

Changes to WCB and OHS Regimes

WORKERS COMPENSATION ACT - KEY CHANGES

CHANGE	DATE CHANGE CAME INTO EFFECT	FORMER STATUTORY FRAMEWORK	CHANGES IN BILL 47	POSSIBLE IMPACTS ON EMPLOYERS AND WORKERS
Cap on wage loss benefits	January 1, 2021	<p>No cap on an injured worker’s wage loss benefits.</p> <p>An injured worker could receive 90% of their net annual earnings with no limit on the amount.</p> <p>Permanent wage loss benefits were indexed to the Alberta Consumer Price Index.</p>	<p>Hard cap on wage loss benefits in place.</p> <p>An injured worker can receive 90% of their net annual earnings up to a maximum of \$98,700.</p> <p>The WCB sets the annual inflationary adjustment at a rate that maintains “approximate parity with the cost of living”.</p>	<p>The rationale behind having a cap in place is to contain claims costs and premiums for employers.</p> <p>However, the WCB now has increased discretion over what the cap and compensation rate will be, and over how permanent benefits are adjusted for inflation, which could potentially translate to lower compensation for work-related injuries.</p>
Presumptive coverage for psychological injuries	January 1, 2021	<p>Coverage is presumed for all workers with a psychological injury diagnosis (such as post-traumatic stress disorder).</p>	<p>Presumptive coverage for psychological injuries is limited to firefighters, police officers, paramedics, peace officers, correctional officers, and emergency dispatchers.</p>	<p>While this does not preclude other workers from claiming benefits for a psychological injury, this kind of diagnosis will not be presumed to be work-related for workers who are not firefighters, police officers, paramedics, peace officers, correctional officers, or emergency dispatchers.</p>

<p>Obligation to Re-hire vs. Duty to Cooperate</p>	<p>April 1, 2021</p>	<p>Employers had an obligation to re-hire injured workers when workers were able to return to their duties.</p> <p>If an employer terminates a worker while they are receiving WCB benefits or within 6 months of their return to work, there is a presumption that the worker was terminated due to their injury.</p> <p>Employers have a duty to accommodate a worker with a disability.</p>	<p>Employers no longer have an obligation to re-hire workers when workers can return to their duties.</p> <p>The presumption that a worker was terminated due to their injury (if terminated while receiving WCB benefits or within 6 months of returning to work) is removed.</p> <p>Both employers and workers have a duty to cooperate and mutually facilitate a safe and early return to work plan. Workers are responsible for mitigating their losses.</p> <p>The duty to accommodate a worker with a disability is removed under the WCB Act [however, this duty remains under by human rights legislation].</p>	<p>Employers have greater latitude when making termination decisions involving injured workers, while still being subject to the human rights duty to accommodate; however, this change may translate to fewer protections for workers. In the event the employer chooses not to re-hire the worker, the burden is on the worker to prove that their termination was due to their injury rather than on the employer to prove that it was not.</p> <p>Employers and workers must work together to develop safe and early return to work plans. If a worker does not cooperate, the WCB can reduce or suspend wage loss benefits. If an employer does not cooperate, the WCB can continue providing wage loss benefits while a worker is deemed unfit to return to their full duties.</p>
<p>Employer contributions to health benefit plans</p>	<p>April 1, 2021</p>	<p>Employers must continue to pay their portion of a worker's health benefit plan for up to 12 months after an accident.</p>	<p>Employers are no longer required to contribute to health benefit plans while a worker is off work.</p>	<p>Any medical benefits that are related to a worker's injury will continue to be covered by WCB, but an employer's decision to contribute to health benefit plans while a worker is off work is voluntary.</p>
<p>Deadline to appeal</p>	<p>April 1, 2021</p>	<p>Injured workers and employers had 2 years to appeal a WCB decision to the Appeals Commission for Alberta Workers' Compensation.</p>	<p>Injured workers and employers now have 1 year to appeal a WCB decision to the Appeals Commission for Alberta Workers' Compensation.</p>	<p>This change may result in faster resolution of appeals; however, both employers and workers have to be mindful of a shorter timeframe to file an appeal.</p>

OCCUPATIONAL HEALTH AND SAFETY - KEY CHANGES

CHANGE	DATE CHANGE CAME INTO EFFECT	FORMER STATUTORY FRAMEWORK	CHANGES IN BILL 47	POSSIBLE IMPACTS ON EMPLOYERS AND WORKERS
<p>Joint Health and Safety Committees (“JHSC”)</p>	<p>December 1, 2021</p>	<p>Workplaces with more than 20 workers are required to have Joint Health and Safety Committees (“JHSC”). Workplaces with 5 to 19 workers are required to have a health and safety representative.</p> <p>The JHSCs and representatives were responsible for regular worksite inspections.</p> <p>Employers were required to provide JHSCs and all workers with all “health and safety information”. Health and safety information was broadly defined to include information that “may affect the health and safety of a person at a work site”.</p>	<p>A JHSC or representative is still required, but the number of workers to be counted in a workplace will now be based on the number of workers an employer “regularly employs”.</p> <p>Employers will now determine who sits on the committees, instead of workers electing or unions appointing the worker representatives. Almost all mandatory elements relating to the membership, frequency of meetings, compensation or time off, and training for the JHSCs have been eliminated. Some are moved to OHS Code or will be introduced as a guideline.</p> <p>There is no longer any requirement for the JHSCs to participate in regular worksite inspections. The JHSCs are primarily responsible for reviewing the employer’s documentation relating to inspections. The information employers are required to provide JHSCs is limited to information that is “related to work site hazards, controls, work practices and procedures”.</p>	<p>This change reduces the requirements and adds more flexibility for employers with respect to health and safety committees and representatives.</p>

<p>Employer Obligations</p>	<p>December 1, 2021</p>	<p>Employers are required to ensure the “health and safety and welfare” of anyone who is in the “vicinity of the work site who may be affected by hazards originating from the work site”.</p> <p>Employers are also required to ensure workers are adequately trained to protect their health and safety before the worker begins performing a new work activity, uses new equipment, performs a new process, or is moved to a different work site.</p> <p>Employers are required to continue paying worker wages while under a stop work or stop use order.</p>	<p>The definition of health and safety as including “physical, psychological and social well-being” has been removed. An employer’s obligation applies only to hazards originating from the work site that are identifiable and controllable and may materially affect people in the vicinity of the work site.</p> <p>Employers are subject to a more general obligation to ensure workers are adequately trained in all matters necessary to perform their work in a healthy and safe manner.</p> <p>Employers are no longer required to continue paying worker wages while under a stop work or stop use order.</p>	<p>Employer obligations to ensure health and safety of individuals on a worksite are generally less prescriptive.</p>
<p>Near Misses and Potentially Serious Incidents Reporting</p>	<p>December 1, 2021</p>	<p>Employers had to report any near misses, or “other injury or any other incident that has the potential of causing serious injury to a person”.</p>	<p>Employers must now investigate (but not report) if the incident “had a likelihood of causing serious injury or illness” and there is “reasonable cause to believe that corrective action may need to be taken to prevent recurrence”.</p> <p>Information from potentially serious incident reports will be used for information and education only and not for enforcement purposes. JHSCs are also no longer involved in these investigations.</p>	<p>This change gives employers greater flexibility and discretion to determine whether an injury qualifies as a potentially serious injury.</p>

<p>Right to refuse unsafe work</p>	<p>December 1, 2021</p>	<p>A worker may refuse work “if the worker believes on reasonable grounds that there is a dangerous condition at the worksite or that the work constitutes a danger to the worker’s health or safety or to the health or safety of another worker or another person.”</p> <p>In the event of a refusal, a JHSC or representative must be involved in the investigation of the unsafe work.</p> <p>Employers are required to pay workers while they are refusing unsafe work.</p>	<p>A worker may refuse work “if the worker believes on reasonable grounds that there is an undue hazard at the work site or that the work constitutes an undue hazard to the worker’s health and safety or to the health and safety of another worker or another person.”</p> <p>Undue hazard is defined as “a hazard that poses a serious and immediate threat to the health and safety of a person.”</p> <p>There is no longer a requirement for a JHSC or representative to be involved in the investigation of the unsafe work. They need to be informed and provided a copy of the report prepared by the employer, but not otherwise involved.</p> <p>Employers are also no longer required to pay workers while they are refusing unsafe work.</p>	<p>The definition of “undue hazard” narrows the circumstances in which a worker can refuse unsafe work to only “serious” and “immediate” threats, which may make it more difficult for workers to refuse unsafe work. The terms “serious” and “immediate” are not defined but workers will not likely be able to refuse work that could cause mild injuries or that could cause injuries that develop over a long period of time.</p>
<p>Disciplinary Action Complaints</p>	<p>December 1, 2021</p>	<p>No one can take discriminatory action against a worker for exercising their rights under the OHS Act or Code.</p>	<p>The phrase “discriminatory action” with “disciplinary action”.</p>	<p>It is possible the shift from “discriminatory” to “disciplinary” can expand the scope of possible legal action an employer can take against an employee who refuses unsafe work. For example, reassigning an employee to an unfavourable shift schedule may be discriminatory, but not disciplinary.</p>