Section Title: Benefits Administration - *Adjudication and Compensation*
Subject: General Premises
Effective Date: For initial decisions on or after April 1, 1995 to December 31, 2022

A. POLICY PURPOSE

Workers are eligible for compensation if they suffer a personal injury "arising out of and in the course of employment". "Arising out of the employment" is mostly concerned with whether the activity giving rise to the injury is causally connected to the employment. "In the course of employment" refers to an injury which occurs within the time of employment, at a location where the worker may reasonably be, and while performing work duties or an activity incidental to employment. Put simply, "arising out of the employment" generally refers to what caused the injury. "In the course of employment" generally relates to "in the doing of".

This policy focuses on "in the course of employment" and specific sub-topics which fall under "employer premises". This policy only deals with the determination of the "employer premises" regarding accidents that occur during the course of going to and from work. The distinct issue of "business travel" is covered under separate policies (44.10.50.10, *Transportation Controlled by Employer;* 44.10.50.50, *Travelling on the Job;* and 44.10.50.60, *Special Assignment Coverage*).

"In the course of employment" is not limited to the actual tasks or exact hours of work. At the same time, it is generally agreed that workers compensation was not intended to cover the worker during travel between home and the workplace. Between these two extremes, a balanced principle on the subject of going to and from work has developed in the workers compensation arena. Namely, going to and from work is covered *on the employer's premises*.

No hard and fast rules can be maintained when considering the broad issue of "arising out of and in the course of employment". Each claim is considered on its individual merits. However, it is reasonable and necessary from a practical perspective to develop a framework to interpret the intent of *The Workers Compensation Act* as it applies to certain situations. This policy serves as a framework for claims when the "premises" issue must be addressed.

B. POLICY

1. The Meaning of "Premises" and "Arising In the Course of Employment":

a. The term "premises" means the entire geographic area devoted by the employer to the industry in which the worker is employed. The employer's premises may be defined as the buildings, plant, or location in which the worker is reasonably entitled to be during the specific course of or incidental to the employment. Subject to the individual merits of each claim and specific exceptions noted in this policy, the employer's premises may include any land or buildings owned, leased, rented, controlled, or used (solely or shared) for the purposes of carrying out the employer's business.

b. The employer's premises do not include:

   i. The public or private land, buildings, roads or sidewalks used by the worker to travel to and from home and the employer's premises.

   ii. Private parking arrangements made by the worker (ie., independent of the employer).

c. When determining whether an accident was in the course of employment, the WCB will consider:

   i. **What** activity the worker was engaged in when injured in order to determine the connection with the employment (ie., did the injury result from a personal act, unrelated to the employment, or was there an employment connection).

   ii. **Where** the worker was performing the activity. The place the injury occurred is an element in determining the connection to the employment.

   iii. **When** the worker was engaged in the activity. This is also an important factor in determining whether the activity was "in the course of the employment" (ie., did the activity occur at a time reasonably connected to the work shift).

d. Generally, a worker is in the course of the employment on entering or departing the employer's premises, at a time reasonably close to the beginning or end of work, and using an accepted means of entering and leaving the employer's premises, all in relation to performing activities for the purposes of the employer's business.

2. General Approach for Parking Lots:

a. A parking lot is considered to be part of the employer's premises when it is owned, maintained, established, or controlled by the employer. As well, a parking lot or space is considered to be part of the employer's premises when workers are allocated parking spaces by the employer or when parking privileges with specific assignments are granted by the employer.

b. In deciding whether an injury on a parking lot arose out of and in the course of the employment, the WCB will consider the following questions as applicable in individual claims:

   i. Did the employer provide or assign the parking space for the worker? The unauthorized use of a parking lot by a worker would normally result in a claim not being accepted (ie., the injury was not work-related).

   ii. Did the employer control the parking lot? This question does not necessarily mean "did the employer own or lease the parking lot?" A claim may be accepted when the parking lot is not owned by the employer, but the employer has arranged for the worker to use the parking lot. The issue is not only whether the employer controls the parking lot, but whether the employer, in essence, controls the worker by establishing certain parking arrangements.

   iii. Was the injury the result of a hazard of the premises? The issue is whether the injury results from the employment versus a personal cause.

   iv. Was the parking lot attached to the place of employment? A parking lot that is not attached to the place of employment may be considered as the employer's premises when the parking lot is owned, maintained, established, or controlled by the employer. This may also be the case where the employer allocates parking spaces or provides parking privileges with specific parking assignments.

   v. Did the injury occur within a reasonable time before or after the work shift? A significant time gap between the time of an injury and the start or stop of a work shift would not automatically result in the denial of a claim. Rather, it would prompt the WCB to investigate further whether there was a connection between the injury and the employment.

   The variations in parking lot arrangements are infinite. No policy can cover every possible scenario. The preceding guidelines are all considered when obtaining detailed information regarding the circumstances surrounding the injury and each claim is then decided on its individual merits.

3. Travel Between Two Portions of the Employer's Premises:

In going to and from work, a worker will not usually be "in the course of employment" when travelling on property between two portions of the employer's premises.

4. Multi-Storey Buildings/Shopping Malls:

Multi-Storey Buildings

a. A worker is on the employer's premises and "in the course of the employment" when in a shared area of a multi-storey building (e.g., a multi-level office building occupied by more than one employer/tenant). This includes the exclusive premises of the employer and the shared or common areas such as entrances, lobbies, elevators, stairs and exits.

b. In a multi-storey building, the issue is not one of whether the employer owns or leases the common areas. Rather, the WCB will consider whether:

   i. The employer (and thus, the employer's workers) has a "right of way" in the common areas.

   ii. The building is, on the whole, for use by employers and their workers as opposed to the general public (i.e., workers are subject to an increased quantity of risk).

c. An injury in a common area will not normally be covered when the worker's reason for being in the common area is a deviation from the employment.

Shopping Malls:

a. A worker is not covered while in the common areas of a shopping mall shared by workers **and** the public unless the entire area is owned and/or maintained by the employer. The worker is considered to be in the course of the employment on entering the particular premises assigned to the employer. [1]

b. A worker is not normally considered in the course of the employment while in shared areas wholly used by the general public which are in no way controlled by the employer. The determination is based upon whether the worker is subject to an increased quantity of risk (i.e., more than the general public).

c. An injury in a parking lot of a shopping mall will be adjudicated according to the following:

   i. A worker is not normally covered while in public parking areas not under the control of the employer.

   ii. A worker is covered if the employer owns and maintains the entire parking lot.

   iii. A worker is covered if the injury occurs in a parking area assigned or directed by the employer and where the employer has a contracted agreement with a lessor covering maintenance of the parking lot. However, the worker is not covered while travelling from the assigned parking area to a shopping mall.

5. "Captive Roads":

a. For the purposes of this policy, a "captive road" is one which may technically be a public road, but leads only to the premises of the particular employer and is for practical purposes under the control of the employer. Under these circumstances, the road is considered to be incidental to and part of the employer's premises.

[1] On March 23, 1995, the Board of Directors confirmed that point 4 a under Shopping Malls does not preclude consideration of a claim if the worker is in a common area of a shopping mall in order to perform a job-related function.

b. A road may be considered a "captive road" if the employer makes decisions on repairs and/or maintains the condition of the road.

c. A determination as to whether a particular road is a "captive road" will not be based solely on whether the employer legally owns or controls the road. The real nature of the use of the road and its relationship to the employer's operation will be considered. For example, significant use of the road by the public and other employers for purposes not related to the employer's operation could result in a determination that the road is not a "captive road".

d. The occasional and incidental use of the road by the general public will not preclude determination of the road as a "captive road".

e. Even when the road in question is considered to be a "captive road", the circumstances surrounding the injury are also considered in determining whether it arose out of and in the course of employment.

6. Privately Owned Towns/Communities:

a. When a town or community is privately owned by the employer, all the land, buildings, and residential areas used for personal purposes are not the employer's premises.

b. In these cases, the employer's premises will be the areas designated specifically for the operation of the industry. Typically, this would be the actual work plant and associated parking lots.

7. Personal Hazards:

a. To be compensable, an injury must not only arise within the time ("when") and space ("where"), but also from an activity related to the employment. "Arising from an activity related to the employment" includes fulfilling work duties or doing something incidental to the employment. The question is whether the activity has its origins in the employment (i.e., is connected in a causal sense).

b. The WCB will make a distinction between an injury resulting from a personal cause and one resulting from the employment. Generally, an injury occurring on the employer's premises is considered to arise out of the employment unless the following apply:

   i. The injury was the result of a personal action by the worker **and** was not caused by a:

      * a hazard of the premises; or,
      * an occurrence under the control of the employer.

   ii. The worker was engaged in an activity not incidental to the employment. The injury will be considered to be the result of a personal hazard where the activity was so remote from normal employment functions that the activity and resulting injury cannot be characterized as reasonably incidental to the employment. The determination is based on whether the activity breaks the employment connection.

C. REFERENCES

The Workers Compensation Act, sections 1(1)(b)(i), 4(1), 4(5), 60(2)(a), and 60(2)(j)

Related WCB Policies:

44.10.50.10, *Transportation Controlled by Employer*
44.10.50.50, *Travelling on the Job*
44.10.50.60, *Special Assignment Coverage*
44.10.60.40, *Accidents Occurring in Lunchrooms*

History:

1. Board Directive entitled "Accidents in Employer's Parking Lots" approved by Board of Commissioners on January 29, 1970.
2. Board Directive entitled "Accident Location" approved by Board of Commissioners on February 6, 1970.
3. Board Directive entitled "Accidents in Employer Parking Lots" amended by Board of Commissioners on March 1, 1974.
4. Board Directives on "Accident Location" (Policy 44.10.50.20) and "Accidents in Employer's Parking Lots" (Policy 44.10.60.30) rewritten in Policy Manual format and issued July, 1992.
5. Policies 44.10.50.20 and 44.10.60.30 rescinded as of April 1, 1995, with the approval of Policy 44.05.20, *General Premises*, by Board Order 3A/95, effective April 1, 1995, to apply to all claims for which the issue has not been adjudicated.
6. On March 23, 1995, the Board of Directors confirmed that point 4a. under Shopping Malls (page 4) does not preclude consideration of a claim if the worker is in a common area of a shopping mall in order to perform a job related function.
7. Policy corrected for minor typographical errors and to incorporate the Board of Directors March 23, 1995, decision (see #6 above) into the policy – November 2002.
8. Minor formatting and grammatical changes were made to the policy June 27, 2012.
9. Minor formatting changes were made to the policy, April 2021.
10. Policy was archived December 31, 2022.