

## **BUSINESS SEMINAR**

# **Bill 41: Amendments to the Workers Compensation Act**

**Presented on Dec. 13, 2022 by:**

**Chris Drinovz, Partner and Alejandra Henao, Lawyer  
Employment, Labour & Disability Group (KSW Lawyers)**

# INTRO

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- Welcome, from the Employment, Labour & Disability Group at KSW Lawyers.
- Our growing group has 7 lawyers and 6 supporting staff to assist our clients, with dedicated WorkSafeBC team.
- Covering all facets of workplace issues including labour/union, WorkSafeBC/OHS, Contracts & Policies, Planning, Terminations, Taxation, etc.
- Today covering new Bill 41 Amendments to the WCA.

# INTRO - Bill 41

- [Bill 41- 2022: Workers Compensation Amendment Act \(No. 2\), 2022](#) (“Bill 41”)
- Received Royal Assent on November 24, 2022
- Since 2018, 5 lengthy and comprehensive [reports](#) reviewing various aspects of the compensation system
- Most of Bill 41 amendments originate from 2019 Patterson report expanding on “worker centered approach” (517 pages long, 102 recommendations)



# Fair Practices Commissioner

356 (4) The fair practices commissioner may do the following:

- (a) investigate complaints by employers, workers and dependants of workers regarding alleged unfairness in their dealings with the Board;
- (b) make recommendations to the Board to (i) resolve complaints referred to in paragraph (a), or (ii) address systemic problems with the fairness of the Board's dealings as indicated by such complaints;
- (c) make recommendations to the Board about systemic problems with the fairness of (i) the application of policies of the board of directors, or (ii) practices and procedures of the Board; BILL 41 – 2022 9
- (d) undertake any other activity prescribed by regulation of the Lieutenant Governor in Council.



**Complaint to the WorkSafeBC Fair Practices Office**

To register a complaint with the WorkSafeBC Fair Practices Office (FPO), please complete the following form. Click the **Attach** button to include additional documentation. When you are ready, click the **Submit** button to send the information to us. We will contact you by phone within one business day. Please note, the FPO will not reach for email.

Before you begin, it may be helpful to review the [Fair Practices Office](#) page to learn more about the FPO and what we can investigate.

Last name		First name	
If you are a worker, include your BUSINESSID/ID number		If you are an employer, include your BUSINESSID/ID number	
Home address		Home phone number	Alternative phone number
City	Province	Postal code	When is the best time to contact you between 9:00 a.m. and 5:00 p.m.?
<input type="button" value="Add"/>			

**As complainant, I affirm the following:** I am a worker, employer, or someone who has been affected by a workplace incident. I am providing information to the FPO to help resolve the issue. I understand that the FPO will not reach for email.

**I am a worker that was involved in the issue.**

**I am an employer that was involved in the issue.**

**Do you have any other issues or concerns regarding the board?**  Yes  No

**Do you wish to be kept up to date on the status of the decision under review or appeal?**  Yes  No

Signature: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

**ATTACH** **SUBMIT**

WorkSafeBC collects information on this form for the purposes of addressing and improving the Worker Compensation Act. This form, along with the information it contains, is confidential. This information is subject to other laws, including the Access to Information Act. For more information, please contact the Information Access and Privacy Officer at 1-800-663-6888 or visit [www.worksafebc.com/privacy](#).

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# Non-Traumatic Hearing Loss

TABLE

Item	Column 1 Range of Hearing Loss (decibels)	Column 2 Percentage of Disability for Ear Most Affected	Column 3 Percentage of Disability for Ear Least Affected
1	0-27	0	0
2	28-32	0.3	1.2
3	33-37	0.5	2.0
4	38-42	0.7	2.8
5	43-47	1.0	4.0
6	48-52	1.3	5.2
7	53-57	1.7	6.8
8	58-62	2.1	8.4
9	63-67	2.6	10.4
10	68 or more	3.0	12.0

# Independent Medical Examinations

- (1.1) Subject to subsection (8), the presiding member must retain a health professional to provide independent assistance or advice in an appeal if all of the following apply:
- (a) the appeal tribunal receives a request under subsection (1.2) from an employer, a worker or a dependant of a deceased worker;
  - (b) the medical condition of the worker is at issue in the appeal;
  - (c) the appeal tribunal determines that the independent assistance or advice would assist in reaching a decision on the appeal. (1.2) If an employer, a worker or a dependant of a deceased worker is a party to an appeal, the employer, worker or dependant may request that the appeal tribunal retain a health professional to provide independent assistance or advice in the appeal. (1.3) A request under subsection (1.2) must be made in writing or in another form authorized by the appeal tribunal's rules.

# Payment of Interest

- 231.1 (2) Interest must be paid on any amount of compensation that
- (a) is determined to be payable following a review under Part 6 [Review of Board Decisions] or an appeal under section 288 [review decisions that may be appealed], and
  - (b) remains unpaid for a period of at least 180 days after the effective date.
- (3) Interest payable under subsection (2) must be calculated in accordance with the policies of the board of directors and begins on the effective date.
- (4) Despite this section, if interest is payable on an amount of compensation under section 312 [*payment of compensation following appeal*], interest is not payable under this section on that amount of compensation in respect of the same period.



# Indexing Benefits to Full CPI

## Cost of living allowance

### What is a cost of living allowance?

Put simply, a cost of living allowance is a payment intended to help protect you from inflation by maintaining your purchasing power.

### How cost of living allowance applies to your benefits

If you receive compensation payments from us, your payments may be affected by a cost of living allowance.

We apply the cost of living allowance every January 1, using a formula set out in provincial government legislation. The allowance can't be greater than 4% or less than 0%, and will never reduce your benefits.

### When your benefits may be adjusted

If changes in the Consumer Price Index are very small, or even negative (meaning prices are lower than they were a year ago), your benefit levels won't change. A substantial change in the Consumer Price Index could increase your benefit levels, by a maximum of 4%.

We apply a cost of living allowance every January 1. The date of your injury determines when you will be eligible:

- If you have been receiving payments from us for an injury that occurred more than 12 months prior to January 1, you are entitled to a cost of living allowance as of January 1.
- If your injury occurred within the last 12 months prior to January 1, you are not entitled to a cost of living allowance until the next January 1.

### Who is affected?

Your payments may be adjusted with a cost of living allowance if you receive any of the following from us:

- Some long-term wage-loss benefits
- Some vocational rehabilitation benefits
- Permanent disability awards
- Other periodic allowances and benefits

“Restore indexing of workers’ compensation benefits to the full rate of annual percentage changes in the Canadian Consumer Price Index (CPI). WorkSafeBC will have the discretion to approve annual indexation above 4%, if the percentage change in the CPI exceeds that amount.

Since 2002, cost-of-living increases for benefits have been indexed to the rate of annual changes in the CPI, minus one percentage point, to a maximum of 4%. Limiting cost-of-living increases is unfair to workers and erodes the value and purchasing power of benefits over time.”

See: <https://news.gov.bc.ca/releases/2022LBR0015-001623>



# Duty to Cooperate

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Under s 154.2 the reciprocal duty to cooperate between the employer and the worker include:

- contacting each other as soon as practicable after the injury and maintaining communication;
  - identifying suitable work for the worker that, if possible, restores the full wages the worker was earning pre-injury;
  - informing the Board of the worker's return to or continuation of work; and
  - responding to any requests of the Board.
- Duty does not apply if contact and communication are likely to imperil or delay the worker's recovery.
  - Either party can each lodge complaints to the Board for failure to cooperate, and the Board must make a decision on the matter within 60 days.



# Duty to Maintain Employment – s 154.3

(1) and (2) – Duty applies to:

- employers with 20 or more workers, and
- in respect of workers who have been employed by the employer for at least 12 continuous months, and
- who have been unable to work as a result of a work-related accident.

(3) If a worker is fit to work but not fit to carry out the essential duties of the worker's pre-injury work, an employer must offer to the worker the first suitable work that becomes available.

(4) If a worker is fit to carry out the essential duties of the worker's pre-injury work, an employer must

(a) offer that pre-injury work to the worker, or

(b) offer to the worker alternative work of a kind and at wages that are comparable to the worker's pre-injury work and wages from that work.

# Duty to Maintain Employment – s 154.3

- (5) An employer must, to the point of undue hardship, make any change to the work or the workplace that is necessary to accommodate a worker.
- Subsection 6 provides that these duties expire 2 years after the date of injury if the worker has not returned to work or if the worker is carrying out suitable work

(8) If an employer terminates a worker's employment within 6 months after the worker begins to carry out suitable work or begins to carry out the essential duties of the worker's pre-injury work or alternative work, the employer is deemed to have failed to comply with subsection (3) or (4), as applicable.

(9) Subsection (8) does not apply if the employer can establish, to the Board's satisfaction, that the termination was unrelated to the worker's injury.

- Subsections (10) – (12) cover workers' request to the Board to determine whether an employer has failed to comply with this section (must be made w/ 3 months after termination).

# Penalties for Failure to Comply

- If employer found to have breached the duty to cooperate or duty to re-employ, the Board may:
  - compensate worker by paying them amount equivalent to compensation that worker was entitled to pursuant to temporary total or partial disability provisions of the WCA;
  - the Board can also impose administrative penalty on employer in amount not exceeding Board's maximum wage rate for applicable year - 2023 maximum wage rate is \$112,800!
- Employers may appeal administrative penalties to the Review Division (within 90 days of decision date) and further to the Appeal Tribunal (WCAT).



# Employer Must Not Attempt to Prevent Reporting

Section 73 amendments:

(2) An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from

(a) making or maintaining an application for compensation under the compensation provisions, or

(b) receiving compensation under the compensation provisions.



# Commencement Dates

Provisions of Act	Commencement
Anything not elsewhere covered by this table (s 2 – Employer Claim Suppression) (s 3 – Percentages of disability) (s 5, 12 – <u>Non Traumatic</u> Hearing Loss) (s 10 - % change in the consumer price index)	The date of Royal Assent (Nov 24, 2022)
Section 4 – Duty to Cooperate and Duty to Maintain Employment	TBD - By regulation of the Lieutenant Governor in Council
Section 6 – Payment of interest	April 3, 2023
Section 7 – Administrative Penalties	TBD - By regulation of the Lieutenant Governor in Council
Sections 8 and 9 – Health professional assistance	April 3, 2023
Section 11 – Fair Practices Commissioner	May 1, 2023
Section 13 – Transitional Provisions	TBD - By regulation of the Lieutenant Governor in Council
Sections 14 and 15 – Transition – interest; Transition – independent assistance or advice	April 3, 2023

# Takeaways

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- Given additional duties and obligations towards injured workers, employers should evaluate whether they wish to protest new WorkSafeBC claims. Once claim accepted, everything triggered.
- Avoid terminating workers returning from WorkSafeBC claims within the first 6 months. If you must terminate returning injured workers, make sure you document reasons very well.
- Communication is key – ensure early communication with worker and Board in event of a claim.
- Keep an eye out on Regulations to know when some of the amendments come into force.
- Take these obligations seriously – penalties can have a big impact.
- Get to know and follow the WCA provisions.
- Have good record keeping for: date of employment, injury date, termination date, length of time off work.
- Review human rights law around undue hardship concept.

# Note to Audience

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The content in this presentation is for your general information and should not be taken as legal advice. If you have a specific problem, please contact one of the speakers to discuss your specific situation.







# QUESTIONS?

# THANK YOU

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**Chris Drinovz**  
**Alejandra Henao**

## EMAIL ADDRESS

[cdrinovz@kswlawyers.ca](mailto:cdrinovz@kswlawyers.ca)  
[ahenao@kswlawyers.ca](mailto:ahenao@kswlawyers.ca)

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Visit our [Employer Resources Blog](#)

## LOCATIONS

Abbotsford, Surrey, Langley, Vancouver

