

# Workers' Compensation:

## Your legal responsibilities

**Note:** On January 1, 1998, workers' compensation law changed, including the official name of the Board. The Workers' Compensation Board (WCB) is now the Workplace Safety and Insurance Board. In this booklet we call it "the Board". Also, there are no vocational rehabilitation plans any more. Now there are labour market re-entry assessments and plans.

This booklet explains the responsibilities of workers who make claims for workers' compensation benefits. The law says you must do certain things, or else you may be penalized.

This booklet has general information only. If you have a problem, talk to someone who knows about workers' compensation law. There is a list of places to go for legal help at the end of this booklet.

There are 2 areas of responsibility for workers that are discussed in this booklet:

- 1** Reporting Material Changes in Circumstances, and
- 2** Co-operating.

# **1 Reporting Material Changes in Circumstances**

## **What are material changes?**

The Board says material changes in circumstances are **any** changes happening to you that affect your entitlement to workers' compensation benefits or services. Material changes must be reported to the Board within 10 days. This time limit is discussed later in this booklet.

There are 3 main types of material changes that could happen to you:

- changes in your medical condition,
- changes in your earnings or income, and
- changes in your availability for work, medical treatment, or Board assistance.

You should report any significant changes in your work-related medical condition. For example, if your condition gets worse, or if it improves and you are able to go back to work, you must tell the Board about this. Make sure your doctor agrees that your condition has changed. You must also tell the Board about any new health care recommendations. For example, your doctor may tell you that you need treatment, medication, or surgery for your work injury.

You also have to report changes in your income. For example, if you start to receive a Canada Pension Plan disability pension, this is a change in your income that you must report. Or, if you are working and your earnings increase or decrease, you must report the change to the Board.

You must also report any changes that make you unavailable to work, to get medical treatment, or to get Board assistance. If you are receiving benefits because you are in a medical treatment program or a return-to-work program, and you have to interrupt the program, you must report this to the Board. For example, if you are hurt in a car accident and you cannot continue with your program, you must report this.

## **Who has the duty to report my material changes?**

If you are claiming or receiving workers' compensation benefits, then you have to report any material change in your circumstances. Even if you have a representative, it is your responsibility to make sure it is reported.

If a deceased worker's spouse or dependent children are receiving survivors' benefits, then they also have a duty to report any material change that affects their entitlement to benefits. For example, surviving children's benefits stop when they turn 19 years old unless they are attending school. If a surviving child continues to attend school after turning 19 years old, he or she must report this to the Board.

However, you do not have to report changes if you are receiving benefits for an injury that happened on or before January 1, 1990 unless you are receiving a Permanent Disability Supplement.

## **Is there a time limit to report material changes?**

Yes. You must report any material change within **10 calendar days** of the change happening. The Board says you count from the day the change occurs. For example, if you get your first Canada Pension Plan disability benefits cheque on November 10, then you must report this to the Board by November 19.

If you know about your material change in advance, then you can report it to the Board before it occurs. For example, if your work hours are going to change from full-time to part-time in a few weeks, you can report this to the Board now.

If you are late reporting a material change, report it as soon as possible, and explain to the Board why you did not report it earlier. The Board does not have to penalize you for a late report.

### **What if I am not sure if something is a material change?**

If you are not sure if you have had a change you should report, then you can tell the Board and let them decide. But you may want to get legal advice before you talk to the Board. Remember, you only have 10 days from the date of the change to report it, so you need to get help quickly. There is a list of places to go for legal help at the end of this booklet.

### **How do I report a material change to the Board?**

You can report your material change to the Board in several ways:

- by regular letter,
- by fax,
- by courier,
- in person, or
- by phone.

Make sure you keep a record of how and when you reported it. If you fax a letter to the Board, you should get a confirmation report from the fax machine showing it was sent. If you phone, make a note of the phone number you called, and who you spoke to or the message you left. Or, if you go to the Board in person, keep a record of the date and time of your visit, the name of the Board person you spoke with and what was said.

Remember that the Board has to get your report within 10 days of when the change occurs. So make sure you allow enough time if you send it by mail or courier.

### **Who do I report my material change to?**

If you know the name of the Board Adjudicator who is assigned to your case, then you should report the change to him or her. If you are not sure, then you can phone the Board's main number to find out the name of the person you should report to. You will need to give your claim number, so have it ready.

### **What will the Board do when I report a material change?**

Depending on what your material change is, different things may happen:

- Your benefits may be increased if the Board agrees your medical condition is worse.
- Your benefits may be reduced or stopped. For example, if you went back to work at your old job, your benefits for loss of earnings will stop.

- Board services may be stopped. For example, if you become seriously ill from a condition that is not work-related while you are participating in a labour market re-entry plan, then the Board may end the plan. This may also affect your benefits.
- Nothing may happen, if the Board finds that the change has no effect on your entitlement.

## **What happens if I do not report my material change or do not report it on time?**

The Board will make a decision based on the reasons for the delay.

A benefit-related debt (also called an overpayment) may be created for payments you received after the date you should have reported your material change. This means that you owe the Board money, and if you are entitled to benefits in the future, the Board will deduct this debt from your future payments. The Board can also go to court to get this money back from you.

If the Board believes you **intentionally** did not report your material change, you may be prosecuted under the Provincial Offences Act or the Criminal Code. If you are prosecuted and found guilty, you can be fined or imprisoned or both. **It is very important to get legal help immediately if the Board is threatening to prosecute or is prosecuting you.** You need to speak to a lawyer or a community legal clinic that knows about criminal law.

## **2** Co-operating

### **What do I have to do to co-operate?**

There are many things the Board expects you to co-operate with. If the Board decides you are not co-operating, your benefits can be reduced or suspended until you co-operate.

Co-operating includes:

- ✓ Reporting any material change within 10 days of the change.
- ✓ Providing the Board with information they request from you, if you have the information or if you are able to get it. For example, the Board may request copies of your pay stubs.
- ✓ Co-operating in the health care that your treating doctor recommends and that the Board agrees with. If the treatment or medication is making you feel worse, tell your doctor.
- ✓ Co-operating with your employer by:
  - contacting your employer as soon as possible after your injury,
  - staying in contact with your employer while you are recovering from your injury, and
  - helping your employer identify any suitable work that you can return to and that you are medically able to do.

- ✓ Co-operating in a labour market re-entry assessment or plan. For example, you may have to do an assessment of your physical abilities or participate in a back to work plan that would require you to try working again.
- ✓ Attending either a Board-requested medical examination or an employer-requested medical examination. You can make an objection to your employer about the employer-requested medical examination. Your employer can then ask the Board to decide if you have to go to the employer's doctor. If the Board agrees with your employer, you can appeal this decision. But if the Board denies your appeal, then your benefits may be cut off if you do not attend this medical examination.

## **How do I know if the Board thinks I am not co-operating?**

Before the Board takes any action affecting your benefits or services, you are supposed to get a warning about not co-operating. Your Adjudicator should tell you what your obligation to co-operate is, and what will happen to your benefits and services if you do not co-operate.

This warning gives you a chance to co-operate without having anything else happen. Or, if you have a good reason for not co-operating, it gives you time to tell the Board this. For example, if you were not able to get to a medical treatment appointment because of bad weather, you should explain this to the Board.

## **What happens if the Board decides that I am not co-operating?**

The Board can reduce or stop your benefits until you co-operate. If you start to co-operate later, you will not be able to get back any of the benefits you lost while you were not co-operating, unless:

- the Board's decision about your co-operation is found to be wrong in an appeal, or
- the Board did not first warn you before your benefits were reduced or stopped.

Also, if the Board decides you are not co-operating in a labour market re-entry plan or assessment, the Board can end your plan or assessment immediately.



### **Can I appeal the Board's decision about a material change or not co-operating?**

Yes. But there are time limits to appeal. If you want to appeal a Board decision, you may want to get legal help first. There is another booklet in this series called, *Workers' Compensation: Your right to appeal*, which explains how to appeal and the time limits to appeal.



## Where can I get help?

- **Community legal clinic:** Clinic lawyers and community legal workers give free legal help to people with low incomes. Some clinics take workers' compensation cases. If there is a community legal clinic in your area, it will be listed under "Legal Aid" or "Legal Clinics" in the white pages of your phone book, or under "Lawyers" in the yellow pages. You can also visit Legal Aid Ontario's Web site at <[www.legalaid.on.ca](http://www.legalaid.on.ca)>.
- **Office of the Worker Adviser (OWA):** The OWA gives free legal help with workers' compensation cases for non-unionized workers. If there is an office in your area, it will be listed in the Government blue pages of your phone book under the Labour section. If there is no listing for your area, call toll-free **1-800-660-6769** or **416-325-8570** in Toronto, or visit their Web site at <[www.gov.on.ca/lab/owa](http://www.gov.on.ca/lab/owa)>.
- **Member of Provincial Parliament (MPP):** Staff at your MPP's office may be able to help you. To find out who your MPP is, call toll-free **1-800-668-2727**, or visit the Ontario Legislature's Web site at <[www.ontla.on.ca](http://www.ontla.on.ca)>.

- **Union:** Call your staff representative. If he or she cannot help you, ask for the staff person who knows about workers' compensation law.
- **Injured workers' group:** Your local injured workers' group may be able to help you. To find out if there is a group near you, call the Ontario Network of Injured Workers' Groups at **905-387-1894** or visit their Web site at <[www.injuredworkersonline.org](http://www.injuredworkersonline.org)>. Or you can call the Union of Injured Workers at **416-785-8787** in Toronto.
- **Legal Aid certificate:** This certificate pays all or part of your lawyer's fees. Contact your nearest legal aid office to learn whether you qualify. The phone number is listed under "Legal Aid" in the white pages of your phone book or visit Legal Aid Ontario's Web site at <[www.legalaid.on.ca](http://www.legalaid.on.ca)>.
- **Lawyer Referral Service:** If there is no community legal clinic near you and you want help finding a lawyer who practices workers' compensation law, you can call the **Lawyer Referral Service** at **1-900-565-4577**. The call costs \$6.00. They should give you the name of a lawyer who will talk with you for free for 30 minutes. For more information you can visit their Web site at <[www.lsuc.on.ca](http://www.lsuc.on.ca)>.

This publication contains general information only. Each situation is unique. The law can also change. If you have a legal problem, contact your community legal clinic or a lawyer.

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