

Section	Policy
40	44.10.30.60

Section Title: Benefits Administration - *Adjudication and Compensation*
Subject: Co-operation and Mitigation in Recovery
Effective Date: All decisions on or after May 1, 2018

A. POLICY PURPOSE

Section 22 of *The Workers Compensation Act* (the Act) requires workers to:

- Take reasonable steps to reduce or eliminate impairment or loss of earnings resulting from an injury;
- Seek out, co-operate in and receive medical aid that the board considers will promote the worker's recovery; and
- Co-operate with the board in developing programs for return to work, rehabilitation, disability management or other program the board considers will promote the worker's recovery.

If a worker fails to comply with section 22, the WCB may reduce or suspend the worker's compensation. Section 22 imposes an obligation on workers to participate cooperatively in their recovery and safe return to work. This policy elaborates on the responsibilities of both workers and the WCB in ensuring compliance with section 22 of the Act.

B. POLICY

The Act requires that workers take all reasonable steps to reduce or eliminate any impairment or loss of earnings resulting from a workplace injury. This is also known as a duty to mitigate the negative effects of a workplace injury. A worker can mitigate the negative effects of a workplace injury by reasonably participating and cooperating in medical treatment and services, and by participating fully in return to work and other programming the WCB considers beneficial to the worker's recovery and return to work.

MEDICAL AID

An injured worker must seek out, co-operate in and receive medical aid that, in the board's opinion, promotes the worker's recovery. The worker's responsibilities include the following:

- a) Avoiding any unreasonable delays in seeking medical attention for the initial injury or medical attention for any subsequent injuries or conditions that may delay recovery;
- b) Regularly attending all appointments with health-care practitioners, other health-care providers, WCB medical advisors and rehabilitation consultants;
- c) Reasonably co-operating with, participating in and following the medical, surgical, therapy or treatment plans, or rehabilitation programs prescribed by health-care providers and supported by the WCB;
- d) Co-operating with health-care providers, WCB medical advisors and WCB staff by informing them of any health changes and by providing health information when requested;
- e) Reasonably eliminating or reducing the effects of personal habits or behaviours that negatively affect recovery;
- f) Co-operating in the development and implementation of a plan intended to reduce the negative effects of personal habits or behaviours on a safe return to health and work;

- g) Avoid any form of treatment that the WCB considers experimental, unproven, or inappropriate in light of the worker's injury, or that is likely to increase the worker's physical or mental impairment.

RETURN TO WORK AND OTHER PROGRAMS

An injured worker is required to participate reasonably in their return to work, rehabilitation, disability management and other programs. The worker's responsibilities include the following:

- a) Reasonably participating in any return to work or disability management program the WCB considers necessary to promote the worker's recovery;
- b) Reasonably co-operating with the WCB in developing and carrying out a rehabilitation program designed to promote the worker's return to work;
- c) Demonstrating to the WCB an ongoing reasonable effort towards the successful completion of a rehabilitation program;
- d) Reasonably avoiding any activity which would result in a slower recovery from the worker's injuries or negatively impact the worker's medical ability to return to work;
- e) Reasonably participating in all programs that the WCB believes will encourage a timely and sustainable return to health and work.

WCB RESPONSIBILITIES

- 1. The WCB must advise an injured worker of his or her responsibilities under section 22 of the Act and this policy, and explain what those responsibilities mean in the individual circumstances of the worker's claim.
- 2. The WCB must assist the injured worker in mitigating the effects of a workplace injury by helping to identify and address impediments to the worker's safe return to health and work.
- 3. The WCB must advise the worker of the possible consequences of a failure to comply with section 22 and his or her responsibilities under this policy, including the reduction or suspension of compensation.
- 4. The WCB may reimburse the costs for a worker to participate in activities or programs designed to mitigate the effects of a workplace injury.
- 5. If a program or activity designed to change the worker's personal habits or behaviours began before the workplace injury, the WCB will not reimburse the costs of the program or activity.

CONSEQUENCES OF A WORKER'S FAILURE TO MITIGATE

- 1. If the WCB determines that the worker has not complied with section 22 of the Act and the requirements of this policy, it may reduce or suspend the worker's compensation. Before taking this step, the WCB will consider whether the worker has a reasonable explanation for non-compliance. If the WCB considers the worker's explanation for non-compliance to be reasonable, it will not suspend or reduce the worker's compensation.
- 2. Before reducing or suspending compensation, the WCB will provide the injured worker with a reasonable opportunity to comply with his or her obligations under the Act and this policy.
- 3. The WCB will communicate with the worker within a reasonable period of time following a reduction or suspension of benefits, to provide a further opportunity to comply with his or her obligations under the Act and this policy.

C. REFERENCES

The Workers Compensation Act, section 22

History:

1. Policy 44.10.30.60, Practices Delaying Workers' Recovery, approved by Board Order 31/92 on June 22, 1992, to be effective June 22, 1992.
2. Policy 44.10.30.60 amended on May 23, 1996, by Board Order 18/96, to clarify that it was originally intended to apply to both "Old" and "New" Act claims.
3. Minor formatting changes were made to the policy and the policy title was clarified, June 27, 2012.
4. Policy 44.10.30.60 Practices Delaying a Worker's Recovery was repealed and replaced with Policy 44.10.30.60 Co-operation and Mitigation in Recovery on April 19, 2018, by Board Order 16/18, to simplify language consistent with legislation that came into force in 2006. The new policy is effective May 1, 2018.
5. Minor formatting changes were made to the policy, April 2021.