



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 #28
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LATE APPLICATION FOR WORKERS' COMPENSATION

When should I apply for workers' compensation?

You must apply for compensation within **one year** of the date of injury or the date you were disabled from an occupational disease. However, you should apply as soon as possible after your injury or the onset of your disability. This will make it easier for WorkSafeBC to investigate and decide on your claim application.

How do I apply?

You can complete an Application for Compensation online at http://www.worksafebc.com/claims/report_injury/incident_and_injury_report/default.asp You can also file your claim over the telephone by calling 1 888 WORKERS (1 888 967 5377), or by pressing #5377 if you are on Telus, Rogers or Bell mobile services. You can also contact WorkSafeBC to request hard copies of the application forms, which you can then fax or mail back, by phoning 1-888-967-5377.

What if I do not apply within the year?

Section 55 of the *Workers Compensation Act* allows WorkSafeBC to accept a late application if there were **special circumstances** that prevented you from applying within a year of your injury or disablement from occupational disease.

If you think special circumstances prevented you from filing a claim within one year, WorkSafeBC must first consider whether it accepts your circumstances as a valid reason for the delay. If WorkSafeBC accepts your reason, it then must decide if there is enough information to consider your claim in the normal way.

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

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What are "special circumstances"?

Examples of things WorkSafeBC usually considers to be 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 the injury;
- did not know about WorkSafeBC;
- did not relate the current problem to the earlier injury; or
- were dealing with medical conditions or other special circumstances that prevented you from filing a claim.

WorkSafeBC may also consider there to have been special circumstances to be when:

- your doctor did not connect your medical problem to your 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 evidence to prove how your particular special circumstances prevented you from applying within the year.

To show special circumstances existed, you may have to provide 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 for applying late, 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 relate 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 decide on your claim in the normal way.

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Usually, WorkSafeBC will only look at your claim after it accepts that there are special circumstances. If WorkSafeBC decides that there are no special circumstances, it may not look at the evidence about your claim. 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 your 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, your benefits will start the day after the 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 neither the *Workers Compensation Act* nor WorkSafeBC recognized as work-related at the time you left your job. It may only be later that WorkSafeBC recognizes it as an occupational disease because of new medical or scientific evidence.

If that is your situation, the rules that apply are slightly different. 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 you find out your work caused your disabling disease, WorkSafeBC would treat your application for special circumstances in the usual way. In that case, your benefits would date from your application for compensation.

This provision does not apply to any disease that disabled you before July 1, 1974. The wording of the Act before July 1974 did not allow for such consideration.

How can I show that my claim should be accepted?

- make sure WorkSafeBC has any first aid or accident book reports;
- get statements from witnesses who saw your injury; and
- get medical opinions from your doctors, connecting your present condition to the injury or problem you are reporting.

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If my special circumstances and my claim application are turned down, can I request a review?

Yes, you can Request a Review to the Review Division. You have **90 days** from the date of the decision to file a request.

At the Review Division you can present arguments about your special circumstances and why you think WorkSafeBC should accept your application now. You cannot present arguments about the claim and why WorkSafeBC should give you compensation, 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, 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 appeal, you can appeal to the Workers' Compensation Appeal Tribunal. You have **30 days** from the date of the Review Division's decision to file an appeal.