

# LEGISLATIVE BRIEFING

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## WORKERS COMPENSATION AMENDMENT ACT (NO.2) 2022 – BILL 41 RECEIVES ROYAL ASSENT

Further to the *Legislative Briefing* titled [Workers Compensation Amendment Act \(No.2\)\(Bill 41\)](#), published on November 4, 2022, [Bill 41](#) passed third reading and received Royal Assent on November 24, 2022. There were no substantive changes to the proposed amendments between the first and third reading.

The effective date of most of the amendments will be the date of Royal Assent, however, a number of them will come into effect on different dates. Please see the table below:

Key Amendment:	Effective Date:
Section 4, 7 & 13 - Duty for employers to return injured workers to work, for employers and workers to cooperate, and the corresponding penalty provisions.	Undetermined date, by Regulation of the Lieutenant Governor in Council
Section 6 & 14 - Interest on delayed benefit payments	April 3, 2023
Sections 8, 9 & 15 - Independent Health Assessments	April 3, 2023
Section 11 - Fair Practices Commissioner	May 1, 2023
All other amendments	Date of Royal Assent

### Key Amendments:

#### New Statutory Duty for Employers to Return Injured Workers to Work

There is a new requirement for employers and workers to cooperate with each other, and the WorkSafeBC Board of Directors (the Board), in the injured worker's early and safe return to, or continuation of, work. The duty to cooperate outlines very specific reciprocal employer and worker responsibilities, such as:



- The employer to contact the worker as soon as practicable after the injury and maintaining communication, and a reciprocal duty on the worker to keep in contact with the employer;
- The employer and worker must identify suitable work together;
- The two parties must keep WorkSafeBC informed and respond to all WorkSafeBC requests.

The duty to cooperate would not apply where doing so may delay or imperil the worker's recovery.

Furthermore, the new amendment outlines two specific return-to-work scenarios which would impose different requirements on the employer:

1. Where a worker is fit to work, but not to carry out the essential duties of their pre-injury work, the employer must offer the worker "the first suitable work that becomes available."
2. Where a worker is fit to carry out the essential duties of their pre-injury work, the employer must either:
  - a. offer the 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."

If an employer terminates a worker within six (6) months after the return to work, the employer is deemed to have failed to comply with its legal duty to return them to work, unless the employer can prove that the termination was unrelated to the worker's injury. If the employer is found to have breached the return to work duty, the Board may pay (out of the Accident Fund) the worker an amount equal to the compensation to which the worker was entitled under the temporary total or partial disability provisions. Furthermore, failure to comply may also result in the Board imposing an administrative penalty on the employer up to the maximum wage rate on average earnings.

### Fair Practices Commissioner

The amendment establishes authority for a Fair Practices Commissioner (FPC) to be appointed by the Board. The FPC will investigate complaints by employers, workers and dependants of workers regarding alleged unfairness in their dealings with WorkSafeBC. They will make recommendations to the Board to resolve complaints and/or to address systemic problems with the fairness of the Board's dealings, as indicated by such complaints. The FPC will not be empowered to review the merits of individual WorkSafeBC, Review Division or Workers' Compensation Appeal Tribunal (WCAT) decisions.

### Claims Suppression

The amendment strengthens existing prohibition against employers and supervisors from discouraging workers, or dependants of workers, from making or maintaining applications for compensation or receiving compensation payments. In specific, it makes it an offence for an employer or supervisor to "by agreement, threat, promise, inducement, persuasion or another other means, seek to discourage, impede or dissuade a worker from either making a claim or receiving compensation." Breaches of this section could result in administrative penalties on employers.

### Indexing Benefits to Full CPI

This amendment will 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 four percent (4%) if the percentage change in the CPI exceeds that amount.

### Independent Health Assessments

The amendment expands access to independent health assessments as part of an appeal at WCAT, if the medical condition of the worker is at issue during the appeal process. It will be the responsibility of WCAT to determine if the independent health assessment would assist in reaching a decision. Prior to the amendment, workers and employers did not have the explicit right to request an Independent Health Professional (IHP) at WCAT if there was a medical dispute on a worker's appeal.

### Interest on Delayed Benefit Payments

The amendment requires interest to be paid on compensation benefits that are owing to a worker for 180 or more days. The parameters for interest to be paid on delayed payments were previously quite narrow. Interest payable must be calculated in accordance with the policies of the Board and begins on the effective date, which is the date on which entitlement to the payment of compensation arises.

### Non-Traumatic Hearing Loss Compensation

This change will enable the Board to set a maximum percentage of disability in relation to non-traumatic hearing loss, consistent with the evolving science. Compensation for non-traumatic hearing loss was previously capped at 15% of a total disability when there was no loss of earnings, and there was no cap for traumatic hearing loss.

### WorkSafeBC Premiums

The average premium rate will remain unchanged for 2023. Future increases to the premium rate are unknown, but will depend on many factors including the cost of the changes mentioned above. It will also take into consideration future WorkSafeBC Board decisions on subsidization rates from the accident fund. For additional information, please refer to the Backgrounder in this [news](#) release.

## QUESTIONS?

If you have any comments or questions about this update, please e-mail [RES360@metrovancover.org](mailto:RES360@metrovancover.org) or call 604-451-6558.

## SOURCES

Bill 41 - 2022, Workers Compensation Amendment Act (No.2), 2022

<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/3rd-session/bills/progress-of-bills>

“Workers’ compensation changes put injured workers first” BC Gov News. October 31, 2022

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