

**Alberta WCB
Policies &
Information**

Chapter:

WORK-RELATEDNESS

Subject:

**ARISES OUT OF AND OCCURS IN THE COURSE
OF EMPLOYMENT**

Authorization:

BoD Resolution 96/10/53

Date:

November 26, 1996

APPLICATION 5: REMOVING ONESELF FROM THE COURSE OF EMPLOYMENT

1. *What are the implications of removing oneself from the course of employment?*

Compensation is not payable if the worker's actions at the time of accident have, in WCB's opinion, removed the worker from the course of employment.

WCB must **first** examine whether or not the action has removed the worker from employment. The claim will be denied if there is a substantial deviation from employment.

If the worker is found to be in the course of employment, WCB may still determine under s.24 (1)(a) that the injury is attributable primarily to the serious and wilful misconduct of the worker.

2. *What types of actions remove a worker from the course of employment?*

Any of the actions below will be considered to have removed the worker from the course of employment:

- a criminal act with gainful intent
- intoxication, when drinking is not permitted or condoned by the employer and intoxication is the **sole** cause of the accident
- an intentional self-inflicted injury
- fighting, when the issue is purely personal with no employment relationship
- horseplay, if the worker is the instigator and it is a serious deviation from or abandonment of employment duties

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Types of actions (continued)

- activities which are exclusively personal and have no relationship, directly or indirectly, to the worker’s employment duties or the employer’s operations

The above list is not intended to be all-inclusive. Each case will be judged on its own merits.

3. *What is considered a deviation which removes a worker from the course of employment?*

When a worker voluntarily engages in an act which is not reasonably expected in the course of employment and which results in abandonment of employment duties, it may be considered a serious deviation. Each case has to be judged on its own merits.

For example, if a worker walks over to chat with a co-worker and accompanies this with a flicking of elastic bands, it is a trivial incident and would probably be an insubstantial deviation. Similarly, attending to activities of personal comfort that are essential to human needs may be considered incidental to the employment and likely not a deviation.

However, if a worker plays a joke which requires a significant part of the working time and concentration of energies to the extent that the employment duties are neglected, it may be considered a substantial deviation. Activities such as transacting personal business or going to places that have nothing to do with employment may remove the worker from the course of employment.

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4. *Is it compensable when horseplay (rough play) resulted in an injury?*

WCB generally provides compensation to a non-participating worker if it can be established that the non-participant was in the course of employment at the time of injury.

A worker who is injured through instigating or participating in horseplay is not necessarily barred from compensation. The circumstances surrounding the horseplay must be thoroughly reviewed to determine if there is a significant deviation from the course of employment.

An injury may still be considered to have arisen out of and in the course of employment if:

- the interruption of productive activity is too brief to be considered a substantial deviation from the course of employment
- the horseplay is a common occurrence at work and is condoned by the employer
- the horseplay is initially harmless then escalates into a dangerous activity, and the worker is not a willing participant in the escalation
- the worker is still participating in productive activity, or some other activity of the employment even though the task was performed in an unbusinesslike manner

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5. *Under what circumstances will WCB provide coverage to a worker who is injured as a consequence of a fight?*

WCB does not provide coverage to a worker who is injured while participating in a fight over a personal matter. There must be a connection between the employment and the dispute which led to the fight.

If a fight results over a work-related matter and occurs at a time and place that is consistent with employment, the claim may be compensable. For example, a foreman and a labourer were involved in a dispute over whether or not the labourer should finish the job before the end of the work day. Both parties were injured as a result of the fight. In this case, the foreman and the worker would be covered under the *WCA* since the injury arose out of and occurred in the course of employment.

Conversely, if the dispute is over a personal matter, neither party will be covered even though the time and place is consistent with employment.

6. *Does WCB provide compensation to an innocent bystander who is injured because of a fight?*

An innocent bystander who is injured in a fight is entitled to compensation as long as the injury occurs while the bystander is in the course of employment. The reason for the fight is irrelevant because employment obligations put the bystander at risk.

7. *Is a claim compensable if there is evidence of intoxication or other substance impairment at the time of injury?*

A claim is not denied simply because the worker is under the influence of alcohol or drugs at the time of injury. Sometimes, drinking may be a permitted, required or condoned activity of the employment. For example, a salesperson may drink with customers as part of employment expectations. A claim may still be compensable if there is some factor in the employment that caused or contributed to the injury.

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*Intoxication or other
substance impairment
(continued)*

If an injury results from intoxication alone, with no contributing factor in the employment situation and drinking is not permitted or condoned by the employer, the claim is denied because the injury is not one that arises out of and occurs in the course of employment. This may apply in a case where a worker who is intoxicated loses balance, then falls to a normal flat surface and sustains an injury.

If, however, there was a contributing employment factor, the claim may be compensable. For example, a worker in a meat packing plant has several drinks at lunch time, returns to work, and catches his hand in a meat slicer. Although the worker had been drinking, he had returned to his employment duties and was injured while performing those duties, and was in the course of employment (WCB would, however, still need to consider whether the accident was primarily due to intoxication, in which case the provisions of serious and wilful misconduct may apply - see Application 6, Serious and Wilful Misconduct).

When drugs or alcohol are involved, WCB will review medical evidence, including accepted medical opinion, to determine if the intoxicated state is of a sufficient degree to remove the worker from the course of employment.

**8. *When is this policy
application effective?***

This policy application (Application 5 – Removing Oneself from the Course of Employment) is effective February 15, 1997, except when noted otherwise in a specific policy section(s).

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Previous versions

- [Policy 0201 Part II - August 2015](#)
- [Policy 0201 Part II - January 2004](#)
- [Policy 0201 Part II - January 2002](#)
- [Policy 0201 Part II \(consolidated manual 1st Issue\) - February 1997](#)