



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.

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 retaliatory (prohibited) action against you.

What is 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 or working hours;
- reduction in wages;
- coercion or intimidation;
- being subjected to any discipline, reprimand or penalty; or
- elimination of the job.

A worker can also file a complaint if their employer does not pay them for time spent doing certain occupational health and safety activities, such as attending a health and safety meeting.

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

If you believe your employer has taken a prohibited action against you, you may submit a prohibited action complaint using WorkSafeBC's online form:

- <https://www.worksafebc.com/en/for-workers/just-for-you/prohibited-action-complaints>; or
- <https://www.worksafebc.com/en/for-workers/just-for-you/prohibited-action-complaints/submitting-complaint>.

Should I go to my union?

If your complaint is against your employer and you are a member of a union, you should first contact your union. Your collective agreement may provide a process or remedy that could result in a better outcome than a prohibited action complaint. If your complaint is against your union, contact WorkSafeBC directly.



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Time Limits

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

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

What kind of evidence will I need?

The evidence needed will depend on the circumstances of each case. However, the following types of evidence may be helpful 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 to show that you took reasonable steps to mitigate your lost wages

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 (parties working together), or adjudication (WorkSafeBC's formal decision-making process).



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What is Mediation?

Mediation is a meeting between you and your employer and a mediator. The purpose of mediation is to resolve the complaint outside of the formal decision-making process.

The mediation process is generally faster than the formal adjudication process and provides parties with 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 (AGCD) of WorkSafeBC, to go through the formal adjudication process. If there is no settlement at mediation and the complaint proceeds to adjudication, nothing said at mediation can be used in the adjudication.

What is Adjudication?

Once the AGCD 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 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 WCAT.

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

If the AGCD decides that there was a prohibited action against you, they may order the employer (or in some cases, the union) to:

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



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

The Workers' Advisers Office (WAO) is independent of WorkSafeBC. Under the *Workers Compensation Act*, the WAO may provide a worker with representation only if their claim has merit, i.e., 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 WAO cannot provide advice or representation on any matters beyond the scope of the *Workers Compensation Act*. For example, the WAO cannot advise 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.

The employer may ask that you sign a "General Release of Claims" as part of the settlement. WAO cannot advise you on the effect of these releases, except in one situation: workers cannot waive their right to file or continue a workers' compensation claim with WorkSafeBC. If a release includes a term that tries to waive this right, that term is not valid. However, the rest of the release may still be enforceable.