

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: December 2019

## PROHIBITED ACTIONS RELATING TO OCCUPATIONAL HEALTH AND SAFETY

If you raise an occupational health and safety issue, refuse unsafe work, carry out any required health and safety related duties, testify in a proceeding about a health and safety matter, or provide others with information about health and safety matters, neither your employer nor your union can take any prohibited (retaliatory) action against you.

### What is a Prohibited Action?

A prohibited action includes any act or omission by an employer or union, or a person acting on behalf of an employer or union that negatively affects a term or condition of your employment or your membership in a union.

Examples of prohibited action include:

- suspension, layoff, or dismissal;
- demotion or loss of opportunity for promotion;
- transfer of duties;
- change of location of workplace;
- reduction in wages;
- change in working hours;
- coercion or intimidation;
- being subjected to any discipline, reprimand or penalty; or
- elimination of the job.

A worker can also make a complaint if an employer fails to pay wages while a worker engages in certain activities relating to occupational health and safety matters, such as attending a health and safety meeting, for example.

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OCCUPATIONAL HEALTH AND SAFETY**

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**What should I do if I have a prohibited action complaint?**

If you think you have experienced prohibited action relating to occupational health and safety, you should contact the WorkSafeBC office nearest to you. You will be asked to give some of the details of the complaint as well as a telephone number in order for a Prevention Officer to contact you.

**Should I go to my union?**

If your complaint is against your employer, you should talk to your union. You may have rights under your collective agreement which will offer a better result than that which you would obtain under the prohibited action process. If your complaint is against your union, you should talk to WorkSafeBC directly.

**Time Limits**

It is critical to keep in mind the following strict time limits:

- If the complaint is about a prohibited action such as dismissal, coercion or intimidation, discipline or reprimand, you must file a written complaint with the WorkSafeBC within **1 year** of the prohibited action.
- If the complaint is about a failure to pay wages relating to an occupational health and safety matter, you must file a written complaint with the WorkSafeBC within **60 days** after the wages became payable.
- If the WorkSafeBC decides that your employer has not taken a prohibited action against you or does not owe you wages, or if your claim is accepted but you disagree with the remedy decision, you have **90 days** to appeal the decision to the Workers' Compensation Appeal Tribunal (WCAT).

**What kind of evidence will I need?**

Each case turns on its own facts, but the following types of evidence may be relevant in supporting your claim:

- Witness statements
  - Email documentation or documented correspondence
    - i.e. hiring letter, letters of reprimand, policy manual information, meeting minutes etc.
  - Photographic evidence
  - Pay stubs, record of hours, T4, Record of Employment
  - All job search information post termination / lay-off
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**Workers have an obligation to mitigate (lessen) their losses if the employment relationship has ended. This documentary evidence is critical when seeking a period of wage loss.**

### **What are the options for resolving my complaint?**

Complaints can be resolved by mediation or adjudication.

### **What is Mediation?**

Mediation is a meeting between you and your employer and a neutral third party called the mediator. The purpose of mediation is to resolve the complaint outside of the formal decision-making process. Mediation is a confidential, “off the record” process. This means that if there is no settlement and the adjudication goes ahead, nothing said at mediation can be used in the adjudication.

The mediation process is generally faster than the formal adjudication process and provides parties the opportunity to have some say in the outcome of the complaint. As mediation is a confidential process, the parties are able to propose settlement options that may not be available through the formal adjudication process.

If mediation does not result in settlement, the file will be returned to the Associate General Counsel Department, and go through the formal adjudication process. No information from mediation will go forward to the Associate General Counsel Department.

### **What is Adjudication?**

Once the Associate General Counsel Department receives the file they will contact the employer first to request a submission in response to the worker’s original Prohibited Action Complaint form (and any additional evidence provided at that time). The worker will be provided an opportunity to respond to the employer’s submission and provide any additional evidence at that time.

Adjudication is a formal decision making process. The Legal Adjudicative Officer (LAO) will review and weigh all evidence submitted and issue a written decision regarding whether or not there was a prohibited action and a decision regarding remedy entitlement. These decisions are appealable to the Workers’ Compensation Appeal Tribunal.

### **What kind of remedies can be ordered through the adjudication process?**

If WorkSafeBC rules that there was a prohibited action against you, they can order the employer (or in some cases, the union) to:

- stop the prohibited action;
- reinstate you to your former position;

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- remove any reprimand or unfavourable references to the matter, from your employment records;
- pay you for out-of-pocket expenses that you incurred as a result of the prohibited action;
- pay any loss of wages; and / or
- do anything that WorkSafeBC considers necessary to ensure compliance with the *Workers Compensation Act* and regulations.

### **Will the Workers' Advisers Office represent me at Mediation and / or Adjudication?**

The Worker's Advisers Office is independent of WorkSafeBC. Under the *Workers Compensation Act*, the Workers' Advisers Office may provide a worker with representation only if their claim has merit, or put another way, a reasonable chance of success. A Workers' Adviser will assess the merits of the case for each step of the process to determine if representation is appropriate.

### **Other Areas of Law**

The Workers' Advisers Office cannot provide advice or representation on any matters beyond the scope of the Workers Compensation Act. For example, we cannot give you advice on:

- employment insurance and income tax implications if you take a settlement at mediation;
- Your rights under the B.C. *Human Rights Code* or the *Employment Standards Act*;
- Suing in the courts for wrongful dismissal, or other causes of action.

Also, the employer may want you to sign a "General Release of Claims" as part of the settlement. We cannot give you advice on the effect of such releases, with one exception. Workers cannot waive their right to file or continue with a compensation claim with WorkSafeBC. If a release contains such a term, the term has no effect, but the rest of the release may be valid.