

Chapter: General and Administrative

Legislative authority: sections 127-129

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 is to explain third party actions and provides a process for a person to request a determination of whether a cause of action is removed by the provisions of the Act.

Definitions

Appeal Tribunal means the appeal tribunal continued under Part 5 of the Act

board means the Workers' Safety and Compensation Board

employer means every association, corporation, individual, partnership, person, society or unincorporated organization or other body having in their service one or more workers in an industry and as further defined in section 77 of the Act

third party action means a civil claim to recover damages suffered by the worker as a result of a work-related injury caused by the fault or negligence of a third party

third party means a person not covered under the Act and in the case where a work-related injury involves a vehicle, third party includes an employer or worker who is not the injured worker's employer or co-worker

vehicle means any mode of transportation the operation of which is insured or required to be insured by liability insurance

worker means a person who performs work or services for an employer under a contract of service or apprenticeship, written or oral, express or implied and as further defined in section 77 of the Act

Policy statement

1. General

A worker who suffers a work-related injury is entitled to compensation benefits. A worker or dependant of a deceased worker cannot take legal action against their employer or co-worker when the injury, disease or death arises out of and in the course of employment.

There are two exceptions to this general rule:

- a. If the work-related injury is caused due to the fault or negligence of a person or third-party not covered under the Act; or
- b. If the work-related injury involves a vehicle that is insured or is required to be insured and the person at fault or is negligent is not the injured worker's employer or co-worker.

Examples of situations in which a third party action may arise include vehicle accidents (including plane and helicopter accidents), occupier's liability (including slips and falls on personal property), assaults and product liability.

2. Action against a third party

If a third party action is possible, the action 'vests' or is transferred to the board who determines whether a third-party action will proceed. In making this determination, the board considers factors including, but not limited to:

- a. the incident itself
- b. the seriousness of the injuries resulting from the incident
- c. causation
- d. fault or negligence of the parties
- e. insurance coverage
- f. possible requirement for experts
- g. availability and credibility of witnesses
- h. past and future compensation expenses incurred, or to be incurred, by the board

The board is not obligated to proceed with a third party action.

The board has the authority to negotiate and settle the third party action at any time for any amount it considers appropriate. Workers or dependants of a deceased worker will be consulted

during this process. No payment or settlement of an action may be made without the consent of the board. Any settlement entered into without the written consent of the board is considered null and void.

A worker or dependant of a deceased worker is required to cooperate with the board and the board's lawyers in the conduct of the action.

3. Distribution of amount recovered

If a third party action is successful, the amount recovered will be distributed in the following order:

- a. to pay legal disbursements
- b. to pay legal fees of counsel for the board
- c. to pay 15% of remaining amount to the worker, their legal personal representative or the dependants of a deceased worker, if in the board's opinion that person co-operated fully with the board throughout the action
- d. to pay all compensation costs, including future costs of the board
- e. to pay excess funds remaining after payment of the above amounts to the worker, their legal personal representative or the dependants of a deceased worker

The board assesses whether there is a need, based on the nature of the injuries, needs of the worker and functional abilities of the worker, to retain a reserve from the amount recovered to cover future costs of compensation benefits before excess funds are paid to the worker, their legal personal representative or the dependants of a deceased worker.

4. No right to choose whether to sue instead of claiming compensation

A worker who suffers a work-related injury does not have the option to choose to commence a civil action instead of taking compensation benefits under the Act (even if the worker does not file a claim for compensation). The Act applies on a mandatory basis and replaces any cause of action that may arise due to the work-related injury.

5. Determination of whether cause of action is removed

A party to a civil action filed in court or another tribunal may submit an application, in writing, to the board requesting a determination by the board on whether the cause of action is removed by the provisions of the Act.

A copy of the statement of claim and any other pleadings should be included with the application. The application should identify if a claim for compensation has been made with the board or any other board and the names of the other parties and their legal counsel.

The process will generally involve a documentary review of the evidence and submissions provided by the parties.

The board will provide a written decision with reasons to the parties.

If a party is dissatisfied with the decision they have the right to appeal the board's decision to the Appeal Tribunal.

6. File

The third-party action file is subject to solicitor-client privilege and does not form part of the worker's claim file.

History

GN-06 Subrogated Claims, effective January 1, 2016; revoked July 1, 2022

GN-06 Subrogated Claims, effective July 1, 2008, revoked January 1, 2016

GC-01 Subrogated Claims, effective June 28, 2005, revoked July 1, 2008

GC-01 Subrogated Claims, effective June 28, 2005, amended November 22, 2005

GC-01- Subrogated Claims, effective August 17, 1994, amended June 28, 2005