

Section	Policy
40	44.30.60

Section Title: Benefits Administration - *Wage Loss*
Subject: Notice of Change in Benefits or Services
Effective Date: January 1, 2023, for initial decisions on all claims.

A. POLICY PURPOSE

WCB benefits, payments or services may be reduced, suspended or stopped. Sometimes, the Workers Compensation Board (WCB) must make these changes because of what is said in *The Workers Compensation Act* (the Act) or WCB Policy. In these cases, the WCB does not have a choice about the change in benefits, payments or services. At other times, the WCB makes a decision or judgement based on the circumstances of the case. In these cases, the WCB is making a "discretionary" decision about whether or not to make the change.

Any person who may lose some benefit, payment or service should be told about the change before it actually happens. This means that "notice" is provided to the person before the change happens. This can include the worker, employer and healthcare professionals providing treatment.

For WCB claims, two types of notice are described in this policy. The type of notice for a change which the WCB must make will be different from the type of notice provided where the WCB is making a discretionary decision.

This policy is intended to help WCB clients understand their rights about when and how notice of a loss in benefits, payments or services will be provided. Specifically, this policy describes:

1. When the person must receive "advance notice" before the WCB actually changes the benefits, payments, or services.
2. When the person might not receive advance notice before the WCB actually changes the benefits, payments or services.
3. How notice is provided by the WCB (i.e., verbal, written, both).
4. How much notice (i.e., how many days) is provided by the WCB before a change is made.

The Act allows the WCB to decide whether to change benefits or services when the worker is delaying recovery or not mitigating the effects of an accident. In these circumstances, the WCB provides notice in a unique way which may be different than described in this policy. For information about these differences, please refer to WCB Policy 44.10.30.60, *Co-operation and Mitigation in Recovery*.

B. POLICY

1. GENERAL PRINCIPLES

- a. When the WCB is making a discretionary decision to change benefits, payments or services, "*advance notice*" will be provided to the worker, employer and healthcare provider. This means that the person(s) will be advised of the change before it is actually made. This notice gives clients an opportunity to consider how they may be affected and what alternative arrangements may be needed before the change is made. This notice also gives the client time to provide any additional information before the decision is implemented.

- b. When the WCB must make the change to comply with the Act or WCB Policy "*deemed notice*" is provided through the Act, WCB Policy Manual or other WCB publications. This means that the change may be made without advance notice. In these cases, the Act, WCB Policy or WCB publication is "deemed" to provide advance notice.
- c. Even when advance notice is not required, the WCB will make best efforts to tell the person that a change is coming before the change is actually made. In any event, the change will be made as required.

2. REQUIRED VERSUS DISCRETIONARY CHANGES TO BENEFITS/SERVICES

- a. **Required:** Changes required by the Act or Board Policy include:

- When the worker returns to work or has been informed by a health-care practitioner that he or she is fit to return to the pre-injury work.
- When a worker is receiving a collateral benefit or some other post-accident earnings.
- When the worker has received wage loss benefits for a loss of earning capacity that extends beyond 24 months.
- When the worker reaches 65 years of age or retires.
- When the worker was 61 years of age or older when he or she experienced a loss of earnings and the WCB has paid wage loss benefits to this worker for a period of up to 48 months following the accident date.

In these and other cases when the change must be made, notice is deemed to have been provided by the Act, WCB Policy Manual or other WCB publications.

- b. **Discretionary:** - Some examples of a discretionary decision to change benefits or services include:

- When the WCB considers the worker to be fit to return to work even though he or she has not returned to work or has not been advised to by the attending health-care provider.
- When the WCB considers that the worker does not have a loss of earning capacity even though he or she does not have any post-accident earnings.
- When the WCB considers that the worker is capable of some form of work and should be provided with vocational rehabilitation benefits and services.
- When the worker requests vocational rehabilitation services.
- Whether the worker should be considered as having a "deemed" earning capacity.
- When the Appeal Commission makes a decision that changes entitlement to compensation.

In the case of these and other discretionary decisions, the WCB will provide advance notice.

3. HOW IS NOTICE PROVIDED?

- a. "*Advance Notice*" may be given in person, by telephone or in writing. This notice will include reasons for the change. When notice is given in person or by telephone, it must be documented on the worker's file.
- b. Whenever possible, this notice should be given verbally. This ensures that notice is prompt, allows clients to better understand the change and quickly communicates the reasons for the change. It also allows clients to confirm that the WCB has all the information that should be considered and to receive answers to any questions.

- c. *"Deemed Notice"* is available through the Act, the WCB Policy Manual and other WCB publications. Making people aware of deemed notice is a natural part of good communications between WCB staff and clients.
- d. A *"Decision Letter"* is the actual letter which advises the person of the change in benefits or services and explains the reasons for the change. This is the formal decision to the person and may represent or include advance notice or confirm deemed notice.
- e. Effective management of a claim requires regular communication between the WCB and its clients, not just contacts prompted by a change. Often, it can be anticipated that there will be a loss of benefits or services if circumstances do not change. Advance notice about expected future change should be part of this regular communication.
- f. For any type of notice, the WCB may include information about community assistance which might lessen the impact of the change in benefits or services.

4. WHAT IS THE NORMAL PERIOD OF ADVANCE NOTICE?

- a. The period of notice will normally be seven calendar days. This will be extended for each statutory holiday which falls within the period of notice.
- b. The period of notice will begin from the date of the notice letter or the date when verbal notice is provided.
- c. The change in benefits or services will come into effect after the period of notice is over.
- d. Sometimes, notice about a change in benefits or services cannot be provided before the decision must be communicated to the person. This can happen when unexpected information is received by the WCB and prompts an immediate decision to change benefits or services. When this is a discretionary change, the decision letter will incorporate the normal period of notice.
- e. In exceptional circumstances, additional notice may be provided before a change in benefits or services is made. The total period of notice will not exceed twelve weeks and is subject to the approval of the responsible Sector Director. It may be applied in situations when:
 - The worker has received wage-loss benefits for more than two consecutive years, relies on the benefits for the necessities of life and has no sources of alternative assistance; or,
 - An extended period of notice is essential to assist the worker's employment capability and will likely prevent a further injury; or,
 - The WCB has committed to a program of medical, physical or vocational rehabilitation which is expedient and cost-effective to continue.

5. WHAT IF ENTITLEMENT IS CHANGED BECAUSE OF MISREPRESENTATION?

When the WCB makes a decision to change benefits or services because important information has been misrepresented by the worker, advance notice will not be provided. The WCB will make the change retroactive to the date on which the change would have otherwise been made if not for the misrepresented information.

C. REFERENCES

The Workers Compensation Act, section 43 (Prior to January 1, 1992)

The Workers Compensation Act, sections 39 to 45 (On or after January 1, 1992)

The Workers Compensation Act, sections 21(2), 24(1), 24(2), 27(1), 27(10) and 109.1(1)

Related WCB Policies:

35.40.50, *Overpayment of Benefits*

44.10.30.60, *Co-operation and Mitigation in Recovery*

44.60.20, *Date of Retirement*

44.80.10.10, *Average Earnings*

44.80.30.10, *Establishing Post-Accident Earning Capacity*

44.80.30.20, *Post-Accident Earnings – Deemed Earning Capacity*

44.80.80.20, *Loss of Earning Capacity Reviews*

History:

1. Policy 44.30.60, *Discontinuation of Benefits - Notification*, approved by Board Order 9/90 on May 3, 1990, effective June 1, 1990.
2. Policy 43.10.80, *Discontinuation of Voc Rehab Benefits & Services*, approved by Board Order 21/90 on June 21, 1990, effective July 1, 1990.
3. Policy 44.30.60 re-written for inclusion in the Policy Manual, approved by Board Order 9/91 on June 19, 1991.
4. Policy updated for current position and division titles, May 2, 1994.
5. Policy 44.30.60 revised by Board Order 19/96 on May 23, 1996, to clarify the principles of advance notice. Effective for all initial decisions for all claims on or after July 1, 1996.
6. Policy 44.30.60 guidelines have been added regarding how to apply the additional 12 week provision, and a reminder to notify the worker first.
7. Minor changes have been made to the Administrative Guidelines – March 2003.
8. December 1, 2006, minor changes have been made to the policy to reflect the proclamation of Bill 25, *The Workers Compensation Amendment Act*.
9. December 1, 2008, paragraph 5 was added to the Administrative Guidelines to clarify that the WCB will not make a determination regarding whether a worker has misrepresented the level of his or her disability without giving the worker an opportunity to comment upon the surveillance evidence. This arose out of amendments to Policy 22.20, *Investigation of Program Abuse*, approved by Board Order 48/08 on November 27, 2008.
10. Minor formatting and grammatical changes were made to the policy June 27, 2012.
11. December 2012 - Section A. 2 a) the last bullet, the word "cumulative" was removed to correct an error. The wage loss benefits payable under clause 39(3) are payable for 48 months after the date of accident.
12. March 2014 - Section 2.a the words "up to" 48 months were omitted when the policy was rewritten.
13. Minor formatting changes and references to Policy 44.10.30.60 updated with the revised policy name on July 3, 2018.
14. Minor formatting changes were made to the policy, July 2021.
15. In May 2022, a non-substantive policy revision was made requiring the primary decision-maker to inform the worker or their surviving dependants of an Appeal Commission decision that changed entitlement to compensation.
16. Policy amended by Board Order No. 15/22 on June 21, 2022, effective for accidents on or after January 1, 2023. A consequential policy change clarified the long-term loss of earning capacity threshold. This time period includes any week in a month in which full or partial wage loss benefits have been paid to the worker. Current policy 44.30.60, *Notice of Change in Benefits or Services*, will be archived and applies to initial decisions from July 1, 1996 to December 31, 2022 and any reconsiderations and appeals.

D. ADMINISTRATIVE GUIDELINES

1. When the WCB decides to discontinue benefits or services, the worker should be informed of this decision before or at the same time as other parties with a direct interest.
2. When the Appeal Commission renders a decision that changes entitlement to compensation, the primary decision-maker will inform the worker or their surviving dependants of this decision.
3. The policy provides that additional notice may be given in exceptional circumstances, subject to approval by the Sector Director responsible. Requests for approval to extend the notice period must be in writing, clearly state the reasons an extension should be provided, and recommend the length of extension appropriate to the circumstances.
3. The notice period shall be not less than seven calendar days. Recommendations for longer periods of notice should not exceed, or if approved, will expire upon the earliest of
 - a) the date the exceptional circumstances end; or
 - b) the date benefits would otherwise have ended or been reduced. For example, if the vocational rehabilitation plan was scheduled to be completed or if a return to work occurs; or
 - c) twelve (12) weeks.
4. "Alternative assistance" (referred to in item 4. e of the policy) may include workplace-based or private sickness benefits, long term disability coverage, or employment insurance. Generally, social assistance will not be considered in determining whether the person has an alternative source of income.
5. When the WCB obtains evidence that suggests that a worker has misrepresented his or her medical condition and/or level of ability or disability, the WCB will immediately notify the worker of the existence of the evidence and provide the worker with up to five business days from the date of notification to respond to it. If the worker is notified by mail, notification to the last address on the file will be sufficient. In that case, notification will be deemed to have been made three days after mailing.