
Board of Directors

**THE WORKERS' COMPENSATION BOARD
MEETING OF THE BOARD OF DIRECTORS
M I N U T E S**

DATE: April 17, 2018

PLACE: The Workers' Compensation Board
12th Floor Board Room
Jarvis Building
9925 - 107 Street
Edmonton, Alberta

TIME: 9:00 a.m.

BOARD MEMBERS

James Kindrake, Chair
Erna Ference, Member
Philip Hughes, Member
Ivana Niblett, Member
Mary Phillips-Rickey, Member
Grace Thostenson, Member

EXECUTIVE

Guy Kerr, President & Chief Executive Officer **
Ron Helmhold, Chief Financial Officer ♦*
Wendy King, Vice President, Operations & Chief Information Officer ♦*
Pieter Lambooy, Vice President, Operations ♦*
William P. Ostapek, Secretary and General Counsel ♦*
Roxy Shulha-McKay, Vice President, Employee & Corporate Services *

ALSO PRESENT

Sheila Szabo, Executive and Board Liaison ♦*
Hon. Christina Gray, Minister, Alberta Labour ♦
Lenore Neudorf, Assistant Deputy Minister, Alberta Labour ♦
Mustafa Farooq, Ministerial Assistant, Alberta Labour ♦

♦ attended for presentation on Implementation of WCB Review Panel Recommendations

* excused for item 12

** excused for item 12 (part 2)

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6.2 Policy 04-05, Return-to-Work Services, Part II, Applications 2 and 3

In January 2018, the draft policies for the new legislated obligation to reinstate and duty to accommodate were posted online for consultation for 60 days, from January 2 to March 6, 2018. In addition, in-person consultations were held with stakeholders in February in Edmonton and Calgary. Stakeholders raised a number of questions through both online and in-person consultations. These questions led to several changes being made to the initial draft.

These requests are reflected in the updated policy application drafts:

- Stakeholders expressed concern that WCB is taking on activities that have traditionally been the role of the Human Rights Commission. This concern has been addressed directly in the policy updates.
- Stakeholders raised questions about the timelines for offering and accepting accommodation in the consultation draft. In addition, the policy draft had been silent on the issue of union participation in return-to-work discussions. This has been clarified and examples have been added to illustrate the cooperation process.
- Employers requested clarification to address overall concerns about how and when an employer would have to rehire someone and into what type of role.
- Stakeholders requested clarification of how federally regulated employers would be treated differently than those who fall under provincial human rights legislation.
- Stakeholders requested explanation of circumstances where WCB would consider paying the employer's penalty to the worker (the explanation has been added).

Requested changes or comments not incorporated in the proposed policy draft:

- **Terminations:** It was suggested that the policy should state that progressive discipline needs to be demonstrated; others thought that they wouldn't be able to terminate with cause because of the work injury. These are concerns that can be addressed through process design, ensuring adjudication is balanced, fair, clear and evidence-based. Key resources, like checklists and decision scenarios, will be provided to assist with the application of the policy.
- **Worker advantage:** Some stakeholders felt the policy could be seen as giving injured workers an advantage over other employees in rehiring scenarios (like seasonal employment). This *could* occur, though this is not a new challenge as it reflects what is in human rights legislation today. Process design will ensure decision-makers focus on aspects of the human rights legislation that speak to the impact of accommodation on other employees.
- **Safety:** Some stakeholders felt the policy suggested they would be required to rehire an injured worker, even if it was unsafe due to their work restrictions. This is something that is currently addressed when work restrictions are confirmed; this can be reiterated in training. Safety is also one of the key considerations under undue hardship within the policy and reference material will be provided to ensure due diligence in assessing safety concerns.
- **Undue hardship:** One stakeholder wanted a formula to verify if financial hardship had been met. The test cannot be reduced to a formula, as individual circumstances must be

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considered in each case. However, more specific information and scenarios can be covered in the process design (currently under development), as well as through training and in the decision letter templates.

Cost impact: Costs are not anticipated to exceed \$1 million per year. Return-to-work services costs will increase; however, these costs would be offset by an anticipated reduction in costs for temporary total disability, vocational rehabilitation and economic loss payment benefits.

MOTION

2018/02/15

It was moved that,

"The Board of Directors approve the draft policy applications: Policy 04-05, Part II, Application 2 – Responsibilities Of Employers And Workers In Return To Work and Application 3 – Accommodation And Undue Hardship, incorporating the new obligation under the *Workers' Compensation Act* to reinstate and accommodate injured workers. These drafts include revisions made following stakeholder consultation. Proposed revisions:

1. A new Application 2, addressing the duties and obligations for cooperation and reinstatement.
2. A new Application 3, addressing accommodation and the determination of undue hardship.
3. The current Applications 2 – 7 will be renumbered to Applications 4 – 9.
4. Amendment to Application 2: A new question (Q1) was added at the beginning of the application to explain why WCB has jurisdiction to administer the obligation to reinstate and the duty to accommodate, including undue hardship.
5. Amendment to Application 2 and Application 3: A new question (Q7, Application 2 and Q11, Application 3) was added to each to explain when WCB would consider paying the employer's penalty to the worker.
6. Amendments to Application 2: Changes were made to the definitions for 'continuous employment' (Q10) and 'mediation' (Q24) as well as when an employer would be required to rehire a seasonal worker (Q15).
7. Amendment to Application 2: Changes were made to Q18 to add context on timelines to offer and accept return-to-work duties, and to provide more information about the case manager's role in the process.
8. Amendment to Application 3: Change was made to the definition of 'essential duties' (Q4).
9. Amendment to Application 3: A reference was added (Q2) so that, when a dispute occurs with a federally regulated employer, WCB and the Appeals Commission will notify

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the Canadian Human Rights Commission instead of the Alberta Human Rights Commission.

10. Amendments to Application 3: Minor changes were made to two of the elements of undue hardship (Q7, points 3 and 7).

Effective date: September 1, 2018."

CARRIED