

Title: Board and Corporate Administration - *Legal*
Subject: Compliance and Enforcement
Effective Date: Effective January 1, 2022

A. POLICY PURPOSE

The Workers Compensation Act (the Act) imposes obligations on workers, employers and third parties.

Failure to meet the requirements and obligations imposed by the Act can result in a warning, an administrative penalty or other sanction, or referral to Manitoba Justice for prosecution.

The Workers Compensation Board (WCB) recognizes that some contraventions of the Act result from a misunderstanding of the rules or inadvertence. In general, to prevent and address such contraventions, the WCB's compliance framework involves educating people about their obligations and providing support to ensure that those obligations are met, before an administrative penalty is imposed.

This policy outlines the WCB's approach to enforcing compliance with the Act.

B. POLICY

1. SCOPE

This policy applies to any person who has specific obligations or requirements imposed on them under the Act and regulations, including workers, employers, and external service providers.

2. INVESTIGATION

Information about possible contraventions of the Act may come from a variety of sources, including workers, employers, third parties, or the WCB itself through audits and inspections.

When the WCB determines that the evidence provided in support of an allegation creates a reasonable belief that a breach has occurred, the WCB will conduct a preliminary investigation.

Preliminary Investigation

The extent of the preliminary investigation depends on the seriousness of the allegation and the evidence available to support it. During a preliminary investigation, the WCB will gather and review available evidence and may conduct an audit.

When the WCB determines, based on the evidence, that there are reasonable and probable grounds to believe a contravention has occurred, a formal investigation may be initiated.

If the WCB determines that the contravention likely resulted from a simple error or lack of awareness a warning may be issued and/or remedial steps taken to address the impacts of the contravention.

Formal Investigation

When a formal investigation is initiated, the WCB will give written notice to the person or organization whose conduct is the subject of the investigation. The written notice will provide information about the allegations under investigation and set a deadline for response.

If no response is received within the time allowed, the WCB may determine the matter based on the available evidence.

Gathering Evidence

The extent of a formal investigation will vary from case to case. During a formal investigation, the WCB collects evidence from a variety of sources, including workers, employers, witnesses and other third parties, and publicly available records and information.

When gathering evidence, the WCB will comply with applicable privacy legislation.

Formal investigations may include surveillance if there are reasonable grounds to believe a contravention is occurring, there is a likelihood that surveillance will provide the necessary evidence, and less invasive measures are unlikely to be as effective.

The WCB also has the authority to compel the production of information, records, and documents for the purpose of enforcing the Act. It may also enter the premises of employers and other third parties to conduct inspections.

Assessing Evidence

Once the WCB has gathered the necessary evidence, it assesses each piece of evidence to determine its relevance, reliability, and credibility. This is done to assign weight to the evidence and to determine what has, more likely than not, occurred.

The WCB will then apply the law to the facts to determine whether the party under investigation has contravened the Act.

3. CONSEQUENCES

When the WCB determines that a party under investigation has contravened the Act, it may impose an administrative sanction or refer the matter to Manitoba Justice for prosecution. Sanctions include administrative penalties, and decisions to terminate, suspend or reduce compensation.

Administrative Penalties

The WCB may impose administrative penalties for contraventions. Penalty amounts are set out in the *Administrative Penalty Regulation*.

The WCB will impose the set penalty for a contravention unless there are mitigating factors that warrant a reduction or waiver of the penalty.

Administrative penalties are explained in further detail in the guidelines that accompany this policy.

Termination, suspension, reduction and/or repayment of compensation

The WCB may terminate, suspend, or reduce compensation payable to a worker or dependent if it is satisfied that the compensation paid is based on false information.

The WCB may also terminate, suspend, or reduce benefits to a worker if there is a failure to inform the WCB of a material change in circumstance affecting a worker's entitlement to compensation.

Only those benefits obtained through the false statement or failure to inform will be affected. This includes benefits already paid to a worker which may be collected by the WCB as an overpayment.

Benefits properly obtained will not be impacted.

Referral for Prosecution

Most contraventions of the Act for which an administrative penalty may be levied are also offences under the Act. In addition, some contraventions of the Act) may also constitute an offence under the *Criminal Code*.

Where the WCB finds that the seriousness of an alleged contravention would make an administrative penalty an inappropriate sanction, and where the evidence gathered by the WCB appears sufficient to prove the contravention beyond a reasonable doubt, the WCB may refer the matter to Manitoba Justice for prosecution as an offence.

4. RECONSIDERATION AND APPEAL

The WCB will reconsider its decisions to apply an administrative penalty, on written request, except in the case of administrative penalties imposed for the following contraventions:

- a) False Statement
- b) Claims Suppression
- c) Discriminatory Action
- d) Employer's Obligation to Re-Employ

These penalties may be appealed directly to the Appeal Commission.

Only the party against whom the penalty is levied may request reconsideration.

C. REFERENCES

The Workers Compensation Act, sections 16, 18, 19, 19.1, 19.2, 60.1, 80, 98, 99, 99.1, 99.2, 99.3, 100, 101, 109.1, 109.6, 109.7

Policy 20.10, *Reconsiderations*

Policy 22.00, *Decision Making*

Policy 44.30.60, *Notice of Change in Benefits or Services*

Policy 35.40.50, *Overpayment of Benefits*

History:

1. Policy approved by Board Order 112/89 on June 28, 1989.
2. Policy re-written and approved for issue to the Policy Manual as Policy 22.20 by Board Order 9/91 on June 19, 1991.
3. Policy amended by Board Order 37/01 on December 21, 2001 to delete the DEFINITIONS section as redundant (definitions not referenced in the policy since it was issued to the Policy Manual in 1991).

4. The word claimant was changed to worker in the last sentence of the paragraph on Page 2 on August 25, 2003.
5. Policy was re-written to expand its scope beyond claims investigation to investigation of program abuse by any person. Policy was approved on November 27, 2008 by Board Order No. 48/08 effective January 1, 2009.
6. Minor formatting changes were made to the policy, June 27, 2012.
7. Policy amended by Board Order No. 44/14 on December 18, 2014 effective January 1, 2015 to specify the role and mandate of Compliance Services with respect to administrative penalties, along with other minor changes to improve clarity.
8. Policy amended by Board Order No. 56/15 on December 17, 2015 effective January 1, 2016. Changes were required to refer to the new Policy 20.10 Reconsiderations.
9. Minor formatting changes were made to the policy, October 2020.
10. Policy amended and renamed by Board Order No. 40/21 on November 25, 2021 effective January 1, 2022.
11. Policy revised by Board Order No. 26/24 on June 20, 2024, effective immediately. The revisions clarify the process for reconsideration and appeal when more than one administrative penalty is applied to the same set of circumstances. This policy version was removed from the policy manual and archived.