

Section Title: Board and Corporate Administration - Legal
Subject: Elective Rights
Effective Date: March 19, 1970

A. POLICY

As provided for in *The Workers' Compensation Act* (the Act), all workers covered under the Act, their dependants and legal representatives have no right to action against their employer in the event of a personal injury or death that arises out of and in the course of employment.

Where an accident that arises in the course of employment results in an injury or death and involves a third party, the worker or the worker's dependants may claim compensation or they may bring an action against the third party. If the worker decides to claim compensation, the right to action against the third party is vested in the WCB; and if the WCB pursues that option and as a result recovers more than the total compensation paid or payable to the claimant, the excess, after legal and administrative costs, is awarded to the claimant. If the WCB recovers less than the compensation paid or payable to the claimant, the claimant is still entitled to the level of benefits and services he or she would have been entitled to had there been no third party involvement.

When a worker has a right of action, yet elects to claim compensation under the provisions of the Act, the worker cannot withdraw the compensation claim at any time after the claim has been approved without the approval of the WCB.

If the accident happens outside Manitoba and a worker sustains a compensable injury normally covered under the Manitoba *Workers Compensation Act*, and if the laws of the jurisdiction in which the accident happened also offer compensation, then the worker may choose between claiming compensation from the Workers Compensation Board of Manitoba or from the jurisdiction in which the accident happened.

It is the worker's responsibility to inform the WCB, in writing, of his or her choice. Once that choice is determined, it cannot be reversed without the approval of the WCB.

When the person required to make an election under the Act is under 18 years of age, the legal guardian may make the election for the minor.

B. REFERENCES

The Workers Compensation Act, sections 4(7), 5(1)-5(6), 6(1)-6(3), 9(1)-9(10), 13(1), 68(4) and 77(4)
WCB Policy 31.10.40, *Recoveries from Third-Parties*

History:

1. Policy approved by the Board of Directors on March 19, 1970.
2. Policy re-written and approved for issue to the Policy Manual as Policy 22.10 by Board Order 9/91 on June 19, 1991.
3. Policy amended by Board Order 37/01 on December 21, 2001, to clarify that once a claim has been approved, the claimant may not withdraw the claim in order to pursue a third party without the approval of the WCB.
4. Minor formatting changes were made to the policy and the history section was updated, June 27, 2012.