



This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Workers Compensation Act* and the *Rehabilitation Services and Claims Manual, Volumes I and II* for purposes of interpretation and application of the law.

Factsheet #36
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THIRD PARTY CLAIMS

It is the law that you cannot sue an employer, another employer, or a fellow worker if any of them cause your work-related injury or occupational disease.

However, if you are injured on the job and someone who was not a worker or an employer caused the injury, you can choose to sue for damages rather than claiming compensation from WorkSafeBC. Someone other than a worker or employer is called a “third party” by WorkSafeBC.

You can either claim compensation with WorkSafeBC or you can sue a third party. For example, in the case of a motor vehicle accident, you could go to ICBC instead of WorkSafeBC.

If a third party caused your injury, we recommend you speak with a lawyer for advice.

Getting Started

Whether you decide to claim with WorkSafeBC or you decide to sue a third party, you should still file a claim with WorkSafeBC. You should complete an “Application for Compensation”. WorkSafeBC will send you an “Election to Claim Compensation” form in the mail.

By law, you must send your Application for Compensation form to WorkSafeBC within one year of the injury.

If you decide to claim compensation you must send your Election to Claim Compensation form to WorkSafeBC within three months of the injury. If you decide not to claim compensation, do not send this form to WorkSafeBC.

To get these forms you should contact WorkSafeBC office nearest to you. You can either pick them up or WorkSafeBC will mail them to you.

For more information:
Website: www.labour.gov.bc.ca/wab



Lower Mainland/Fraser Valley/Kootenays: 1-800-663-4261
Northern & Central Interior: 1-800-663-6695
Vancouver Island: 1-800-661-4066

THIRD PARTY CLAIMS

Claiming Compensation

If you decide to claim benefits from WorkSafeBC, you should immediately send the Election to Claim Compensation form to WorkSafeBC. Once WorkSafeBC receives this form, it will determine what benefits to pay you for your injury.

Once you have made your election and filed a WorkSafeBC claim, your own right to take legal action against the third party goes over to the WorkSafeBC. WorkSafeBC can then decide whether it is going to sue the third party or not. Since you gave up your own right, you cannot force WorkSafeBC to take the other party to court or to settle. This is now totally up to WorkSafeBC.

If WorkSafeBC chooses to take legal action, WorkSafeBC will provide a lawyer. If WorkSafeBC's legal action is not successful, all costs are paid by WorkSafeBC.

However, WorkSafeBC may allow you to choose your own lawyer, who can sue the other party. Any settlement or judgment award obtained through your legal action will still go to WorkSafeBC. If your lawsuit is not successful, WorkSafeBC is not responsible for your legal fees and costs.

If WorkSafeBC or your lawyer recovers more money than you received in WorkSafeBC benefits, WorkSafeBC will pay this surplus to you after deduction of administrative costs and legal fees. Please note: If your claim gets reopened in the future for a worsening of your compensable condition, any extra money paid out to you will be deducted before you receive more WorkSafeBC benefits.

Electing not to claim compensation

If you decide not to claim compensation and decide to sue the third party, do not send the Election to Claim Compensation form to WorkSafeBC. However, you should still send in your Application for Compensation form. This is important to protect your right to reopen your WorkSafeBC claim in the future.

You should ask a lawyer for specific advice and assistance.

If you or your lawyer is offered a settlement by the third party, you should ask WorkSafeBC to approve the settlement. You do not need to ask WorkSafeBC to approve a court ordered settlement. If you had already applied for compensation, you will have the right to ask WorkSafeBC pay you benefits. WorkSafeBC will deduct the money you got from the settlement from any WorkSafeBC benefits you may get.

If you have more questions regarding a third party claim, you can contact our office or you can phone the WorkSafeBC Legal Department at 604-276-3121 for further information.