Chapter: Claims for Compensation
Legislative authority: sections 77, 86, 93

Prevention statement

Preventing injuries is one of the most important responsibilities in the workplace. The Workers' Safety and Compensation Act *(the 'Act') establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.*

Purpose

This policy provides information on the established principles that have evolved to define arising out of and in the course of employment within the compensation system.

Definitions

arising out of employment means that there is a causal connection between the conditions of the work required to be performed and the resulting injury

board means the Workers' Safety and Compensation Board

in the course of employment means that an injury is linked to a worker's employment in terms of time, place and activity consistent with the obligations and expectations of that employment

intoxication means that a worker is under the influence of alcohol, drugs, and/or the improper use of medications

removing oneself from the course of employment means what happens when there is a distinct departure by the worker from the obligations and/or expectations of their employment duties for personal reasons or when there is an act of serious and wilful misconduct

serious and wilful misconduct means a deliberate and intentional act of the worker that demonstrates a disregard for safety or consequence that the worker should reasonably have recognized as likely to result in personal injury and, hence, is considered to have been undertaken for the purpose of receiving compensation

Policy statement

1. General

A worker who suffers a work-related injury or death is entitled to compensation unless the work-related injury is attributable to conduct deliberately undertaken for the purpose of receiving compensation.

An injury to or the death of a worker that arises "out of their employment" is presumed to be an injury or death that occurred "in the course of the worker's employment", unless the contrary is shown; and that an injury to or the death of a worker that occurs "in the course of the worker's employment" is presumed to be an injury or death that arose "out of the worker's employment", unless the contrary is shown.

A claim for compensation must meet the following criteria:

a. the injured worker is a "worker" as defined in the Act; and

b. the injured worker suffered a work-related injury.

2. Work-related injury

A work-related injury means an injury or death arising out of and in the course of a worker's employment resulting from:

a. a chance event occasioned by a physical or natural cause;

b. a wilful and intentional act, not being the act of the worker,

c. a disablement, or

d. an occupational disease.

but does not include

e. mental stress; or

f. an injury resulting from any decision by the worker's employer relating to the worker's employment, including a change in the work to be performed or working conditions, or promotion, transfer, demotion, lay-off, discipline, suspension or termination.

2.1 Arising out of employment

Arising out of employment generally refers to the cause of the injury or death. An injury arises out of employment if there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. The link between the causative employment hazard and the injury may be direct or incidentally related to the employment. An injury does not arise out of employment if it is caused by a hazard to which the employee would have been equally exposed apart from the employment.

In making this determination the board considers, on a case by case basis, criteria including, but not limited to:

a. whether the injury occurred when the worker was in the process of doing something for the benefit of the employer;

b. whether the injury occurred while the worker was doing something at the instruction of the employer;

c. whether the injury occurred while the worker was using equipment or materials supplied by the employer;

d. whether the injury was caused by some activity of the employer or another worker; and

e. whether the activity was an accepted or condoned part of the work environment.

2.2 In the course of employment

In the course of employment generally refers to whether the injury or death happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectation of the employment.

A worker is considered to be in the course of employment from the time the worker enters the employer's premises to start the work-shift and terminates when the worker leaves the employer's premises. Routine travel to and from work is not considered in the course of employment.

Appendix A contains examples of common situations relating to in the course of employment. This is not an exhaustive list.

3. Removing oneself from the course of employment

Workers are not entitled to compensation if they have removed themselves from the course of employment by their actions. Actions which may be considered as removing oneself from the course of employment include, but are not limited to:

a. activities which are exclusively personal;

b. criminal acts;

c. intoxication, when drinking or the use of drugs is not permitted or condoned by the employer and intoxication is a major contributing factor to the incident;

d. an intentional self-inflicted injury;

e. fighting, if the worker is an instigator or the issue is purely personal with no employment relationship; or

f. horseplay.

However, an injury does not cease to be considered arising out of and in the course of employment merely because some other factor extrinsic to the employment also has causative significance. Injuries are often caused, for example, by inattentiveness due to nausea, depression, lack of sleep, or a variety of other factors, and may still be compensable.

4. Presumption

The presumption of work-relatedness exists from the outset of the claim. Following submission of the initial reports, the decision maker will review and determine the claim. During this process, the decision maker may find it necessary to further investigate, particularly where there is some possibility that the injury may not have been work- related.

When decision makers seek out information, it is not from the perspective of gathering evidence for or against the worker. Rather, it is an active, impartial inquiry to obtain relevant facts, and to seek complete information.

4.1 When the Presumption Applies

When processing a claim, decision makers must ensure that workers who potentially have a claim are dealt with as quickly as possible. Whether the injury arose out of and in the course of employment is the first determinations a decision maker must make in processing a claim. Both criteria must be met, on a balance of probabilities.

In some cases, however, it may not be possible to obtain sufficient evidence to decide both criteria.

In these cases, there is a presumption that where an injury or death arises out of a worker's employment it is presumed to have occurred in the course of the worker's employment unless the contrary is shown. Similarly, where the injury or death occurs in the course of a worker's employment, it is presumed to be an injury that arose out of the worker's employment unless the contrary is shown.

The presumption ensures that workers are covered where one criterion applies, (either arises out of or occurs in the course of employment) but there is insufficient evidence to determine the second criterion.

> *For example, if a worker is found unconscious bleeding at their workplace and there are no witnesses. In this case the evidence is clear that the worker was in the course of employment as the worker was at their workplace, however there is no evidence on what caused the worker to fall and sustain the injury - whether it arose out of their employment activities. This criteria will be presumed to be met and the injury would be determined to be work-related.*

The presumption does not apply where there is sufficient evidence to decide both criteria.

4.2 When the presumption does not apply

If there is sufficient evidence to decide both conditions, then the presumption does not apply.

If there is evidence to the contrary, the presumption does not apply. The decision maker is not required to identify an alternative explanation for the injury, supported by evidence of greater weight, in order to make this decision.

In some cases, this may mean that a claim originally accepted based on the presumption is eventually denied because of further evidence to the contrary.

If the decision maker determines that, based on the evidence, the injury was not work-related, the worker always has the opportunity to provide further information to the decision maker. This information may be provided at any time, and will be weighed along with all of the other evidence.

5. Contagious Diseases

For the contagious disease to be compensable there must be an inherent risk of contracting the disease in the nature of the employment which had causative significance, and where there:

a. is significantly greater than the ordinary exposure risk of the public at large; or

b. is acquiring a kind of disease to which the public at large is not normally exposed.

A worker is not entitled to compensation simply because they contracted the disease while in the course of employment.

> *For example, a claim for meningitis may be accepted from a health care provider who was engaged in the treatment of a patient with meningitis. Here, the nature of the employment involved a risk of contracting a disease. Conversely, a claim would not be accepted from a worker where there was an outbreak of meningitis affecting the community at large. The disease would be viewed as a public health problem.*

History

EN-01 Arising Out of and In The Course of Employment, effective July 1, 2018, revoked July 1, 2022

EN-01 Arising Out of and In The Course of Employment, effective July 1, 2009, revoked July 1, 2018

EN-01 Arising Out of and In The Course of Employment, effective July 1, 2008, revoked July 1, 2009

CL-42 Arising Out of and In The Course of Employment, effective October 1, 2007, revoked July 1, 2008

CL-42 Arising Out of and In The Course of Employment, effective November 17, 1993

CL-06 Out of and In The Course of Employment - Buildings, effective January 1, 1993

CL-07 Out of and In The Course of Employment – Parking Lots and Lunch Areas, effective January 1, 1993

CL-27 Accidents Arising Out of Travel, effective January 1, 1993

CL-29 Use of Facilities and Equipment Provided by the Employer – Captive Worker, effective January 1, 1993

CL-04 Claims Involving Alcohol and Drugs, revoked December 16, 2005

APPENDIX A

ARISING IN THE COURSE OF EMPLOYMENT

Temporary Worksites

Injuries or illnesses that happen in temporary worksites may be considered to be on the employer's premises when the worker is directed or requested by the employer to be at the place as a condition of the employment.

Shared Premises

Employers may share premises in office complexes or shopping malls with other employers. When the employer rents, leases or owns office space or floor space in a mall, it is implied that there is a "right of passage" through elevators, common stairways, hallways, and parking lots. These shared premises may be considered to be part of the employer's premises.

Working from Home

When working from home, either on a permanent or temporary basis, the worker is considered to be in the course of employment, provided that working from home has been authorized by the employer and the incident occurs while performing a function of the job during hours when the worker would normally be expected to work.

Meal Breaks and Rest Periods

Meal breaks, rest periods or other similar rest periods may be considered to be work-related. This also applies to workers at construction sites or similar workplaces while on meal breaks or rest periods on site. Injuries are not considered to have arisen out of or in the course of employment when a worker chooses to leave the employer's premises to eat or perform other personal errands.

Work-Related Day Travel

Injuries that happen during travel may be considered in the course of employment when the travel is under the direction of the employer, specifically or as an expected part of the work duties.

Only travel by the most direct route qualifies for being in the course of employment. Any detour for personal business removes the worker from the course of employment. Once the journey has resumed, the worker is again considered to be in the course of employment. Breaks, including meal breaks, are considered part of travel and therefore are considered in the course of employment.

Workers whose employment requires them to travel from home to different job sites (such as installers, pieceworkers, home care workers) are considered to be in the course of employment from the time they leave home until they return home, if travel is an integral

part of the worker's duties.

As stated above, routine travel to and from work is generally not considered to be in the course of employment regardless of who owns the vehicle.

Exceptions to this general rule are when:

a. the means of transportation is operated by (or for) the employer.

   For example, workers are in the course of employment if they commute to work in an employer provided or operated bus. Coverage begins from the point the worker boards the bus; or

b. an office worker is expected to travel offsite for business meetings.

Overnight Travel

Workers required to stay away from home overnight may be considered to be in the course of employment. However, workers may not be considered to be in the course of employment when participating in wellness, entertainment, or other recreational activities.

Residential Facilities

Workers staying in a residential facility may be considered to be in the course of employment when the worker:

a. is required to use the premises as a condition of employment; or

b. is permitted to use the premises because the worksite is so remote that the worker had no reasonable alternative for accommodations.

   For example, if a worker burns a hand while cooking a meal, it would be considered to be in the course of employment. If a worker becomes intoxicated and drives an ATV along a steep path in the dark, the worker would be considered to have removed him/herself from the course of employment by serious and wilful misconduct.

Generally, when a worker pays rent to reside at a location provided by the employer, the relationship between the employer and worker becomes that of a landlord and tenant and therefore the worker is not considered in the course of employment if incidents occur within the residential facility.

Responding to Employment-Related Emergencies and Urgent Business

If a worker is required to make an unexpected or special journey to the jobsite due to an emergency such as fire, flood, robbery or some other unusual event, the worker may be

considered to be in the course of employment from the time the worker leaves their residence until returning home unless the worker does not immediately return home or to their regular place of employment following the event.

Parking Lots and Private Roads

Workers may be considered to be on the employer's premises while using:

a. attached or adjacent parking lots owned, operated or leased by the employer;

b. remote parking lots and public land between the remote parking lot and the employer's premises, provided that the employer has arranged parking privileges for the worker at the location; or

c. a private road which is the only access to the workplace. A worker is considered to be in the course of employment when the worker enters the private road unless the worker makes a personal deviation, or is not on the road for employment purposes (for example, showing a friend where they work).

Wellness and Athletic Activities

A worker may be considered in the course of employment when participating in wellness or athletic activities on the employer's premises. A worker may not be considered in the course of employment when participating in wellness or athletic activities off the employer's premises, even if the employer pays for the activity as part of a wellness program. The exception is if the employer directs or requires the worker to participate in the activity and the activity is performed at a location designated and/or approved by the employer. (An example would be if a group goes to a retreat to participate in team building exercises which include physical activities).