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118 No contribution from workers

(1) An employer must not, either directly or indirectly,

(a) deduct from the wages of a worker of the employer any part of an amount that the employer is or may become liable to pay into the accident fund or otherwise under a compensation provision, or

(b) require or permit a worker of the employer to contribute in any manner toward indemnifying the employer against a liability that the employer has incurred or may incur under a compensation provision.

(2) A person who contravenes subsection (1)

(a) commits an offence, and

(b) is liable to repay to a worker any amount

(i) deducted from the worker's wages in contravention of subsection (1)(a), or

(ii) that the worker has been required or permitted to contribute in contravention of subsection (1)(b).

119 Compensation cannot be waived

A worker may not agree with the worker's employer to waive or to forego any benefit to which the worker or the worker's dependants are or may become entitled under the compensation provisions, and every agreement to that end is void.

120 Compensation not assignable or liable to attachment

(1) The following apply to an amount payable as compensation or by way of commutation of a periodic payment in respect of compensation:

(a) the amount is not capable of being assigned, charged or attached;

(b) the amount must not pass by operation of law except to a personal representative.

(2) A claim must not be set off against an amount referred to in subsection (1), except for money

(a) advanced by way of financial or other social welfare assistance owing to the government, or

(b) owing to the accident fund.

121 Compensation for injured worker who is a minor

For the purposes of the compensation provisions,

(a) a worker who is a minor has the capacity of a person who has reached 19 years of age, and

(b) no other person has a cause of action or right to compensation for the personal injury or disablement of the worker except as expressly provided in the compensation provisions.

122 Exclusive jurisdiction of Board in relation to compensation provisions

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

(2) Without restricting the generality of subsection (1), the Board has exclusive jurisdiction to inquire into, hear and determine the following:

(a) whether a worker's injury has arisen out of or in the course of an employment within the scope of the compensation provisions;

(b) the existence and degree of a worker's disability by reason of an injury;

(c) the permanence of a worker's disability by reason of an injury;

(d) the degree of impairment of a worker's earning capacity by reason of an injury;

(e) the existence, for the purposes of the compensation provisions, of the relationship of a family member of a worker;

(f) the existence of dependency in relation to a worker;

(g) the amount of the average earnings of a worker for purposes of payment of compensation;

(h) whether a person is a worker, subcontractor, contractor or employer within the meaning of the compensation provisions;

(i) the amount of the average earnings of a worker, whether paid in cash or board or lodging or other form of remuneration, for the purpose of levying assessments;

(j) whether an industry or a part, branch or department of an industry is within the scope of the compensation provisions, and the class to which an industry or a part, branch or department of an industry within that scope should be assigned;

(k) whether a worker in an industry that is within the scope of the compensation provisions is within the scope of those provisions and entitled to compensation under those provisions.

(3) Subsection (1) does not restrict the Board's authority under the following provisions:

(a) section 123 *[Board authority to reconsider previous decisions]*;

(b) section 124 *[Board authority to set aside decision or order]*;

(c) section 125 *[Board authority to reopen matter: recurrence of injury or significant change in medical condition]*;

(d) section 152(2) *[Board reconsideration relating to occupational disease]*.

123 Board authority to reconsider previous decisions

(1) Subject to subsection (2), the Board may, on its own initiative, reconsider a decision or order made under a compensation provision by the Board or an officer or employee of the Board.

(2) Subject to subsection (3), the Board may not reconsider a decision or order referred to in subsection (1) if any of the following apply:

(a) more than 75 days have elapsed since the decision or order was made;

(b) a request for review has been filed under section 270 *[making request for a review]* in respect of the decision or order;

(c) a notice of appeal has been filed under section 292 *[how to appeal]* in respect of the decision or order.

(3) The Board may, on its own initiative, reconsider a decision or order after the 75 days referred to in subsection (2)(a) have elapsed, if the decision or order contains an obvious error or omission.

124 Board authority to set aside decision or order

The Board may at any time set aside a decision or order made under a compensation provision by the Board or 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.

125 Board authority to reopen matter: recurrence of injury or significant change in medical condition

(1) The Board may at any time, on its own initiative or on application, reopen a matter that had been previously decided under a compensation provision by the Board or an officer or employee of the Board if, since the decision was made in the matter,

(a) there has been a recurrence of a worker's injury, or

(b) there has been a significant change in a worker's medical condition that the Board had previously decided was compensable.

(2) If the Board determines that the circumstances described in subsection (1) justify a change in a previous decision respecting compensation or rehabilitation, the Board may make a new decision that varies the previous decision or order.

126 Definitions for purposes of this Division

For the purposes of this Division:

"person" includes the personal representative of a person;

"worker" includes an employer to which the compensation provisions apply by direction under section 4(2)(b) *[Board direction]*.

127 Limitation on legal proceedings against employers or workers

(1) Subject to subsection (2),

(a) the compensation provisions are in place of any right and rights of action, statutory or otherwise, founded on a breach of duty of care or any other cause of action, whether that duty or cause of action is imposed by or arises by reason of law or contract, express or implied, to which a worker or a dependant or family member of the worker is or may be entitled against

(i) the employer of the worker,

(ii) an employer within the scope of the compensation provisions, or

(iii) any other worker,

in respect of any personal injury, disablement or death of the worker arising out of and in the course of employment, and

(b) no action lies in respect of such an injury, disablement or death.

(2) Subsection (1) applies only if the action or conduct of

(a) the employer or the employer's servant or agent, or

(b) the other worker,

that caused the breach of duty of care arose out of and in the course of employment within the scope of the compensation provisions.

128 Worker or dependant may bring action against other persons or elect to claim compensation under this Act

(1) If the cause of an injury, disablement or death of a worker is such that an action lies against a person, other than an employer or worker within the scope of the compensation provisions, the worker or dependant may

(a) claim compensation under the compensation provisions, or

(b) bring an action.

(2) If a worker or dependant of a worker elects to claim compensation under subsection (1)(a), the worker or dependant must do so within 3 months of the occurrence of the injury, disablement or death of the worker or a longer period that the Board allows.

(3) If the Board is satisfied that

(a) a worker is unable to exercise the worker's right to elect to claim compensation under subsection (1)(a) due to the worker's physical or mental disability, and

(b) undue hardship will result,

the Board may pay the compensation provided under the compensation provisions until the worker is able to make an election.

(4) If, after compensation is paid under subsection (3), the worker then elects not to claim compensation under subsection (1)(a),

(a) no further compensation may be paid, and

(b) the compensation that was paid is a first charge against any amount recovered.

(5) In relation to a minor child of a deceased worker, an application filed by a parent, a guardian or the Public Guardian and Trustee for compensation for the child is a valid election on behalf of that child.

129 Circumstances where compensation may be paid after action is settled

If after trial, or after settlement out of court with the written approval of the Board, less is recovered and collected than the amount of the compensation to which a worker or dependant would be entitled under the compensation provisions, the worker or dependant is entitled to compensation under those provisions to the extent of the amount of the difference.

130 Board has right of action if compensation is claimed

(1) If a worker or dependant applies to the Board claiming compensation under the compensation provisions, neither the making of the application nor the payment of compensation under those provisions restricts or impairs any right of action against the party liable.

(2) In relation to every claim referred to in subsection (1), the Board is subrogated to the rights of the worker or dependant and may maintain an action in the name of the worker or dependant or in the name of the Board.

(3) The Board has exclusive jurisdiction to determine whether to maintain an action under this section or compromise the right of action, and the Board's decision is final and conclusive.

(4) If, by an action under subsection (2), more is recovered and collected than the amount of the compensation to which the worker or dependant would be entitled under the compensation provisions, the amount of the excess, less costs and administration charges, must be paid by the Board to the worker or dependant.

131 Constraint on recovery if some fault attributable to employer or other worker

The following apply if, in an action brought by a worker, by a dependant of a worker or by the Board, it is found that the injury, disablement or death of the worker, as applicable, was due partly to a breach of duty of care of one or more employers or other workers to which the compensation provisions apply:

(a) no damages, contributions or indemnity are recoverable for the portion of the loss or damage caused by the negligence of such an employer or other worker;

(b) the portion of the loss or damage caused by that negligence must be determined despite the employer, other worker or both, as applicable, not being a party to the action.

132 Limitation on legal proceedings by employer of injured or deceased worker

(1) Subject to subsection (2), the provisions of the compensation provisions are in place of any right of action that the employer of an injured or deceased worker is or may, in respect of the personal injury or death of the worker, be entitled to maintain against

(a) another employer within the scope of the compensation provisions, or

(b) an independent operator to whom the compensation provisions apply by Board direction under section 4(2)(a) *[Board direction of application]*.

(2) Subsection (1) does not affect any right an employer may have against another employer, or against an independent operator referred to in subsection (1)(b), arising out of an indemnity agreement or contract between the employer of the worker and the other employer or independent operator.

133 Amounts to be awarded in legal proceedings under this Division

(1) In an action brought under this Division, an award for damages must include

(a) health care provided under Part 4 *[Compensation to Injured Workers and Their Dependants]*, and

(b) wages and salary paid by an employer during the period of disability

(i) that were considered by the Board in setting the amount of a periodic payment of compensation, or

(ii) that would have been considered by the Board for that purpose if the worker had elected to claim compensation.

(2) Costs may be awarded to and collected by the Board in an action taken by the Board under this Division even if a salaried employee of the Board acts as solicitor or counsel for the Board.