



SASKATCHEWAN WORKERS' COMPENSATION BOARD

COMP 2018

INSTITUTE

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REGINA SK

Workers' Compensation: Your System - Your Way

Subrogation

Third Party Recovery

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wcb

Saskatchewan
Workers'
Compensation
Board

Can I sue or be sued?

- The workers' compensation system is a no fault insurance scheme whereby employers in industries covered by *The Workers' Compensation Act, 2013* (the "WCAAct") pay into a fund which covers the cost of administration of the system, the cost of earnings loss replacement, the cost of medical care, etc.
- In return for funding the system employers are protected from being sued for the injuries that occur to workers. This is laid out in section 43 of the WCAAct:

Certain actions barred

43 No employer and no worker or worker's dependant has a right of action against an employer or a worker with respect to an injury to a worker arising out of and in the course of the worker's employment.

Can I sue or be sued?

- In giving up this right to sue, workers and their dependants have the security of receiving earnings loss replacement, medical care, etc. that arise out of the work injury.

Reporting Injuries to the WCB:

- Employers and workers have a duty under the WCA Act to report injuries to the WCB. This reporting requirement serves the purpose of ensuring that injured workers receive benefits under the WCA Act and the costs for such injuries are attributed to the correct employer.
- Reporting injuries **enables** the WCB to determine if there are third parties who may be responsible for the injury and whether there may be a right of action against that third party.



Can I sue or be sued?

- Once the claim has been accepted and payment has been made for the worker's injury, a worker may decide to pursue an action against a third party which is permitted under section 38 of the WCA Act:

If worker entitled to action against person other than employer

38(1) This section applies if a worker or a worker's dependant:

(a) has a right of action with respect to any injury arising out of and in the course of employment of the worker against a person other than an employer or a worker; and

(b) is entitled to compensation.

(2) In the circumstances mentioned in subsection (1), the worker or the worker's dependant:

(a) is entitled to compensation to be paid by the board out of the fund; and

(b) may bring the action.





Can I sue or be sued?

BUT

- Where the involvement of a third party requires a determination as to whether the claimant has a right to compensation under the Act, or whether the action is one barred by the Act, an application for such determination can be made to the WCB. All **Section 169** applications are handled exclusively by the Members of the Board. Please refer to ***POL 01/2013*** for more information.

Subrogation

What is Subrogation?

- It means that the Board is placed in the shoes of the worker with respect to the benefits that the Board has paid out to the worker to cover the losses that the worker has suffered as a result of the injury.
- The WCB has the right within the worker's action to recover the costs of wage loss, medical, etc. that were paid under the injury claim.
- The WCB cannot commence an action of its own unless the worker chooses not to sue. The WCB's action would only be for the costs paid on the injury claim not for other items such as pain and suffering.
- Common third party cases include, but are not necessarily limited to, defective machinery/equipment manufactured by a non Saskatchewan registered employer and / or outside of the province, altercations/assaults, injuries inflicted by animals (i.e.–dog bites), and hazards of premises (i.e.-slip and fall on a customer's icy sidewalk).



Subrogation

The following are examples of situations where there may be a right to a third party action:

Case Example 1:

- John was in the process of couriating materials for his employer when he was in collision with a bus operated by Joe. Both individuals received minor injuries requiring medical attention and a minimal amount of time loss from work.
- Both these individuals were in the course of their employment at the time the accident occurred. Both their employers were registered with the WCB.
- As such, there is no right of action applicable in this case as it is barred under **Section 43**.



Subrogation

- **Case Example 2:**
- A home care worker, was driving between two clients' residences when her car was broad sided by a pick up truck. When traveling from the residence of one client to the residence of the next client, this worker is considered to be in the course of employment.
- The driver of the pick up truck was a farmer, but had not elected optional coverage with the WCB.

Subrogation

- The worker's injuries consisted of bruising and a moderate whiplash disorder (neck injury). They were off work for four months and received compensation benefits. Total costs of the claim amounted to \$15,000.00.
- As the other driver was at fault in the accident, and as there is an agreement between the WCB and SGI to recover in such cases, the WCB was able to recover its full costs from SGI.
- **Case Example 3:**
 - A worker lost two fingers as a result of a workplace injury. On their report, his employer noted the accident had been due to faulty machinery that had since been returned to the manufacturer.
 - The Claims Entitlement Specialist (CES), when contacting the employer, was able to learn that the machinery in question had been manufactured by an American company in Ohio.
 - If the machinery in question had been manufactured in Saskatchewan by a Saskatchewan firm, there would be no basis for third party recovery. That firm would be considered an employer in its own right (covered under the Act) and as a result, any action would be barred by Section 43.

Subrogation

Case Example 4:

- Fred worked as a waiter at one of the local eating establishments. One evening, he was serving a rather boisterous group of individuals. One of them had the idea it would be great fun to trip the waiter.
- Fred fell awkwardly, twisting and injuring his knee quite severely. In fact, he tore his anterior cruciate ligament (ACL), he would be disabled from his pre injury job for six months.
- In many assault / altercation incidents, the identity of the third party may not be obtainable and / or the chances of success in third party recovery may be limited or non existent.



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Questions?

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Thank you

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