

**Alberta WCB
Policies &
Information**

Chapter:

BENEFITS

Subject:

DUTY TO COOPERATE

Authorization:

BoD Resolution 2021/02/09

Date:

March 22, 2021

REFERENCE:

[Workers' Compensation Act, RSA 2000, Sections 32, 33, 34, 38, 39, 40, 54, 89.1, 89.2, 89.3, and 152.1](#)

POLICY:

Successful recovery from a work injury and a successful return to work rely on collaboration between all parties including, but not limited to, injured workers, employers, treatment providers, and WCB.

Parts of this collaboration are specific requirements under the *Workers Compensation Act (WCA)*, while others are best practices that facilitate effective treatment and return to work. Specific requirements under the *WCA* include *reporting requirements, attendance and participation in medical treatment, and a duty to cooperate in return to work.*

This policy is effective April 1, 2021, and, as of that date, applies to all claims regardless of the date of accident unless noted otherwise in a specific policy section(s).

INTERPRETATION

1.0 Reporting Requirements

Sections 32, 33, and 34 set out specific duties and timelines for reporting work accidents for employers, workers, and physicians. Policy 01-05, *Recording and Reporting Accidents*, addresses these duties in detail.

2.0 Attendance and Participation in Medical Examinations and Treatment

When a worker makes a claim for compensation or at any point during the life of the claim, the worker may be required to have a medical examination so WCB can determine entitlement to compensation. Under s.39(1), the worker's employer can also ask WCB to arrange for a medical examination and, if WCB agrees, the worker is required to attend.

In addition to attending required medical examinations, workers have a responsibility under s.54 to cooperate in

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March 22, 2021**2.0 Medical Examinations and
Treatment (continued)**

their medical treatment by accepting medical treatment that, based on independent medical advice, WCB considers reasonably essential for the worker's recovery. Workers also have a responsibility to avoid activities and behaviours that could prevent or delay their recovery.

**3.0 Duty to Cooperate in
Return to Work**

Employers and workers both have a duty to cooperate in return to work.

Under s.89.1, workers have a duty to take all reasonable action to mitigate any earnings loss caused by work injury and, if circumstances require it, to cooperate with WCB in the development of vocational or other rehabilitation plans.

Under s.89.2, employers have a duty to cooperate with the worker and WCB in efforts to achieve the worker's early and safe return to work.

The duty to cooperate under s.89.1 and s.89.2 has some similarities with the duty to accommodate and reinstate that existed under s.88.1 and was repealed as of April 1, 2021 (see Policy 04-05, Part II, Applications 2 and 3). Both provisions have the goal of achieving the injured worker's early and safe return to employment; however, there are differences, including the following:

- Instead of the rigid process dictated by s.88.1, WCB will focus on whether the employer and worker have made reasonable, good faith, efforts to cooperate in the return-to-work process
- When a worker has fully recovered from the work injury and returned to their date of accident employment, the employer's and worker's duty to cooperate under the WCA ends
- Workers now have an explicit duty to take reasonable action to mitigate their loss of earnings due to their injury.

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Please see Part II for additional information on the following subjects:

Application

1 – [General](#)

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APPLICATION 1: GENERAL

1. *What is a duty to cooperate?*

The worker’s recovery and return-to-work (RTW) journey consists of a series of activities and services that generally start as soon as the worker realizes they may have a work-related injury or disease.

Cooperation includes the worker, employer, their authorized representatives, and service/treatment providers, and means full participation and disclosure, as required, in those activities and services at each stage of a claim. The goal is to act in good faith to maximize recovery and achieve an early and safe return to work, or independence for workers who are medically unable to return to any form of work.

2. *What are the cooperation requirements when establishing a claim?*

Timely reporting and information sharing are essential for timely and fair decision-making. Workers, employers, and physicians all have legislated obligations and play a critical role in getting the claim off to a positive start.

For details on reporting requirements, see Policy 01-05, *Recording and Reporting*.

3. *How do the parties cooperate in establishing a diagnosis and medical care plan?*

Medical clarity is essential in ensuring timely access to the right benefits and services, and all parties have a role. Cooperation in a medical care plan is a shared responsibility.

Employers and workers

The employer’s role is to support the worker’s recovery and return to work by supporting the worker’s access to assessment and treatment, both before (when appropriate) and after the worker has returned to work in a modified or full capacity. A typical example is allowing workers to take time during the workday to attend necessary medical appointments that the worker cannot reasonably schedule outside normal work hours.

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APPLICATION 1: GENERAL

*Establishing a diagnosis and
medical care plan
Employers and
workers (continued)*

The worker’s role is to participate fully in medical examinations, investigations and treatment that WCB considers reasonably essential for the worker’s recovery and refrain from behaviours that may delay recovery.

If a worker is unable to attend an appointment because of illness, family emergency, or other unavoidable circumstance, they should contact WCB as soon as possible so WCB can reschedule the appointment.

NOTE: If a medical investigation is necessary to determine entitlement, WCB may pay the worker compensation benefits, even though WCB has not yet confirmed the worker’s entitlement. Workers should discuss eligibility for these benefits with their claim adjudicator. If WCB does pay benefits during the medical investigation, employers may be eligible for cost relief (see Policy 05-02, Part II, Application 1, Question 16).

Dependants

When there is a fatality and WCB considers an autopsy necessary to determine the worker’s cause of death, WCB may ask for the dependants’ cooperation in authorizing an autopsy (s.40). If the worker’s dependants refuse to permit the autopsy, WCB may reject any claim for compensation if it is unable to confirm work causation without the autopsy (see Policy 02-01, Part II, Application 7).

Treatment Providers

The worker’s access to the right support at the right time relies on timely, regular, evidence-based reporting of progress. Cooperation and communication with the claim owner ensure workers receive the benefits they need and return-to-work plans reflect the best options for success.

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APPLICATION 1: GENERAL

4. *What are the cooperation requirements for workers and employers in return-to-work planning?*

For workers who are medically able to return to work, the goals are to achieve an early and safe return to work and maximum income recovery.

Workers and employers have legislated responsibilities under s.89.1 and s.89.2, respectively, to cooperate in good faith with WCB and other parties to achieve these goals. Regular communication and joint problem solving to achieve a safe return to work as early as possible are fundamental expectations for successful return-to-work planning.

To meet their obligations, both employers and workers should:

- Maintain contact with each other and WCB throughout the return-to-work process
- Provide WCB with required information in a timely manner
- Work together to resolve problems as they arise and, if unable to do so, contact WCB as soon as possible to discuss options
- Participate in discussions and meetings about modified work, and suggest modified work options
- Follow the modified work agreement

Specific employer cooperation responsibilities:

- Participate in case conferences with service providers when needed
- Provide timely, suitable temporary modified work while the worker is recovering from the injury and, when possible to do so, support participation in hybrid return-to-work programs (where a worker participates

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APPLICATION 1: GENERAL

*Cooperation requirements
for workers and employers in
return-to-work planning
(continued)*

in both medical rehabilitation and work)

- Return the worker to their pre-accident job when the worker is fit for full duties
- If the worker has permanent work restrictions and cannot return to pre-accident duties, in keeping with the duty to accommodate that all employers have under human rights law, consider suitable modified work or, alternatively, work assessment, training-on-the-job, or other opportunities to keep the worker job attached and maximize income recovery, as appropriate

Specific worker cooperation responsibilities:

- Maintain consistent contact with their service providers
- Accept suitable temporary modified work offers
- Comply with all professional standards, safety rules, and employer policies applicable to the temporary modified work and a successful return to work
- Return to full duties when medically fit
- If unable to return to pre-accident duties because of permanent work restrictions, work with WCB to develop and actively participate in a vocational plan that minimizes job loss and maximizes income recovery

5. What happens if an employer or worker fails to cooperate?

WCB will work with employers and workers to ensure they understand their cooperation requirements. There may be cases where it is an unreasonable expectation that cooperation can occur and WCB will make every reasonable effort to understand what has happened. There may be valid reasons why a worker or employer is not

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APPLICATION 1: GENERAL

Employer or worker fails to cooperate (continued)

able to fulfil their obligations.

There may be circumstances outside the worker’s control such as illness or a family emergency that affect the worker’s ability to participate in return-to-work plans for a period of time. Some employers may not be able to provide modified work or other work opportunities because of the size of their business, the nature of their operations, or other factors. It is not a failure to cooperate when the worker or employer has good reason and is acting in good faith and WCB does not apply penalties in such circumstances.

When there are valid reasons preventing the worker or employer from meeting cooperation expectations, it is important they contact WCB and explain the situation.

If it appears there is no valid reason for failing to cooperate and the worker or employer continues to be uncooperative, they may face financial penalties. WCB will try to work with the worker or employer to resolve issues before applying a penalty.

If a worker is not cooperating, WCB may, depending on the nature of the failure to cooperate and the relevant section of the WCA (sections 38, 39, 54, and 89.3), either suspend or reduce the worker’s compensation benefits until the worker cooperates.

If a worker with permanent work restrictions does not participate or cooperate in vocational plans or training that would maximize income recovery, WCB may estimate their post-accident earning capacity as though the worker has successfully completed the vocational plan (see Policy 04-04, Part II, Application 1, Questions 4 and 5) with

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APPLICATION 1: GENERAL

Employer or worker fails to cooperate (continued)

earnings not lower than minimum wage.

If an employer is not making a reasonable attempt to cooperate in efforts to achieve an early and safe return of their worker to the worker’s employment, WCB may levy an administrative penalty under s.152.1.

NOTE: If an employer terminates or withdraws a worker’s temporary modified work, WCB will place the worker on full wage loss benefits, as required by s.56(14), unless the termination or withdrawal is due to the worker’s egregious conduct [s.56(15.1)]. See Policy 04-05, Part II, Application 4, Questions 8 – 11 for more information.

6. When is this policy application effective?

This policy application (Application 1 – General) is effective April 1, 2021, and applies to conduct on or after that date for all claims, regardless of the date of accident.