

WCB Policy 22.20, Compliance and Enforcement Administrative Guidelines

These guidelines provide a more detailed explanation of the enforcement process. They outline:

- A. The powers granted to inspectors under *The Workers Compensation Act* (the Act).
- B. The WCB's expectations for the conduct of its inspectors.
- C. Contraventions for which defences are available.
- D. The meaning of "material change in circumstance."
- E. The determination of an appropriate administrative sanction.
- F. The process for publishing administrative penalties on the WCB website.

A. POWERS OF INVESTIGATION AND INSPECTION

The WCB 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.

Inspectors are WCB employees who carry out compliance related inspections, investigations, and audits. Inspectors must carry their WCB issued identification card and should present it on arrival at the premises.

An inspector has the authority to carry out any inspection and/or order the production of documents that are reasonably required to determine compliance with the Act and regulations.

This includes verifying information previously provided to the WCB, determining the amount of an employer's payroll, determining the identity of an employer, and determining whether an industry or person is covered under the Act.

Inspectors also have the authority to inspect the site of an accident, interview witnesses, and inspect a workplace in connection with a timely and safe return to work.

Inspectors may enter any premises where the inspector has reasonable grounds to believe that records or property relevant to the enforcement of the Act are kept. This does not include private residences unless the owner or occupant consents, or the WCB obtains a warrant to enter the residence.

The person in charge of the premises is obligated to assist the inspector. This includes providing access to the records and property the inspector requires. It also includes providing additional information, such as personal information and personal health information, that the inspector reasonably requires for the purposes of the inspection.

Inspectors may make copies of records onsite or remove the records to make photocopies – returning them as soon as it is possible to do so.

It is an offence to hinder, obstruct or interfere with an inspector conducting an inspection. Such behavior is also a contravention of the Act for which an administrative penalty may be levied.

For the purpose of administering and enforcing the Act, the WCB may also issue a written order to employers and third parties requiring them to produce records in their possession and control.

A written order to produce must state the name of the person it is directed to, the name of the person to whom the records relate (if different), a description of the records requested, and the manner in form in which they must be made available.

Failure to provide records in response to an order to produce is an offence under the Act. It is also a contravention for which an administrative penalty may be levied.

B. INSPECTOR CONDUCT

Inspectors are expected to:

- conduct investigations in a fair and impartial manner;
- adhere to the principles of natural justice;
- ensure that external influence does not compromise the integrity of an investigation;
- excuse him or herself from an investigation if a conflict of interest becomes apparent;
- adhere to WCB policies, human rights principles and practices, and other legislation;
- confine the scope of the investigation to matters raised in the complaint and as documented in the investigation plan;
- maintain the confidentiality of all information received; and
- retain all records and maintain an up-to-date schedule of the documentation.

C. CONTRAVENTIONS FOR WHICH DEFENCES ARE AVAILABLE

As stated in Policy 22.20, *Compliance and Enforcement*, the WCB gathers and weighs evidence to determine whether a person under investigation has contravened the Act. The standard of proof the WCB uses to determine whether a contravention has occurred is the balance of probabilities standard.

Policy 22.00, *Decision Making*, provides further guidance on the key concepts and legal principles the WCB relies on when making its decisions, including guidance on the burden and standard of proof.

In the case of most contraventions of the Act and regulations, if the WCB is satisfied, on the basis of the evidence it has gathered, that the person under investigation has committed the prohibited act or omission, the WCB will determine that a contravention has occurred.

In some cases however, more is required. For certain contraventions, even when there is sufficient evidence to demonstrate that the person under investigation committed the prohibited act of omission, the WCB will determine that they have not contravened the Act where the evidence also demonstrates, on a balance of probabilities, that they:

- took all reasonable care to avoid committing the contravention; or
- reasonably believed in a mistaken set of facts which, if true, would have rendered the act innocent.

Contraventions where these defences are available:

- false statements affecting a person's entitlement to compensation or an employer's assessment, or false statements made to obtain payment for goods and services (clause

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- 109.7(1)(a) of the Act);
 - failure to inform the WCB of a material change in circumstances affecting a worker's entitlement to compensation (clause 109.7(1)(b) of the Act);
 - prohibitions against claim suppression and discriminatory action (subclause 109.7(1)(d)(viii) of the Act);
 - breach of re-employment obligations (subclause 109.7(1)(d)(x) of the Act); and
 - failure to destroy documents (subclause 109.7(1)(d)(xvii) of the Act.

Evidence that the person under investigation took all reasonable care to avoid the contravention or reasonably believed in a mistaken set of facts frequently comes from that person, but may also come from other sources.

D. WHAT IS A MATERIAL CHANGE IN CIRCUMSTANCE?

Workers and employers are obligated to inform the WCB of a material change in circumstances that affects the worker's entitlement to compensation. This information must be provided to the WCB within 10 days of the change. Failure to inform the WCB of a material change in circumstances within the required time frame is a contravention for which an administrative penalty may be imposed.

The term "material change in circumstances" is not defined in the Act. For the purposes of this contravention, it means any change that would reasonably be understood to affect a worker's entitlement to benefits and services under the Act. Changes that workers and employers must report to the WCB include:

- changes in the worker's health or health care status due to the workplace injury ;
- changes in a worker's earnings or income;
- changes in the worker's work status (e.g. changes in job duties or hours as a result of the workplace injury, termination, retirement, etc.); and
- availability for, or co-operation in health care or return to work activities.

E. DETERMINING AN APPROPRIATE ADMINISTRATIVE SANCTION

When the WCB determines that a contravention has occurred, it will apply a set penalty for the contravention, unless there are mitigating factors that warrant a reduction or waiver of the penalty.

If an inspector is satisfied that the person who committed the contravention has a reasonable explanation for the contravention, including, but not limited to, simple error or lack of familiarity with the worker's compensation system, they may choose to reduce the penalty or waive it in its entirety.

In such circumstances, the WCB will frequently issue a warning letter to the person who committed the contravention. The WCB may also instruct them to take remedial steps to address the impacts of the contravention or preventative steps to prevent future contraventions.

F. PUBLICATION OF ADMINISTRATIVE PENALTIES

The WCB may publish an administrative penalty on its [website](#) after the statutory appeal period has expired or the Appeal Commission has upheld the WCB's decision to apply a penalty.

The publication may include the name of the person against whom the penalty was levied, the provision in the Act or regulation that was contravened, a brief description of the contravention, the penalty amount, and the date the penalty was applied. This information will be removed from the website five years after it was applied.