

What you need to know about personal injury lawsuits by WorkSafeBC

Introduction

The *Workers Compensation Act of British Columbia* provides for the payment of compensation benefits to you if:

- (1) You are an injured worker or the dependant of a fatally injured worker; and
- (2) The injury or death in question has arisen out of and in the course of employment.

In exchange for this right to compensation, you cannot sue any employer or worker under Part I of the *Workers Compensation Act* (the “Act”).

A worker’s injury or death may, however, result from the fault of a person who is neither an employer nor a worker under Part I of the *Workers Compensation Act*. We refer to such a person as a “third party.” Injury may occur as a result of such things as a motor vehicle accident, an assault, a defective product, or a slip and fall.

This pamphlet describes what decisions you, as the injured worker or dependant, must make where a third party is involved.

Note: *It is not possible to fully describe aspects of every third party situation in a pamphlet of this size. If you have questions, or wish to discuss your case, contact WorkSafeBC for assistance.*

The right to choose

Where a worker’s injury or death is caused or contributed to by the fault of a third party, Section 10 of the *Workers Compensation Act* provides that you must make a choice. You may choose to either sue the third party for damages or elect to claim compensation under the *Act*. This choice must be made within three months of the injury or death, although WorkSafeBC can extend this time period.

When you elect to claim compensation, you will be asked to complete the form contained in the Appendix of this pamphlet. If you choose to sue the third party for damages, a letter advising WorkSafeBC of your decision will be satisfactory.

Further information concerning the *Workers Compensation Act* and WorkSafeBC policy will be made available to you on request prior to your choice being made.

If you choose to claim compensation

When you elect to claim compensation, your compensation claim will be adjudicated and, if accepted, you will receive whatever benefits are payable under the provisions of the *Act*. The effect of electing to claim compensation means that you transfer your right of action to WorkSafeBC. WorkSafeBC will determine whether or not to bring an action against the third party. You can not claim compensation *and* bring your own action against the third party. Should WorkSafeBC decide not to proceed with an action, your entitlement to compensation benefits will not be affected.

If you choose to sue

When you decide to sue the third party, no compensation benefits are initially payable to you by WorkSafeBC. You may negotiate your own settlement, or you may hire a lawyer and instruct the lawyer yourself on how the case is to be conducted. Any money ultimately received from the third party will belong to you, and your lawyer's legal fees will be your own responsibility. Where, however, you are unsuccessful in your action or you recover less money than the compensation benefits that would have been payable, you may still receive up to the amount of compensation benefits that would have been payable, provided an application form has been filed within one year of the injury or death. Any settlement reached between you and the third party must have the prior written approval of WorkSafeBC.

If WorkSafeBC chooses to sue

If WorkSafeBC decides to sue, it will normally be done by a lawyer in WorkSafeBC's Legal Services Department. The legal processes undertaken by WorkSafeBC's lawyer are the same as those pursued by an independent lawyer. The difference is that the WorkSafeBC lawyer takes instruction from WorkSafeBC and not from you. You will have to give up control over the ultimate decision to settle or to press on with your action. You will, however, be an active participant in the proceedings and you will be kept informed of the progress of the action.

Deductions from amounts recovered from the third party

If the action is settled with the third party or proceeds have been recovered through trial, the money is paid directly to WorkSafeBC. Under the Act, WorkSafeBC is required to deduct certain amounts from those proceeds prior to paying any excess to you. The amounts deducted by WorkSafeBC will include:

- (1) Any wage-loss benefits paid by WorkSafeBC on your claim
- (2) Any supplementary wage-loss benefits paid to you by your employer
- (3) Any medical aid paid by WorkSafeBC on your claim
- (4) Any pension reserve established on your claim

- (5) Any vocational rehabilitation costs paid by WorkSafeBC on your claim
- (6) Any miscellaneous costs, e.g. transportation, paid by WorkSafeBC on your claim
- (7) An administration charge
- (8) Any payments made for the legal costs of the lawsuit

Some of these items are self-explanatory. Items 4, 7, and 8, however, require some explanation.

The excess that remains after the various deductions are made is paid to you on the understanding that the excess payment is to be taken into account if you should have any further entitlement to benefits under the claim. In other words, if the compensation claim in question should be re-opened for benefits in the future, WorkSafeBC will pay additional benefits only after the value of those future benefits equals the excess monies already received by you.

Deductions for pension reserves

A pension may be paid by WorkSafeBC where a worker suffers a permanent disability as a result of a compensable injury or industrial disease. A pension may also be paid to dependants where a worker dies of a compensable injury or industrial disease. A reserve is established by WorkSafeBC to fund future payments of such pensions. The amount of that reserve is deducted from any settlement or court award received by WorkSafeBC from the third party.

Deductions for administration costs

Under the *Workers Compensation Act*, where the amount of the out-of-court settlement or court award exceeds the amount of compensation paid by WorkSafeBC, WorkSafeBC must deduct an administration charge prior to paying the excess to the claimant. The administration charge is not calculated on the basis of the entire settlement or court award. Rather, it is a percentage of the compensation costs payable by WorkSafeBC on the claim, including the total amount of the pension reserve. The administration charge also includes a minimum fee that varies according to the size of the claim.

The percentage used in calculating the administration charge varies from year to year and is fixed by WorkSafeBC's Finance Department at the beginning of the year.

Deductions for legal costs

The legal costs that WorkSafeBC deducts from the excess consist of the costs associated with suing, including the costs of issuing and serving legal documents, medical reports, witness fees, and so on. Most of these costs will be recovered from the third party to the action as part of the settlement or court award. You will not be required to pay for the cost of the WorkSafeBC lawyer's time, as the lawyer's salary is already included in the administration charge. However, if WorkSafeBC retains an external lawyer, their legal fees will be deducted from the excess. Where the action brought by WorkSafeBC is unsuccessful, you are not liable for any of the costs.

Please complete this form in full and return to WorkSafeBC:

Mailing address:
PO Box 4700 Stn Terminal
Vancouver BC V6B 1J1

Location:
6951 Westminster Highway
Richmond BC

Fax:
Lower Mainland 604 233-9777
Toll free 1 888 922-8807

WorkSafeBC claim number

Worker last name <i>(please print)</i>	First name <i>(please print)</i>
I hereby elect to claim compensation for injuries sustained on	
<i>yyyy-mm-dd</i>	
at	
<i>(place)</i>	

Signature
Date
<i>yyyy-mm-dd</i>

Personal information on this form is collected for the purposes of administering a worker's compensation claim by WorkSafeBC in accordance with the *Workers Compensation Act* and the *Freedom of Information and Protection of Privacy Act*. For further information about the collection of personal information, please contact WorkSafeBC's Freedom of Information Coordinator at PO Box 2310 Stn Terminal, Vancouver BC, V6B 3W5, or telephone 604 279-8171.

Date: INDEX DATE

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I have decided to claim compensation

I was injured on <i>yyyy-mm-dd</i>	WorkSafeBC claim number
Worker last name <i>(please print)</i>	First name <i>(please print)</i>

Traffic accident information

Where did the accident happen?		
Name and address of the driver of the other vehicle		
City	Province	Postal code
ICBC claim number		
ICBC claims officer's name		
ICBC claims centre		
Have you received any ICBC benefits?		
Which police department came to the accident?		
Police case number	Were any charges laid? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Worker signature	Date <i>yyyy-mm-dd</i>	

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