages 3 to 4	C3-20.00, housekeeping amendment
	Pages 3 to 4	C3-22.10, housekeeping amendment
	Pages 1 to 2	C3-22.30, housekeeping amendment
	Page 3	C3-23.00, housekeeping amendment
	Page 3	C3-23.10, housekeeping amendment
	Pages 3 to 4	C3-23.20, housekeeping amendment
	Pages 1 to 2	C3-23.30, housekeeping amendment
Chapter 4	Page 3	C4-27.00, housekeeping amendment
	Page 5	C4-27.10, housekeeping amendment
	Page 5 to 6	C4-32.00, housekeeping amendment
Chapter 7	Pages 19 to 20	Policy item #49.13, housekeeping amendment
Chapter 8	Pages 1 to 3	C8-53.10, housekeeping amendment
Chapter 11	Pages 1 to 2	C11-88.10, housekeeping amendment
	Pages 1 to 2	C11-88.20, housekeeping amendment
Chapter 13	Pages 1 to 2	C13-101.00, housekeeping amendment
	Page 3	C13-102.00, housekeeping amendment
Chapter 14	Pages 3 to 4	C14-102.01, housekeeping amendment
	Pages 1 to 2	C14-104.01, housekeeping amendment
Chapter 16	Pages 9 to 10	Policy item #111.50, housekeeping amendment
	Page 17	Policy item #112.40, housekeeping amendment

Chapter 17	Pages 1 to 4	Policy item #113.20, housekeeping amendment
	Pages 13 to 24	Policy item #114.40, housekeeping amendment

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

LIST OF APPENDICES

#8.10 Admission of Federal Government Employees

The *Government Employees Compensation Act* grants "employees" of the Federal Government usually employed in the province the same rights to compensation as non-Federal employees. The definition of "employee" is given in section 2 of the *Government Employees Compensation Act*, and takes the form of five alternative definitions which are as follows:

> "(a) any person in the service of Her Majesty who is paid a direct wage or salary by or on behalf of Her Majesty,
>
> (b) any member, officer or employee of any department, corporation or other body that is established to perform a function or duty on the Government of Canada's behalf who is declared by the Minister with the approval of the Governor in Council to be an employee for the purposes of this *Act*,
>
> (c) any person who, for the purpose of obtaining employment in any department, corporation or other body that is established to perform a function or duty on the Government of Canada's behalf, is taking a training course that is approved by the Minister for that person,
>
> (d) any person who is employed by any department, corporation or other body that is established to perform a function or duty on the Government of Canada's behalf, who is on leave of absence without pay and, for the purpose of increasing the skills used in the performance of their duties, is taking a training course that is approved by the Minister for that purpose, and
>
> (e) any officer or employee of the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer, office of the Conflict of Interest and Ethics Commissioner, Parliamentary Protective Service or office of the Parliamentary Budget Officer;".

This definition is wide enough to cover most Federal employees, whether employed directly by the Government or by some statutory body. For example, it covers post office workers. The definition also includes certain persons taking training courses relating to their employment with the Government.

Any person appointed by authority of the Chief Electoral Officer and the *Canada Election Act* to prepare for and hold a Federal election is considered as an employee of the Federal Government for the purposes of the *Government Employees Compensation Act*. This definition includes Returning Officers,

Election Clerks, Enumerators, Stenographers, Typists, Poll Clerks and a Constable.

Effective November 10, 1976, employees of the Bank of Canada are considered employees under the *Government Employees Compensation Act*.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

The following are examples of personal injuries:

1. Wounds.
2. Fractures.
3. Concussions.
4. Physiological changes caused by explosion.
5. Sprains and strains.
6. Damaged cartilage or ligaments.
7. Dislocation of the bones at a joint.
8. Burns caused by a single incident of a chemical spilled on the skin.

The following are examples of diseases:

1. A disability caused by the gradual absorption of a chemical through the skin, by inhalation, or otherwise.

2. Cancer.

3. Respiratory disease such as asbestosis.

4. Contagious disease such as tuberculosis.

The following are examples of physiological changes that can be classified as either an injury or a disease, depending on the circumstances:

1. Infections. An infection incidental to a compensable injury is treated as part of the injury, otherwise it is classified as a disease.

2. Hearing loss. Hearing loss that results from an explosion is classified as an injury. Hearing loss that results from exposure to noise over a period of time or by infection is classified as a disease.

3. Disablement from Vibrations

   a) Instant disablement of a worker that results from vibrations of a traumatic nature, such as an explosion, is classified as an injury.

   b) Instant disablement of a worker, for example some sudden breakdown in the worker's system, that results from exposure to vibrations over a period of time, is classified as an injury.

   c) A gradual deterioration in a worker's condition that results from exposure to vibrations over a period of time is classified as a disease.

4. Heart Conditions

a) Physiological changes of the heart attributed to a specific event or cause, or to a series of specific events or causes are classified as injuries.

b) Physiological changes of the heart involving a gradual onset and not attributed to a specific event or cause, or to a series of specific events or causes, are classified as diseases.

EFFECTIVE DATE:	February 15, 2021
AUTHORITY:	Section 134(1) of the *Act.*
CROSS REFERENCES:	Item C3-22.30, *Compensable Consequences – Psychological Impairment*; Item C3-23.00, *Replacement and Repair of Personal Possessions – Section 161(1)*; Item C3-24.00, *Section 135 – Mental Disorders*; Item C3-24.10, *Section 135(2) – Mental Disorder Presumption*; Chapter 4, *Occupational Disease*; Item C4-25.10, *Has a Designated or Recognized Occupational Disease*, of the *Rehabilitation Services & Claims Manual*, Volume II. Schedule 1 of the *Act.*
HISTORY:	February 15, 2021 − Policy amended to provide guidance on injuries caused by overexertion during accustomed work. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy resulted from the consolidation of former policy items #12.00, #13.00, #13.10, #13.12, #13.20, and #14.20 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	Applies to all decisions made on or after February 15, 2021, respecting claims for injuries occurring on or after July 1, 2010.

RE: Entitlement for Federal Government Employees **ITEM: C3-12.10**

BACKGROUND

1. Explanatory Notes

This policy outlines the test for entitlement to compensation for personal injury or death of federal government employees working in British Columbia.

2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

Section 336:

> The Board may exercise any power or duty conferred or imposed on it by or under a statute of Canada or agreement between Canada and British Columbia.

3. Government Employees Compensation Act

Section 3:

(1) This Act does not apply to any person who is a member of the regular force of the Canadian Forces or of the Royal Canadian Mounted Police.

(2) This Act applies in respect of an accident occurring or a disease contracted within or outside Canada.

Section 4, in part:

(1) Subject to this Act, compensation shall be paid to

(a) an employee who

(i) is caused personal injury by an accident arising out of and in the course of his employment, or

(ii) is disabled by reason of an industrial disease due to the nature of the employment; and

(b) the dependants of an employee whose death results from such an accident or industrial disease.

(2) The employee or the dependants referred to in subsection (1) are, notwithstanding the nature or class of the employment, entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed respecting compensation for workmen and the dependants of deceased workmen, employed by persons other than Her Majesty, who

(a) are caused personal injuries in that province by accidents arising out of and in the course of their employment; or

(b) are disabled in that province by reason of industrial diseases due to the nature of their employment.

(3) Compensation under subsection (1) shall be determined by

(a) the same board, officers or authority as is or are established by the law of the province for determining compensation for workmen and dependants of deceased workmen employed by persons other than Her Majesty; or

(b) such other board, officers or authority, or such court, as the Governor in Council may direct.

...

Section 5:

(1) Where an employee is usually employed in Yukon or the Northwest Territories, the employee shall for the purposes of this Act be deemed to be usually employed in the Province of Alberta.

(2) Where an employee is usually employed in Nunavut, the employee shall for the purposes of this Act be deemed to be usually employed in the Province of Alberta.

Section 6:

> Where an employee, other than a person locally engaged outside Canada, is usually employed outside Canada, the employee shall for the purposes of this Act be deemed to be usually employed in the Province of Ontario.

POLICY

Compensation for personal injury or death arising out of and in the course of the employment of federal government employees is addressed in the *Government Employees Compensation Act* ("*GECA*").

The employees covered by the *GECA* are also discussed in policy item #8.10.

The phrase "by an accident" in section 4(1) of the *GECA* does not require that there be a clearly ascertainable incident or series of incidents which caused the injury. Injuries that arise gradually over time or "by process" are not excluded by this subsection. The injury itself can be the "accident" for the purpose of section 4 of the *GECA*. Thus, the test for entitlement of federal employees in British Columbia under section 4(1) of the *GECA* is, in effect, the same as the test for entitlement for other workers in British Columbia under section 134(1) of the British Columbia *Act*.

Section 4(2) of the *GECA* provides that notwithstanding the nature or class of their employment, federal government employees, or their dependants, are entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed. A federal government employee will be considered to be "usually employed" in British Columbia where appointed or engaged to work in British Columbia. In accordance with the *GECA*, federal government employees considered to be "usually employed" somewhere other than in British Columbia will not be covered by the British Columbia *Act*.

Section 3(2) of the *GECA* provides that the *GECA* applies to an accident occurring or a disease contracted within or outside Canada.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 134(1) of the *Act.*
CROSS REFERENCES:	Policy item #8.10, *Admission of Federal Government Employees*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

July 1, 2010 − The interpretation that the test for entitlement under section 4(1) of the *GECA* is equivalent to the test for entitlement under section 134(1) of the *Act* is based on Appeal Division Decision No. 92-0743.

APPLICATION: This item applies to all claims for injuries occurring on or after July 1, 2010.

RE: Commencement and Termination of the Employment Relationship **ITEM: C3-12.20**

BACKGROUND

1. Explanatory Notes

This policy provides guidance as to when the employment relationship commences and terminates for the purposes of determining whether a personal injury or death arises out of and in the course of a worker's employment.

2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

POLICY

The commencement and termination of an employment relationship for compensation purposes is not limited to the commencement or termination of a contract of service. A decision is made whether, having regard to the substance of the matter, an employment relationship had commenced or terminated for compensation purposes.

A person offering services to an employer will often be told to come back at a certain time in the future when work might be available. A person may also be promised a specific job but the commencement date may be specified some weeks or months ahead. Such persons would not normally become workers under the *Act* until they actually returned to the employer's premises at the future date for the commencement of work.

The fact that a worker has not commenced productive work is not a bar to compensation. For example, if an injury takes place while entering the employer's premises on the way to the first day of work, coverage may be extended before the necessary hiring formalities are complete or productive work commences.

Similarly, an employment relationship does not automatically terminate for compensation purposes when a contract of service is terminated by notice.

Workers may be eligible for compensation coverage for a reasonable period while winding up their affairs and leaving the employer's premises.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 134(1) of the *Act.*
CROSS REFERENCES:	Item C3-19.00, *Work-Related Travel* (Section B. Journeys to a Remote Worksite), of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy replaced policy items #17A.10 and #17A.20, of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	This item applies to all claims for injuries occurring on or after July 1, 2010.

D. Employer's Experience Rating

Where wage-loss benefits were paid between January 1, 1994 and September 27, 2002 on a claim where the injury is attributable solely to the serious and wilful misconduct of the worker, but resulted in death or serious permanent disablement, the cost of compensation paid after the first 13 weeks of wage-loss benefits is excluded from the employer's experience rating.

Where wage-loss benefits are paid on or after September 28, 2002 on a claim where the injury is attributable solely to the serious and wilful misconduct of the worker, but resulted in death or serious permanent disablement, the cost of compensation paid after the first 10 weeks of wage-loss benefits is excluded from the employer's experience rating.

If wage-loss benefits were not paid because the claim that was attributable solely to the serious and wilful misconduct of the worker resulted in immediate death, no costs are excluded from the employer's experience rating.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 134(2) of the *Act.*
CROSS REFERENCES:	Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*; Item C3-17.00, *Deviations from Employment*; Policy item #115.30, *Experience Rating Cost Exclusions*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy replaced former policy item #16.60, *Serious and Wilful Misconduct*, of the *Rehabilitation Services & Claims Manual*, Volume II. The number of weeks of wage-loss benefits that must be paid before the costs of compensation will be excluded from an employer's experience rating changed from 13 weeks to 10 weeks in former policy item #16.60 effective September 28, 2002.
APPLICATION:	This Item applies to all claims for injuries occurring on or after July 1, 2010.

RE: Accident – Section 134(3) Presumption **ITEM: C3-14.20**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for personal injury caused by accident.

2. The Act

Section 1, in part:

> **"accident"**, in relation to a worker, includes
>
> (a) a wilful and intentional act that is not the act of the worker, and
>
> (b) a fortuitous event occasioned by a physical or natural cause;
>
> ...

Section 134(3):

> The following apply in relation to an injury caused by accident:
>
> (a) if the accident arose out of the worker's employment, unless the contrary is shown, it must be presumed that the injury occurred in the course of that employment;
>
> (b) if the accident occurred in the course of the worker's employment, unless the contrary is shown, it must be presumed that the injury arose out of the employment.

POLICY

The definition of "accident" provided in the *Act* is not an exclusive definition of the term; the word has been interpreted in its normal meaning of a traumatic incident. It has not, for example, been extended to cover injuries resulting from a routine work action or a series of such actions occurring over a period of time.

Section 134(3) of the *Act* creates the following presumption for injuries resulting from an accident:

- Where an injury is caused by an accident that arose out of the worker's employment, unless the contrary is shown, it is presumed that the accident occurred in the course of that employment.

- Where an injury is caused by an accident that occurred in the course of the worker's employment, unless the contrary is shown, it is presumed that the accident arose out of that employment.

Where an injury occurs at work as a result of any traumatic experience or external cause, it is usually from an accident to which the presumption in section 134(3) applies. For injuries resulting from an accident, evidence is only needed to establish either that the injury arose out of the worker's employment or that it arose in the course of the worker's employment. The other component of the test is presumed, unless there is evidence to the contrary.

The standard of proof to be applied in determining whether the presumption has been rebutted is proof on a balance of probabilities. Balance of probabilities means "more likely than not." The presumption is rebutted if opposing evidence shows that the contrary conclusion is the more likely. The presumption is not rebutted because there is a lack of evidence to support an employment connection. Every reasonable effort is made to obtain all available evidence.

Where there is no "accident", the presumption in section 134(3) does not apply.

The broad interpretation given to the term "accident" for the purpose of section 4(1) of the *Government Employees Compensation Act*, R.S.C. 1985, c. G-5 does not apply to section 134(3) of the *Workers Compensation Act*.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 134(3) of the *Act.*
CROSS REFERENCES:	Item C3-12.10*, Entitlement for Federal Government Employees*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on legal issues of standard of proof, evidence, and causation. July 1, 2010 – This policy replaced former policy item #14.10 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting claims for injuries occurring on or after July 1, 2010.

RE: Hazards Arising from Nature **ITEM: C3-14.30**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for personal injury or death that is caused by a hazard arising from nature.

2. The Act

Section 1, in part:

> **"accident"**, in relation to a worker, includes
>
> (a) a wilful and intentional act that is not the act of the worker, and
>
> (b) a fortuitous event occasioned by a physical or natural cause;
>
> ...

Section 134:

> (1) If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.
>
> (2) As an exception to subsection (1), if the injury is attributable solely to the serious and wilful misconduct of the worker, compensation is not payable unless the injury results in the worker's death or serious or permanent disablement.
>
> (3) The following apply in relation to an injury caused by accident:
>
> (a) if the accident arose out of the worker's employment, unless the contrary is shown, it must be presumed that the injury occurred in the course of that employment;
>
> (b) if the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that the injury arose out of that employment.

POLICY

An injury or death may result from natural elements. For instance, a worker may be stung by an insect or plant or suffer from exposure to extreme weather conditions. An injury or death resulting from a natural element is considered to arise out of and in the course of a worker's employment where a particular activity required by the employment exposes the worker to these natural elements.

If an injury is caused by accident, the rebuttable presumption contained in section 134(3) of the *Act* applies.

The failure of a worker to wear protective clothing may in some cases be considered serious and wilful misconduct and grounds for denying a claim under section 134(2) of the *Act*.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Sections 134(1) to 134(3) of the *Act.*
CROSS REFERENCES:	Item C3-14.10, *Serious and Wilful Misconduct*; Item C3-14.20, *Accident – Section 134(3) Presumption*; Item C3-17.00, *Deviations from Employment*; Item C3-18.10, *Clothing and Footwear*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy resulted from the consolidation of former policy items #17.00, #17.10, #17.20 and #17.30 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	This item applies to all claims for injuries occurring on or after July 1, 2010.

are more than just an incidental intrusion into the personal life of the worker at the moment of the injury or death, the worker may be entitled to compensation.

The term “assault”, as used in this policy, includes sexual assault.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 134(1) of the *Act.*
CROSS REFERENCES:	Item C3-14.00, *Arising Out of and In the Course of a Worker’s Employment*; Item C3-14.10, *Serious and Wilful Misconduct*; Item C3-18.00, *Personal Acts*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2020 − This policy resulted from the consolidation of former policy items #16.00, #16.10, #16.20, #16.30, #16.40 and #16.50 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	This Item applies to all claims for injuries occurring on or after July 1, 2010.

RE: Clothing and Footwear **ITEM: C3-18.10**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for personal injury or death sustained by a worker resulting from clothing or footwear.

2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

POLICY

Changing clothes prior to starting or after finishing work is generally a prerequisite to work and therefore not normally part of a worker's employment.

However, where changing clothes on the employer's premises is a requirement of the job, such as the donning and removal of protective garments, an injury or death resulting from this activity may be considered to arise out of and in the course of a worker's employment.

Injuries or death resulting from the wearing of clothing or footwear may be considered to arise out of and in the course of a worker's employment where the employment activity was of causative significance to the injury or death *and* the clothing or footwear was required by the employer for the job.

If there is nothing in the employment activity which would reasonably cause an injury or death and that injury or death can be seen to be directly related to the ill-fitting nature of the clothing or footwear, the injury or death does not arise out of and in the course of a worker's employment.

It is irrelevant who purchased the clothing or footwear.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 134(1) of the *Act.*
CROSS REFERENCES:	Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*; Item C3-18.00, *Personal Acts*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy replaces former policy item #20.41 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	This Item applies to all claims for injuries occurring on or after July 1, 2010.

arise out of and in the course of the worker's employment, if no other factors demonstrate an employment connection.

Personal activities associated with and incidental to business trips, such as traveling, eating in restaurants, staying in overnight accommodations (including sleeping, washing etc.) are normally regarded as within the scope of a worker's employment where a worker is on a business trip.

On the other hand, when a worker makes a distinct departure of a personal nature while on a business trip, this may be regarded as outside the scope of the worker's employment. There is an obvious intersection and overlap between employment and personal affairs while a worker is on a business trip. However, a "distinct departure" is more than a brief and incidental diversion.

If a worker simply stops for a short refreshment break, this may be regarded as a brief and incidental diversion from the business trip and an employment connection may still be found. The employment connection may be broken where the injury or death occurs as a result of the worker's involvement in social or recreational activities that are not incidental to the business trip.

In the marginal cases, it is impossible to do better than weigh the business trip features of the situation against the personal features to reach a conclusion as to whether the injury or death arises out of and in the course of a worker's employment.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 134(1) of the *Act*.
CROSS REFERENCES:	Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*; Item C3-18.00, *Personal Acts*; Item C3-20.00, *Employer Provided Facilities*; Item C3-22.10, *Compensable Consequences – Travel*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy resulted from the consolidation of former policy items #18.00, #18.01, #18.10, #18.11, #18.12, #18.20, #18.21, #18.22, #18.30, #18.31, #18.32, #18.33, #18.40, #18.41 and #18.42 of the *Rehabilitation Services & Claims Manual*, Volume II. February 24, 2004 − Former policy item #18.31 was revised and applied to all decisions made on or after February 24, 2004, to clarify that compensation is provided to workers from leaving home until their return home, if the workers are required to make a special journey to the employer's premises or some other place where the job was to be done, because of an emergency or for some other reason, provided the workers do not deviate from their route.

APPLICATION: This Item applies to all claims for injuries occurring on or after July 1, 2010.

RE: Worker-Owned Tools and Equipment **ITEM: C3-19.10**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for personal injury or death sustained by a worker who provides his or her own tools or equipment for employment.

2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

POLICY

The fact that a worker is required to provide his or her own tools or equipment for a job does not mean that carrying or transporting the tools or equipment to work or away from work is part of the worker's employment. In most instances, injuries or death associated with carrying or transporting tools or equipment to or from work as part of a worker's regular commute do not arise out of and in the course of a worker's employment.

The carrying or transporting of tools or equipment may be sufficiently connected to the worker's employment where the worker's travel is not a regular commute and:

- the worker is a traveling employee; or
- the worker is on a business trip.

In such cases, an injury or death that results may be considered to arise out of and in the course of a worker's employment.

EFFECTIVE DATE: July 1, 2010
AUTHORITY: Section 134(1) of the *Act*.

CROSS REFERENCES: Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*;
Item C3-19.00, *Work-Related Travel*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
July 1, 2010 − This policy replaced former policy item #20.40 of the *Rehabilitation Services & Claims Manual*, Volume II.

APPLICATION: This Item applies to all claims for injuries occurring on or after July 1, 2010.

2. Was the parking lot controlled by the employer?

If the parking lot is controlled by the employer, this weighs in favour of coverage. If control does not exist, there may be other factors that demonstrate an employment connection.

Control of a parking lot is not determined only by whether the parking lot is owned or leased by an employer. In assessing if an employer controls a parking lot used by a worker, the Board may also consider whether the employer was responsible for the operation, maintenance, or repair of the parking lot, or had the ability to control access to the parking lot.

In the absence of other factors demonstrating an employment connection, an injury or death that occurs on a shopping centre or shopping mall parking lot designed primarily for customer use and not controlled by the individual employer of a worker would not normally be considered to arise out of and in the course of a worker's employment.

3. Was the injury or death caused by a hazard of the parking lot?

If the injury or death was caused by a hazard of the parking lot, this weighs in favour of coverage.

The term "hazard of the parking lot" is intended to limit acceptance to only injuries or death which have an employment connection. This serves to distinguish between injuries or death resulting from personal causes and those resulting from the employment. In effect, the type of injury or death that would qualify for acceptance if it occurred on a factory floor would also qualify for acceptance if it occurred in a parking lot. For example, a slip on a pool of oil or a trip over an obstruction would weigh in favour of coverage. On the other hand, workers who close their own car doors on their fingers would not have their claims allowed. There will also be injuries or death which are not a direct result of the parking lot which may be considered to arise out of and in the course of a worker's employment, such as a worker struck by a fellow employee's car while walking on the parking lot.

4. Did the injury or death occur on a parking lot that was contiguous to the place of employment?

The word "contiguous" is defined as meaning both adjacent to and attached to.

If the injury or death occurs on a parking lot that is contiguous to the place of employment, this weighs in favour of coverage. If the injury or death occurs on a non-contiguous parking lot under the direction, supervision or control of an employer, this also weighs in favour of coverage. In the absence of other factors demonstrating an employment connection, injuries or death that occur while workers make their way across and along public thoroughfares between the place of employment and the non-

contiguous parking lot are not normally considered to arise out of and in the course of a worker's employment.

5. Did the injury or death occur proximal to the start or stop of a worker's shift?

In the absence of other factors demonstrating an employment connection, a significant time gap between the time of the worker's injury or death and the start or stop of the worker's shift, does not weigh in favour of coverage.

C. Lunchrooms

Injuries or death occurring in lunchrooms may be considered to arise out of and in the course of a worker's employment if the lunchroom is provided by the employer. This does not extend to injuries or death sustained through eating food, unless the food was provided by the employer, and the worker was specifically required to eat the food provided by the employer, or the food was provided as part of the worker's remuneration.

An employment connection generally exists for traveling employees during normal meal breaks. However, an employment connection generally does not exist where a non-traveling worker chooses to have a coffee break in a coffee shop away from the employer's premises, rather than use the company facilities.

D. Medical Facilities

An injury or death that results from the use of medical or first aid facilities may be considered to arise out of and in the course of a worker's employment, where such facilities are provided by the employer.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 134(1) of the *Act*.
CROSS REFERENCES:	Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*; Item C3-18.00, *Personal Acts* (Section A. Lunch, Coffee and Other Breaks); Item C3-19.00, *Work-Related Travel*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy resulted from the consolidation of former policy items #19.00, #19.10, #19.20, #19.30, #19.31 and #19.40 of the *Rehabilitation Services & Claims Manual*, Volume II.

- traveling in relation to a referral by the attending physician to a specialist for a special examination or treatment (but not for a course of treatments);

- traveling for diagnostic imaging services or laboratory tests where this involves a special journey separate from any attendance for routine treatment;

- traveling to a social or rehabilitation agency in connection with assistance in the diagnosis, handling, treatment or care of medical or rehabilitation problems related to the compensable injury on referral by the attending physician, or by the Board;

- traveling on referral by a physician or qualified practitioner to another physician or qualified practitioner for a second opinion;

- traveling for a medical examination at the Board by prearranged appointment with the Board, or for a medical examination elsewhere approved by the Board in connection with a compensable injury;

- traveling to or from the Board for a prearranged appointment for the purpose of an enquiry, interview, discussion, or review in respect of a claim that has been accepted, or that is subsequently accepted; or

- traveling to or from a prearranged appointment at the Workers' Compensation Appeal Tribunal in respect of a claim that has been accepted, or that is subsequently accepted.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 134(1) of the *Act*.
CROSS REFERENCES:	Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*; Item C3-19.00, *Work-Related Travel*; Item C3-22.00, *Compensable Consequences*; Policy item #115.34, *Experience Rating Exclusions for Certain Compensable Consequences*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy replaced former policy item #22.15 of the *Rehabilitation Services & Claims Manual*, Volume II. February 1, 2004 − Former policy item #22.15 was amended to clarify that travel to the place of treatment is generally comparable to a regular

commute to work, but, where a worker is injured in the course of a special or exceptional journey for medical treatment, the further injury is compensable. Any further injuries or disablement are compensable on the basis that they arose out of and in the course of the employment. This amendment applied to all decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

APPLICATION: This Item applies to all claims for injuries occurring on or after July 1, 2010.

RE: Compensable Consequences – Psychological Impairment **ITEM: C3-22.30**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for psychological impairment as a compensable consequence of a worker's personal injury.

2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

POLICY

Psychological impairment may be accepted as compensable where the evidence indicates that it results as a consequence of an employment-related injury or occupational disease.

It cannot be assumed that a psychological impairment exists simply because the worker has unexplained subjective complaints or is having difficulty in psychologically or emotionally adjusting to any physical limitations resulting from a compensable injury or disease. There must be evidence that the worker has a psychological impairment.

The worker may be entitled to health care benefits for as long as the worker has a psychological impairment that is a compensable consequence of an injury accepted under section 134(1) or occupational disease accepted under section 136(1). When the psychological impairment is temporarily disabling, the worker is also entitled to wage-loss benefits under section 191 or 192 of the *Act*.

When the psychological impairment becomes permanent, it will be necessary to determine whether there is entitlement to permanent disability benefits. The decision-making procedure for assessing entitlement to permanent disability benefits for psychological impairment is found in policy item #39.01.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 134(1) of the *Act*.
CROSS REFERENCES:	Item C3-12.00, *Personal Injury*; Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*; Item C3-22.00, *Compensable Consequences*; Item C3-22.20, *Compensable Consequences – Pain and Chronic Pain*; Chapter 5 – Wage-Loss Benefits; Policy item #39.01, *Decision-Making Procedure under Section 195(1)*; Item C10-72.00, *Health Care – Introduction*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy replaced former policy item #22.33 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	This Item applies to all claims for injuries occurring on or after July 1, 2010.

Item C3-23.30, *Section 161(1) – Wage-Loss Benefits During the Replacement or Repair Period*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
July 1, 2010 − This policy replaced former policy item #23.00 and incorporates concepts from former policy items #23.10, #23.40 and #23.70 of the *Rehabilitation Services & Claims Manual,* Volume II.

APPLICATION: This Item applies to all claims for injuries occurring on or after July 1, 2010.

APPLICATION:	July 1, 2010 − Incorporates concepts from former policy items #23.30 and #23.40 of the *Rehabilitation Services & Claims Manual*, Volume II. This Item applies to all claims for injuries occurring on or after July 1, 2010.

Normally corroboration consists of the evidence of witnesses to the accident. However, where there are no such witnesses, other evidence that suggests that an accident had occurred will be considered. This may include a worker's spontaneous exclamation of the accident, the evidence of others who had overheard the exclamation, or other circumstantial evidence which suggests that an accident had occurred.

(b) Is the Board satisfied the worker was not at fault?

Any negligent or careless act or omission of the worker is weighed against the causative significance of the worker's employment in contributing to the breakage of the eyeglasses, dentures or hearing aids.

Minor lapses of attention are reasonable to expect from the average worker in the normal course of work and will not generally outweigh the employment aspects of the situation.

After weighing all the relevant factors, if the worker's negligence is considered more than a trivial or insignificant cause of the breakage, the worker is considered to be at fault, and the Board will not assume the responsibility of replacement or repair of the broken eyeglasses, dentures or hearing aids. Alternatively, if there is no negligence, or the worker's negligence is considered trivial or insignificant, the worker is not considered to be at fault, and the Board will assume responsibility for the necessary replacement or repair of the broken item.

EFFECTIVE DATE: July 1, 2010
AUTHORITY: Section 161(1) of the *Act*.
CROSS REFERENCES:
Item C3-12.00, *Personal Injury*;
Item C3-14.20, *Accident – Section 134(3) Presumption*;
Item C3-23.00, *Replacement and Repair of Personal Possessions – Section 161(1)*;
Policy item #97.00, *Evidence*;
Policy item #97.10, *Evidence Evenly Weighted*;
Policy item #97.20, *Presumptions*;
Policy item #97.30, *Medical Evidence*;
Policy item #97.31, *Matter Requiring Medical Expertise*;
Policy item #97.32, *Statement of Worker about Own Condition*;
Policy item #97.33, *Statement by Lay Witness on Medical Question*;
Policy item #97.34, *Conflict of Medical Opinion*;
Policy item #97.35, *Termination of Benefits*;
Policy item #97.40, *Permanent Disability Benefits*;
Policy item #97.50, *Rumours and Hearsay*;
Policy item #97.60, *Lies*;
Policy item #97.70, *Surveillance*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
July 1, 2010 − Incorporates concepts from former policy items #23.20, #23.30, #23.40, #23.50, and #23.60 of the *Rehabilitation Services & Claims Manual*, Volume II.

APPLICATION: This Item applies to all claims for injuries occurring on or after July 1, 2010.

RE: Section 161(1) – Wage-Loss Benefits During the Replacement or Repair Period **ITEM: C3-23.30**

BACKGROUND

1. Explanatory Notes

This policy provides guidance with respect to wage-loss benefits for a worker awaiting the repair or replacement of an artificial appliance, eyeglasses, dentures and hearing aids.

2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

Section 161(1):

> The Board may assume the responsibility of replacement and repair of the following for a worker:
>
> (a) artificial appliances, including artificial members damaged or broken as the result of an accident arising out of and in the course of the employment;
>
> (b) eyeglasses, dentures and hearing aids broken as a result of an accident arising out of and in the course of the worker's employment if
>
> (i) that breakage is accompanied by objective signs of personal injury to the worker, or
>
> (ii) where there is no personal injury, the accident is otherwise corroborated and the Board is satisfied the worker was not at fault.

Section 191(1), in part:

> … if a temporary total disability results from a worker's injury, the Board must pay the worker compensation…

Section 192(1), in part:

> … if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation…

POLICY

Wage-loss benefits are payable only where a compensable injury causes a period of temporary disability from work. Broken or damaged artificial appliances, eyeglasses, dentures or hearing aids are not personal injuries.

Section 161(1) does not provide authority for the Board to pay a worker wage-loss benefits when there is a delay in replacing the broken or damaged artificial appliance, eyeglasses, dentures or hearing aids and the only reason the worker is unable to work is because the worker is without the broken or damaged item. Similarly, it does not provide authority for the Board to pay wage-loss where the worker has to take time off from work in order to be fitted for the item or to pick it up when ready.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 161(1) of the *Act*.
CROSS REFERENCES:	Item C3-23.00, *Replacement and Repair of Personal Possessions – Section 161(1)*; Item C3-23.10, *Section 161(1)(a) – Artificial Appliances*; Item C3-23.20, *Section 161(1)(b) – Eyeglasses, Dentures and Hearing Aids*; Policy item #33.00, *Introduction*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy replaced former policy item #23.70 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	This Item applies to all claims for injuries occurring on or after July 1, 2010.

C. DEFINITIONS OF NERVE ENTRAPMENT AND TENDINOPATHY

The majority of the ASTDs discussed in this section can be classified as nerve entrapments or tendinopathies. A nerve entrapment occurs when nerve function is affected by mechanical anatomical factors that compress the nerve, such as, tight muscles or tendons, lesions, bony irregularities or swelling.

Tendinopathy is a generic descriptor of the clinical conditions in and around tendons, characterized by a combination of pain, swelling and impaired functioning. Tendinopathy encompasses tendinitis, which implies an inflammatory tendon condition, and tendinosis, which implies a degenerative tendon condition. The term tendinitis can be misleading because it is often used to describe all painful tendon conditions, even when there is a lack of inflammatory change.

EFFECTIVE DATE:	April 6, 2020
AUTHORITY:	Sections 134, 136, and 319 of the *Act.*
CROSS REFERENCES:	Item C3-12.00, *Personal Injury*; Item C4-25.10, Has a Designated or Recognized Occupational Disease, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 – This policy replaced sections 1 to 3 of former policy item #27.00, consequential to the implementation of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Former policy item #27.00 was amended to provide direction when adjudicating ASTD claims where the condition may be either an injury or a disease, and to further emphasize the importance for the Board to base its decisions on the merits and justice of the case. March 1, 2015 – Former policy item #27.00 provided guidance on adjudicating ASTDs generally. It incorporated language from former policy items #27.00, *Activity-Related Soft Tissue Disorders of the Limbs*, #27.11, *Bursitis*, #27.12, *Tendinitis and Tenosynovitis*, #27.20, *Tendinitis/Tenosynovitis and Bursitis Claims Where No Presumption Applies*, and #27.40, *Risk Factors*. The policy provided guidance on adjudicating ASTDs as either personal injuries or occupational diseases, included the definitions for “nerve entrapment” and “tendinopathy” and included guidance on factors relevant to establishing work causation of ASTDs and risk factors generally.
APPLICATION:	This Item applies to all decisions, including appellate decisions, made on or after April 6, 2020.

When assessing whether one of the above noted employment-related risk factors caused or contributed to the development of a worker's ASTD, the Board considers:

- the location of the anatomical structure affected (e.g. the elbow);
- the risk factors involved in the worker's employment activities;
- the muscle groups, tendons and joints involved in performing the worker's employment activities; and
- whether there is a biologically plausible connection between the employment activities and the development of the ASTD.

EFFECTIVE DATE:	April 6, 2020
AUTHORITY:	Sections 134, 136, and 137 of the *Act.*
CROSS REFERENCES:	Item C4-25.10, *Has a Designated or Recognized Occupational Disease* (Section C. *Recognition by Inclusion in Schedule 1*, and Section D. *Recognition by Regulation of General Application*); Item C4-25.20, *Establishing Work Causation*; Appendix 2, Schedule 1, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 – This policy replaced sections 4 and 5 of former policy item #27.00, consequential to the implementation of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Amendments include providing direction when adjudicating ASTD claims where the condition may be either an injury or a disease, and further emphasizing the importance of considering all of the relevant ASTD risk factors in a particular case, and for the Board to base its decisions on the merits and justice of the case. March 1, 2015 − Former policy item #27.00 provided guidance on adjudicating ASTDs generally. It incorporated language from former policy items #27.00, *Activity-Related Soft Tissue Disorders of the Limbs,* #27.11, *Bursitis*, #27.12, *Tendinitis and Tenosynovitis*, #27.20, *Tendinitis/Tenosynovitis and Bursitis Claims Where No Presumption Applies,* and #27.40, *Risk Factors*, of the *Rehabilitation Services & Claims Manual*, Volume II. This policy provided guidance on adjudicating ASTDs as either personal injuries or occupational diseases. The definitions of the terms nerve entrapment and tendinopathy were included. Guidance on factors relevant to establishing work causation of ASTDs and risk factors generally were included.
APPLICATION:	This Item applies to all decisions, including appellate decisions, made on or after April 6, 2020.

the nature of the employment; and . . . the dependants of an employee whose death results from such . . . industrial disease . . . are, notwithstanding the nature or class of such employment, entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed.

The meaning of "employee" is discussed in policy item #8.10. The place where an employee is usually employed is discussed in Item C3-12.10.

ii. Meaning of "Industrial Disease" under Government Employees Compensation Act

"Industrial Disease" is defined in section 2 of the *Government Employees Compensation Act* to mean "any disease in respect of which compensation is payable under the law of the province where the employee is usually employed respecting compensation for workmen and the dependants of deceased workmen".

The *Government Employees Compensation Regulations* created under section 8(1)(a) of that act provides that any employee who is disabled by reason of a disease that is not an occupational disease but is due to the nature of the employment and peculiar to or characteristic of the particular process, trade or occupation in which the employee is employed at the time the disease was contracted and the dependants of a deceased employee whose death is caused by reason of such a disease, are entitled to receive compensation at the same rate as they would be entitled to receive under the *Government Employees Compensation Act* if the disease were an occupational disease, and the right to and the amount of such compensation is determined by the same board, officers or authorities and in the same manner as if the disease were an occupational disease.

EFFECTIVE DATE:	January 1, 2021
AUTHORITY:	Section 136 of the *Act.*
CROSS REFERENCES:	Policy item #8.10, *Admission of Federal Government Employees*; Item C3-12.00, *Personal Injury*; Item C3-12.10, *Entitlement for Federal Government Employees*; Item C3-16.00, *Pre-Existing Conditions or Diseases*; Item C3-22.00, *Compensable Consequences*; Item C3-22.30, *Compensable Consequences – Psychological Impairment*; Item C3-22.40, Compensable Consequences – Certain Diseases and Conditions; Item C6-44.00, *Proportionate Entitlement*; Appendix 2, Schedule 1;

Appendix 3, *Permanent Disability Evaluation Schedule*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:

January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23).
April 6, 2020 – This policy resulted from the consolidation of former policy items #30.50, #30.70, #32.00, #32.10, #32.15, and #32.85. The principles set out in Section C. i. were derived from *Workers Compensation Reporter* series Decision No. 348 (1982), 5 W.C.R. 127.
February 1, 2020 – Former policy item #30.50 was amended to provide guidance on legal issues of evidence and causation.
May 29, 2014 – Former policy item #30.70 was consequentially amended as a result of *Miscellaneous Statutes Amendment Act, 2014* (Bill 17 of 2014).
January 1, 2007 – Former policy item #30.50 was revised, including to provide that a worker may be considered to have a permanent impairment where the worker is left with a significant underlying allergy or sensitivity and as a result the worker must avoid workplaces containing the sensitizing agent.
July 16, 2002 – Housekeeping change was made to former policy item #30.50.

APPLICATION:

Section A applies to all decisions, including appellate decisions, made on or after January 1, 2021, respecting claims where the worker was first disabled from earning full wages in accordance with section 6(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 or section 136 of the *Act*, on or after January 1, 2007.
Sections B, C, and D apply to all decisions, including appellate decisions, made on or after January 1, 2021.

Payments for the maintenance of the worker's home should normally be made to the person who is managing the property on the worker's behalf. The Board should not normally undertake the management of a worker's property.

4. Accumulation of balance

Wage-loss benefit payments may be "accumulated by the Board for payment to the worker on the worker's recovery". Any balance remaining after payments have been made under alternatives 1 to 3 set out above should be accumulated until the worker has recovered the capacity to manage personal affairs. The accumulations should then be paid to the worker either as a lump sum or, if this is in the worker's best interests, by instalments over a period of time.

AUTHORITY: Sections 231 and 232 of the *Act.*
CROSS REFERENCES: Policy item #48.30, *Worker Not Supporting Dependants*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 30, 2002 − Housekeeping changes consequential to implementing the *Workers Compensation Amendment Act, 2002*.
The principles for this policy were derived from *Workers Compensation Reporter* Series Decision No. 247 (1977), 3 W.C.R. 127.

#49.14 Application of Sections 231(2) and 231(3) in Cases of Permanent Disability

In the case of a worker entitled to permanent disability benefit payments who is receiving custodial care in a hospital or elsewhere, the Board may take any of the alternative courses of action set out in subsections 231(2)(b), 231(2)(c)(i), and 231(2)(c)(ii).The Board's priorities for dealing with these cases are set out below.

1. Worker able to use money for personal needs

Under section 231(2)(c)(i), permanent disability payments will in the first place be paid to the worker to the extent that the worker is capable of using them for personal needs. If a worker is capable of handling greater sums than required for personal needs, section 231(2)(c)(i) authorizes the Board to pay these greater amounts to the worker and this is the practice of the Board in the case of temporary disability. However, in the case of permanent disability, the exercise of this authority would conflict with the object of the section to prevent the accumulation of estates. It is not, therefore the Board's practice to pay more to the permanently disabled worker than required for personal needs.

2. Person dependent upon the worker for support

   Any balance remaining after the application of alternative 1 above will be applied for the benefit of any dependants of the worker according to the same principles as for temporary disability.

3. Maintenance costs

   Any balance remaining after the application of alternatives 1 and 2 above will be applied toward the cost of the worker's maintenance. This applies to the full cost of custodial care, not just the value of the worker's room and board. It only applies when the Board is paying the cost of maintenance as part of the costs of a compensation claim.

If a worker is conscious and compensation is being applied toward the cost of maintenance, the worker must receive a comfort allowance of a minimum amount which is subject to cost of living adjustments as described in policy item #51.20. The amount of this minimum is set out in policy item #49.10. Comfort allowance is interpreted to mean the monies payable to the worker under alternative 1 above which the worker is able to use for personal needs. The result is that if the worker is conscious, the minimum amount payable for personal needs is the amount set out in policy item #49.10.

Any balance remaining after payment of the cost of maintenance will be paid to the worker to the extent the worker is able to manage personal affairs. To the extent the worker is not able, it will be paid to the person who is best qualified to administer it under the terms of section 231(1) of the *Act*.

AUTHORITY:	Section 231 of the *Act*.
CROSS REFERENCES:	Policy item #49.10, *Worker Receiving Custodial Care in Hospital*; Policy item #49.13, *Application of Section 231(2) in Cases of Temporary Disability*; Policy item #51.20, *Dollar Amounts in the Act*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#49.15 Application of Section 231 on a Change of Circumstances

A situation may arise where the compensation of a worker receiving custodial care is being applied to the cost of maintenance, but the worker becomes able to leave the hospital and live at home. Section 231(2)(b) would then cease to have any application so that it would be necessary to resume periodic payment of the worker's permanent disability benefits. However, the worker would not be entitled to receive the payments previously applied to the cost of maintenance. If, following departure from custodial care, the worker remains incapable of handling personal affairs, consideration should be given to the application of section 231(1).

RE:	Compensation on the Death of a Worker − Definitions − Meaning of "Spouse"	ITEM:	C8-53.10

BACKGROUND

1. Explanatory Notes

This policy describes who is a "spouse" for the purposes of compensation as a result of a worker's death.

2. The Act

Section 1, in part:

> **"dependant"** – See Item C8-53.00.
>
> **"spouse"** means a person who
>
> (a) is married to another person, or
>
> (b) has lived with another person in a marriage-like relationship for
>
> (i) a period of at least 1 year, if the person has had a child with the other person, or
>
> (ii) a period of at least 2 years in any other case;
>
> **"surviving spouse"** means a person who was a spouse of a worker when the worker died;
>
> ...

Section 165, in part:

> (1) In this Division [Division 5 of Part 4 of the *Act* – Compensation in Relation to Death of Worker].
>
> …
>
> **"dependent spouse"**, in relation to a deceased worker, means a surviving spouse of the worker who is a dependant of the worker;
>
> …

POLICY

1. Meaning of Spouse

A "spouse" means a person who

(a) is married to another person, or

(b) has lived with another person in a marriage-like relationship for

(i) a period of at least 1 year, if the person has had a child with the other person, or

(ii) a period of at least 2 years in any other case.

The phrase "marriage-like relationship" is interpreted to mean a common-law relationship, and describes situations in which two people are living together in a regular and established way, sharing conjugal relations and a common household.

A person is not excluded from being a common-law spouse of one person simply because the person is legally married to another.

The phrase "had a child with the other person" means that children must be born of the relationship between the worker and the common-law spouse or be adopted by the worker and the common-law spouse. The fact that children have been brought into the relationship from a previous relationship is not sufficient. However, such children may have claims in their own right as children of the deceased, even if brought into the relationship by the common-law spouse.

2. Surviving Spouse

A surviving spouse is a person who was a spouse of a worker when the worker died. A surviving spouse may be a married spouse or a common-law spouse of a worker.

EFFECTIVE DATE: March 1, 2012
AUTHORITY: Section 1 of the *Act*.
CROSS REFERENCES: Item C8-53.20, *Compensation on the Death of a Worker Definitions – Meaning of "Child" or "Children"*;
Item C8-56.00, *Compensation on the Death of a Worker – Calculation of Compensation – Dependent Spouse with Children*;
Item C8-56.70, *Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 1, 2012 − New Item consequential to the *Family Law Act* (Bill 16 of 2011), which introduced definitions of spouse and surviving spouse to then section 1 of the *Act*.

APPLICATION: This Item applies to the death of a worker that occurs on or after March 1, 2012.

RE: Vocational Rehabilitation − Work Assessments **ITEM: C11-88.10**

BACKGROUND

1. Explanatory Notes

This policy describes work assessment programs.

2. The Act

Section 155(1):

> To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Work Assessments

A work assessment program is a method of determining or enhancing a worker's employment capabilities and potential in an actual work environment with an employer, or in a simulated setting using functional evaluation methodology.

Guidelines

Subject to policy in Item C11-88.00, the following guidelines on work assessments apply.

1. When a work assessment with an employer takes place prior to full medical recovery and is intended primarily as a therapeutic measure to assist increasing levels of work activity, the program is normally referred to as a "Graduated Return to Work". This program is commonly a first step in a worker's successful reinstatement with the pre-injury employer.

2. Work assessments also allow employers and workers to assess the viability of employment in a particular job and are frequently used together with training-on-the-job programs.

Expenditures

1. The Board provides financial assistance to workers who are participating in work assessment programs, either through a continuation of wage-loss benefits under section 191 or 192 of the *Act*, or payment of rehabilitation allowances under section 155 when wage-loss benefits are no longer payable.

2. Costs arising from injuries or aggravations that occur during the course of Board-sponsored work assessments with an employer are not charged to the participating employer.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Sections 155, 190, 191, and 192 of the *Act*.
CROSS REFERENCES:	Item C11-87.00, *Vocational Rehabilitation − Process*; Item C11-88.00, *Vocational Rehabilitation − Nature and Extent of Programs and Services*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. November 1, 2002 − Replaced policy items #88.10 - #88.12 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, or the *Act*.

RE:	Vocational Rehabilitation – Work Site and Job Modification	ITEM:	C11-88.20

BACKGROUND

1. Explanatory Notes

This policy describes work site and job modification programs.

2. The Act

Section 155(1):

> To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Work Site and Job Modification

The Board may provide assistance to alter work sites or modify jobs to facilitate re-employment in physically appropriate working conditions.

Guidelines

Subject to policy in Item C11-88.00, the following guidelines on work site and job modification apply.

1. Assistance of this nature may occur where it is advantageous in returning workers to employment.

2. Modifications are considered and undertaken in consultation with workers, employers, unions and treating professionals.

Expenditures

1. The Board may provide financial assistance for the modification of jobs and work sites, including expenditures for special equipment and/or tools,

if appropriate and necessary in facilitating the worker's return to employment.

2. In some instances, it may be appropriate to share the costs of these expenditures with employers.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 155 of the *Act*.
CROSS REFERENCES:	Item C11-87.00, *Vocational Rehabilitation − Process*; Item C11-88.00, *Vocational Rehabilitation − Nature and Extent of Programs and Services*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. November 1, 2002 − Replaced policy items #88.20, #88.21, and #88.22 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, or the *Act.*

RE: Reviews and Appeals – Review Division – Practices and Procedures **ITEM: C13-101.00**

BACKGROUND

1. Explanatory Notes

The Board may establish practices and procedures for the conduct of reviews. Those practices and procedures are established under the direction of the President of the Board or the President's delegate.

2. The Act

Section 272(2):

> Subject to any Board practices and procedures for the conduct of a review, a review officer may conduct a review as the officer considers appropriate to the nature and circumstances of the decision or order being reviewed.

Section 338(8):

> The Board may establish practices and procedures for carrying out its responsibilities under this Act, including specifying time periods within which certain steps must be taken and the consequences for failing to comply within those time periods.

POLICY

As with other practices or procedures established by the Board, the practices and procedures for the conduct of reviews by the Review Division will be established by the President or under the direction of the President or delegate.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	Sections 272(2) and 338 of the *Act.*
CROSS REFERENCES:	Item C13-100.00, *Reviews and Appeals – General*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. March 3, 2003 − New Item resulting from the *Workers Compensation Act (No. 2), 2002*.
APPLICATION:	

- decisions respecting the conduct of a review if the review is in respect of any matter that is not appealable to WCAT under section 288(2)(b) to (e) of the *Act*.

2. The Act

The provisions of the *Act* are too extensive to quote in this Chapter. Readers are referred to Part 6 [*Review of Board Decisions*] and Part 7 [*Appeals to Appeal Tribunal*] of the *Workers Compensation Act* on the following website:

http://www.bclaws.ca/civix/document/id/complete/statreg/19001

POLICY

There is no POLICY for this Item.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	Sections 277 to 314, *Workers Compensation Act*; s. 4, *Workers Compensation Act Appeal Regulation* (B.C. Reg. 321/2002)
CROSS REFERENCES:	Item C13-100, *Reviews and Appeals – General*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. March 3, 2003 − New Item resulting from the *Workers Compensation Amendment Act (No. 2), 2002*.

entitled to an additional period of wage-loss benefits and/or consideration for permanent disability benefits under the original claim.

A recurrence of injury that entitles a worker to request a reopening of an existing claim is to be distinguished from a new injury that entitles the worker to make a new claim.

For example, where a compensable injury is aggravated by a second compensable injury, the first injury has not "recurred". Rather a new injury has occurred that will result in a new claim. The decision whether to reopen the existing claim or initiate a new claim will depend upon the evidence in each case.

The following types of questions may assist in determining whether there is a recurrence or a new injury:

- Have there been any intervening incidents, work-related or otherwise?
- Has there been a continuity of symptoms and/or continuity of medical treatment?
- Can the current symptoms be related to the original injury?

(e) Reopening on application or on own initiative

Section 125(1) sets out the two ways in which the Board may reopen a matter that has been previously decided by the Board: on its own initiative, or on application.

A request for a reopening of a previous decision will be considered on application where the worker refers specifically to section 125(1) of the *Act* or uses language substantially similar to that section. An application may be submitted to the Board in written or verbal form.

A reopening request will not be considered on application where:

- a worker makes a general request for additional wage-loss benefits, health care benefits, rehabilitation services or permanent disability benefits;
- a worker makes a request for a reconsideration and/or the acceptance of a new injury or occupational disease;
- a request is made by a person other than the worker, employer or their authorized representative;
- information is submitted to the Board such as medical reports received from a worker's doctor; or
- the Board has made a decision to reopen a matter on its own initiative as part of the ongoing adjudication of a claim.

EFFECTIVE DATE:	October 21, 2020
AUTHORITY:	Section 125 of the *Act.*
CROSS REFERENCES:	Item C14-101.01, *Changing Previous Decisions – General*; Item C14-103.01, *Changing Previous Decisions – Reconsiderations*; Item C14-104.01, *Changing Previous Decisions – Fraud and Misrepresentation*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	October 21, 2020 – Amended to reflect amendment to review provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. August 1, 2006 − Consequential amendment was made to section (d) of policy resulting from changes to policy item #1.03 *Scope of Volumes I and II in Relation to Benefits for Injured Workers* of the *Rehabilitation Services & Claims Manual* Volume II. April 8, 2005 − Housekeeping amendment was made to correct numbering. January 1, 2005 − Amended to clarify recurrence of injury and to distinguish between a reopening on application and a reopening on own initiative. March 18, 2003 − Amended to clarify that a reopening allows compensation or rehabilitation benefits to be “varied” and that disputes over a decision to reopen or not to reopen a matter “on application” are appealable directly to WCAT under section 240(2). March 3, 2003 − New Item consequential to the *Workers Compensation Amendment Act (No. 2), 2002*.
APPLICATION:	Applies to all decisions made on or after October 21, 2020.

RE: Changing Previous Decisions – Fraud and Misrepresentation **ITEM: C14-104.01**

BACKGROUND

1. Explanatory Notes

Section 124 allows the Board to set aside any decision or order under the compensation provisions of the *Act* that has resulted from fraud or misrepresentation.

2. The Act

Section 124:

> The Board may at any time set aside a decision or order made under a compensation provision by an officer or employee of the Board if that decision or order resulted from fraud or misrepresentation of the facts or circumstances on which the decision or order was based.

POLICY

In order for a decision or order to be set aside as a result of misrepresentation, there must be more than innocent misrepresentation.

The misrepresentation must have been made, or acquiesced in, by the worker, dependant, employer or other person with evidence to provide, knowing it to be wrong or with reckless disregard as to its accuracy, and the decision or order must have been made in reliance on the misrepresentation. Misrepresentation would include concealing information, as well as making a false statement.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	Section 124 of the *Act*.
CROSS REFERENCES:	Item C14-101.01, *Changing Previous Decisions – General*; Item C14-102.01, *Changing Previous Decisions – Reopenings*; Item C14-103.01, *Changing Previous Decisions – Reconsiderations*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. March 3, 2003 − New Item consequential to the *Workers Compensation Amendment Act (No. 2), 2002.*
APPLICATION:	Applies to all decisions on and after March 3, 2003.

AUTHORITY: Section 130 of the *Act.*
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#111.26 Failure to Recover Damages

Where the Board is unsuccessful either in total or in part in recovering damages from a third party and the third party has an entitlement to benefits from the Board, the recovery will be made from such benefits. If there is no existing entitlement to benefits, a record of the indebtedness will be made by the Board and should any future entitlement to benefits accrue, a recovery will be made from that entitlement. As a general guideline, this recovery will follow the limits set out in the *Court Order Enforcement Act*. Such limitations would not apply in the case of permanent disability benefits where the indebtedness may be recovered from the permanent disability capital reserve.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#111.30 Meaning of "Worker" and "Employer" under Division 3 of Part 3 of the *Act*

In the provisions discussed in policy items #111.10 to #111.24, "worker" and "employer" have the meaning given to them in Chapter 2.

Section 126 defines "worker" for the purposes of Division 3 of Part 3 of the *Act* [Legal Effect of Worker's Compensation System] to include an employer to whom the Board has directed that the compensation provisions of the *Act* are to apply, as if the employer were a worker entitled to personal optional protection.

However, this does not affect status as an employer under this Division in regard to other workers.

The meanings of "employer", "worker", and "employment" for the purpose of Division 3 of Part 3 of the *Act* in claims concerning commercial fishers are discussed in section 14 of the *Fishing Industry Regulations*.

EFFECTIVE DATE: March 18, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 18, 2003 − Deleted reference to the *Workers' Compensation Reporter* Decision No. 223.

#111.50 Third Party Claims - Federal Government Employees

The provisions discussed in policy items #111.00 to #111.30 above have no application to employees entitled under the *Government Employees Compensation Act*.

Rules similar to those set out in policy items #111.00 to #111.30 are set out in section 148 of that *Act*. In general, the claimant is precluded from suing the government in respect of an employment accident, but must claim compensation. Where the circumstances of the accident give rise to a right of action against someone other than the government, the claimant must elect either to sue that other person or claim compensation. If the claimant does the latter, the government is subrogated to the right of action. These subrogated actions are administered by the Federal Government directly. The Board is not concerned in them.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#112.00 INJURIES OCCURRING OUTSIDE BRITISH COLUMBIA

Section 134(1) provides in part that compensation is payable where ". . . personal injury or death arising out of and in the course of a worker's employment is caused to a worker . . ." It places no limitation on the place of injury. On the face of it, it might be held to apply to all employment injuries, whether they occur inside or outside British Columbia. The Board has, however, concluded that the section could not be intended to have such a broad effect. The *Act* only applies to injuries occurring outside British Columbia where its provisions expressly provide for this, or do so by necessary implication. There are two main situations that have to be considered, which are discussed in policy items #112.10 and #112.20.

The payment of health care benefits for costs incurred outside British Columbia is discussed in Item C10-75.10.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#112.10 Worker is Working Outside British Columbia

Section 147 provides:

(1) This section applies if

#112.40 Injuries Occurring Outside British Columbia - Federal Government Employees

Federal Government employees must claim compensation in the province where they are usually employed regardless of the place of injury.

CROSS REFERENCES: Item C3-12.10, *Entitlement for Federal Government Employees*, of the *Rehabilitation Services & Claims Manual*, Volume II.

CHAPTER 17

CHARGING OF CLAIM COSTS

#113.00 INTRODUCTION

The general practice followed by the Board is that the cost of any compensation paid out on a claim is charged to the class or subclass of employers of which the worker's employer is a member. These costs are not paid directly by the employer. Rather, the employer will, through the assessment rate, pay a proportion of the total costs incurred on all claims made by employees of all the employers in the subclass. The proportion paid is the proportion which the employer's payroll bears to the total payrolls of all employers in the subclass. This may be adjusted through a system of experience rated assessments.

In certain cases, the class or subclass consists of one major employer so that the employer does directly pay the costs of the claim. Examples are the Canadian National Railway, Air Canada, Canadian Pacific Railway Limited, and the Government of British Columbia. These are termed deposit classes.

Generally speaking, whether or not an employer was at fault is not a material factor when determining how the costs of a claim are to be charged. The general practice set out above applies both when the employer's negligence or misconduct caused an injury and when the injury was due to circumstances beyond the employer's control.

There are certain provisions in the *Act* which result in exceptions to the above rule. An individual employer or the class or subclass may be relieved of the costs of compensation incurred on a particular claim. Alternatively, an individual employer may be charged with costs additional to the employer's ordinary liability as a member of a class or subclass. None of these special relieving or charging provisions apply to claims by Federal Government employees.

The amount of costs attributed to an employer are disclosed to an employer in the cost statements which are sent regularly. These list the claims concerned and the amount of costs incurred on each.

EFFECTIVE DATE:	October 21, 2020
HISTORY:	October 21, 2020 – Amended to reflect amendments to the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020. December 31, 2003 – Changes were made to the third paragraph of this policy which incorporated portions of, and replaced, policy item #115.20, *Significance of Employer's Conduct in Producing Injury*, of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	Applies on or after October 21, 2020.

#113.10 Investigation Costs

Costs may be incurred prior to making a decision on a claim in investigating the validity of the claim or in paying benefits pursuant to an interim adjudication. Where the decision is ultimately in the worker's favour, these costs are charged to the employer's class in the normal way. Where the decision is unfavourable to the worker, these costs will not be charged to the employer's class, but will be spread across all classes. They are treated in effect as an administration cost.

The same rule also applies where:

1. A claim is accepted in error or benefits paid in error;

2. A decision is reversed by the Review Division or Workers' Compensation Appeal Tribunal;

3. There is a reconsideration by the Board.

The employer's class is relieved where the original decision was favourable to the worker and benefits were paid pursuant to it. Conversely, the class will be charged with costs already incurred where the previous decision was unfavourable to the worker.

For another situation where the class of employers is relieved of costs as investigation costs, see the policy in Item C4-25.10 regarding having an occupational disease.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Medical Review Panel, officer, Manager and Director.
March 3, 2003 – Inserted reference to the Review Division, the Workers' Compensation Appeal Tribunal and to reconsideration by a Manager or Director.
APPLICATION: Applies on or after June 1, 2009.

#113.20 Occupational Diseases

The long period of exposure required for the development of some occupational diseases raises special problems in connection with the charging of claim costs. The position is the same as for injuries when the exposure has been with one employer only, but there are commonly situations where the relevant exposure has occurred during employments with two or more employers. The general rules followed in these cases are as follows:

1. Until September 27, 2002, all wage-loss benefits and health care benefits were charged to the class of the employer at the time the claim was submitted for the first 13 weeks. Effective September 28, 2002, all wage-

loss benefits and health care benefits are charged to the class of the employer at the time the claim was submitted for the first 10 weeks.

2. Until September 27, 2002, an assessment of the worker's work exposure history was then made and an apportionment of the costs incurred beyond 13 weeks, including the amount of any permanent disability reserve, was carried out. The class of the employer at the time the claim was submitted would be charged with the portion of costs incurred after the 13 weeks, which was attributable to the worker's employment with the employer, provided that that portion exceeded 20% of the total amount. The balance would not be charged to any particular class but would be spread across all classes of industry.

   Effective September 28, 2002, an assessment of the worker's work exposure history is then made and an apportionment of the costs incurred beyond 10 weeks, including the amount of any permanent disability reserve, is carried out. The class of the employer at the time the claim is submitted will be charged with the portion of costs incurred after the 10 weeks, which is attributable to the worker's employment with the employer, provided that that portion exceeds 20% of the total amount. The balance will not be charged to any particular class but will be spread across all classes of industry.

3. Until September 27, 2002, if any portion attributable to any employer at the time the claim was submitted was less than 20%, the costs incurred following 13 weeks were not charged to any employer's class, but would be spread across all classes of industry. To ensure procedural fairness in the event of a request for review or an appeal in cases where the class has changed, decision letters and review and appeal information were sent to the employers' association that best represented the appropriate class and subclass of industry.

   Effective September 28, 2002, if any portion attributable to any employer at the time the claim is submitted is less than 20%, the costs incurred following 10 weeks are not charged to any employer's class, but will be spread across all classes of industry. To ensure procedural fairness in the event of a request for review or an appeal in such situations, decision letters and review and appeal information are sent to the employers' association that best represents the appropriate class and subclass of industry.

4. The apportionment is made by comparing the number of years of exposure with the employer at the time the claim is submitted with the worker's total exposure. No account is taken of varying degrees of exposure which may have occurred at different times.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Changes were made regarding references to review.

#113.21 Silicosis and Pneumoconiosis

If, in the case of silicosis or pneumoconiosis claims, there is exposure to silica dust or other dust conditions in more than one subclass of industry within British Columbia, costs are normally apportioned on the basis of employment records confirming the exposure. Occasionally, it is difficult to be precise about exact periods of exposure because absolute confirmation of employment is not always available many years after the fact. This is because employers may no longer be in business or the worker is unable to provide a complete résumé of employment. Under the circumstances, there may be a few cases where it is unfair to simply use employment records for the charging of costs, particularly if there is other substantive evidence available to support exposure to silica dust in a certain class or classes of industry. The Board therefore has discretion in the apportionment of costs for silicosis or pneumoconiosis claims, where it appears that the sole use of employment records will produce an inequitable result.

The guidelines set out below are followed:

1. Cost for silicosis or pneumoconiosis claims will normally be apportioned on the basis of confirmed periods of employment in industries where there is exposure to silica dust or other dust conditions.

2. If confirmed employment records are unavailable, but there is other substantive evidence to support periods of exposure to silica dust or other dust conditions, the Board has discretion to apportion costs on the basis of the best evidence available.

3. If a worker is entitled to compensation for silicosis or pneumoconiosis under the terms of section 136, 137, 141, 142, or 143 of the *Act*, the costs will be charged to the appropriate class or classes of industry within British Columbia as provided by the *Act*.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 250(1) of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Board officer.
APPLICATION: Applies on or after June 1, 2009.

#113.22 Hearing-Loss Claims

Section 250(2) of the *Act* provides that “If compensation is paid under section 145 *[non-traumatic hearing loss]* in relation to a worker’s hearing loss caused by exposure to causes of hearing loss in 2 or more classes or subclasses of industry in British

Percentage

How much disability stems from the compensable injury and how much from the enhancement of the disease, condition or disability and, therefore, to what extent costs should be charged under section 240(1)(d) can never be more than an estimate and will always be difficult to determine.

There may be circumstances where the evidence points to a different percentage being relieved than those suggested in the grid. It is more likely that the grid would be used where the distinction between the effects of the pre-existing disease, condition or disability and the compensable injury are not easily made.

In cases of continuing wage-loss benefits and health care benefits, it may be appropriate for the Board to determine that after a particular point in time, all the costs are charged under section 240(1)(d). Alternatively, it may also be determined that a percentage is relieved from a certain time onwards.

A decision on cost relief related to the payment of wage-loss benefits is distinct and separate from a decision on cost relief for permanent disability benefits arising out of the same claim.

No minimum period of temporary disability is required in order for cost relief to be considered on permanent disability benefits.

In respect of permanent disability benefits, it is necessary for the Board to establish a percentage of cost relief to be granted based on the applicable medical evidence. It is noted that 100% cost relief cannot be granted for permanent disability benefits, as this would imply that no portion of the permanent disability resulted from the work-related injury.

5. Timing of Cost Relief Decisions

If an employer is eligible for cost relief consideration on a claim, the decision is made at the earliest of:

a) there being sufficient evidence to make a determination on whether the compensable disability was enhanced by reason of a pre-existing disease, condition or disability; or

b) the conclusion of temporary disability compensation; or

c) after six months of wage loss has been paid.

Cost relief decisions may be deferred beyond six months of wage loss payment if the impact of the pre-existing disease, condition or disability on the compensable disability is not yet clear, or major diagnostic procedures have been scheduled that would clarify the existence, and/or extent of any pre-existing disease, condition or disability.

6. Communication of Cost Relief Decisions

The Board notifies the eligible employer of all section 240(1)(d) cost relief decisions.

If there is a disagreement with such a decision, the employer may request a review by the Review Division.

EFFECTIVE DATE:	September 1, 2020
CROSS-REFERENCES:	Policy item #97.30, *Medical Evidence*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	September 1, 2020 – Policy amended to remove a spent provision. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. May 1, 2011 – Housekeeping amendments to remove references to specific job titles, departments, appellate bodies and update references to external government bodies. April 8, 2005 − Housekeeping amendments. March 1, 2005 − Combination and replacement of policy items #114.40A, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*, #114.40B, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*, #114.43, *Procedure Governing Applications under Section 39(1)(e)*, and then #114.50, *Sections 39(1)(d), 39(1)(e) and Federal Government Claims* of this *Manual*; incorporated policy previously set out in Panel of Administrators' Resolution No. 1998/04/23-03 *Re: Section 39(1)(e)*: section 240(1)(d) cost relief consideration does not occur on claims where wage loss ended and/or permanent disability compensation was established on or before December 31, 1993; on or after July 1, 1998, section 240(1)(d) cost relief consideration is available for claims in which the pre-existing disease, condition or disability arises from an earlier compensable injury or disease with the same employer as the compensable injury or disease for which relief is sought; incorporated portions of, and retired from policy status, *Workers' Compensation Reporter* Decision No. 271, [1971] 4 W.C.R. 10; further amendments clarified the evaluation process for allocating cost relief. This policy continues the substantive requirements as they existed prior to the effective date.
APPLICATION:	Applies to all decisions made on or after September 1, 2020.

#114.41 Relationship Between Sections 146 and 240(1)(d)

It is important to distinguish between the provisions of section 146 and section 240(1)(d), as discussed in Item C6-44.00 and policy item #114.40. Section 146 deals with the situation where a disability resulting from a work injury is superimposed on a pre-existing disability in the same part of the body and increases that disability, or if entitlement to permanent disability benefits is being determined on a loss of earnings basis under section 196 of the *Act*, and the disability is deemed to be partly the result of a disability in another part of the body. The application of section 146 may result in a reduction in the amount of compensation paid to the worker.

Section 240(1)(d), on the other hand, is concerned only with the rate group to which the costs of the claim are to be charged and cannot affect the entitlement of the worker. It can apply in cases where section 146 does not apply and the whole of the worker's disability results from the injury or, if section 146 does apply, to the portion of disability for which the Board is responsible. It provides relief for the rate group of the worker's employer if the disability or portion of disability accepted under the claim is worse because of a pre-existing disease, condition or disability than it otherwise would be. That condition might well be in a different part of the worker's body.

EFFECTIVE DATE:	March 1, 2005
HISTORY:	January 1, 2021 – Housekeeping change made to cross-reference consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. March 1, 2005 − Updated language, consistent with rate-making system in *Assessment Manual*. This policy continues the substantive requirements as they existed prior to the effective date.
APPLICATION:	Applies to all decisions on and after March 1, 2005.

#114.42 Application of Section 240(1)(d) to Occupational Diseases

Section 240(1)(d) will not be applied to occupational disease claims simply because the disease results from exposure in several different employments. That situation is dealt with in policy item #113.20. However, there may be cases where the disability caused by an occupational disease was enhanced by a pre-existing condition. Section 240(1)(d) can be applied in such cases if the criteria outlined in policy item #114.40 are met.

CROSS REFERENCES:	Policy item #113.20, *Occupational Diseases*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#115.00 PROVISIONS CHARGING INDIVIDUAL EMPLOYERS

One provision of this nature has been discussed in policy item #94.15. Section 262 permits the Board to charge an employer with the costs of a claim where late in submitting a report of injury to the Board.

Other provisions of this nature are discussed below.

HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#115.10 Failure to Register as an Employer at the Time of Injury

If an employer is an employer to which the *Act* extends compulsory coverage, failure to register with the Board as an employer will not prejudice any claim by the employees unless the provisions set out in the policy in Item AP1-1-4 of the *Assessment Manual* apply. However, the employer may be faced with paying the costs of the claim under section 263, which provides, in part:

> (1) This section applies if an employer
>
> (a) refuses or neglects to make or provide a payroll estimate or other record required to be provided by the employer under section 245(1) [*employer obligation to provide payroll estimates and reports*], or
>
> (b) refuses or neglects to pay
>
> (i) an assessment,
>
> (ii) the provisional amount of an assessment, or
>
> (iii) an instalment or part of an assessment or a provisional amount of an assessment.
>
> (2) Subject to subsection (4), the employer must, in addition to any penalty or other liability to which the employer may be subject, pay the Board the full amount or capitalized value, as determined by the Board, of the compensation payable in respect of an injury or occupational disease to a worker in the employer's employ that happens during the period of the default referred to in subsection (1).
>
> (3) The payment of an amount required to be paid under subsection (2) may be enforced in the same manner as the payment of an assessment may be enforced.
>
> ...

Section 245(1) provides:

> An employer must do the following:
>
> (a) keep at all times at a place in British Columbia complete and accurate particulars of the employer's payrolls;
>
> (b) notify the Board of the current location of the place referred to in paragraph (a);

(c) provide to the Board an estimate of the probable amount of the payroll of each of the employer's industries within the scope of the compensation provisions, together with any further information required by the Board,

(i) when the employer becomes an employer within the scope of those provisions, and

(ii) at other times as required by Board regulation of general application or by an order of the Board limited to a specific employer

(d) provide to the Board certified copies of reports of the employer's payrolls, on or after the end of each calendar year and at the other times and in the manner required by the Board.

Under section 263(4), if satisfied that the default was excusable, the Board may in a specific case relieve the employer in whole or in part from liability under section 263.

The Board has decided that section 263 applies to claims for fatalities.

The charge made under section 263 is in addition to any ordinary assessments which the employer may be liable to pay for the period prior to the occurrence of the injury.

Policy item #113.30 dealt with the rules followed in charging the costs of claims where an employer is carrying on business in two or more provinces and is required to register in both. If such an employer is not registered in British Columbia at the time of an injury, there may be personal liability for the costs of the claim under section 263 in any situation where, under the provisions of the Interjurisdictional Agreement or otherwise, the employer's class would ordinarily be charged.

EFFECTIVE DATE:	March 18, 2003
AUTHORITY:	Sections 245 and 263 of the *Act*.
CROSS REFERENCES:	Policy item #113.30, *Interjurisdictional Agreements*, of the *Rehabilitation Services & Claims Manual*, Volume II; Item AP1-1-4, *Coverage under Act – Employers*, of the *Assessment Manual.*
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. March 18, 2003 – Changes were made regarding numerical reference to the policy in Item AP1-1-4 of the *Assessment Manual*.

#115.30 Experience Rating Cost Exclusions

Section 247 provides, 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 that industry or plant, and

(b) for the purose referred to in paragraph (a), may also adopt a system of experience rating.

The Board has adopted an experience rating plan (ER) under this section of the *Act*. The plan compares the ratio between an employer's claim costs and assessable payroll with the ratio between the total claim costs and assessable payroll of the employer's rate group. Subject to maximums, discounts are assigned for favourable ratios and surcharges for unfavourable ratios. The discount or surcharge takes the form of a percentage increase or decrease in the usual assessment rate. Details of ER can be found in the policy in Item AP5-247-1 of the *Assessment Manual*.

As a general rule, all acceptable claims coded to a particular employer are counted for experience rating purposes. It makes no difference whether the injury was or was not the employer's fault. There are, however, some types of claim costs which are excluded from consideration. These are:

1. Costs recovered by way of a third party action (see policy item #111.25).

2. Investigation and/or compensation costs paid out prior to the disallow of a claim or reversal of a decision by the Board, or the Workers' Compensation Appeal Tribunal (see policy item #113.10).

3. Costs transferred to the rate group of another employer under section 249 (see policy item #114.10).

4. Costs assigned to the funds created by section 240(1)(c) and (d) (see policy item #114.30, and policy item #114.40).

5. Occupational disease claims which on average require exposure for, or involve latency periods of, two or more years before manifesting into a disability. The diseases presently excluded on this ground are:

   Non-traumatic hearing loss, excluding hearing loss resulting from other injuries

   Silicosis

   Asbestosis

   Other diagnosed pneumoconioses, for example, anthracosis and siderosis

Pneumoconioses not specifically diagnosed

Heart disease

Cancer

Hand-arm vibration syndrome, vinyl chloride induced Raynaud's phenomenon, disablement from vibrations

(see policy item #113.20)

6. Until September 27, 2002, costs after 13 weeks where section 134(2) applies (see Item C3-14.10). Effective September 28, 2002, costs after 10 weeks where section 134(2) applies (see Item C3-14.10).

7. Costs from accidents substantially due to personal illness, e.g. epilepsy (see Item C3-16.00).

8. Injuries covered by Items C11-88.10, C11-88.40, and C11-88.50.

9. The situations covered by policy item #115.31 and policy item #115.32 below.

10. The situation covered by policy item #115.33.

11. The costs of certain compensable consequences that occur at a place, or en route to or from a place, of treatment, surgery, or Board-related assessment, as set out in policy item #115.34.

The decision whether a claim falls within one of the exclusions will usually be made by the Board. In the case of third party actions (Exclusion 1), a Board solicitor makes the decision.

EFFECTIVE DATE: January 1, 2016

HISTORY:
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2016 – policy amended to add new type of claim costs to be excluded from consideration for experience rating purposes, as set out in policy item #115.34, *Experience Rating Exclusions for Certain Compensable Consequences*.
August 1, 2010 – Consequential amendments to address whether an employer should receive cost relief where a worker continues to receive temporary wage-loss benefits for a compensable disability when a subsequent non-compensable incident delays the worker's recovery from the compensable disability.
June 1, 2009 – Deleted references to the Review Division, Medical Review Panel and the Worker and Employer Services Division.
March 1, 2005 – Updated language as to the use of the phrase "rate group", consistent with rate-making system in *Assessment Manual*; updated and incorporated cross-references to policy items #113.20 and C11-88.10, to make all items consistent and accurate. This policy

continues the substantive requirements as they existed prior to the effective date. Applied to all decisions on or after March 1, 2005.
March 18, 2003 – "Discount", "Surcharge" and the numerical reference to the policy in then Item AP1-42-1 in the *Assessment Manual* were incorporated.

APPLICATION: This policy applies to all decisions made on or after January 1, 2016.

#115.31 Injuries or Aggravations Occurring in the Course of Treatment, Surgery, and Board-related Appointment, or Travel Thereto

If there is an aggravation of an injury or a subsequent injury arising out of treatment, surgery, Board-related assessment, or travel for exceptional medical treatment or examination for the primary injury, and the aggravation or subsequent injury is acceptable on the claim, compensation costs resulting from this secondary problem will be charged in the usual way. Exclusion from the employer's experience rating will only occur if:

1. the original injury was one that would not have been expected to result in death or the permanent disability, or the increased disability, that occurred, and

2. the aggravation or subsequent injury occurred beyond the operations of the employer, and if the worker required transportation to a hospital or other place of medical treatment, after the employer had fulfilled the obligations under section 159 (see Item C10-83.30), and

3. the aggravation or subsequent injury resulted in permanent disability or death.

The application of relief is limited to the permanent disability compensation reserve established for a fatality or the permanent disability, or portion of the permanent disability, that resulted from the aggravation or subsequent injury arising out of treatment, surgery, Board-related assessment, or travel for exceptional treatment or examination.

Consideration is automatically given by the Board to excluding the costs from experience rating in these cases. No request from the employer is required. The employer will be advised of the decision in writing and of the relevant review and/or appeal rights.

EFFECTIVE DATE: January 1, 2016
AUTHORITY: Section 247 of the *Act.*
CROSS REFERENCES: Item C3-22.00, *Compensable Consequences*;
Item C3-22.10, *Compensable Consequences – Travel* (esp. for meaning of travel for exceptional treatment or examination);
Item C10-83.30, *Date of Injury Transportation*;
Policy item #115.30, *Experience Rating Cost Exclusions*;
Policy item #115.34, *Experience Rating Exclusions for Certain Compensable Consequences*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2016 − Policy amended to clarify that the costs of injuries or aggravations arising out of surgery, Board-related assessment, and travel for exceptional medical treatment or examination will be excluded from an employer's experience rating per injuries or aggravations arising out of treatment.
January 1, 2015 – Consequential amendments were made effective, arising from changes to Chapter 10, *Medical Assistance,* of the *Rehabilitation Services & Claims Manual*, Volume II.
June 1, 2009 – Policy updated to reflect the wording of decision-makers, departments, appellate bodies, and external agencies.
March 3, 2003 – Amended to delete references to the Review Board and the Appeal Division.
June 30, 2002 – Housekeeping changes were made to update terminology.

APPLICATION: This policy applies to all decisions made on or after January 1, 2016.

#115.32 Claims Involving a Permanent Disability and a Fatality

ER does not include the actual cost of the fatal claims experienced by an employer. Rather, it includes for each claim the average cost for all fatal claims in the year.
A worker in receipt of permanent disability benefits may die as a result of the injury or disease accepted under the claim. If compensation is payable to dependants, the cost otherwise included in ER may be reduced to the extent set out below:

1. Where the average cost of compensation for a fatality is the same or less than that of the permanent disability benefits, the total cost of the compensation for the fatality is excluded.

2. Where the average cost of compensation for a fatality is greater than that of the permanent disability benefits, a portion of the cost of the compensation for the fatality equal to the reserve charged to the employer for the permanent disability benefits is excluded.

#115.33 Claims Relating to Subsequent Non-Compensable Incidents

A worker may continue to receive temporary wage-loss benefits where recovery from a compensable disability is delayed due to a subsequent non-compensable incident.

As set out in policy item #34.55, the Board estimates when the worker would have reached maximum medical recovery. The Board continues to pay wage-loss benefits for the period that the Board estimates the worker would have taken to reach maximum medical recovery from the compensable injury had the subsequent non-compensable incident not occurred.

When the estimated date for terminating wage-loss benefits arrives, if the worker is still disabled, the Board makes a new decision as to whether the disability is due to the compensable injury or the subsequent non-compensable incident. If the disability is due to the compensable injury, wage-loss benefits may be continued.

If the delay in recovery is due to the subsequent non-compensable incident, the cost of compensation associated with the delay in recovery beyond the estimated date for terminating temporary wage-loss benefits is excluded from the employer's experience rating. These costs will also not be charged to the employer's rates group, but will be spread across all rate groups.

Claims costs associated with permanent disability benefits would not be relieved under this policy.

EFFECTIVE DATE:	August 1, 2010
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION:	This policy applies to all decisions made on or after August 1, 2010.

#115.34 Experience Rating Exclusions for Certain Compensable Consequences

A. At Places of Treatment, Surgery, Board-Related Appointment, and Vocational Rehabilitation

The Board considers places of treatment, surgery, appointment (including pre-arranged appointments at the Board or Workers' Compensation Appeal Tribunal), or Vocational Rehabilitation that a worker attends because of a compensable injury analogous to the worker's place of employment.

A further injury, increased disablement, disease, or death arising at such a location may therefore be compensable, if the Board has determined that the parameters set out in Item C3-22.00 were met. This includes a further injury sustained by a worker stumbling down the stairs at the location in question while en route to the pre-arranged appointment.

The Board includes most costs of the compensable consequences that occur at the place of treatment, surgery, and pre-arranged appointment (including appointments at the Board or Workers' Compensation Appeal Tribunal) when calculating an employer's experience rating.

There are two exceptions. One is for compensable consequences that occur at the location in question, but which are not a direct consequence of the treatment, surgery, or Board-related assessment itself, or actually caused by the condition resulting from the compensable injury. The Board normally excludes the costs of these compensable consequences from the employer's experience rating.

The second exception is for the compensable consequences of Vocational Rehabilitation. With respect to Board-approved Vocational Rehabilitation plans, the

Board normally excludes the following costs from the participating employer's experience rating:

- the costs arising from injuries or aggravations that occur during the course of Board-sponsored work assessments described in Item C11-88.10;

- the costs of certain employment injuries and aggravations occurring in the course of training-on-the-job programs described in Item C11-88.40; and

- the costs of an aggravation or new injury to a trainee participating in a Vocational Rehabilitation Formal Training program described in Item C11-88.50.

B. Travel to Places of Treatment, Surgery, Appointment, and Vocational Rehabilitation

As set out in Section A of Item C3-22.10, the Board considers travel to and from places of treatment, surgery, appointment, and Vocational Rehabilitation analogous to the worker's regular commute to and from work. For this reason, further injuries, increased disablement, or death sustained in the course of this travel are not generally compensable and cost allocation is not an issue.

However, the Board may have determined that a further injury, increased disablement, or death sustained in the course of such travel was a compensable consequence of the compensable injury, if the parameters set out in Section B of Item C3-22.10 were met. This includes traveling to pre-arranged appointments at the Board or Workers' Compensation Appeal Tribunal.

So long as the condition resulting from the compensable injury did not actually cause the accepted compensable consequence, the Board normally excludes the costs of the compensable consequences that occur in the course of travel to and from places of treatment, surgery, and pre-arranged appointment (including appointments at the Board or Workers' Compensation Appeal Tribunal) from the employer's experience rating.

C. Excluding the Costs for Further Temporary Disability

In order to exclude the costs of one of the exceptional compensable consequences discussed above from an employer's experience rating, the Board estimates when the worker would have recovered or stabilized from the original compensable injury.

When the Board's estimated date for recovery arrives, the Board excludes the claim costs beyond that date from the employer's experience rating if:

- the worker is still temporarily disabled; and

- there is no clear evidence that the continuing temporary disability is due to the original compensable injury.

D. Excluding the Costs for Further Permanent Disability

The Board may exclude the costs of one of the exceptional compensable consequences discussed above from an employer's experience rating for permanent disability or fatality compensation under policy item #115.31.

EFFECTIVE DATE:	January 1, 2016
AUTHORITY:	Section 247 of the *Act*.
CROSS REFERENCES:	Item C3-22.00, *Compensable Consequences*; Item C3-22.10, *Compensable Consequences – Travel*; Item C11-88.10, *Vocational Rehabilitation – Work Assessments*; Item C11-88.40, *Vocational Rehabilitation – Training-on-the-Job*; Item C11.88.50, *Vocational Rehabilitation – Formal Training*; Policy item #115.30, *Experience Rating Cost Exclusions*; Policy item #115.31, *Injuries or Aggravations Occurring in the Course of Treatment, Surgery, and Board-related Appointment, or Travel Thereto*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. This new policy was approved and brought into effect by BOD Resolution No. 2015/05/27-03.
APPLICATION:	This policy applies to all claims for injuries that occur on or after January 1, 2016.