

## Egregious conduct

If you're injured at work, we all work together to support your safe recovery and return to work. But what happens if your employment relationship ends or is suspended due to your egregious conduct after you return to work on modified duties?\*

Canadian courts defined egregious conduct to mean conduct that is “flagrantly bad” or “staggeringly bad, or obviously wrong, beyond any reasonable degree.” To classify as egregious behaviour, the conduct must be outstandingly or flagrantly bad to a reasonable person.

Actions include, but are not limited to, a serious breach of an employer or professional safety standard, rule, or policy; violence, including aggressive, threatening behaviour; sexual harassment or assault involving coercion, threats, or violence; deliberate destruction of property; fraud or embezzlement. Termination for what the employer classifies as just cause may be appropriate disciplinary action, but it is not in-and-of-itself proof of egregious conduct.

In the event your modified work ends due to your own egregious conduct, your wage replacement benefits will be impacted significantly. WCB will only pay your pre-accident salary, minus what you were being paid by your employer for working your modified duties.

Legislation regarding egregious conduct came into effect on January 1, 2021. It applies to any egregious conduct by a worker that occurs on or after January 1, 2021, regardless of your date of accident.

*\* Egregious conduct only applies if you have returned to work on modified duties. If you were not working modified duties at the time, we may consider whether there was a [failure to cooperate](#).*

### Frequently asked questions

#### 1. What does WCB consider when assessing egregious conduct?

To determine if an action or behaviour meets the definition of egregious conduct, WCB must consider the facts and the context in which the behaviour occurred. Would the behaviour and its context lead a reasonable person to consider the behaviour shockingly bad?

To provide the proper context for a decision, WCB will consider a number of factors. This may include, but is not limited to, questions like:

- Was the conduct a deliberate, intentional act or an unintentional error?
- Did you follow your employer's policies? Are those policies well known and consistently enforced?
- Have you done this before? If so, what disciplinary measures were taken at that time?
- What were the actual or potential consequences of the conduct? Did the conduct endanger yourself or others and/or cause injury or property damage?
- If impairment due to drugs or alcohol was a factor, were you physically and mentally capable of performing your duties? How was the impairment determined and validated (e.g., medical test or visual identification) and how reliable is this mechanism?
- Are there any mitigating factors?

#### 2. What benefits and services may be impacted?

If your modified work is removed due to your own egregious behaviour, your entitlement to temporary wage loss benefits may be reduced or suspended. Only temporary benefits may be impacted. WCB will continue to cover all of your health care costs.

If you have permanent work restrictions and will never return to your pre-accident employment, your benefits and services will not be impacted. Egregious conduct legislation was added to the section of the *Workers' Compensation Act* which speaks to only temporary disability benefits [Section 56(13)] and, as such, does not apply to permanent benefits.

If you have permanent work restrictions, we'll continue to work collaboratively on your return-to-work plan and keep you informed of any changes to your care plan.

#### Example scenarios

These examples demonstrate how we make decisions around egregious conduct. As with all claim decisions, each case is

reviewed independently based on the specific and unique circumstances of each case. These are very complex decisions and a full investigation is completed to ensure all of the facts are clear before a decision is made.

These examples are shortened for ease of reference and are not indicative of the thoroughness of the documentation of both the scenario and the outcome. As you'll soon see, some cases are more clear-cut than others. That's why we look at each case individually.

### Scenario 1: John

**John was hurt at work and is on modified duties with his employer. On his lunch break, John got into a heated argument with his co-worker, Bill. After lunch, John pursued the argument despite Bill's attempts to end it. The situation escalated. John threatened Bill and swung at him with a shovel. Bill tried to walk away but John got into a visitor's running vehicle and drove erratically through the job site, chasing Bill.**

**The employer thinks John's conduct was egregious and intends to terminate his employment contract. Does John's conduct classify as egregious?**

Given the circumstances, John's conduct was egregious. John's actions included threats, violence and theft of a visitor's property. A reasonable person would consider his conduct shockingly bad.

### Scenario 2: Fatima

**Fatima is employed at a convenience store, working modified duties while she recovers from a work injury. During her shift someone entered the store and demanded money from the cashier. Fatima tried to physically stop the robber from leaving the store. The thief fired a gun but no one was hurt.**

**Her employer's safety rules state that if a robbery takes place, workers are to follow instructions and not restrain or resist the robber. The employer feels Fatima's actions breached an important safety rule and endangered the lives of everyone in the store. In their opinion, Fatima's actions were egregious and the employer is planning to withdraw modified work. Does Fatima's conduct classify as egregious?**

Likely not. While she breached her employer's safety rule which put people at risk, her heat-of-the-moment actions were in response to a frightening experience. Though inadvisable, she was attempting to protect the employer's property. A reasonable person is unlikely to consider Fatima's actions shockingly bad and Fatima's conduct is likely not egregious.

### Scenario 3: Terry

**Terry is terminated while on modified duties after an investigation determined Terry was being intimidating and aggressive towards co-workers. Terry's employer has a policy against aggressive and threatening behaviour. Does Terry's conduct classify as egregious?**

We need more information to make a decision. We'll speak to Terry and the employer to gather additional details of the incident. We also need to look at contextual factors. For example, was the employer's policy well known and consistently enforced? Have there been previous (documented) infractions? What were the actual or potential consequences of the conduct? Were there mitigating factors (such as psychological or medical factors)?

We will make a decision after looking at all relevant facts and determining whether a reasonable person is likely to consider Terry's actions to be shockingly bad.

**Still have questions?** Please contact us toll-free at 1-866-922-9221.