

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.

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THIRD PARTY CLAIMS

You cannot sue your employer, another employer or a worker (whether or not you have the same employer) for causing your work-related injury or occupational disease. Section 127 of the Workers Compensation Act bans such lawsuits.

However, if someone else caused or contributed to the work-related injury or occupational disease, you can choose to sue that “third party,” rather than claim compensation from WorkSafeBC.

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

Getting started: filing a claim

Even if you intend to sue a third party, you should still file a claim with WorkSafeBC in order to preserve your potential right to claim workers compensation later. You should complete and send Application for Compensation and Report of Injury or Occupational Disease form to WorkSafeBC. Please note that the deadline for filing to file a claim for based on a personal injury is one year from the date of injury. A claim for an occupational disease must be filed within one year from the date of diagnosis or date of disablement, whichever comes first.

WorkSafeBC's forms are available on their website or from the WorkSafeBC office nearest to you.

Electing to claim benefits

If you decide to go ahead and claim compensation, you must send your Election to Claim Compensation form to WorkSafeBC **within three months** of the injury. When 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 transfers to WorkSafeBC. WorkSafeBC then decides whether it is going to sue the third party or not. You cannot force WorkSafeBC to take the other party to court or to settle. WorkSafeBC will decide how and if it will go forward.

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

THIRD PARTY CLAIMS

WorkSafeBC may allow you to choose your own lawyer and sue the third party. However, any settlement or judgment award obtained through legal action will still go to WorkSafeBC. If WorkSafeBC or your lawyer recovers more money than you received in WorkSafeBC benefits, WorkSafeBC will pay this surplus to you after deducting administrative costs and legal fees. If your lawsuit is not successful, WorkSafeBC is not responsible for your legal fees and costs.

Electing not to claim compensation

If you decide not to claim compensation, do not send the Election to Claim Compensation form to WorkSafeBC. However, you should still send in your Application for Compensation form. Doing so is important to protect your right to have your WorkSafeBC claim reopened in the future if need be.

If you or your lawyer is offered a settlement by the third party, you should ask WorkSafeBC to approve the settlement. If WorkSafeBC does approve the settlement and its value is less than the value of the benefits you would be entitled, you can claim the difference from WorkSafeBC, provided that you filed your Application for Compensation form as noted above.

If after a trial, you are awarded an amount which is less than the value of the benefits you would be entitled, you can claim the difference from WorkSafeBC, provided that you filed your Application for Compensation form as noted above.