

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.

Updated: September 2022

## LATE APPLICATIONS FOR WORKERS' COMPENSATION

### How much time do I have to apply for workers' compensation in British Columbia?

You must apply to WorkSafeBC for workers' compensation within **one year** of:

- The date of a physical injury, or in the case of a series of injuries, the date of the last injury in the series,
- The date you were disabled from work due to an occupational disease, or,
- The date you first experienced a psychological change after you were exposed to a traumatic event or significant stressor in the course of your work.

You should apply for workers' compensation as soon as possible after your injury, the onset of your disability, or psychological change. This will make it easier for WorkSafeBC to investigate your claim and determine whether it will be accepted.

### How do I apply?

You need to report your workplace injury or disease to WorkSafeBC. You can make a report of an injury or disease by filing an Application for Compensation:

- Online at WorkSafeBC's website: <https://www.worksafebc.com/en/claims/report-workplace-injury-illness/how-workers-report-workplace-injury-illness>,
- Over the phone by calling 1-888-WORKERS (1-888-967-5377), or,
- By submitting a hard copy of the Application for Compensation form to WorkSafeBC by fax or mail. You can obtain a hard copy of the Application for Compensation form online or by calling WorkSafeBC and requesting a copy.

### What happens if I apply for compensation after more than a year?

If you do not file for compensation within one year of the date of your injury, disablement from occupational disease or psychological change, WorkSafeBC might deny your claim as your application is late. However, WorkSafeBC may still accept your claim for compensation after more than one year if there were **special circumstances** that prevented you from applying within the one-year period.

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You will need to provide WorkSafeBC with your explanation of why you were not able to apply within one year. WorkSafeBC will first consider whether they accept your circumstances as a valid reason for the delay. If WorkSafeBC accepts your explanation, they will then determine if there is enough information available to consider your claim.

### What are "special circumstances"?

Examples of factors WorkSafeBC usually accepts as special circumstances are if you:

- did not lose time from work;
- did not lose any income;
- did not need to seek medical attention for some time after your injury;
- did not know about WorkSafeBC; or
- were dealing with medical conditions or other unusual events that prevented you from filing a claim.

WorkSafeBC may also accept matters outside of your control as special circumstances, such as when:

- your doctor did not connect your medical problem to your work-injury, **or**
- someone, such as your employer, a co-worker or a doctor, talked you out of claiming compensation.

This is a partial list, and WorkSafeBC may look at other factors. In all cases, you must provide an explanation of how your circumstances prevented you from applying for compensation within the one-year period.

Your explanation may include information such as:

- why you did not at first think your work caused the injury;
- why your doctor now feels that your work caused the injury; or
- if possible, evidence that someone talked you out of filing a claim (for example, provided lighter job duties, suggested private insurance) or that your doctor told you not to bother.

### If I successfully show that there were special circumstances, will I get compensation?

Not necessarily. WorkSafeBC will still have to decide whether there is enough information to make a decision on your claim. For instance, if witnesses cannot remember anything and there is no medical way to connect your current problems to the earlier incident, WorkSafeBC may feel a decision cannot be made to accept your claim. If there is enough information, then WorkSafeBC will determine whether or not to accept your claim following their policies and procedures.

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Usually, WorkSafeBC will only look at your claim after they accept that there are special circumstances. It is unlikely that WorkSafe BC will look at the evidence for your claim, if they determine that there are no special circumstances. However, sometimes WorkSafeBC does look at both the special circumstances and the claim in one decision.

### **If I receive compensation, what date will the benefits start from?**

If WorkSafeBC accepts that there were special circumstances and accepts your claim, then the date your benefits start from depends on how late your application is. If your application was filed **within 3 years** of the date of injury, disablement or psychological change, your benefits will start the day after your injury. If your application is **later than 3 years**, your benefits will start from the date of your late application, and you cannot receive any benefits for the period before that date.

### **What if there is new medical evidence that shows my disease is work-related?**

In some cases, you may have a disabling disease that WorkSafeBC has not recognized as work-related at the time you were disabled from your employment. It may only be later that WorkSafeBC recognizes it as an occupational disease based on new medical or scientific evidence.

The rules are slightly different in this situation. If you apply for compensation **within 3 years** of the date that WorkSafeBC obtained "sufficient medical or scientific evidence" (as decided by WorkSafeBC), your compensation would date from when you were disabled by the disease.

If you apply **later than 3 years** after WorkSafeBC obtained "sufficient medical or scientific evidence", WorkSafeBC would treat your application for special circumstances in the same way that other late applications are considered. If your claim is accepted, your benefits would date from your application for compensation.

### **How can I show that my claim should be accepted?**

In order to increase the likelihood that your claim will be accepted, you should:

- make sure WorkSafeBC has copies of any first aid or accident reports;
- provide WorkSafeBC with statements from witnesses who saw your injury occur; and
- get medical opinions from your doctors, connecting your present condition, whether it is a physical injury, occupational disease or psychological injury, to the work-incident(s) you are reporting.

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### What happens if WorkSafeBC determines that there were no “special circumstances” present?

Your claim will be rejected due to the late application and absence of special circumstances.

If you do not agree with a decision made by WorkSafeBC, such as a determination that there were no special circumstances preventing you from filing your claim, you have the right to request for a review of the decision. You must request a review within **90 days** from the date of the decision.

At the Review Division you can present arguments about your circumstances and why you think WorkSafeBC should accept your late application for compensation. The Review Division cannot consider any arguments except those about your special circumstances and why they prevented you from filing your claim on time, unless WorkSafeBC looked at both the special circumstances and whether it should accept the claim together in their original decision.

If the Review Division allows your request and determines that special circumstances were present, your claim application will go back to WorkSafeBC, which will decide on your claim based on its merit and their ability to make a decision with current information.

If the Review Division denies your request, you can appeal the decision to the Workers' Compensation Appeal Tribunal. You have **30 days** from the date of the Review Division's decision to file an appeal.