

Title: Board and Corporate Administration - Legal
Subject: Program Abuse
Effective Date: January 1, 2016

POLICY PURPOSE

The WCB has an obligation to its stakeholders – workers, employers and the accident fund - to prudently manage the human, technological and financial resources entrusted to it. As part of this stewardship obligation, the WCB has the responsibility to prevent, respond to and minimize the impact of program abuse.

The purpose of this policy is to define "program abuse" and outline the authorities, principles, and processes for responding to allegations or suspected cases of program abuse.

A. POLICY

1. SCOPE

This policy applies to any person with whom the WCB has dealings, including workers, employers, and external service providers.

2. DEFINITION

Program abuse means receiving an advantage or benefit from the WCB that should not have been received and includes fraud, which is defined by the *Criminal Code* of Canada.

Examples of program abuse include:

- Claim suppression;
- Discriminatory action;
- Breach of the re-employment obligation;
- Exaggerating the effect of an illness or injury;
- Causing a worker to pay for the cost of compensation;
- Double billing or over billing by a service provider;
- Returning to work without notifying the WCB;
- Fraud committed against the WCB;
- Violations of *The Workers Compensation Act* (the *Act*).

Program abuse *does not include actions that* are innocently or inadvertently taken as a result of unfamiliarity with the workers compensation system. The WCB recognizes its responsibility to ensure that stakeholders are aware of their obligations and entitlements under the *Act*.

3. INVESTIGATION

The Compliance Services department of the WCB is responsible for investigating allegations of program abuse and administering administrative penalties arising from program abuse. Compliance Services will conduct a preliminary investigation of all allegations of program abuse, the extent of which will depend upon the seriousness of the allegation and the information given in support of the allegation, including whether the information is sufficient to form the basis of an investigation, and is within the sole discretion of Compliance Services. Investigations may be by way of audit or review.

Compliance Services will investigate allegations that are made anonymously so long as enough information is provided to form the basis of an investigation.

When there is sufficient *prima facie* information from the preliminary investigation to suggest that program abuse may have occurred, Compliance Services will begin a formal investigation. Compliance Services may contract with an external investigation service in any case where it is considered to be appropriate, but oversight of investigations remains with Compliance Services.

While the extent of the formal investigation will vary from case to case, generally speaking an investigation includes collecting, reviewing, analyzing and assessing facts for the purpose of determining the merit or truth of an allegation. Depending on the situation, facts may be gathered from evidence provided by complainants, workers, co-workers, employers, neighbours and other witnesses, from WCB file information and other documentation and may include inferences drawn by the investigator from the evidence received.

Compliance Services may also audit or conduct reviews of workplaces to establish compliance with responsibilities and obligations under the *Act*.

An investigation may, but will not necessarily, include surveillance depending upon the nature of the allegation and whether other methods of investigation are available and appropriate.

4. CONSEQUENCES

A finding of program abuse may result in either an administrative sanction or a referral to Manitoba Justice for prosecution.

Administrative Sanction

An administrative sanction may include:

- the imposition of an administrative penalty under the *Act*;
- the reduction or cessation of benefits; and/or
- the obligation to repay any amount received as a result of the program abuse.

Appeals of decisions to apply administrative sanctions are dealt with in Policy 20.10 *Reconsiderations*.

Referral for Prosecution

Some allegations of program abuse are so serious that they warrant the laying of formal charges. These include allegations of breaches of the *Criminal Code* of Canada and/or breaches of the Act where an administrative penalty is not appropriate given the seriousness of the alleged violation. Convictions under either the *Criminal Code* or the Act require proof of the allegation to be “beyond a reasonable doubt.” Where Compliance Services determines that formal charges should be laid, and that the evidence collected suggests that there is a reasonable likelihood of conviction, Compliance Services will obtain a legal opinion regarding the matter. If the legal opinion supports Compliance Services' conclusion, the matter will be referred to Manitoba Justice, Public Prosecutions for further handling.

The WCB may take any action it considers necessary to recover amounts arising from program abuse, misrepresentation or fraud.

B. REFERENCES

The Workers Compensation Act, sections 60.1, 109.1, 109.6, 109.7
Policy 20.10, Reconsiderations
Policy 44.30.60, Notice of Change in Benefits or Services

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.