

WORKERS' COMPENSATION:
A Guide for New Brunswick Workers
Reprinted May 2011



our vision

*Healthy and safe workplaces
in New Brunswick.*

mission

The Commission will promote a safe and healthy work environment to the workers and employers of New Brunswick, and efficiently provide quality services, just adjudication and fair administration of the legislation.

mandate

Promote the creation of a workplace culture in which all employers and workers view all occupational diseases and accidents as being preventable. • Provide sustainable insurance and insurance-related services to the employer community. • Provide timely compensation benefits, including rehabilitation, medical aid, vocational counseling and safe return-to-work services to injured workers. • Provide recommendations and advice to government with respect to legislation and publish such reports, studies and recommendations, as the Commission considers advisable.

values

We dedicate ourselves to the provision of prompt, effective, efficient and caring services to each of our clients. • We believe that a team approach ensures that all members of the Commission are working towards a shared vision, mission, values and goals. • We are committed to providing competent and energetic leadership that is focused on a clear direction for the Commission. • We ensure that our decisions are made with integrity, credibility, and accountability. • We ensure that our communications are based on trust, mutual respect, openness, and clear and reliable information. • We manage our human, material and financial resources effectively in responding to our mandate and established priorities.

Health and Safety Emergencies: 1 800 222-9775

www.worksafenb.ca

Office Locations and Fax Numbers

Toll free number for all locations: 1 800 222-9775

Saint John

Mailing address for all WHSCC offices:
1 Portland Street, PO Box 160
Saint John NB E2L 3X9

Contact numbers for:

Head Office

Assessment Services

Claims Inquiry

Phone 506 632-2200
Toll free fax for claims:
1 888 629-4722

Appeals Tribunal

Phone 506 632-2200
Fax 506 633-3989

Grand Falls

166 Broadway Blvd., Suite 300
Phone 506 475-2550
Fax 506 475-2568

Dieppe

30 Englehart Street, Suite F*
Phone 506 867-0525
Fax 506 859-6911

*As of October 2006

Bathurst

Place Bathurst Mall
1300 St. Peter Avenue, Suite 220
Phone 506 547-7300
Fax 506 547-7311 or 506 547-2982

Workers' Rehabilitation Centre

3700 Westfield Road
Grand Bay-Westfield
Phone 506 738-8411
Fax 506 738-3470

contact

WHAT IS THE WHSCC?

- What is the workers' compensation system?
- How does it work?

GUIDING PRINCIPLES OF WORKERS' COMPENSATION

ROLES AND RESPONSIBILITIES

HOW DOES A WORKERS' COMPENSATION CLAIM GET STARTED?

COVERAGE AND REPORTING OF ACCIDENTS

- What is workers' compensation?
- Who pays for workers' compensation?
- What is an accident?
- What is an occupational disease?
- What does the term compensation mean?
- How do I know if I am covered by the *Workers' Compensation Act*?
- How long do I have to apply?
- Do I have to work full time to be covered?
- What if I am a volunteer firefighter?
- What types of injuries should I report to file a claim?
- Are there any conditions or situations that may affect my coverage?
- Am I covered when travelling to and from work?
- What if I am injured on my employer's property?

- Am I covered while employed outside of New Brunswick?
- What if I am injured while working outside of New Brunswick?
- What about my health insurance at work?
- Can I receive other income while on workers' compensation benefits?
- Will I receive compensation benefits if the injury was my fault?
- If I am covered by workers' compensation insurance, can I sue the person or company responsible for my injury?
- What if my accident involved a third party?
- Can my employer and I agree not to report my injury to the Commission?
- What if I have a pre-existing medical condition?
- What if I have a recurrence of an old work-related injury?
- Could my compensation claim be investigated?
- Can I get information from my claim file?

IF YOU ARE INJURED AT WORK

- What should I do if I am injured on the job?
- What should my employer do?
- What kind of information should be included in the accident report?
- What should my physician or other health care provider do?
- What happens after I file a claim?

[table of contents]

PAGE 15

ROLES AND RESPONSIBILITIES AFTER FILING A CLAIM

- What are my responsibilities after I file a claim?
- What are my employer's responsibilities when I am injured?
- What are my health care providers' responsibilities?
- What are the Commission's responsibilities?

PAGE 17

COMPENSATION BENEFITS

- What types of benefits can I get?
- How are my Loss of Earnings benefits calculated?
- What is the waiting period for benefits?
- Is there a limit on insurable earnings?
- What is the NBIAE?
- Are workers' compensation benefits taxable?
- Can employers top up Loss of Earnings benefits?
- What if I have two or more jobs?
- Do I have to report receipt of employment-related income while on compensation?
- Is there a maximum age for receiving benefits?
- What about Canada Pension Plan Disability benefits?
- What about entitlement to Long-term Disability benefits?
- What are estimated capable earnings?

- What is a suitable occupation?
- What happens if my actual earnings exceed my estimated capable earnings?
- When are Long-term Disability benefits terminated?
- What about medical treatment and expenses?
- What about travel expenses?
- What is a Personal Care allowance?
- Is there a pension at age 65?
- What is a Permanent Physical Impairment award?
- Does the Commission pay for burial expenses if I suffer fatal injuries?
- Are there benefits for my surviving spouse and dependants?
- Are my children from a previous relationship eligible for benefits?
- Are benefits terminated upon remarriage?

PAGE 25

CASE MANAGEMENT

- What is case management?
- Who are the members of my case management team?
- What are my case manager's responsibilities?
- What does an occupational therapist do?
- What does a medical advisor do?
- What is the rehabilitation specialist's role?

RETURN TO WORK

- What are the benefits of returning to work?
- Who decides when I should return to work?
- What happens if I can't return to the job I had before my injury / illness?
- Does my employer have to give me a job when I am ready to return to work?
- Will the Commission find me a job?
- What happens if I am considered medically fit to return to the same type of job I had when I was hurt, but I cannot find work?
- What happens if I am considered medically fit to return to work, but I choose not to? Do I continue to receive benefits?
- Can my employer lay me off after a workplace accident?

WORKERS' REHABILITATION CENTRE

- What is the Workers' Rehabilitation Centre (WRC)?
- Where do I stay?
- What about meals?
- What if I am admitted to the WRC?

QUESTIONING A DECISION

- What if I disagree with a decision on my claim?
- Is there a time limit for appeals?
- What is the Appeals Tribunal?
- How do I submit an appeal?
- What is an Appeals Panel hearing?
- Can I bring a witness to my appeal?
- What about new documents or reports?
- Is there someone who can help me with my appeal?
- What happens after an Appeals Panel hearing?
- Can my employer appeal a decision on my claim?
- Can I go to court?

WORKERS' ADVOCATES

- What do workers' advocates do?
- Is there a fee for their service?
- How can a workers' advocate help me?
- How do I access a workers' advocate?
- Contact information

What is the WHSCC?

WHAT IS THE WHSCC?

The Workplace Health, Safety and Compensation Commission (WHSCC) is dedicated to promoting a safe and healthy work environment and providing services to employers and workers in New Brunswick.

The Commission is an employer-funded Crown Corporation, and not a provincial government department. The Commission reports to the New Brunswick Legislature through the Minister of Post-Secondary Education and Training, and provides cost-effective disability and liability insurance for approximately 13,000 employers and 350,000 workers in New Brunswick.

The Commission administers three acts:

- (1) the *Occupational Health and Safety (OHS) Act* and regulations;
- (2) the *Workers' Compensation (WC) Act* and regulations; and
- (3) the *Workplace Health, Safety and Compensation Commission (WHSCC) Act*.

The *OHS Act* asserts that every worker is entitled to a safe and healthy workplace. This *Act* places primary responsibility for occupational health and safety in the hands of workers and employers and grants workers three basic rights:

- The right to know about workplace hazards;
- The right to participate in solving health and safety problems; and
- The right to refuse dangerous work.

Note: The *OHS Act* also sets out specific accident reporting requirements, and defines the rights and responsibilities of employers and workers. For more information on your rights and responsibilities under the *OHS Act*, please contact us at 1 800 222-9775, or visit our website www.worksafeb.ca.

This guide primarily addresses the legislative requirements of the *WC Act*.

What is the workers' compensation system?

Like other pieces of workers' compensation legislation in Canada, the *WC Act* of New Brunswick is based on the Meredith Principles, which formed the basis of an historic agreement between labour and business. According to the Meredith Principles, employers agreed to fund a workers' compensation system, and in exchange, workers gave up the right to sue employers for compensation of work-related injuries.

In New Brunswick, workers' compensation is administered through a no-fault insurance system set up under the *WC Act*. The workers' compensation program protects employers and workers against the impact of work injuries by compensating injured workers for lost income, health care, and other costs. It also protects employers from being sued by workers who are injured on the job.

How does it work?

In New Brunswick, the *WC Act* requires all employers with three or more part-time or full-time employees at any time during the year to register for coverage with the Commission. Employers are grouped according to industry and associated risk, and are assessed an annual payment based on their rate group and yearly payroll.

Employers are not permitted to collect compensation contributions from workers.

GUIDING PRINCIPLES OF WORKERS' COMPENSATION

No-fault compensation Workers are eligible to receive benefits for work-related injuries or occupational diseases, no matter who is at fault.

Collective liability All employers in covered industries share responsibility for fully funding the cost of workers' compensation insurance.

Immunity from suit Participating employers and their workers have universal immunity against lawsuits for work-related accidents.

Exclusive judicial jurisdiction The *WC Act* gives the Commission exclusive legal authority to make all decisions arising under the *WC Act*, recognizing the rules of natural justice.

Fair compensation and fair premiums Compensation should be fair and should account for the nature of the injury as well as the impact on employment earnings. Furthermore, premiums should be fair and competitive and account for the full cost of the system including claims, reserves, and administration.

Workers' compensation in New Brunswick is guided by principles formulated by the former Chief Justice of Ontario, Sir William Meredith, more than 80 years ago.

Comprehensive injury prevention and disability management

The Commission administers the *OHS Act* and associated regulations. The Commission provides a comprehensive range of services to both prevent injuries and manage disabilities.

Sustainability The system is operated to ensure its long-term stability, financial security, and cost-effectiveness.

[what is the WHSCC?]

ROLES AND RESPONSIBILITIES

The Commission's responsibility is to provide high quality workers' compensation and related services to employers and injured workers. Employers, workers and health care providers are also responsible for supporting the workers' compensation system.

The **Commission** must:

- Provide injured workers with clear information in a timely manner.
- Provide injured workers with effective compensation and rehabilitation services to help them return to employment.
- Collaborate with workers, employers and labour organizations to promote injury prevention and develop effective disability management services.
- Maintain sound financial and administrative management practices.

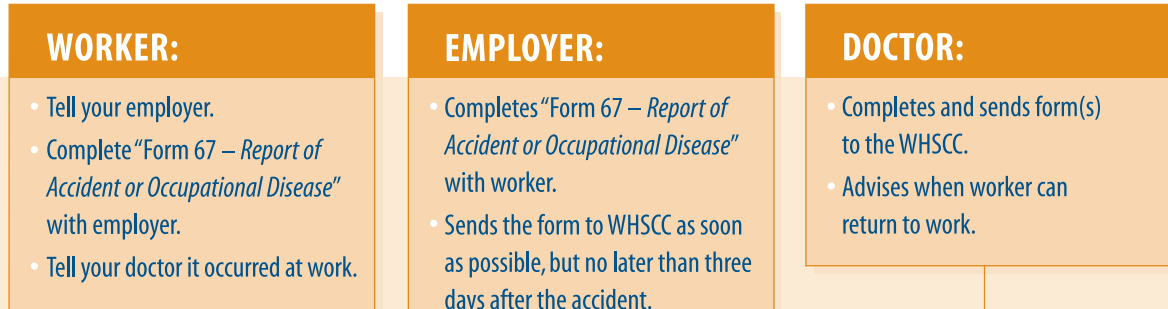
Employers are responsible for paying assessment premiums, reporting injuries and helping injured workers return to work by offering modified or alternative employment.

Injured workers have a responsibility to participate fully in their rehabilitation plan and maintain regular contact with their employer, the Commission, and their health care providers.

Health care providers are responsible for supporting the injured worker's recovery and return to work by working with the injured worker, the employer, other health care providers and the Commission.

[what is the WHSCC?]

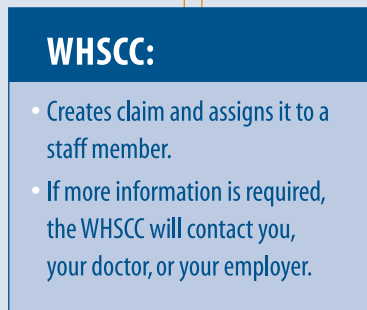
HOW DOES A COMPENSATION CLAIM GET STARTED?



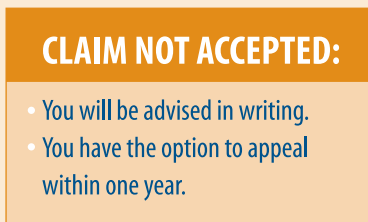
stage 1

FORM 67

MEDICAL FORM



stage 2



stage 3



Coverage and reporting

COVERAGE AND REPORTING OF ACCIDENTS

What is workers' compensation?

Workers' compensation is a no-fault liability insurance system that provides financial, medical and rehabilitation assistance for workers covered by workers' compensation who are injured as a result of their employment, or who suffer from an occupational disease.

The *WC Act* substitutes the injured worker's right to legal action against an employer with a no-fault and prompt method of compensation.

Who pays for workers' compensation?

Employers with more than three part-time or full-time employees pay assessments to fund the workers' compensation program. Workers do not contribute financially to the program, and employers are not permitted to collect compensation contributions directly from employees.

What is an accident?

Under the *WC Act*, an *accident must arise out of employment and in the course of employment*, and includes one of the following:

- A willful and intentional act, not being the act of the worker who suffers the accident.
- A chance event or incident occasioned by a physical or natural cause.
- A disablement caused by an occupational disease.
- A disablement or disabling condition caused by employment.

An accident does not include the disablement of mental stress or disablement caused by mental stress, unless that disablement resulted from an acute reaction to a traumatic event.

What is an occupational disease?

An occupational disease is a disease declared to be an occupational disease by regulation, a disease peculiar to or characteristic of an industrial process, trade or occupation, or a disease that arises out of and in the course of employment.

What does the term compensation mean?

The term compensation refers to a monetary payment made to an injured worker to partially reimburse lost earnings that result from a workplace injury.

How do I know if I am covered by the *WC Act*?

As a general rule, the *WC Act* covers every person who works for a company that employs three or more workers. However, there is one exception to this rule. In the fishing industry, coverage is only required for companies that employ 25 or more workers at the same time.

The *WC Act* does not cover family members of the employer who reside with the employer and who are under 16 years of age, persons employed as domestic servants, Armed Forces personnel, professional athletes and members of the Royal Canadian Mounted Police.

As a general rule, the WC Act covers every person who works for a company with three or more employed workers.

If you are unsure of your coverage, ask your employer if the business has workers' compensation insurance for its employees. You can also call our Assessment Services inquiry line at 1 800 222-9775.

How long do I have to apply?

Application for compensation must be made within one year after the accident has occurred. However, there are circumstances where the Commission may pay the claim if, in its opinion, it is a just one, and ought to be allowed.

Do I have to work full time to be covered?

If you work for an employer that must have workers' compensation insurance, you are covered whether you are a full-time, part-time, temporary or casual worker.

What if I am a volunteer firefighter?

Volunteer firefighters are considered employees of the village, town or municipality that hires them and are protected by the *WC Act* while carrying out firefighting duties. Volunteer firefighters are protected from the time they receive an emergency call until the time they return home, or to the place from which they responded to the emergency, as long as they used the most direct route. Volunteer firefighters are also covered as they perform duties relating to the maintenance of firefighting equipment and as they attend training sessions authorized by the fire chief.

What types of injuries should I report to file a claim?

You and your employer should complete Form 67 – *Report of Accident or Occupational Disease* for all work-related injuries, whether or not you lose time from work.

Are there any conditions or situations that may affect my coverage?

If you believe your injury is work-related, always report the injury. The Commission reviews and assesses all claims on a case-by-case basis. Benefits will not be paid if the injury is not work-related.

Some conditions or situations that are not considered work related include pre-existing or unrelated health problems such as diabetes, arthritis, or old sports injuries. However, if you are injured at work, and the injury makes a pre-existing condition worse, you may be eligible to receive benefits during your recovery period.

Am I covered when travelling to and from work?

Generally, if you are in an accident while travelling to and from work, you are not covered by workers' compensation. However, if you are travelling at the request of your employer, you may be covered. The Commission reviews each case individually.

[coverage and reporting]

What if I am injured on my employer's property?

Workers' compensation coverage is in place for you from the time you arrive on your employer's property or job site until the time you leave, provided you are there for work-related purposes.

Am I covered while working outside of New Brunswick?

Workers are covered while they are working outside of New Brunswick if the following conditions apply:

- The worker's usual place of employment is in New Brunswick.
- The worker is working outside of New Brunswick for a specific period of time and at the request of the employer.

- The employer is registered with the Commission and operates within the province of New Brunswick.
- Before the worker leaves New Brunswick, the employer provides a written request to the Commission for coverage with the names of the workers to be covered.
- The worker is paid through the New Brunswick employer's payroll.

If you are going to be working outside of New Brunswick, your employer should advise the Commission prior to leaving the province.

YOU SHOULD REPORT ALL WORK-RELATED ACCIDENTS OR DISEASES.

The following list outlines the types of injuries that can occur.

- Traumatic injuries** happen quickly, causing trauma to the body. Examples include broken bones, severe cuts, and burns.
- Repetitive strain injuries** include strains or sprains caused by repeatedly performing the same activity. For example, an assembly line worker may develop a repetitive strain injury in his/her wrist as a result of performing job duties.

- Occupational diseases** are caused by a job site condition. For example, workers repeatedly exposed to toxic materials in the workplace may develop conditions that impact their health.
- Recurring injuries** happen when a job site condition causes difficulty with an old work-related injury. The acceptance of a claim for recurring injuries is based on the continuity of symptoms, as well as the medical relationship between the present condition and the past injury.

What to report

“Am I covered while working outside of New Brunswick?”

What if I am injured while working outside of New Brunswick?

If your employer is not required to register, or is not granted registration in the province where your accident occurred, your claim must be made with the WHSCC of New Brunswick regardless of the “accident province.”

If you are covered by workers’ compensation in the accident province and your home province, you can choose to receive compensation benefits from one province or the other, but *not both*. To apply for benefits from another province, you must sign a Form of Election (affidavit) indicating that you are not applying for benefits in your home province.

There are some instances where neither one of these situations applies. In such cases, decisions on specific claims are based on individual circumstances.

What about my health insurance at work?

The Commission does not accept responsibility for employer-sponsored health insurance plans that provided benefits at the time of injury. You may no longer be entitled to such a health plan while on workers’ compensation; you should confirm this with your employer.

Can I receive other income while on workers’ compensation benefits?

The *WC Act* states that an injured worker cannot receive more than 85% of his or her net pre-accident earnings in compensation payments. The Commission will consider all employment-related income when calculating

your benefits. It is important that you inform the Commission of all income you receive while on benefits as soon as possible to avoid overpayment. In the event of an overpayment, you will be required to reimburse the overpayment amount to the Commission.

Will I receive compensation benefits if the injury was my fault?

Workers’ compensation is “no-fault guaranteed” insurance, and in most cases, workers are eligible for benefits for work-related injuries, regardless of who is at fault. However, if your injury is caused by your own serious and willful misconduct, you may not be eligible for benefits.

If I am covered by workers’ compensation insurance, can I sue the person or company responsible for my injury?

No. You cannot sue the person or company responsible for your injury if they have, or are required to have, workers’ compensation coverage in New Brunswick, and if your injury was caused in the course of employment. You are still insured if your employer is required to have workers’ compensation coverage, but has not registered.

What if my accident involved a third party?

If your injury was caused by a company or person not covered by the *WC Act* (a third party), and you are in the course of employment at the time of the accident, you may choose to claim compensation from the Commission or take action against the third party.

If you elect to claim compensation from the WHSCC, the Commission may proceed with legal action against the third party, and any monies exceeding the total cost of your claim including

[coverage and reporting]

future benefit entitlement, legal costs, and administration, will be paid to you or your dependants.

If you elect to not claim compensation you can sue the third party as if the accident was not work-related.

There are also some circumstances where you may elect to claim compensation or bring your own action even though the employer or person who caused the accident is also protected by the *WC Act*. The most common of these cases is where your injuries were caused in a motor vehicle accident. In this case, you have the option of bringing an action against the person

What if I have a pre-existing medical condition?

If a workplace accident aggravates a pre-existing condition, only the aggravation and not the entire pre-existing condition becomes part of the compensable injury. As a result, the Commission is responsible to provide rehabilitation until the injured worker reaches the pre-accident functional capacity or a maximum level of functional capacity considering the injury.

What if I have a recurrence of an old work-related injury?

The decision to either accept or reject your claim is based on the continuity of your symptoms, and

You and your employer are required by law to report your work-related injury to the WHSCC. Your employer can be fined if it is not reported, and your failure to report your injury in a timely manner may result in your being denied compensation benefits.

who caused the accident. You must note, however, that even in motor vehicle cases you cannot bring an action against your own employer or any of your co-workers.

Can my employer and I agree not to report my injury to the Commission?

No. Under the *WC Act*, you and your employer are required to report your work-related injury to the Commission. Your employer can be fined if the injury is not reported, and you may be denied compensation benefits if you fail to report your injury to your employer as soon as possible, and before voluntarily leaving the job site where you were injured.

the medical relationship between your present condition and your past injury. If the Commission is unable to confirm that the condition is an aggravation of your previous injury, it may be treated as a new, unrelated incident.

Could my compensation claim be investigated?

Yes. The Commission may investigate the facts of your claim if they are in dispute. The Commission also investigates allegations of fraud and abuse that come to our attention.

Can I get information from my claim file?

Yes. You can make a written request for a copy of your claim file. Your employer is also entitled to a copy of your claim file. A small fee will be applied to process this request.



If you are injured

IF YOU ARE INJURED AT WORK

What should I do if I am injured on the job?

In the event of an accident, injury or occupational disease at work, you must immediately take the following action:

- Report the accident to your employer before voluntarily leaving work, even if you do not require medical attention.
- Get medical treatment, as required.
- File a claim for benefits using a Form 67 – *Report of Accident or Occupational Disease*. Your employer must provide you with the form, and it should be completed jointly and submitted to the WHSCC. You may submit the form directly if you choose.
- If you seek medical attention for your injury and your physician does not ask if it is work-related, you must indicate that it is a work-related injury, so that he/she can forward your medical reports to the Commission immediately.

If you and your employer disagree about the claim or any aspect of it, you must still complete a Form 67 – *Report of Accident or Occupational Disease* and forward it to the Commission. Issues of dispute should be identified on your Form 67, and the Commission will investigate if necessary.

What should my employer do?

Immediately following your accident, your employer should take the actions outlined below.

Under the WC Act, your employer must:

- Provide first aid for your injury.
- Provide or pay the cost of immediate transportation from the injury site to a medical treatment facility when required.
- Complete and submit a Form 67 for all accidents, even you did not lose time from work. This must be done within three days from the date of the accident, or the date your employer was notified of the accident.

Under the OHS Act, your employer must:

- Immediately contact the Commission (1 800 222-9775) to report any injury that causes or may cause a fatality, a loss of limb or an occupational disease, or that requires or may require hospitalization.

What kind of information should be included in the accident report?

When completing the accident report, it is important that your employer obtain information about the events leading up to the injury. He or she should ask you whether there were any witnesses to your injury, what specific activities you were engaged in, and what your physical body movements were, at the time of your injury. Your employer should also speak with your co-workers and any other individuals you have identified as a witness.

[if you are injured]

What should my physician or other health care provider do?

Your health care provider must:

- Send medical reports pertaining to your injury to the Commission as soon as possible.
- Help you understand your physical injury.
- Discuss a recovery plan with you, and initiate that plan.

What happens after I file a claim?

The Commission will verify whether your employer is registered for workers' compensation insurance. If you are covered, the Commission will determine the acceptability of your claim and state to you and your employer, in writing, whether or not they have accepted it. If your employer is required to have coverage but does not, you are still covered by workers' compensation, and are entitled to benefits if the Commission determines that your injury is work-related.



After filing a claim

ROLES AND RESPONSIBILITIES AFTER FILING A CLAIM

What are my responsibilities after I file a claim?

You should:

- Keep your injury-related appointments with health care providers (physicians, physical therapists, chiropractors).
- Ask your health care providers to complete and submit a report to the Commission.
- Follow the treatment plan developed by your health care providers.
- Discuss your progress with your physician so you understand when you can return to work.
- Inform your Commission adjudicator or case manager of any changes in your medical recovery.
- Regularly discuss your progress, a possible return-to-work date, and if necessary, alternative work options, with your employer.
- Regularly contact your adjudicator or case manager.
- Inform your adjudicator or case manager when your doctor tells you that you are fit to return to work.
- If you return to work early, understand and follow all work limitations, so your re-employment is safe for everyone.
- Contact the Commission if you feel you need to change your duties or stop working because of your injury.
- Keep receipts for expenses directly related to your workplace injury. You will be asked to submit your receipts at a later date if you request reimbursement for your claim-related expenses.
- Use your claim number when you write letters to, or call the Commission.
- Advise your adjudicator or case manager if you will be leaving the province or if you are moving out of the province.
- Participate fully in modified work accommodations made available by your employer and supported by your treating physician.

[after filing a claim]

What are my employer's responsibilities when I am injured?

Your employer must:

- Provide or pay the cost incurred for the worker's transportation from the injury site to a medical treatment facility.
- Keep accurate first aid records.
- Work with you, your health care providers, and the Commission to develop an effective return-to-work plan.
- Make every effort, short of undue hardship, to accommodate you if you suffer a work restriction (according to provincial human rights legislation).
- Maintain regular contact with you and the Commission.

What are my health care providers' responsibilities?

Your health care providers should:

- Send their reports to the Commission as soon as possible.
- Help you understand what is wrong and what can be done to assist in your recovery.
- Work together with you, your other health care provider(s) and the Commission to develop an effective return-to-work plan.

What are the Commission's responsibilities?

The Commission will evaluate your claim. If your claim is accepted, the Commission will:

- Provide you with clear information about your case and the services available in a timely manner.
- Provide you with effective compensation and rehabilitation services to help you return to employment.
- Ensure that you receive appropriate medical treatment.
- Involve you, your employer and your health care provider(s) in the return-to-work process.
- Help you return to work in a safe and efficient manner.
- Accelerate medical management when available.
- Provide vocational assistance and conduct job modifications to help you in your return to work.

Compensation benefits

COMPENSATION BENEFITS

What types of benefits can I get?

Compensation benefits under the *WC Act* include:

- Payment for time lost from work
- Medical treatment and health care expenses
- Transportation allowances
- Personal care allowances
- Clothing allowances
- Loss of Opportunity award
- Long-Term Disability benefits
- Benefits to dependants of fatally-injured workers
- Assistance with funeral expenses

How are my Loss of Earnings benefits calculated?

Your initial loss of earnings is based on the information available at the time your claim is adjudicated. In most cases, your employer provides this information on a Form 67 – *Report of Accident or Occupational Disease*. No later than three months after the start of your claim, and then at any time during the claim management process, the Commission may review your earnings and adjust your benefits to more appropriately reflect what best represents your loss of earnings. In some cases, the Commission considers earnings for up to three years prior to your injury, or recurrence of your injury, in order to determine what best represents your loss of earnings. Other earnings, such as Employment Insurance (EI) benefits, are included as regular employment earnings.

You will be compensated at 85% of your average net earnings, not to exceed the maximum compensation allowable for the year of the injury. Net earnings are calculated by deducting income tax, Canada Pension Plan (CPP) contributions and EI premiums from your established, pre-accident gross earnings. The tax deduction information provided by your employer will be used to establish your income tax exemptions.

See example 1, at left.

[example 1]

Tom earned \$500 gross per week at the time of his workplace accident. He suffered serious injuries and was admitted to hospital.

After deductions for CPP, EI, and income tax, Tom's net earnings were \$388.19.

Under the WC Act, the current benefit is 85% of net, so Tom will receive \$329.96 per week from the Commission.

Gross earnings per week	\$ 500.00
CPP contributions	-21.42
EI premiums	- 9.75
Income tax	-80.64
Net loss of earnings	\$ 388.19
85% of net loss of earnings	\$ 329.96

[compensation benefits]

Actual benefits received from the WHSCC are not taxable. However, recipients must report WHSCC benefits to the Canada Customs and Revenue Agency as these benefits may affect tax credits.

What is the waiting period for benefits?

In New Brunswick, all injured workers are subject to a three-day waiting period beyond the day of the injury where they receive no compensation benefits from the Commission or the employer. Loss of earnings for this period will not be reimbursed. There are two exceptions to this rule:

- If your injury caused you to be admitted to the hospital as an in-patient, your benefits begin immediately and there is no deduction for the three-day waiting period.
- If your claim is accepted and you remain on benefits for more than 20 working days (four calendar weeks), the amount that was deducted for the three-day waiting period will be reimbursed.

The three-day waiting period is based on a five-day work week regardless of the number of days you work in a week. Three days of a five-day work week is equivalent to $\frac{3}{5}$ or 60% of a week. Therefore, the amount of your three-day waiting period will be 60% of your average weekly salary.

See example 2, at right.

Is there a limit on insurable earnings?

Yes. The maximum amount of insurable earnings is equal to 1.5 times the *New Brunswick*

Industrial Aggregate Earnings (NBIAE) amount. In 2005, the maximum insured salary amount is \$50,900.

What is the NBIAE?

The NBIAE is an amount set by the Commission as of January 1 each year. It is based on yearly increases in the Consumer Price Index for Canada, and monthly reports published by Statistics Canada.

Are workers' compensation benefits taxable?

Actual benefits received from the Commission are not taxable. However, recipients must report

[example 2]

Martine earned \$500 gross per week at the time of her accident. She suffered minor injuries and was off work for only three weeks.

Gross earnings per week	\$ 500.00
CPP contributions	-21.42
EI premiums	- 9.75
Income tax	-80.64
Net loss of earnings	\$ 388.19
85% of net loss of earnings	\$ 329.96
$\frac{3}{5}$ or 60% of weekly benefit (waiting period)	-197.98
Entitlement for first cheque	\$ 131.98

In Martine's case, her first cheque would be reduced by \$197.98, which represents $\frac{3}{5}$ or 60% of the weekly benefit amount.

During the time period that you receive Loss of Earnings benefits, you must report the receipt of employment-related income from any source to the WHSCC.

WHSCC benefits to the Canada Customs and Revenue Agency as these benefits may affect tax credits.

Can employers top up Loss of Earnings benefits?

The injured worker must report to the Commission all employment-related income received while on compensation. Such income will be deducted from the worker's regular benefits if the total top-up plus the WHSCC entitlement exceeds 85% of pre-accident net earnings. The worker may receive top-up from the employer only when the pre-accident earnings exceed the maximum insured salary for the year of the injury.

The employer may choose to continue paying the injured worker full salary, in which case no benefits will be paid by the Commission. The amount of post-accident income earned by the injured worker only has an effect on their Loss of Earnings benefits. This has no effect on other benefits the injured worker might be eligible for under the *WC Act*.

What if I have two or more jobs?

Your pre-accident earnings – including all full-time or part-time jobs you might have – are used to calculate average earnings, provided you are unable to perform all pre-accident jobs.

Do I have to report receipt of employment-related income while on compensation?

Yes. Employment-related income includes Employment Insurance, vacation pay, bonuses, and any other wage replacement or disability

insurance paid by the employer or paid through an employment related program. Benefits paid by the Canada Pension Plan and the US Social Security program are also considered if you receive them while on WHSCC benefits. The Commission will deduct such income to determine your loss of earnings.

Is there a maximum age for receiving benefits?

Yes. Wage loss benefits from the WHSCC cease when you turn 65 years old. If you are 63 or older when your loss of earnings begins, you are entitled to receive benefits for a maximum of two years as long as you are restricted by your injury from performing your pre-accident work. Medical aid related to your injury is paid for life.

What about Canada Pension Plan Disability benefits?

An injured worker who receives Canada Pension Plan Disability (CPPD) or Quebec Pension Plan Disability benefits must report such benefits to the Commission. CPPD benefits compensate individuals who cannot work due to disability. Eligibility for CPPD benefits is not related to a specific accident or event and may include congenital or acquired disabilities.

To receive WHSCC compensation benefits, a worker must have been injured in the course of his or her job and the injury must have arisen out of that job. WHSCC Loss of Earnings benefits recognize the financial impact of the individual's injury and are meant to replace lost earnings.

[compensation benefits]

[example 3]

If Mary made \$15 per hour before her accident and is subsequently considered capable of earning \$9 per hour after her accident, then the residual loss of earnings is \$6 per hour (**40% disability**). Therefore **40%** of the CPPD benefits would be deducted from WHSCC benefits, as that is considered to be the portion of the CPPD award related to her work-related injury.

[example 4]

If John is injured and not considered capable of any earnings, then John would be entitled to **full** LTD benefits from the WHSCC and **100%** of his CPPD benefits would be deducted.

Since CPPD recognizes and compensates for the entire person, it pays benefits on both work-related and non work-related portions of the disablement. The receipt of full CPPD and WHSCC Loss of Earnings benefits would constitute double payment of benefits for lost wages relating to the work injury.

As a result, the WHSCC deducts from your Loss of Earnings benefits an amount equal to the portion of CPPD benefits representing the loss of earnings caused by the work-related injury, relative to your pre-accident earnings.

In rare cases where the worker has a work-related injury but CPPD benefits are solely attributable to a non work-related condition, CPPD benefits are not deducted from WHSCC benefits.

The children's portion of the CPPD is excluded from the adjustment.

See example 3, above.

What about entitlement to Long-term Disability benefits?

Injured workers who complete rehabilitation and suffer a loss of earnings because of a permanent work restriction related to their compensable accident may be entitled to Long-term Disability (LTD) benefits.

The LTD benefit is the difference between what the worker was earning before the accident (average earnings), and what the worker is estimated to be capable of earning after the accident, or is earning at a suitable occupation (estimated capable earnings, also known as deeming, up to the maximum allowable for that year).

Canada Pension Plan Disability benefits, Canada Pension Plan retirement benefits, and Quebec Pension Plan benefits are deducted from the worker's entitlement to LTD benefits (*see section on CPPD benefits*). As well, if the combined benefit exceeds 85% of pre-accident net earnings, LTD benefits will be reduced by an amount equal to the excess amount.

See example 4, at left.

What are estimated capable earnings?

Estimated capable earnings are earnings that a worker is estimated to be capable of earning at a suitable occupation after sustaining the injury as per section 38.1(1) of the *WC Act*. This process is often referred to as deeming.

What is a suitable occupation?

A suitable occupation means employment at an appropriate job that an injured worker is capable of performing, considering the worker's physical abilities and employment qualifications, and which does not endanger the health, safety or physical well-being of the worker.

What happens if my actual earnings exceed my estimated capable earnings?

The Commission will use the greater of the following to calculate your entitlement to LTD benefits:

- Your actual earnings
- Your estimated capable earnings

The Commission is committed to supporting workers who are in receipt of LTD benefits, and who are seeking employment opportunities that will improve their earnings. To help meet this commitment, the Commission has adopted a Return to Work (RTW) Incentive Program.

The Commission's current practice is to reduce a worker's compensation benefits by the amount they are earning or are considered capable of earning. The RTW Incentive Program is intended to provide a financial incentive for workers who are currently employed and are trying to improve their earnings.

You qualify for the program when your actual earnings exceed your estimated capable earnings (ECE) by 20% or more. In such cases, instead of reducing your benefits, you will be allowed to earn this amount of money and maintain your long-term disability benefits at the *current year's indexed level* for a 12-month period. At the end of the 12-month period, your benefits will be reviewed once again, and your new ECE will be established

based on your previous year's actual earnings level. This means that the reduction of your LTD benefits normally associated with increased earnings will be delayed until a full 12-month period has passed.

The Commission reviews LTD benefits annually, and the qualification for the RTW Incentive Program will be determined as part of this process. You may qualify for this incentive more than once.

When are LTD benefits terminated?

LTD benefits are terminated when:

- The loss of earnings ceases.
- The work restriction which prevented the worker from returning to the pre-accident employment no longer exists.
- The worker reaches age 65.

What about medical treatment and expenses?

The Commission pays all reasonable expenses for required medical treatment arising from the work-related injury, including hospital fees and approved health care provider (for example, physician, chiropractor, and physiotherapist) fees.

The Commission may also pay or reimburse workers for the cost of prescription medication and physical aids, such as assistive devices (braces, crutches, and artificial limbs, for example). Expenses related to clothing damaged during the accident may also be reimbursed. Approved medical aid expenses related to your injury remain the responsibility of the Commission for your life.

What about travel expenses?

The WHSCC makes payments to help cover your claim-related travel expenses. These are expenses incurred while travelling in relation to a claim, above those incurred in day-to-day living. Expenses covered may include, but are not limited to, transportation, accommodation, meals and associated child and dependant care expenses. Claim-related travel includes travel to and from medical appointments, Appeals Tribunal hearings, and training. There is a daily exclusion zone of 22 km for any reimbursement of travel.

In all cases, you should submit your receipts prior to being considered for full reimbursement. If you do not submit your receipts, you will only be eligible for a daily per diem amount, which may be less than what you spent.

What is a Personal Care allowance?

The Commission provides monthly financial care allowances for you if you require, as a result of your work-related injury or occupational disease, ongoing assistance with personal care and the activities of daily living and home maintenance assistance. Home care and related services generally include:

- Professional health care services such as nursing.
- Physical care assistance such as bathing, transferring and grooming.
- Home support to assist with activities such as cleaning and meal preparation.
- Home maintenance such as lawn care and snow removal.

In order to determine your entitlement to a Personal Care allowance, you must be seen by a health care professional, such as an occupational therapist. He/she will complete an assessment to

determine the level of assistance that you need, and will send it to the Commission. This information will be used to determine if you qualify for an allowance, as well as the amount you will receive. This amount, if approved, is based on an approved fee schedule and is separate and distinct from other benefits paid by the Commission. Allowances are not wage loss benefits, but are paid in specific cases to help you with certain ongoing costs incurred as a result of your compensable injury.

Respite Care

The Commission also recognizes the need for injured workers' caregivers, such as family members, to have periods of rest, especially when caring for the terminally ill, or those suffering long-term illness. Respite care assistance may be approved in such situations to allow a period of rest for the caregiver.

Quality of Life Grant

Seriously-injured workers may require assistance to realize possibilities that exist in their remaining abilities. In addition to providing assistive devices, prosthetics and orthotics, the Commission may provide support for items or services that improve the quality of life for those seriously-injured workers. The Quality of Life grant helps seriously-injured workers to resume participation in recreational, social, or community activities. The Commission works with your recovery team to determine if you qualify for this grant.

Is there a pension at age 65?

For loss of earnings benefit recipients, an amount equal to 5% of your benefits plus accrued interest is set aside to provide an annuity at age 65, if you have been on benefits for more than two consecutive years. When you reach age 65, the amounts that have been set-aside are made available to you in order to establish a 5-year, 10-year or lifetime annuity at a provider of your choice. This annuity will offset, in part, any reduction in CPP retirement benefits or personal pension contributions that may result from your workplace injury. The annuity is unaffected by benefits you receive from CPP but may reduce your eligibility for any supplemental benefits under the Old Age Security program.

What is a Permanent Physical Impairment (PPI) award?

If you suffer a permanent physical impairment as a result of your compensable accident, you may be entitled to a lump sum award in recognition of your loss of opportunity. The Commission completes a PPI evaluation once the injured worker has achieved maximum medical improvement. The evaluation is performed by a certified medical examiner (usually a WHSCC physician).

A WHSCC medical advisor reviews the evaluation and calculates the award in accordance with the approved rating schedule as prescribed by regulation. The award is in addition to any compensation you may receive for loss of earnings. The award is not intended to compensate you for lost earnings, pain, suffering or lost enjoyment of life. The award is not a settlement of your claim, nor does it affect your entitlement to other compensation benefits.

Does the Commission pay for burial expenses if I suffer fatal injuries?

For burial expenses, the Commission will pay an amount equal to the 20% of the New Brunswick Industrial Aggregate Earnings (NBIAE), less the CPP burial entitlement. If the worker's body must be transferred for burial, additional monies may be paid.

Are there benefits for my surviving spouse and dependants?

Yes. Under the *WC Act*, a spouse includes both married and common-law conjugal relationships. In order to be considered a common law spouse, the couple needs to have lived together in a conjugal relationship for more than three years or more than one year if a child is born of that relationship. Surviving spouses will receive monthly benefits equal to 80% of the deceased worker's average net earnings for the first 12 months following the worker's death.

Within one year of the death of the worker, the surviving spouse must choose to receive benefits under one of the plans outlined on the following page.

[compensation benefits]

Option 1

Monthly benefits payable to age 65 based on 85% of the deceased worker's average net earnings, less any CPP surviving spouse benefits. In addition, an amount equal to 5% of the survivor benefits paid will be set-aside for the surviving spouse, to provide an annuity at age 65. These survivor benefits are reviewed annually and the level of benefits is subject to a "family" income test. The family income test compares the indexed pre-accident family income (deceased

worker and surviving spouse) with the new family income (surviving spouse and any new spouse). Benefits under this plan may be reduced if the new family income is greater than the indexed pre-accident family income.

Option 2

Monthly benefits payable to age 65 based on 60% of the deceased worker's average net earnings, less any CPP surviving spouse benefits, plus benefits for each dependent child. A one-time lump sum payment of 60% of the net annual income of the deceased worker is also paid to the surviving spouse. The child/children benefits are based on the age of the dependant child/children. In addition, an amount equal to 8% of the monthly surviving spouse benefits (60% worker's average net earnings) will be set-aside for the surviving spouse, to provide an annuity at age 65. No family income test applies in this case.

At no time will the total benefits paid under either plan noted above, exceed those that would be paid to a completely disabled worker based on 85% of the deceased worker's average indexed net pre-accident earnings.

Are my children from a previous relationship eligible for benefits?

Yes. If you suffer fatal injuries, your children from a previous marriage or relationship, who are 18 or under, or, 22 or under if enrolled in a full time educational institution and who were financially dependant on your earnings at the time of your death, may also be eligible for benefits.

Are benefits terminated upon remarriage?

No. Survivor benefits are not terminated upon remarriage or cohabitation.

[option 1]

Monthly benefits based on 85% of the deceased worker's average net earnings, payable to age 65. In addition, an amount equal to 5% of the benefits will be set aside for the surviving spouse to provide a pension beginning at age 65. These benefits are subject to a "family" income test.

[option 2]

A lump sum payment of 60% of the net annual income of the deceased worker, plus monthly benefits based on 60% of the deceased worker's average net earnings, plus benefits for each dependent child. The benefit depends on the age of the dependent child /children. In addition, an amount equal to 8% of the monthly surviving spouse benefits (60% worker's average net earnings) will be set aside for the surviving spouse to provide a pension at age 65. No income test applies in this case. However, the total amount of monthly benefits (spousal and dependent children) paid cannot exceed 85% of the deceased worker's monthly average earnings.

At no time will the total benefits paid above exceed those that would be paid to a completely disabled worker.



Case management

CASE MANAGEMENT

What is case management?

After a workplace accident, the Commission's goal is to return you to work in a safe and efficient manner. Case management is a way of coordinating everyone involved in your case to achieve that goal – the worker, the employer, and the health care providers. Case management is usually for long-term cases, meaning an injured worker who is off work for six weeks or more.

Who are the members of my case management team?

The team may include your case manager, an occupational therapist, a medical advisor and a rehabilitation specialist, dedicated to your rehabilitation.

What are my case manager's responsibilities?

Your case manager will be your main contact with the Commission and all other team members. Your case manager is responsible for developing, implementing, monitoring, and evaluating your rehabilitation and return-to-work plan.

What does an occupational therapist do?

The occupational therapist works with you and your employer to ensure your safe return to work. The occupational therapist may visit your job site to determine if changes must be made to help you get back on the job. The therapist may also arrange a gradual return-to-work schedule for you. They may conduct home evaluations to assist you if you require help with activities of daily living.

Case management is a way of coordinating everyone involved in your case.

What does a medical advisor do?

The medical advisor is a WHSCC physician who provides medical expertise to the case management team concerning the medical management of your case. The medical advisor may also conduct a medical examination.

What is the rehabilitation specialist's role?

If you cannot return to pre-accident employment due to work restrictions resulting from your injury, the rehabilitation specialist will provide you with information on retraining, alternative employment options, and vocational counseling services. The rehabilitation specialist's goal is to help you find safe, suitable employment, while attempting to match your pre-accident earnings.



Return to work

RETURN TO WORK

What are the benefits of returning to work?

Suitable modified or alternative work is good for you and your pre-accident employer. It allows you to be independent and productive, and provides you with opportunities to gain additional skills and experience. Other advantages may include protecting your seniority rights and other related employer benefits, such as sponsored health insurance and vacation days. Return to work also benefits your employer, allowing them to retain a skilled, valuable worker who is familiar with and actively involved in the business.

Who decides when I should return to work?

Your doctor and other health care providers send progress reports to your adjudicator or case manager, who will use them and other information to determine when you are fit to return to work.

If you have temporary work restrictions, your case manager will discuss modified work options with your employer.

What happens if I can't return to the job I had before my injury / illness?

If you have temporary work restrictions, your case manager will discuss modified work options with your employer. Modified work promotes an early and gradual return to pre-accident employment. If you suffer a permanent work restriction, your case manager and your employer will discuss alternative work options that match your functional abilities. If alternative options are unavailable, you and your case management team will work to develop a vocational plan to allow you to work in an alternate position. Depending on your interests, physical condition and learning ability, your vocational plan could include formal training, training on the job, and a counselor-assisted job search.

The WHSCC is responsible for providing you with fair compensation and services that help you return to work. The Commission will support you in your job search efforts.

Does my employer have to give me a job when I am ready to return to work?

Your employer has a legal obligation to make every reasonable effort, short of undue hardship, to accommodate you if you suffer a temporary or permanent disability resulting from a work-related accident. These obligations stem from section 3 of the *Human Rights (HR) Act* of New Brunswick, and section 42.1 of the *WC Act*.

While you (and your union) have a duty to cooperate with, and participate in the accommodation process, the primary responsibility rests with your employer who has the ultimate control over the workplace. Your employer must make every reasonable effort to accommodate the particular needs of your disability in your return to work.

Will the Commission find me a job?

No, the Commission will not find you a job. The WHSCC is responsible for providing you with fair compensation and services that help you return to work. The Commission will support you in your job search efforts and in doing so, may provide up to 13 weeks of benefits.

The Commission has a new incentive pilot project to encourage injured workers to actively search for and secure suitable and sustainable employment during the job search period. You might qualify for a \$6,000 bonus if you:

- Have a permanent work restriction due to your workplace injury.

- Do not receive vocational retraining as part of your rehabilitation plan.
- Are considered capable of returning to some suitable employment.
- Secure suitable employment during the Commission-approved job search period, with earnings greater than or equal to your capable earnings estimated by the Commission.

To receive this incentive, you will also be required to keep your employment and maintain or exceed the wage level for the period listed below:

- \$1,000 bonus at the completion of the 2nd month of employment.
- \$2,000 bonus at the completion of the 6th month of employment.
- \$3,000 bonus at the completion of the 12th month of employment.

What happens if I am considered medically fit to return to the same type of job I had when I was hurt, but I cannot find work?

If you cannot return to work because of a poor job market or another reason not related to your injury, workers' compensation benefits will not cover you. If this happens, you may need to apply for another type of insurance coverage such as federal Employment Insurance or CPP Disability benefits.

What happens if I am considered medically fit to return to work, but I choose not to? Do I continue to receive benefits?

When your adjudicator or case manager finds you medically fit to return to work, you are expected to return to suitable employment. If you decide not to return to work, the Commission will reduce or stop your benefits.

Can my employer lay me off after a workplace accident?

Under the *HR Act*, all employers have a duty to accommodate injured workers who are disabled as a result of their employment, so that they can return to work. Reasonable accommodations include, but are not limited to:

- Altering work schedules.
- Reconfiguring job duties.
- Re-assigning or re-bundling work.
- Introducing job aids.
- Retraining the injured worker.

Employers are obligated to accommodate a disabled employee only up to the point of undue hardship to the employer as determined by the Human Rights Commission.

Employers also have a duty to accommodate injured workers under the *WC Act*. Employers with ten or more workers have a legislated responsibility to re-employ injured workers in one of the following:

- The same or equivalent job if the injured worker is capable of performing the required duties.
- Suitable employment that may become available with the employer, with no loss of seniority benefits, if the injured worker is incapable of performing the required duties of the pre-accident job.

The re-employment obligation applies for:

- One year for employers who regularly employ ten but fewer than twenty workers; or,
- Two years for employers who regularly employ twenty or more workers.

In the construction industry, re-employment obligations are subject to the rules and practices respecting hiring and placement in the worker's trade, and whether the construction project and position exist at the time you are able to resume work.

The re-employment obligation begins on the date the injured worker was entitled to receive compensation following a workplace accident or recurrence, and continues until the one or two-year period has expired.

If an accident employer offers the injured worker the pre-accident or equivalent position, or other suitable employment, but the worker refuses, an accident employer is no longer bound to re-employ the injured worker under the *WC Act*.

When employers refuse to accommodate or re-employ injured workers in accordance with the *WC Act* or the *HR Act*, injured workers can file a formal complaint with the appropriate organization to require the accident employer to comply with the legislation. Injured workers must file a complaint with one of the following:

- The Employment Standards Branch, when employers fail to re-employ under the *WC Act*.
- The Human Rights Commission, for non-compliance with the *HR Act*.

To assist in the complaint process, the Commission provides injured workers with information on how to file a complaint. When the injured worker does not file a complaint, and the Commission is satisfied that the employer did not comply with the *WC Act*, the Commission may file a complaint with the Employment Standards Branch for breach of legislation. Complaints to the Human Rights Commission can only be filed by the injured worker.

WORKERS' REHABILITATION CENTRE

What is the Workers' Rehabilitation Centre (WRC)?

The Commission owns and operates the Workers' Rehabilitation Centre, which provides specialized and comprehensive occupational rehabilitation services.

The WRC has treated injured workers since 1965. Located in Saint John, New Brunswick, the Centre is the only occupational rehabilitation centre of its kind in Eastern Canada. The WRC is recognized by the Canadian Council on Health Services Accreditation.

If you are admitted to the WRC, you will participate in a rehabilitation program designed especially for you. The WRC offers the programs shown at right.

Where do I stay?

If your treatment requires an overnight stay and you do not live in the local area, the choice of where to stay is yours. We will cover your expenses according to our transportation policy.

What about meals?

The WRC's dietitian designs three well-balanced meals, plus snacks, from the cafeteria every day.

What if I am admitted to the WRC?

If you are admitted to the WRC, you will participate in the above-mentioned programs at the Centre during daytime hours (Monday-Friday only). If you are admitted for more than one day, you will be required to find separate accommodations (see "*Where do I stay?*", above). You should bring casual, comfortable

clothing, a swimsuit, and closed-toe shoes, such as sneakers or walking shoes. You will have your own locker to store your personal belongings. You should also bring any required prescription medicine.

Your case manager will provide you with more information and will answer your questions at the time of your referral to the WRC.

[programs]

The WRC offers the following programs:

- **Work Recovery** provides intensive occupational rehabilitation to prepare injured workers to return to the workplace.
- **Pain Management** helps injured workers cope with chronic pain to increase their level of activity, to prepare for employment, and to generally improve their quality of life.
- **Vocational Evaluation** assesses injured workers' physical, psychological, and vocational capabilities – and assists in setting realistic occupational goals.
- **Assistive Devices** provides devices designed to maximize injured workers' functional independence, including artificial limbs, braces, splints, and modified tools.
- **Health Services** maintains injured workers' participation in their rehabilitation program by providing nursing services at the Centre.



Appeals

QUESTIONING A DECISION

What if I disagree with a decision on my claim?

Workers, dependants, and employers can appeal decisions of the WHSCC.

Before submitting an application of appeal to the Appeals Tribunal, you must provide all relevant information to the original decision maker.

The original decision maker is the person who signed the letter informing you of the decision. In providing all relevant information to the original decision-maker, you ensure that you obtain all of the services and benefits that you are eligible to receive without unnecessary delay.

Is there a time limit for appeals?

Legislation effective June 1, 2001 imposed a time limit on appeals. As of that date, you have a one-year time limit from the date of the decision to file an appeal. WHSCC decisions made prior to June 1, 2001, are not affected by this change.

What is the Appeals Tribunal?

The Appeals Tribunal operates at arm's length from the Commission. As an administrative tribunal, it operates on the premise of natural justice. Hearings require structure, must be fair, and are a tool to collect necessary information.

How do I submit an appeal?

To submit an application of appeal to the Appeals Tribunal, you do not need to fill out any lengthy forms. However, you must submit the following information in writing to the Registrar:

- Your name, address and claim or employer number.
- Date of the decision being appealed.
- Issue being appealed as well as your request.
- Reasons supporting your appeal.
- Your preferred official language.

What is an Appeals Panel hearing?

An Appeals Panel will consider your appeal at an Appeals Panel hearing. You may choose either an oral presentation or a paper review. The Appeals Panel consists of a Three-Person Panel or a Single-Person Panel.

A Three-Person Panel is made up of a Chairperson and two panel members. The Chairperson is chosen from the Appeals Tribunal's list of individuals appointed for that purpose. The two remaining Panel members consist of a workers' representative and an employers' representative, also chosen from pre-established lists. Members of the panel act on an impartial basis.

A Single-Person Panel is subject to the consent of all parties and consists of a Chairperson acting alone.

The Appeals Tribunal holds its hearings in regions throughout the province in the official language chosen by the person submitting the appeal. Appeals Panel decisions are final and delivered in writing.

[appeals]

You [and your employer] are both entitled to appeal a decision made on your claim and will be notified in the event that an appeal is filed.

Can I bring a witness to my appeal?

Any party to an appeal can bring witness(es) to the hearing. However, the Appeals Tribunal must be advised, in writing, of witnesses at least three weeks before the hearing date.

The notice must include the name(s) of the witness(es) and must explain the purpose of having the witness(es) at the hearing.

What about new documents or reports?

Ordinarily, all relevant information should have been submitted to the original decision-maker. However, if this is not possible and it is necessary to submit documents to the Appeals Tribunal, then such information must be submitted at least three weeks prior to the hearing date. Any documents not provided three weeks prior to the hearing date, but presented at the hearing, are subject to the acceptance of the Appeals Panel.

Is there someone who can help me with my appeal?

Workers' advocates are located throughout the province to help you on matters pertaining to the *WC Act* and, in particular, with the appeals process. They will assist you with the preparation of your appeal. (See "*Workers' Advocates*" section, page 34.)

Workers' advocate services are available to you at no charge.

What happens after an Appeals Panel hearing?

After your hearing is finished, the Appeals Panel members will discuss the documentary and oral evidence, and render a decision. All parties will be informed in writing of the Panel's decision and reasons. Any decision, order, or ruling of the Appeals Tribunal is final. If your appeal is accepted, it will be sent to the Commission for implementation.

If your appeal is not accepted, there are two other options, outlined below, that you may want to consider.

Court of Appeal

Any decision, order or ruling of the Appeals Tribunal is final and subject to an appeal to the Court of Appeal for questions as to jurisdiction or law.

Any party intending to appeal to the Court of Appeal must, within 30 days of notice of the Appeals Tribunal's decision, order, or ruling, apply to the Appeals Tribunal for a Statement of Facts.

Reconsideration

Appeals Panel decisions are final and delivered in writing. However, decisions may only be reconsidered by the Appeals Panel when new, substantial information is submitted.

Can my employer appeal a decision on my claim?

Yes. You and your employer both have an interest in your claim, with similar rights to fair and equal treatment. You are both entitled to appeal a decision made on your claim, and will be notified in the event that an appeal is filed. As well, you are both entitled to attend any Appeals Panel hearing relating to your claim.

If your employer files an appeal relating to your claim, you can access the free services of a workers' advocate, or elect to retain the services of a lawyer or other representative, at your own expense. Like you, your employer can also enlist assistance with an appeal. They can access the services of an employers' advocate, free of charge, or they can retain the services of a lawyer or other representative at their expense.

Can I go to court?

Courts have limited jurisdiction over workers' compensation matters since the legislation also creates an appeal process. If you disagree with a decision, you cannot go directly to court. Any decision, order or ruling may be appealed to the Appeals Tribunal. If you are dissatisfied with the decision made by the Appeals Tribunal you may then, under certain circumstances, appeal that decision to the Court of Appeal. The Court of Appeal will usually only hear cases where there is evidence that the Appeals Tribunal made a mistake in interpreting the law, or where the Appeals Tribunal had no jurisdiction to make the decision that it made.

Workers' advocates

WORKERS' ADVOCATES

What do workers' advocates do?

Workers' advocates are in place to help you and your family with matters pertaining to the *WC Act* and the appeals process.

The advocates are employees of the Department of Post-Secondary Education and Training and are independent of the Commission. Note that advocates have full access to all WHSCC files and records relating to your claim.

Is there a fee for their service?

The services of a workers' advocate are available to you at no charge.

How can a workers' advocate help me?

A workers' advocate can help you by:

- Providing general information about the workers' compensation system, policies, and procedures.
- Advising you on what actions to take and helping to gather the necessary information.
- Determining if there is a problem with a claim that can be resolved through an appeal.
- Helping to prepare a written or oral appeal.
- Appearing with you, or as your representative, at an appeal hearing.

How do I access a workers' advocate?

Telephone or write the Office of the Workers' Advocate nearest you. You will need to provide them with some basic information concerning your claim and the nature of the problem. Always refer to your WHSCC claim number, and state what you want clearly. Please call and arrange an appointment with an advocate before coming to the office.

Contact information

Office of the Workers' Advocate
Department of Post-Secondary
Education and Training

470 York Street
PO Box 6000
Fredericton NB E3B 5H1
Phone 506 453-3247
Fax 506 453-3990

8 Castle Street
PO Box 5001
Saint John NB E2L 4Y9
Phone 506 658-2166
Fax 506 658-3075

360 St. George Street
Bathurst NB E2A 1B9
Phone 506 549-5361
Fax 506 549-5351

121 Church Street
PO Box 5001
Edmundston NB E3V 3L3
Phone 506 735-2082
Fax 506 735-2558

770 Main Street, 4th Floor
PO Box 5001
Moncton NB E1C 8R3
Phone 506 869-6455
Fax 506 869-6608

150 Pleasant Street
PO Box 1030
Miramichi NB E1V 3V5
Phone 506 624-2125
Fax 506 624-5482