

Section Title: Board and Corporate Administration - Legal
Subject: Employer Adjudication
Effective Date: June 22, 1992

GENERAL INFORMATION

The Worker's Compensation Act (effective January 1, 1992) stipulates that the WCB may delegate certain powers to agents or local representatives. This policy will deal with this section as it pertains to the delegation of the function of adjudication being performed by an employer for its own employees. The Worker's Compensation Board will consider applications from employers wishing to perform this function. The criteria that the Worker's Compensation Board will consider when evaluating applications from employers to perform the function of adjudication can generally be divided into the areas of capacity to perform the function; track record in the areas of compensation, safety, and labour relations; and commitment to the process and to the requirements of the Worker's Compensation Board.

A. POLICY

The WCB will approve applications from employers to perform the adjudication function only when it is apparent that such an agreement would be beneficial to both workers and employers, as well as to the WCB. Specific criteria that will be considered include:

1. An employer must demonstrate the capacity to perform the role by its willingness and ability to dedicate staff to the task of adjudication and by committing to any steps that the WCB recommends with regard to the training of staff. At least one staff person, and more if the WCB believes it to be required, must be dedicated to the task with sufficient trained back-up available at all times. Staff employed to perform this function must be employees of the organization. This function may not be sub-contracted to others.
2. To perform the adjudication function, an employer should have a stable record of operation in the province and demonstrated financial stability. The WCB will assess such factors as net worth, credit rating and other information, as it sees fit, to determine stability.
3. The employer's safety record and attitude to safety must be satisfactory to the WCB. The WCB must be satisfied that the employer has an appropriate attitude to safety and does not engage in inappropriate forms of claims management. The existence of surcharges, worse than average position in the rating group, or citations or convictions for unsafe practices that have occurred within two years of the application, will normally disqualify the employer's application unless the conditions that gave rise to the problems have been remedied or the WCB is satisfied with an explanation provided by the employer. Any evidence of inappropriate claims control or claims suppression activities will disqualify the employer until the WCB is satisfied that the problem has been eradicated.
4. An employer's appeal record should demonstrate an understanding of the basic principles of compensation by an absence of frivolous or malicious appeals. Accepted employers will normally have a record of being successful in the appeals that they bring against workers, unless an appropriate attitude can be demonstrated despite a less successful record.

5. On receiving an application from an employer to perform the adjudication function, the WCB will solicit a response from the employees (unions, associations, or individuals), giving them the opportunity, if the employees are not in favour of the employers application, to show cause why they believe the application should not be approved. The employer must co-operate with any investigation that the WCB undertakes in this regard. The employees may raise issues related to claims management, appeals, re-employment, rehabilitation, safety or any other issue of relevance to the compensation function.
6. The WCB will examine the employer's operation for an appropriate approach to rehabilitation evidenced by an active and on-going disability management plan acceptable to the WCB.
7. An employer, if accepted, must be willing to enter into a contract with the WCB committing to meet certain standards with regard to policy, procedure, service, training, and the general scope of the employer's rights and duties. Contracts may be tailored to the unique situation of the particular employer but will conform to the following:
 - a) Claims involving a fatality, permanent impairment, or occupational disease will be handled by the WCB.
 - b) Claims that the employer believes should be denied will be transferred to the WCB, as will claims not adjudicated within 21 days.
 - c) Claims involving a termination of benefits will be transferred to the WCB if the worker disputes the appropriateness of the termination.
 - d) Claims for wage loss in excess of 30 days will be transferred to the WCB.
 - e) Claims that the employer believes should be subject to section 4(3) of the Act dealing with serious and wilful misconduct will be transferred to the WCB.
 - f) Claims that occur outside the Province of Manitoba will be transferred to the WCB.
 - g) Claims that the employer believes should be subject to sections 40(5) through 40(7) of the Act dealing with recurrence of injury will be transferred to the WCB.
 - h) Claims involving executive officers will be transferred to the WCB.
8. An employer must continue to pay its share of WCB administrative costs as well as paying directly for costs incurred by the WCB for monitoring, auditing, and training costs arising from the Employer Adjudication agreements. The WCB may consider a payment to the employer in recognition of its increased contribution to the process.
9. An employer must be willing to extend re-employment rights to its injured workers within reasonable parameters that will be delineated in an agreement between the WCB and the employer.
10. An employer must undertake to inform the WCB of any substantive changes affecting the conditions of acceptance. If problems are found by the WCB or disclosed by the employer the WCB may suspend the agency agreement or allow the employer to remedy any problem arising. The WCB may withdraw from an adjudication agreement at any time, without advance notice to the employer, at the sole discretion of the WCB.

11. An employer may withdraw from an adjudication agreement with a minimum of one month notice to the WCB of its intention to stop providing the adjudication function.
12. Decisions on applications for, and termination of, employer adjudication agreements will be made by the administration of the WCB. Employers or workers wishing to appeal the decision will appeal directly to the Board of Directors whose decision will be final.

B. REFERENCES

The Workers Compensation Act, section 109.5(1)

History:

1. Policy approved by the Board of Directors on June 22, 1992, by Board Order 36/92, effective June 22, 1992.
2. Minor formatting and grammatical changes were made to the policy and the history section was updated, June 27, 2012.