

This Act is current to April 29, 2020

See the [Tables of Legislative Changes](#) for this Act's legislative history, including any changes not in force.

## **WORKERS COMPENSATION ACT**

### **[RSBC 2019] CHAPTER 1**

*Deposited with Clerk of the Legislative Assembly on August 23, 2019*

*[Note: the dollar amounts shown in sections 94, 95, 102, 167, 169, 170 to 175, 191, 194, 208, 213, 225, 231, 236, 251, and 349 and may not reflect the current consumer price index adjustments referred to in section 333, and the maximum wage rate shown in section 209 (2) and 227 may not be current.]*

*Current information may be found on the Workers' Compensation Board website at [www.worksafebc.com/en/law-policy/claims-rehabilitation/claims-related-consumer-price-index](http://www.worksafebc.com/en/law-policy/claims-rehabilitation/claims-related-consumer-price-index) or may be obtained by calling your WorkSafeBC regional office.]*

### **Part 1 — Scope of Act**

#### **Division 1 — Interpretation**

#### **Definitions**

##### **1 In this Act:**

**"accident"**, in relation to a worker, includes

- (a) a wilful and intentional act that is not the act of the worker, and
- (b) a fortuitous event occasioned by a physical or natural cause;

**"accident fund"** means the fund continued under section 239 [*Board to maintain accident fund*];

**"action"** includes proceedings brought in the civil resolution tribunal under the *Civil Resolution Tribunal Act*;

**"appeal tribunal"** means the Workers' Compensation Appeal Tribunal continued under Part 7 [Appeals to Appeal Tribunal];.

**"assessment"** means an assessment under this Act of an amount to be paid to the Board;

**"average net earnings"**, with respect to a worker, means the average net earnings of the worker as determined by the Board under section 220 [average net earnings: short-term compensation] or 221 [average net earnings: long-term compensation],, as applicable;

**"Board"** means the Workers' Compensation Board continued under section 316 [Workers' Compensation Board and its board of directors];.

**"board of directors"** means the board of directors under section 316 (2);.

**"chief review officer"** means an officer of the Board who is appointed as chief review officer under section 330 [Board must appoint review officers];.

**"class"**, in relation to an employer, independent operator or industry,, means the applicable class established under section 244 [classification of industries];.

**"compensation"** includes health care;

**"compensation provision"** means a provision of the following:

- (a) Division 3 [Scope of Compensation Provisions] of this Part;
- (b) Part 3 [Workers' Compensation System];.
- (c) Part 4 [Compensation to Injured Workers and Their Dependants];.
- (d) Part 5 [Accident Fund and Employer Assessment];.
- (e) Part 6 [Review of Board Decisions];.

**"construction"** includes reconstruction, repair, alteration and demolition;

**"consumer price index for Canada"** means the Consumer Price Index for Canada published by Statistics Canada under the Statistics Act (Canada);.

**"court"** includes the civil resolution tribunal under the Civil Resolution Tribunal Act;

**"dependant"**

- (a) means

- (i) a family member of the worker who was wholly or partly dependent on the worker's earnings at the time of the worker's death, or
  - (ii) a family member of the worker who, but for the worker's incapacity due to the accident or occupational disease, would have been wholly or partly dependent on the worker's earnings, and
- (b) other than in the following sections, includes a spouse, child or parent of the worker who satisfies the Board that the spouse, child or parent had a reasonable expectation of pecuniary benefit from the continuation of the life of that worker:
- (i) section 167 [lump sum payment to dependent spouse or foster parent];
  - (ii) section 169 [dependent spouse who is 50 years of age or older or is incapable of earning, no dependent children];
  - (iii) section 170 [dependent spouse who is under 50 years of age and not incapable of earning, no dependent children];
  - (iv) section 171 [dependent spouse and one or more dependent children];
  - (v) section 172 [one or more dependent children but no dependent spouse];
  - (vi) section 173 [dependent parents in addition to spouse or children];
  - (vii) section 174 [no dependent spouse or children: compensation to other dependants];
  - (viii) section 178 [dependent spouse living apart from worker at the date of death];

**"employer"** includes every person having in their service under a contract of hiring or apprenticeship, whether the contract is written or oral, express or implied, a person engaged in work in or about an industry;

**"employers' adviser"** means a person appointed as an employers' adviser under section 350 [government to provide workers' advisers and employers' advisers];

**"employment"**, when used in a compensation provision,

- (a) means all or part of an establishment, undertaking, trade or business within the scope of the compensation provisions, and
- (b) in the case of an industry that is not as a whole within the scope of the compensation provisions, includes a department or part of the industry that would be within the scope of those provisions if carried on separately;

**"family member"**, in relation to a worker, means the following:

- (a) a spouse, parent, grandparent, step-parent, child, grandchild, stepchild, sibling or half-sibling of the worker;
- (b) a person, whether related to the worker by blood or not, who stood in place of a parent of the worker or to whom the worker stood in place of a parent;

**"firefighter"** means a member of a fire brigade, working with or without remuneration, who is assigned primarily to

- (a) fire suppression duties, whether or not those duties include the performance of ambulance or rescue services,
- (b) investigation duties respecting the cause, origin or circumstances of a fire, or
- (c) any combination of both fire suppression duties as described in paragraph (a) and fire investigation duties as described in paragraph (b).;

**"health care"**, when used in a compensation provision, includes things that the Board is empowered under this Act to provide for injured workers;

**"industry"** includes establishment, undertaking, work, trade and business;

**"initial payment period"**, in relation to an injured worker, means the period described in section 210 (a) [average earnings: short-term compensation].;

**"manufacturing"** includes making, preparing, altering, repairing, renovating, servicing, dyeing, cleaning, ornamenting, printing, finishing, packing, packaging, assembling the parts of and adapting for use or sale any raw material, goods, article or commodity.;

**"metalliferous mining industry"** includes the operations of milling and concentrating, but does not include any other operation for the reduction of minerals;

**"occupational disease"** means a disease, including a disablement resulting from exposure to contamination, that is

- (a) a disease identified in Schedule 1 [Presumption of Occupational Disease Related to Specific Process or Industry] of this Act,
- (b) a disease designated or recognized by regulation under section 138 (2) [Board regulation of general application],,
- (c) a disease designated or recognized by order under section 138 (3) [Board order in specific case],,
- (d) a disease designated or recognized under section 138 (4) [disease peculiar to or characteristic of particular employment],, or

(e) a disease

- (i) referred to in section 139 (2) [firefighters: presumptions respecting heart disease],.
- (ii) referred to in section 140 (1) (a) [firefighters: presumptions respecting primary site lung cancer], or
- (iii) prescribed by regulation of the Lieutenant Governor in Council for the purposes of section 140 (1) (b) [firefighters: presumptions respecting prescribed diseases],.

but only in respect of a worker to whom the presumption in any of those provisions applies, unless the disease is otherwise described by this definition;

**"OHS provision"** means a provision of the following:

- (a) Division 2 [Scope of OHS Provisions] of this Part;
- (b) Part 2 [Occupational Health and Safety];.

**"physician"** means a person authorized under an enactment to practise in British Columbia as a medical practitioner;

**"president"** means the president of the Board appointed under section 323 [Board president];.

**"qualified practitioner"** means a person authorized under an enactment to practise in British Columbia as a chiropractor, dentist, naturopathic physician, nurse practitioner or podiatrist;

**"reconsider"** means to make a new decision in a matter previously decided such that the new decision confirms, varies or cancels the previous decision or order;

**"regulation"**, when used in a compensation provision in relation to regulations of the Board, means rules and regulations made by the Board under a compensation provision;

**"retirement benefit"**, in relation to a worker, means the lump sum payable to the worker under section 206 [payment of retirement benefit];.

**"review officer"** means an officer of the Board who is appointed as a review officer under section 330 [Board must appoint review officers];.

**"silica dust"** means dust containing silica;

**"silicosis"** means a fibrotic condition of the lungs caused by the inhalation of silica dust;

**"specialist"** means a physician residing and practising in British Columbia and listed by the Royal College of Physicians and Surgeons of Canada as having specialist qualifications;

**"spouse"** means a person who

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship for
  - (i) a period of at least 1 year, if the person has had a child with the other person, or
  - (ii) a period of at least 2 years in any other case;

**"surviving spouse"** means a person who was a spouse of a worker when the worker died;

**"worker"** includes the following:

- (a) a person who has entered into or works under a contract of service or apprenticeship, whether the contract is written or oral, express or implied, and whether by way of manual labour or otherwise;
- (b) a person who
  - (i) is a learner who is not under a contract of service or apprenticeship, and
  - (ii) becomes subject to the hazards of an industry within the scope of the compensation provisions for the purpose of undergoing training or probationary work specified by the employer as a preliminary to employment;
- (c) a firefighter;
- (d) in respect of the industry of mining, a person
  - (i) while the person is actually engaged in taking or attending a course of training or instruction in mine rescue work under the direction or with the written approval of an employer in whose employment that person is employed as a worker in that industry,.
  - (ii) while, with the knowledge and consent of an employer in that industry, either express or implied, the person is actually engaged in rescuing or protecting, or attempting to rescue or protect, life or property in the case of an explosion or accident that endangers either life or property in a mine, whether or not during the time that person is so engaged the person is entitled to receive wages from the employer, or from any employer, or is performing the work or service as a volunteer, or
  - (iii) while the person is engaged as a member of the inspection committee, appointed or elected by the workers in the mine, to inspect the mine on behalf of the workers;
- (e) an independent operator to whom the compensation provisions apply by the Board direction under section 4 (2) (a) [extending application: independent operator who is neither an employer nor a worker];

- (f) a person deemed by the Board to be a worker under section 6 (2) [extending application: vocational or training programs];

**"workers' adviser"** means a person appointed as a workers' adviser under section 350 [government to provide workers' advisers and employers' advisers].

## **Division 2 – Scope of OHS Provisions**

### **General application of OHS provisions**

**2** Subject to section 3, the OHS provisions apply to

- (a) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the government of British Columbia,
- (b) the government of British Columbia and every agency of that government, and
- (c) the government of Canada, every agency of that government and every other person whose occupational health and safety are ordinarily within the jurisdiction of the Parliament of Canada, to the extent that the government of Canada submits to the application of the OHS provisions.

### **Exceptions from application – mines and industrial camps**

**3** (1) The OHS provisions and the regulations under those provisions do not apply in respect of the following:

- (a) mines to which the *Mines Act* applies;
- (b) unless a regulation under subsection (2) applies, the operation of industrial camps to the extent their operation is subject to regulations under the *Public Health Act*.

(2) The Lieutenant Governor in Council may, by regulation, provide that all aspects of the OHS provisions and the regulations under those provisions apply to camps referred to in subsection (1)(b), in which case those provisions and regulations prevail over the regulations under the *Public Health Act* to the extent of any conflict.

## **Division 3 – Scope of Compensation Provisions**

### **General application of compensation provisions**

**4** (1) The compensation provisions apply to

- (a) all employers, in their capacity as employers, in British Columbia, and
- (b) all workers in British Columbia,

other than employers or workers exempted by order of the Board.

- (2) The Board may direct that the compensation provisions apply on the terms specified in the Board's direction to
  - (a) an independent operator who is neither an employer nor a worker as if the independent operator were a worker, or
  - (b) an employer as if the employer were a worker.
- (3) The application of the compensation provisions under subsection (2)(b) to an employer does not exempt the employer, in their capacity as an employer, from the application of the compensation provisions.

### **Extending application: public interest undertakings**

- 5** (1) In relation to a person or group of persons carrying on an undertaking that the Board considers is in the public interest, the Board may, on the terms and conditions the Board directs,
  - (a) deem the person or group of persons, whether or not any of them receive payment for their services, to be a worker or workers for the purposes of this Act, and
  - (b) on approval of the Lieutenant Governor in Council, deem the person or group of persons to be a worker or workers of the Crown in right of British Columbia.
- (2) Without limiting subsection (1), admissions under this section may be made at the time, in the manner, subject to the terms and conditions and for the period the Board considers adequate and proper.

### **Extending application: vocational or training programs**

- 6** (1) This section applies if the Minister of Education, Skills and Training and the minister responsible for the administration of this Act approve
  - (a) a vocational or training program, and
  - (b) a school or other location as a place at which the vocational or training program is to be provided.
- (2) The Board may, at the request of a minister referred to in subsection (1), deem a person or class of persons enrolled in a program approved under that subsection to be a worker or workers of the Crown in right of British Columbia.
- (3) In relation to a person who is deemed to be a worker under subsection (2), compensation under this Act is payable under the compensation provisions for injuries to the worker arising out of and in the course of training for that worker.
- (4) As limits on subsection (3), if an injury results in a period of temporary disability with no loss of earnings,

- (a) subject to paragraph (b) of this subsection, a health care benefit only is payable, and
  - (b) if training allowances paid by Canada or British Columbia are suspended, the Board may, for the period the Board considers advisable, pay compensation in the amount of the training allowance.
- (5) Admissions under this section may be made at the time, in the manner, subject to the terms and conditions and for the period the Board considers adequate and proper.

### **Extending application: work study and other programs**

- 7** (1) This section applies in relation to a person or group of persons engaged in a work study program or other program of self-improvement involving work, whether or not the person or group of persons receives payment for the work.
- (2) The Board may,
- (a) on the application of an employer or a program organizer, and on the terms and conditions the Board directs, by order, admit the person or group of persons as being within the scope of the compensation provisions, and
  - (b) with the approval of the Lieutenant Governor in Council, deem a person or group of persons engaged in the program to be a worker or workers of the Crown in right of British Columbia, on the terms and conditions the Board determines.
- (3) Without limiting subsection (2), admissions under this section may be made at the time, in the manner, subject to the terms and conditions and for the period the Board considers adequate and proper.
- (4) On admission under subsection (2)(a),
- (a) the person or group of persons is deemed to be a worker or workers to whom the compensation provisions apply, and
  - (b) the Board may levy assessments on the applicable employer or program organizer by the formula the Board determines.

### **Application to fishing industry**

- 8** (1) The Lieutenant Governor in Council may make regulations as follows:
- (a) defining the terms used in this section, and, for this purpose,
    - (i) the term "fish" may be defined to include any species of animal living in water, and

- (ii) the term "commercial fisher" may be defined to include the master and crew of a fishing vessel, the master and crew of a fish-packing vessel and any other person who contributes in any manner to the catching or landing of fish for sale or commercial use;
  - (b) providing that a compensation provision relating to workers applies or may be applied to any commercial fishers
    - (i) working in or out of British Columbia ports or on or about the waters of British Columbia, or
    - (ii) resident in British Columbia,

even though the commercial fishers may not otherwise be workers under this Act;
  - (c) providing that a compensation provision relating to employers applies or may be applied to
    - (i) any commercial buyers or other commercial recipients of fish, or
    - (ii) any person engaged in British Columbia in transmitting payments to commercial fishers for fish, whether the fish are landed in British Columbia or otherwise,

even though the persons referred to in subparagraph (i) or (ii) may not otherwise be employers under this Act, and, to the extent the regulations provide, each buyer, recipient or payor is deemed to be the employer of all commercial fishers who contributed in any manner to the catching or landing of the fish bought, obtained or paid for by or through that person;
  - (d) providing that methods of calculating and levying assessments additional to or different from the methods otherwise provided under the compensation provisions may be used for levying assessments, for the purposes of those provisions, on persons referred to in paragraph (c) (i) and (ii);
  - (e) establishing obligations, different from the terms of this Act, on commercial buyers and other commercial recipients of fish, and on masters of fishing vessels,
    - (i) to report to the Board injuries and occupational diseases sustained by commercial fishers, and
    - (ii) to provide transportation for initial medical treatment of commercial fishers;
  - (f) excluding from application of a compensation provision a portion of the fishing industry or a category of workers or employers in that industry to which the provision would otherwise apply, and to substitute provisions of regulations under this section;
  - (g) delegating to the Board, to the extent the regulations provide, power conferred by paragraphs (a) to (f).
- (2) If the Board considers that a provision of this Act, or a provision of a regulation under another section of this Act is inappropriate or unworkable in relation to commercial fishers, the fishing industry or commercial buyers, or

other commercial recipients of fish, the Board may, by regulation, make the rules and give the decisions the Board considers fair and appropriate having regard to the intent that all commercial fishers must, as far as possible, receive the benefit of and be subject to the compensation provisions.

**(3) If the death of a commercial fisher resident in British Columbia**

- (a) arises out of and in the course of the commercial fisher's occupation in British Columbia or waters off British Columbia, and**
- (b) is not otherwise compensable under the compensation provisions,**

the Board may treat the death in the same manner as if the commercial fisher were a worker employed by the Crown in right of British Columbia.

## **Division 4 – Liability of Employers in Industries Not Within the Scope of Compensation Provisions**

### **Application of this Division**

- 9 (1) This Division applies only to the industries to which the compensation provisions do not apply and to the workers employed in those industries.**
- (2) Workers who are exempted under section 4 (1) [Board orders for exemptions] from the benefits of the compensation provisions are not, under this section, excluded from the benefits of this Division.**

### **Legal actions against employer**

- 10 (1) This section applies if personal injury is caused to a worker by reason of**
  - (a) a defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of the worker's employer, or**
  - (b) the negligence of the worker's employer or of a person in the service of that employer acting within the scope of the person's employment.**
- (2) The following have a right of action against the employer:**
  - (a) the worker;**
  - (b) if the injury results in death, the legal personal representatives of the worker, and any person entitled in case of death.**
- (3) If an action under this section is brought by the worker, the worker is entitled to recover from the employer the damages sustained by the worker by or as a result of the injury.**

- (4) If an action under this section is brought by legal personal representatives of the worker, or by or on behalf of persons entitled to damages under the *Family Compensation Act*, those persons are entitled to recover the damages to which they are entitled under that Act.
- (5) A worker is not, by reason only of continuing in the employment of the employer with knowledge of the defect or negligence that caused the worker's injury, deemed to have voluntarily incurred the risk of injury.

### **Legal actions in relation to work done under contract**

#### **11 (1) This section applies if**

- (a) the execution of any work is being carried into effect under a contract,
  - (b) the person for whom the work is done owns or supplies ways, works, machinery, plant, buildings or premises and, by reason of a defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises, personal injury is caused to a worker employed by the contractor or by a subcontractor, and
  - (c) the defect arose from the negligence of
    - (i) the person for whom the work or any part of it is done, or
    - (ii) another person in that first person's service who is acting within the scope of this other person's employment.
- (2) The person for whom the work or part of the work referred to in subsection (1) (c) is done is liable to an action under section 10 as if the worker had been employed by that person, and for this purpose the person is deemed to be the employer of the worker within the meaning of this Division.
  - (3) Despite subsection (2), the contractor or subcontractor is liable to the action as if that subsection had not been enacted, but not so that double damages are recoverable for the same injury.
  - (4) Nothing in this section affects a right or liability of the person for whom the work is done and the contractor or subcontractor as between themselves.

### **Override and application of common law rules**

- 12 (1) A worker is deemed not to have undertaken the risks due to the negligence of the worker's fellow workers.**
- (2) Contributory negligence on the part of a worker is not a bar to recovery by the worker or by any person entitled to damages under the *Family Compensation Act* in an action for the recovery of damages for an injury sustained by or causing the death of the worker while in the service of that worker's employer for which the employer would otherwise have been liable.

(3) Contributory negligence on the part of the worker must be taken into account in assessing the damages in an action.

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