



Claims Management for Alberta Workers' Compensation: Implementation of 2018 Workers' Compensation Legislation and Policy Changes

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BCL Consulting Group Inc.

- Employer Representatives for Workers' Compensation matters since 1988
- Current Claims Management,
- Historical Cost Recovery Review,
- Classification and Assessment Reviews,
- Appeal Preparation and Presentation



Bill 30: An Act to Protect the Health and Well-being of Working Albertans

has led to changes in Alberta's:

- Occupational Health and Safety Act, and
- Workers' Compensation Act (WCA) and associated Workers' Compensation Policy and Regulation.

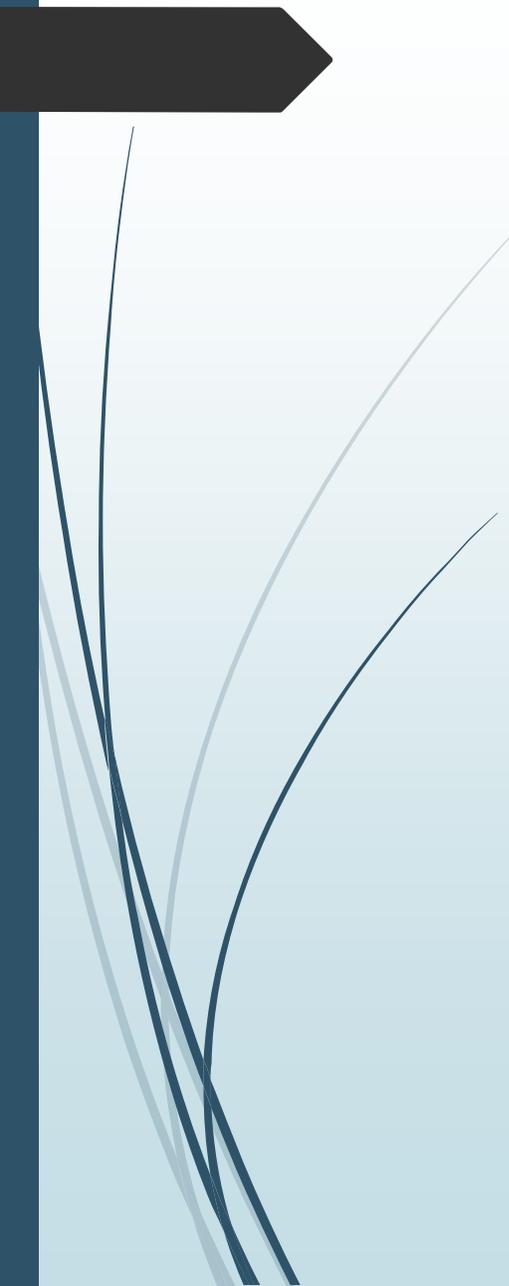
Focus today: Alberta Workers' Compensation claims management considerations as they relate to some of the Workers' Compensation policy changes.



2018 – A year of policy change for the Workers' Compensation Board

Many policy changes have occurred with some taking effect:

- on a certain date (e.g. January 1, 2018),
- on or after a certain date of injury (e.g. September 1, 2018)
- on or after a certain decision date (e.g. September 1, 2018), or
- a combination of the above parameters or as otherwise noted in policy

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Still to come in December, 2018:

The establishment of the Fair Practices Office



Some Highlights:

- Employers and workers can request interim relief during the appeal process
- Fair Practices office will be established (December, 2018)
- Myocardial Infarction presumption added for paramedics
- PTSD presumption to include correctional officers and emergency dispatchers,
- Traumatic psychological injury presumption for all workers



Some Highlights (continued):

- Occupational Health Advisory Committee established (WCA s.24.3)
- Workers will have the opportunity to choose a physician from a roster established by the Medical Panels Office to conduct a Board directed medical exam
- Medical Panels office established
- The Board or Appeals Commission (AC) may, or depending on the circumstances, shall request a medical panel.
- Worker/worker's dependant may apply to the AC for a medical panel in certain circumstances.



Some Highlights (continued):

-**NOTE:** An employer can still make a written request for medical examination by a physician selected by the WCB (WCA s.39)

-Estimated earnings capacity not to be completed until WCB has made every effort to assist an injured worker with a job search

-Rate adjustments available for young workers (under 25 or over 25 enrolled in academic program or vocational program) under certain circumstances.



Some Highlights (continued):

- Change to cost relief sum for back and cardiac claims
- No maximum compensable earnings/changes to compensation rate tables,
- Cap remains for Assessable Earnings
- Benefit of Doubt employs new wording to: "approximately equal"
- ELP retirement adjustment



Some Highlights (continued):

- For decisions on or after September 1, 2018 from the DRDRB; the time frame to appeal at the Appeals Commission has increased to 2 years.
- Continuation of Employment Health Benefits
- Obligation to Reinstate
- Implementation of administration penalties regarding obligation to reinstate and continuation of health care benefits.



Some Highlights (continued):

-Temporary Modified Work

WCA 56(14) states, Notwithstanding subsection (13), if the worker is subsequently terminated or the work is withdrawn by the employer, the Board shall pay compensation for temporary total disability until the Board determines the worker is capable of other suitable employment.

- Policy 04-05, Part II, Application 4 (Temporary Modified Work) states, in part:

If the modified work program ends because the employer has terminated the worker's employment or has withdrawn the modified work, WCB will, in accordance with s.56(14) of the WCA, pay the worker temporary total disability benefits until



Some Highlights (continued):

- Policy 04-05, Part II, Application 4 (Temporary Modified Work)states, in part (continued from prior slide):

WCB determines that the worker is capable of other suitable employment. WCB's determination will take into consideration the worker's remaining work restrictions and their impact on the worker's competitiveness in the labour market, as well as any other relevant factors. Each case will be judged on its own merits.

...This policy application (Application 4 – Temporary Modified Work Programs) is effective September 1, 2018, except when noted otherwise in a specific policy section(s).



Continuation of employment (health) benefits:

- WCA s.88.2
- Policy 04-02 Part II, Application 4

Read the aforementioned legislation and policy for specific details and policy provision for varying circumstances during a claim.

Some Highlights:

-if the employer was paying, in whole or part, for the worker's health benefits at the time of injury, the employer must make ongoing contributions for health benefits while the worker is absent from work for a work injury throughout the first year after a worker is injured.



Continuation of employment (health) benefits (continued):

Employer health benefit contributions are only required if:

- a.** the employer was making contributions to the worker's plan prior to the accident, and
- b.** the worker continues to pay his/her contributions, if any during the absence from work.

-if the employer does not continue the contributions as required and the worker incurs costs for health services that would have been covered by the health benefits, the WCB will reimburse the worker for the sum and the employer "is liable to the Board for the amount so paid" (WCA s.88.2 (4))

- "These amounts will be added to the employer's premium assessment as they occur." (Excerpt from Policy 04-02, Part II, Application 4

Continuation of employment (health) benefits (continued):

- if the employer is found to be in contravention to policy/legislation regarding continuation of employment health benefits, the " employer is subject to an administrative penalty" ... "not exceeding one year's contributions for health benefits in respect of the worker." (*WCA Section 88.2 (5)*).
- "Employment health benefits include only medical, dental, and vision related benefits." (Excerpt from Policy 04-02, Part II, Application 4, question 3)
- "The employer must make the worker aware of any contribution amounts due by the worker, and provide a process for the worker to make those payments." (Excerpt from Policy 04-02, Part II, Application 4, question 9)

Obligation to return injured workers to work:

-WCA s. 88.1

-Policy 04-05, Part II, Application 2 and 3

Read the aforementioned legislation and policy for specific details and policy provision for varying circumstances during a claim.

Some Highlights

- WCA s. 88.1 (1) states:

In accordance with this section, an employer shall offer to reinstate a worker (a) who has been unable to work as a result of an accident, and (b) who, on the date of the accident, had been employed by the employer for at least 12 continuous months on a full-time or regular part-time basis.



Obligation to return injured workers to work (continued):

- WCA s. 88.1(2) goes on to outline where section (1) does not apply.

- WCA s. 88.1(3) states:

The employer shall accommodate the work or the workplace to the needs of the worker to the extent that the accommodation does not cause the employer undue hardship.



Obligation to return injured workers to work (continued):

-WCA s. 88.1(4) states:

When the worker is medically and physically capable to perform the essential duties of the worker's employment on the date of the accident, the employer shall

(a) offer to reinstate the worker in the position the worker held on the date of the accident, or

(b) offer to provide the worker with alternative employment of a comparable nature at not less than the earnings and benefits earned by the worker on the date of the accident.



Obligation to return injured workers to work (continued):

WCA s. 88.1(5) states:

When the worker is medically and physically capable to perform suitable work but is unable to perform the essential duties of the worker's employment on the date of the accident, the employer shall offer the worker the first opportunity to accept suitable employment that becomes available with the employer.



Obligation to return injured workers to work (continued):

Policy 04-05, Part II, Application 2, Question 18 states, in part:

When WCB receives information that confirms the worker is fit for work, WCB will notify the worker and employer. When the employer receives the information about a fit for work date and restrictions, in most cases:

□the worker is expected to be offered the pre-accident job within a day of being notified by WCB



Obligation to return injured workers to work (continued):

Policy 04-05, Part II, Application 2, Question 18 states, in part:

□if a temporary accommodation is required, the employer is expected to offer the worker suitable employment within three days of being notified by WCB, unless this period of time has been otherwise negotiated with WCB

□if the worker requires a permanent modification or a permanent alternative suitable position, WCB will negotiate the time frame with the worker and the employer



Obligation to return injured workers to work (continued):

Policy 04-05, Part II, Application 2, Question 18 states, in part:

Employers who are not able to meet the above time frames (for example, because of unavailability of alternative suitable work) must contact WCB.

WCA s. 88.1(6) states:

Where an employer reinstates a worker in accordance with this section and then terminates the employment, the employer is presumed not to have fulfilled the employer's obligations under this section if the worker is terminated

- (a) within 6 months after reinstatement, or*
- (b) while the worker is continuing to receive compensation under this Act.*



Obligation to return injured workers to work (continued):

WCA s. 88.1(7) states:

The employer may rebut the presumption under subsection (6) by demonstrating to the Board that the termination was not related to the worker's accident.



Obligation to return injured workers to work (continued):

WCA s.88.1 (8) states:

Nothing in this section prevents an employer from

(a) refusing to continue to employ a worker,

(b) terminating, laying off or suspending a worker, or

(c) altering the status of or transferring a worker,

if the employer satisfies the Board that the employer's decision to do so was for a business reason made in good faith and that the decision was not affected by the worker being or having been unable to work as a result of an accident.



Obligation to return injured workers to work (continued):

WCA s. 88.1 (9) states:

The employer or the worker shall notify the Board of disputes concerning whether the employer has fulfilled the employer's obligations to the worker under this section.

WCA s. 88.1(10) states:

On receiving a notice under subsection (9), the Board shall, within 60 days or within any longer period that the Board allows, determine whether the employer has fulfilled the employer's obligations to the worker under this section.



Obligation to return injured workers to work (continued):

WCA s. 88.1(12) states:

The Board is not required to make a determination under subsection (10) where the worker's notice under subsection (9) is provided to the Board more than 3 months after the date of termination.

WCA s. 88.1(13) states:

If the Board determines that the employer has not complied with an obligation under this section, the employer is subject to an administrative penalty under section 152.1 in an amount not exceeding the amount of the worker's net average earnings for the year before the accident.



Obligation to return injured workers to work (continued):

WCA s. 88.1(16) states:

An employer is obligated under this section until the date on which the worker declines an offer from the employer to reinstate the worker that, in the opinion of the Board, complied with this section.

WCA s. 88.1 also speaks to:

- union considerations,
- worker and employer responsibilities under this section of the Act.
- conditions for suspension or reduction of benefits to a worker who fails to comply with their responsibilities under this section of the Act.
- Board and Appeals Commission obligations to notify the director of Alberta Human Rights Commission if a matter under WCA s. 88.1 is "being dealt with" or appealed.



Considerations related to arguing undue hardship:

- Policy 04-05 Part II, Application 3 states, in part:

Undue hardship is more than inconvenience. The threshold for undue hardship is high – the Canadian Human Rights Commission describes it as when an employer or service provider cannot sustain the economic or efficiency costs of the accommodation.

- smaller employers may be more successful in demonstrating undue hardship
- compensation and medical cost accrual up to MPCC (unless cost relief applied etc.) and associated premium impacts,
- lost time statistics



Policy 04-05 (Return to Work Services), Part II,
Application 2 (Responsibilities of employers
and workers in return to work) states, in part:

This policy application (Application 2 – Responsibilities of Employers and Workers in Return to Work) is effective September 1, 2018, and applies to all claims with a date of accident on or after that date.



Policy 04-05 (Return to Work Services), Part II, Application 3 (Accommodation and Undue Hardship) states, in part:

This policy application (Application 3 – Accommodation and Undue Hardship) is effective September 1, 2018, and applies to all claims with a date of accident on or after that date, except when noted otherwise in a specific policy section(s).



Claims Management Considerations

Prior to a claim being established ensure you have documented sign off on items such as:

- terms of employment; in particular temporary employment, occurrence of lay offs, employment after the temporary contract is not guaranteed.
- injury reporting requirements,
- availability of modified work after work place injury,
- worker responsibilities after work place injury and during modified work,
- training,
- performance management policy,
- any performance management issues,
- applicable policies for your worksite (example: drug and alcohol policy),

Be sure to review these items regularly with workers and have updated sign off acknowledging understanding each time.



Claims Management Considerations (Continued):

- Ensure your company policies and procedures are in keeping with legislated standards.
- Ensure applicable personnel are sufficiently trained to enforce policy.
- Ensure consistent and correct use of company policy and procedures.
- Performance manage workers and have documentation related to same before a claim occurs.
- Thoroughly document investigations for near misses and accidents/ incidents.
- If you are unsure of the reason for a worker's absence – investigate.
- Not knowing the facts is not a comfortable place to be.



Claims Management Considerations Continued:

- Be proactive; not reactive,
- Know when to report injuries to WCB; accident or allegation of an accident with disability beyond the date of accident and/or medical aid acquired.
- When in doubt; report the claim to WCB,
- WCB is first payer for work related injuries,
- Ensure you provide the CORRECT worker earnings information to the WCB (temporary workers, seasonal workers, permanent full time, permanent part time, casual),
- Ask WCB to provide you with Temporary and Base rates of compensation for temporary workers,



Claims Management Considerations Continued:

- Ensure WCB and the treatment providers have a physical demands analysis document from the onset of a claim.
- Ensure you have medical documentation (we recommend from a physician) confirming work fitness and restrictions prior to returning a worker to modified work.
- Ensure that all modified work offers are clearly documented and presented to the worker for sign off; optimally on the date of accident.
- Ensure you have medical documentation (we recommend from a physician) that clearly indicates the worker is fit for full duties prior to returning a worker to full duties.



Not new but still concerning:

Historically Return to work services provision often not in keeping with policy/legislation:

Policy 04-05 (Return to Work Services) Part I states, in part:
To be eligible for return-to-work services, the worker must be entitled to benefits under s.56 of the WCA...

...Services include any reasonable activity or expense required to restore the worker's employability. The services may include, but are not limited to:

- counselling services
- job clubs
- job search assistance
- relocation assistance
- re-employment assistance
- temporary modified work programs
- training
- vocational assessments
- workplace modifications

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Not new but still concerning:

Industry Custom Pricing – Cost Relief Option



Thoughts:

- Anticipate growing pains with the implementation of policy and interpretation of same.
- Take time to familiarize yourself with policy changes prior to and during management of each claim. (i.e. read the legislation and policy)
- Determine if policy comes into effect on a certain date or if policy is in effect from a specific date of injury or otherwise
- Cross reference legislation and policy to better understand the intent of policy.
- Obtain documented confirmation and clarification from WCB if you have questions or concerns related to circumstances on a claim.



Some resources for employers:

<https://www.wcb.ab.ca/about-wcb/policy-manual/recent-changes.html>

http://www.qp.alberta.ca/1266.cfm?page=W15.cfm&leg_type=Acts&isbncln=9780779725809

Contact BCL Consulting Group Inc. at:
<http://www.bclconsulting.ca/>