

# Workers' Compensation: Federal Public Administration

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A Member's Guide on How to  
Navigate the *Government Employees  
Compensation Act (GECA)*

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# Origin of Workers' Compensation in Canada

Ontario passed its first *Workmen's Compensation for Injuries Act* in 1886. The Act changed laws on employer liability, but still meant claims by the injured worker had to be made through civil lawsuits and depended on being able to prove employer negligence.

At the turn of the century, as mechanization of production grew, so did the accident rate. Juries were increasingly holding employers responsible for workplace safety while workers joined unions and fought for better compensation.

Changing social conditions and the impact of some major strikes meant the labour movement was successful in having the government consider compensation reform. In 1910 a Commission of Enquiry was created, headed by Chief Justice of Ontario, Sir William Meredith. By the time he issued his "Final Report" in 1913, Meredith had gathered written evidence, travelled to several countries in Europe to see up close how workers' compensation systems were working there, and, most importantly, held 27 sittings around the province where he heard from almost 100 witnesses.

## Historic Compromise

The Ontario Legislature passed the 1914 *Workmen's Compensation Act* based on a "historic compromise" with key stakeholders. In exchange for forfeiting their legal right to sue employers for damages, workers were guaranteed compensation.

The "no-fault" nature of the system relieved the worker from the burden of proving that the employer was negligent. The only proof required was that the injury or illness arose out of, and during employment. Also, compensation was established as a right, like wages, not as a gratuitous benefit or an act of charity.

The 1915 report to the Ontario Legislature clearly stated that "the presumption is to be in favour of the workman until the contrary is shown; the burden of proof will be on the employer".

## Federal Government Employees Compensation Act

Early provincial compensation legislation did not include federal government workers. In 1918, the *Federal Government Employees Compensation Act (GECA)* was introduced to cover federal railway and canal workers. Over the years the legislation was extended to include public service employees and many employees of Crown agencies.

At that time, six provinces already had compensation mechanisms in place. Therefore, it was decided by the government of the day to use these provincial boards to adjudicate federal workers' claims, rather than establish a new structure.

Workers' compensation for the federal public administration is provided through a variety of vehicles. For most of the federal government, the *GECA* is the legislation governing workers' compensation. The *GECA* entitles employees of federal departments, agencies and many Crown Corporations to compensation for occupational accidents and illnesses.

*GECA* is administered by the Labour Program of Employment and Social Development Canada (ESDC). The Federal Workers' Compensation Service (FWCS) administers the *GECA* and the necessary contractual agreements covering funding mechanisms with the federal government and the various workers compensation boards across Canada.

FWCS contracts directly with provincial workers' compensation boards to adjudicate *GECA* claims. The respective boards are mandated to provide compensation services and assistance to employees according to the rates and conditions under the law of the province where the employee is usually employed. The federal government reimburses the workers' compensation boards for the costs of their services plus a negotiated administrative fee.

## **Yukon, Northwest Territories and Nunavut**

For federal employees who work in the Yukon, the Northwest Territories or in Nunavut, their claims are adjudicated by the Alberta Workers' Compensation Board. These claims are based on the rates and conditions established by the Alberta Workers' Compensation Board.

## **Outside of Canada**

For federal employees who work outside of Canada, claims are adjudicated by the Ontario Workplace Safety and Insurance Board. These claims are based on the rates and conditions established by the Ontario Workplace Safety and Insurance Board.

Over the years, a few legislative reviews were conducted with key stakeholders, including PSAC, to recommend significant legislative changes to the *GECA* and modernize the current system. Except for a few minor amendments, the *GECA* was never changed.

By delegating to the provinces, the federal government relinquishes control over essential elements of workers' compensation normally addressed in legislation such as which injuries are compensated and under what conditions, what benefits are payable, the rates, limitations and administrative penalties often used by the existing boards.

# PSAC's Position

PSAC continues to endorse a clear objective of ensuring fair and complete compensation coverage for federal jurisdiction workers. PSAC consistently raises concerns with the common practice of federal employers who file ongoing appeals and seek to restrict the application of existing workers' compensation sections found in many provincial acts, including return-to-work provisions, entitlement presumption clauses, rehabilitation services, employer fines and penalties.

Over the years, workers' compensation legislation has greatly evolved and the *GECA* should be amended to better reflect today's reality. The *GECA* must provide current and complete coverage to all federal jurisdiction workers.

Since 1985, PSAC endorses the position that there be one uniform/consistent system of workers' compensation for all federal workers. In addition, PSAC recommends that there be one central administrative body and one set of rules regardless of where a worker lives or works. This position is also endorsed by the Canadian Labour Congress and many of its affiliates.

## Inconsistencies and Legal Problems

### Workers' compensation systems in general

The current scheme of workers' compensation falls short of many basic principles expected by workers compensation schemes:

- The original "no fault" insurance principle on which compensation was based was abandoned, placing the burden of proof on victims, particularly for occupational disease.
- Victims of workplace hazards are punished doubly: first, in pain and trauma; second, by loss of income and benefits. In many cases, they are also deprived of their right to work.
- Employers who know how to and have the means to prevent accidents and illnesses yet neglect to do so, are protected from punishment.

### For workers covered by *GECA*

PSAC members are further faced with inequities in obtaining workers' compensation under *GECA*:

- Federal employees working for the same department/agency who are injured, made ill, or killed on the job may be subject to 10 different provincial pieces of legislation and 10 different provincial boards for obtaining the necessary compensation and much needed support.
- Benefits, services and appeal rights available under the present system fluctuate widely from one jurisdiction to another. Entitlements for identical illnesses or injuries also vary depending on the province in which the worker is usually employed.
- Entitlement presumption clauses and standards of proof vary from one jurisdiction to another. In exceptional cases, workers' compensation boards have even ignored the application of its presumption clauses and board policies in adjudication of federal claims.

- Where *GECA* has distinct provisions on certain items (e.g. its own definition of “accident”), these supersede provincial provisions with no federal means for the federal government to ensure its application unless the case is appealed by the worker.
- Provincial compensation acts often stray into areas of labour relations on occupational health and safety and these provisions are inapplicable to workers covered by the *GECA*.
- Unlike provincial and territorial boards, the federal scheme has no advisory council representing the positions of all key stakeholders. There is a need for a mechanism to address ongoing issues with a focus on solutions and to ensure workers governed by the federal scheme can be full partners in every aspect and step in the system.
- According to the Treasury Board Secretariat Guidelines, employers subject to the *GECA* must report work-related injuries within three (3) days of occurrence to the ESDC-Labour Program. However, unlike the provincial workers’ compensation acts, the *GECA* currently does not have any enforcement mechanisms if employers fail to comply with this time frame and there are no financial consequences if federal employers fail to comply with the guidelines.
- By relying on provincial Boards to adjudicate workers’ compensation claims and provide benefits and services, federal employees are entitled to the same coverage as other employees working in the same province. However, since each provincial Board has its own adjudication and compensation policies, two federal public service employees with similar cases but who reside in different provinces may be entitled to vastly different remedies (e.g. mental health issues such as chronic stress).
- Federal employees are expected to be provided the same coverage as other employees working in the same province but not for federal employees working in the three territories. Those workers are not granted the same treatment as other workers in their jurisdiction. All territorial workers’ compensation claims for federal workers are adjudicated by the Alberta Workers’ Compensation Board. Their claims are based on the rates and conditions established by the Alberta Workers’ Compensation Board.
- Even if PSAC was to succeed in incorporating a specific occupational disease within the *GECA* or in the regulations, there is no process to assess specific federal entitlement requirements for federal workers. Initial entitlement of all federal workers’ compensation claims is done by the provincial boards using their specific provincial entitlement processes. Specific federal requirements found in *GECA* are only considered by provincial boards on appeal.

The result is that provincial schemes in their entirety are sometimes not applied. Numerous court challenges were filed on these points of law with a significant personal and financial burden on the injured workers and to the unions. What is left is a system that does not treat federal workers the same across the country. The irony is that workers covered by the *GECA* are not necessarily treated the same as workers in the same province either.

The current system is dependent on provincial compensation boards administering the *GECA*. In fact, there have been termination notices issued by provincial compensation boards to the federal government over the years. Outside of renegotiating an increase in its applicable administrative fee with the province or asking that all claims be submitted to another provincial compensation board, the federal government is simply unable to quickly establish an alternative system.

# Federal Feasibility and Planning Study

In 2004, the federal government contracted Deloitte Consulting to examine the possibility for a system more suitable to the federal government environment. The objective of the study was to analyze the feasibility, the costs and the benefits of implementing a single system administered by the federal government for compensating work-related injuries sustained by workers covered by the *GECA*.

The study outlined a detailed proposal for the establishment of a federal workers' compensation system and concluded that the implementation of a federally managed system was not only feasible but would also provide several benefits including:

- Better control over program designs specifically suited to its needs;
- The elimination of legal jurisdictional issues related to conflicts between federal, provincial and territorial legislation;
- The provision of consistent treatment for all employees covered by the *GECA*;
- A significant reduction of service delivery risks for the program by building a federal infrastructure for program delivery therefore reducing reliance on the provincial boards;
- Better integration between the federal workers' compensation regime and its occupational health and safety programs; and
- Better disability management practices to achieve better return-to-work outcomes.

## Modernization of the *Government Employees Compensation Act*

The recommendations from the 2004 Deloitte Consulting study were never implemented and the *Government Employees Compensation Act* was not modernized in any significant way.

Along with the CLC, and other federal jurisdiction unions, it is important to continue to pursue the collective goal of achieving a better federal workers' compensation system.

PSAC plays a leadership role every time there is a review of the *GECA* with the clear objective of ensuring fair and complete compensation coverage for federal workers.

All suggestions and potential amendments of *GECA* which would achieve a more consistent treatment of workers who suffer workplace injuries and improve the present workers compensation scheme are encouraged and welcomed.

This guide is drafted to support PSAC members who must navigate the present *GECA* regime.

# NAVIGATING THE GOVERNMENT EMPLOYEES COMPENSATION ACT

## Questions and Answers

### Injury compensation for federal government employees

#### Q.1

**As an employee of the federal government, what benefits am I entitled to from my employer if I am injured by accident in the course of employment or believe that I am suffering from an occupational disease?**

Generally, you are entitled to receive compensation for loss of earnings, medical care, and other benefits similar to those received by employees of private industry through workers' compensation in the various provinces.

For federal employees who usually work in the Yukon, the Northwest Territories or in Nunavut, you are entitled to receive compensation for loss of earnings, medical care, and other benefits similar to those received by employees in Alberta.

For federal employees who usually work outside of Canada, you are entitled to receive compensation for loss of earnings, medical care, and other benefits similar to those received by employees in Ontario.

It is the responsibility of employers to ensure that employees are aware of their rights to workers' compensation. Unfortunately, many employers only provide this information at the time of injury or illness.

#### Q.2

**Who provides these benefits?**

The government provides benefits to employees under the *Government Employees Compensation Act* administered by the Labour Program of Employment and Social Development Canada. Instead of establishing a federal system, the government contracts the services through existing provincial workers' compensation boards. There is no cost to the employee for these services. The government of Canada is required to reimburse the provincial boards for the costs of all claims, including a negotiated administrative fee specific to each board.

#### **Yukon, Northwest Territories and Nunavut**

For federal employees who work in the Yukon, the Northwest Territories or in Nunavut, claims are adjudicated by the Alberta Workers' Compensation Board. Their claims are based on the rates and conditions established by the Alberta Workers' Compensation Board.



## Outside of Canada

For federal employees who work outside of Canada, their claims are adjudicated by the Ontario Workplace Safety and Insurance Board. These claims are based on the rates and conditions established by the Ontario Workplace Safety and Insurance Board.

### **Government Employees Compensation Act**

<https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-g-5/latest/rsc-1985-c-g-5.html>

### **Government Employees Compensation Regulations**

<https://www.canlii.org/en/ca/laws/regu/crc-c-880/latest/crc-c-880.html>

### **Government Employees Compensation Place of Employment Regulations**

<https://www.canlii.org/en/ca/laws/regu/sor-86-791/latest/sor-86-791.html>

### **Link to a list of provincial and territorial boards from the Association of Workers' Compensation Boards of Canada**

<https://awcbc.org/en/boardscommissions/>

## Workers' compensation coverage

### Q.3

#### **Is everyone in the federal government covered by the *Government Employees Compensation Act*?**

Yes, the vast majority of federal employees are covered, including all federal employees of federal departments, agencies, the Senate, the House of Commons, the Library of Parliament, office of the Senate Ethics Officer, office of the Conflict of Interest and Ethics Commissioner, Parliamentary Protective Services or of the Parliamentary Budget Officer.

Most Crown Corporations are brought in through Orders in Council or through their own enabling legislation (including Canada Post).

The *GECA* does exclude members of the regular forces of the Canadian Forces or the Royal Canadian Mounted Police. It also excludes persons engaged to perform a service on a fee or contract basis.

## Special Circumstances for locally-engaged employees

Locally-engaged employees (individuals hired outside of Canada) are usually foreign citizens Canada hires to work in their home countries. Locally-engaged employees work in Canadian offices overseas, such as embassies and consulates.

Locally-engaged employees may be covered by one of the following:

- the workers' compensation board of the country they work in, or
- the *GECA*, administered directly by Employment and Social Development Canada

## Retired employees

Retired federal employees who were diagnosed with an illness or injury resulting from their previous employment may be eligible for compensation benefits. These situations could include cases of hearing loss or other occupational diseases such as asbestosis.

## Q.4

### What benefits does injury compensation provide?

You may receive any or all of these benefits:

- compensation for loss of earnings;
- medical, hospital and related services;
- rehabilitation services;
- a lump sum or income replacement indemnity;
- compensation for permanent impairment.

## Q.5

### What type of service may not be available to injured workers covered by the **Government Employees Compensation Act**?

The overwhelming majority of workers' compensation claims are managed by federal employers in such a way that the ability for injured workers to return to work is not an issue. This is usually achieved using existing programs, policies and legal provisions already in place in most workplaces, including the obligation of the employer to accommodate pursuant to the *Canadian Human Rights Act*.

In a few exceptional cases, the application of a provincial workers' compensation requirements - including return-to-work provisions - have been legally challenged by some federal employers. The *GECA* does not have a specific return-to-work duty in the statute and no penalties for breaching this duty. PSAC supports affected members and provides representation for legal challenges up to and including, the Supreme Court of Canada.

The present legal landscape is favorable to the inclusion of return-to-work requirements from the provincial legislation. As the *GECA* is silent on the matter, the courts have held that, where Parliament intended to impose different conditions, it has done so expressly. Where a direct conflict with the provincial law exists, the *GECA* prevails, rendering those aspects of provincial laws or policies inapplicable to federal workers. This interpretation is supported by the scheme and history of the *GECA*, and Parliament's stated intentions.

*(MARTIN v. ALBERTA (WORKERS' COMPENSATION BOARD), 2014 SCC 25, File No.: 35052)*

During previous legislative consultations with the federal government, representatives from unions, employers, and several provincial workers' compensation boards identified the silence of the *GECA* concerning the return-to-work provisions in provincial workers' compensation acts as a major problem. To date, no major legislative amendments have been adopted in Parliament.

## Q.6

### **Does my employer pay my salary if I am away from my job because of a work injury?**

Most workers covered by the *GECA* are entitled to injury-on-duty leave either through their collective agreements or by policy, provided the claim is approved by the appropriate workers' compensation authority. In most circumstances, injured workers on injury-on-duty leave continue to receive their full pay and benefits for the period recognized by the provincial board.

To ensure no stoppage in pay, most federal employers grant sick leave benefits until a decision is made on the claim by the appropriate workers' compensation authority. Upon approval by the board, the used sick leave credits are reimbursed to the worker and injury-on-duty leave is approved. Injury-on-duty leave is granted for such period as may be reasonably determined by the employer.

Most crown agencies have similar arrangements for their employees.

The Treasury Board Secretariat (TBS) also has two policies that provide additional information on the administration of workers compensation claims as well as injury-on-duty leave provisions.

The TBS Policy on Workers' Compensation generally explains the claims processing scheme in relation to the administrative agreement with each provincial boards.

The TBS policy also states that federal employers must ensure that all occupational injuries or illnesses involving lost time or requiring medical attention are reported to the Federal Workers' Compensation Service **within three days of occurrence** in order that claims may be checked for accuracy and completeness, countersigned and forwarded to the appropriate provincial workers' compensation authority. Unfortunately, there are no serious penalties for lack of compliance with this requirement by departments and agencies.

The TBS Policy on Injury-on-Duty Leave explains the administrative process in the application of injury-on-duty leave. This TBS policy is also where to find a recommendation for a "departmental review" of the workers' compensation case once the absence has reached 130 working days. Departments and agencies can reassess the continued benefits provided by the injury-on-duty leave beyond this period.

Most collective agreements and employer policies allow for termination of injury-on-duty leave by the employer after a “reasonable” period and the TBS policy is often used as a benchmark for the reassessment process of injury-on-duty leave.

Faced with an employer decision to discontinue the provision of injury-on-duty leave, the injured worker does have a legal right to receive provincial workers’ compensation payments from the date injury-on-duty leave ceases until the claim is considered closed by the board. The wage replacement benefits will be adjusted for that period based on the provincial workers’ compensation rates.

### **TBS Policy on Workers’ Compensation**

<https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12143>

### **TBS Policy on Injury-on-Duty Leave**

<https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12139>

## **Q.7**

### **What if I am not an indeterminate (permanent) employee?**

If you have been employed by the federal government for more than six months, you should have access to injury-on-duty leave. As your employment status may impact your ability to access injury-on-duty leave, you should refer to the relevant authorities such as your collective agreement and/or the various terms and conditions of employment specific to your classification group for more information.

No matter what your employment status is, if you are injured while employed by the federal government, you have a right to workers’ compensation benefits based on the rates and conditions established by the province where you are usually employed.

Contact your local, component or regional union representative for assistance.

## **If you have an accident**

## **Q.8**

### **If I am injured at work, what must I do to make sure I receive compensation benefits?**

The longer injuries go unreported, the harder it will be to prove that the injuries originated in the workplace.

Always report an injury or illness right away to your immediate supervisor. If you have an accident or get hurt at work, you must inform your supervisor as soon as possible.

Seek and accept first aid immediately or further medical attention if it is required.

Should you require transportation to a medical facility, transportation must be provided by your employer.

Your employer must complete and process an employer's report for compensation purposes by providing your description of the accident and their own comments. Your claim needs to be reported to the employer. Once signed by the employer, your claim must be transmitted by the employer to the appropriate provincial workers' compensation authority. Upon receipt of your claim and your medical certificate, the employer is required to send the claim to the Federal Workers' Compensation Service. There are some cases where unexpected delays in claim processing occurred from the appropriate provincial workers' compensation authority when the injured worker sent all documentation directly to the provincial workers' compensation board. If the employer is not transmitting the required information in a timely manner, please contact your local and your nearest PSAC regional office for assistance.

The TBS Policy on Workers' Compensation states that federal employers must ensure that all occupational injuries or illnesses involving lost time or requiring medical attention are reported to the Federal Workers' Compensation Service **within three days of occurrence** in order that claims may be checked for accuracy and completeness, countersigned and forwarded to the appropriate provincial workers' compensation authority.

If you believe your employer failed to submit the reports, you should report your injury directly with the provincial workers' compensation board and also notify your union representative.

Your supervisor must complete an accident/incident report and provide you with a copy of their report for your records. Your workplace health and safety committee or the health and safety representative has a legal right to participate in all investigations arising out of an accident/incident report.

## Q.9

### **Should I report even a minor injury that occurs at work?**

You should report all injuries promptly to your employer. Minor injuries can develop into serious conditions, and failure to immediately report could make it difficult to establish a claim if the original injury was not reported.

## Q.10

### **Should I take notes and keep copies of my documentation?**

Yes, always take notes of the incident and keep them in a safe place. It is a good idea to make notes as soon as possible after the accident. Your notes and records may play a vital role in the success of your claim in the event your employer claims that your injury is not work-related. Should the employer appeal your case, the more evidence you have, the stronger your case will be.

Your notes should include:

- Dates and times;
- Photographs of the accident location and workplace layout;
- Photographs of the injury;
- Names of witnesses who saw the accident;
- The supervisor you reported the incident/accident to;
- The location of incident;
- Health care visits;
- Receipts for treatment items;
- Workers' compensation records/conversations; and
- Meetings with employer (with a witness as much as possible).

## Q.11

**Am I protected while carrying out my duties away from my usual place of work?  
If so, which province would deal with my claim?**

As long as you are engaged in work for your employer at the time of the accident, you are covered by the *GECA* both in Canada and abroad. Your claim will be handled by the province in which you are usually employed.

## Q.12

**Can I go to my own doctor for treatment?**

You have the right to choose your own doctor even after your first visit at the emergency department of the hospital. You may need to check with your provincial workers' compensation board as some of them have special rules as to the selection of your doctor or any changes you may want to do during the treatment period.

You need to tell the doctor exactly what happened and explain all of your symptoms. It's a good idea to confirm that your doctor documents everything that you say. Finally, make sure that your doctor is aware that this is a workplace injury and advise the doctor that they must send a formal report to the appropriate workers' compensation board.

## Q.13

**Can claims for work injuries be disallowed?**

You have the right to choose your own doctor even after your first visit at the emergency. The process of submitting a claim can be confusing and difficult. This is especially true if the claim is ultimately denied by the provincial board.

As a general rule, workers' compensation claims may be disallowed for the following reasons:

- Sufficient information (medical or administrative) was not supplied to support the claim;
- The accident was determined by the provincial workers' compensation board as not being related to the employee's work; or
- The injury or disability is not considered to be due to the accident.

Under exceptional circumstances, a claim may also be rejected if the accident was caused solely by the serious and willful misconduct of the employee.

With every workers' compensation claim, it is important to advance all favourable evidence in order for the claim to have an optimal chance of success. The description of the event that led to your injuries must be very detailed and the medical evidence must support the extent of your injuries.

Either the employee or the employer may request a review of a decision to disallow a claim.

## Q.14

**I have a pre-existing medical condition. Can my personal condition have an impact on my workers' compensation claims.**

Old injuries, ongoing illnesses, chronic diseases, and medical conditions can all be considered as factors on a workers' compensation claim. Most of us are impacted by existing medical conditions. Pre-existing conditions can impact workers' compensation claims in the following three ways:

### **Pre-existing conditions that worsen as a result of the workplace**

It is not uncommon for pre-existing, non-occupational conditions to become aggravated due to an accident, or over time, especially when performing physically demanding jobs. When a job duty or workplace accident aggravates a pre-existing condition, a claim can still be established. In most cases, these types of claims are supported by the boards as long as there is sufficient medical evidence that the pre-existing condition worsened as a result of the workplace accident/injury.

### **Previous workplace injuries or illnesses that flare up (also known as a reoccurrence)**

When employees are injured in the workplace the injury may cause ongoing problems (especially if it was a repetitive strain injury). In situations of job duties aggravating an old work-related injury from the same employer with continuity of complaint and no new accident occurring, the claim is relatively easy to establish. This situation usually prompts the board to reopen the previous claim file and assess it for additional entitlement. Some claims arising from pre-existing conditions involve injury progression where the workplace exacerbates the effect of such a condition, but the work/duties are not the exclusive cause of the flare up. Such claims can be much more difficult to establish with the board.

## **Pre-existing injuries or illnesses that cause, enhance, or impact the recovery process during a workers' compensation claim**

When recovery from a workplace injury surpasses the usual timeline and the pre-existing condition may be impeding on the “normal” recovery process. If a pre-existing condition negatively impacts recovery for the workplace injury, the board may reassess the claim.

### **Q.15**

#### **What rehabilitation services might be provided?**

The provincial workers' compensation board may provide services to help you recover from the effects of your accident and facilitate your return to work. These services may include a wide variety of services such as medical and surgical treatment, physical and occupational therapy, and in some cases, vocational training. Artificial limbs and appliances may also be supplied under specific conditions established by the board and kept in repair or even replaced as necessary.

### **Q.16**

#### **What happens if, during my accident, I also broke my glasses, my dentures or damaged my clothes?**

As a general rule, broken glasses and dentures will be repaired or replaced if they were worn at the time of injury. Some provinces make provision for replacing or repairing clothing lost or damaged in an accident, others do not.

### **Q.17**

#### **What happens if I am seriously injured and never fully recover?**

You have the right to receive either a permanent disability pension or a lump sum with future loss of earnings protection as provided pursuant to the workers' compensation law of the province where you are usually employed. Both pensions and lump sums are calculated according to the degree of physical impairment remaining after allowing time for recovery.

### **Q.18**

#### **What happens if I contract an occupational disease as a result of my work?**

Occupational diseases and illnesses are considered to be work related, either by way of a general definition or through an approved list of diseases. If not specifically included on the approved list, each claim is assessed based on its own merit.



In each province, a specific list of occupational diseases is recognized for workers' compensation purposes. In addition, regulations authorized by Section 8 of the *GECA* provides additional coverage in some instances for federal employees. Under these regulations, any disease, other than the occupational ones cited in provincial acts, that develops as a result of the nature of the employment and peculiar to or characteristic of a particular process, trade or occupation in which the person was employed at the time the disease was contracted, may be compensated. The challenge is to get the recognition of the claim by a provincial workers' compensation board.

In addition, the regulations provide for coverage of employees working abroad (other than locally engaged employees) for diseases that result from the environmental conditions of the place outside Canada to which the employee was assigned.

Each provincial workers' compensation board have criteria about work-related illnesses and diseases that may be covered by their legislation. Most boards have presumptive lists of occupational diseases that appear either in schedules to the legislation or in supporting regulations. The presumptive lists vary from province to province.

The primary purpose of these schedules is to establish causation for diseases where there is sufficient evidence that the disease is specific to a particular exposure, process, or condition of employment. Typically, their goal is to streamline the adjudicative process by avoiding the repeated effort of producing and analyzing medical and other evidence of work-relatedness for each individual case.

Any disease, other than those found in provincial workers' compensation presumptive lists of occupational diseases, that can be linked to the nature of the employment and characteristic of a particular occupation or trade may also be compensable.

In many such cases, the burden of proof falls heavily on the worker to establish to the satisfaction of the board that the illness or disease was due to the nature of employment. In some cases, the lack of work history and exposure records will make it very difficult to establish the claim. Appeals and legal challenges are often necessary to establish the right to compensation.

## **Q.19**

### **What happens when an employee is fatally injured on the job?**

Some limited fatality and survivor benefits are available to cover related expenses. Additional benefits may be awarded based on the provincial legislation to the surviving partner and other dependents. In some cases, the provincial board may be able to provide benefits for family members including a monthly pension and/or a lump sum payment.

## Accidents caused by a third party

### Q.20

#### What is a “third party” accident?

If you are injured in an accident caused by someone who is not in the public service, this individual is the third party. For example, if you are struck by a car while on duty, the driver of the car is the third party.

### Q.21

#### A third party was involved in my accident and I received a letter from the federal government asking to choose to claim compensation or bring legal action against the third party. What does that mean?

A workers' compensation law principle recognized in the *GECA* is that workers' compensation is a substitute for the common law action taken by an injured worker against his or her employer. However, when an employee's injury is caused by a third party, that is, a person who is not the employer or employer's servant or agent acting in the course of employment, the employee or his or her dependents have the right to elect:

- a. to claim compensation under the *GECA*, or
- b. to bring an action against the third party.

An official letter is usually sent to the employee or dependents, to select their choice of action by the Federal Workers' Compensation of ESDC – Labour Program (and not from the provincial workers' compensation authority).

The form explains that if the employee or dependents choose to claim compensation, they transfer to the federal government the rights to file legal action they may have against the third party in respect of personal injuries. In such cases, the recovery of damages from the third party is entirely a matter for ESDC – Labour Program.

When an election to claim compensation is made, the employee must not admit liability nor accept or agree to any settlement offered by the third party. This responsibility rests with the Crown. It should be noted that the election must be made within three months after the date of the accident or, in case of a fatality, within three months of the death. In exceptional cases, a further period may be allowed if requested in writing and if there are sound reasons for doing so.

## Q.22

### What does PSAC recommend?

PSAC strongly recommends that you choose to file a claim for workers' compensation benefits and transfer your right to file legal actions against the third party to the Crown.

**PSAC will not represent members who decide to NOT claim for workers' compensation benefits under the *GECA* and personally bring a legal action against the third party.**

## Q.23

### What should I do if am involved in an accident caused by a third party?

You should report the accident to the employer as previously outlined. It is important that a complete description of the accident be promptly supplied to a regional injury compensation office of ESDC-Labour Program through your employer. Names of witnesses, drawings or photos of the scene, and any other pertinent, factual information should also be submitted. You will also be required to indicate whether you will claim compensation pursuant to the *GECA* or whether you intend to sue the third party for damages.

## Q.24

### May I sue the third party for damages and also claim compensation?

No. If you claim compensation, you transfer your right to sue the third party to the federal government represented by ESDC-Labour Program. **You may not do both.**

## Q.25

### If I sue the third party for damages and lose, OR I recover less than I would be entitled to under compensation, can I then claim compensation?

You are always protected under the *GECA* up to the full amount of compensation to which you are entitled. Should you sue and recover less, you would be entitled to receive the difference between what you received from the lawsuit and what you are entitled to under the *GECA*, provided the settlement is approved by the Minister of Labour. A court judgement does not require prior approval. **No union representation or advice on this matter is provided by PSAC. Legal assistance and advice are exclusively the worker's responsibility.**

## Q.26

### **Should I accept a settlement offer made by a third party?**

When you elect to claim compensation, you should not discuss nor accept any settlement offered by the third party. In such a case, the recovery of damages from the third party is entirely the responsibility of ESDC-Labour Program.

## Q.27

### **How long do I, or my dependents, have to decide whether to claim compensation benefits or to sue the third party for damages?**

You must make your decision to claim compensation or to sue within three months after the accident. In the case of an accident resulting in your death, your dependents must elect to claim compensation or sue within three months of your death.

## Q.28

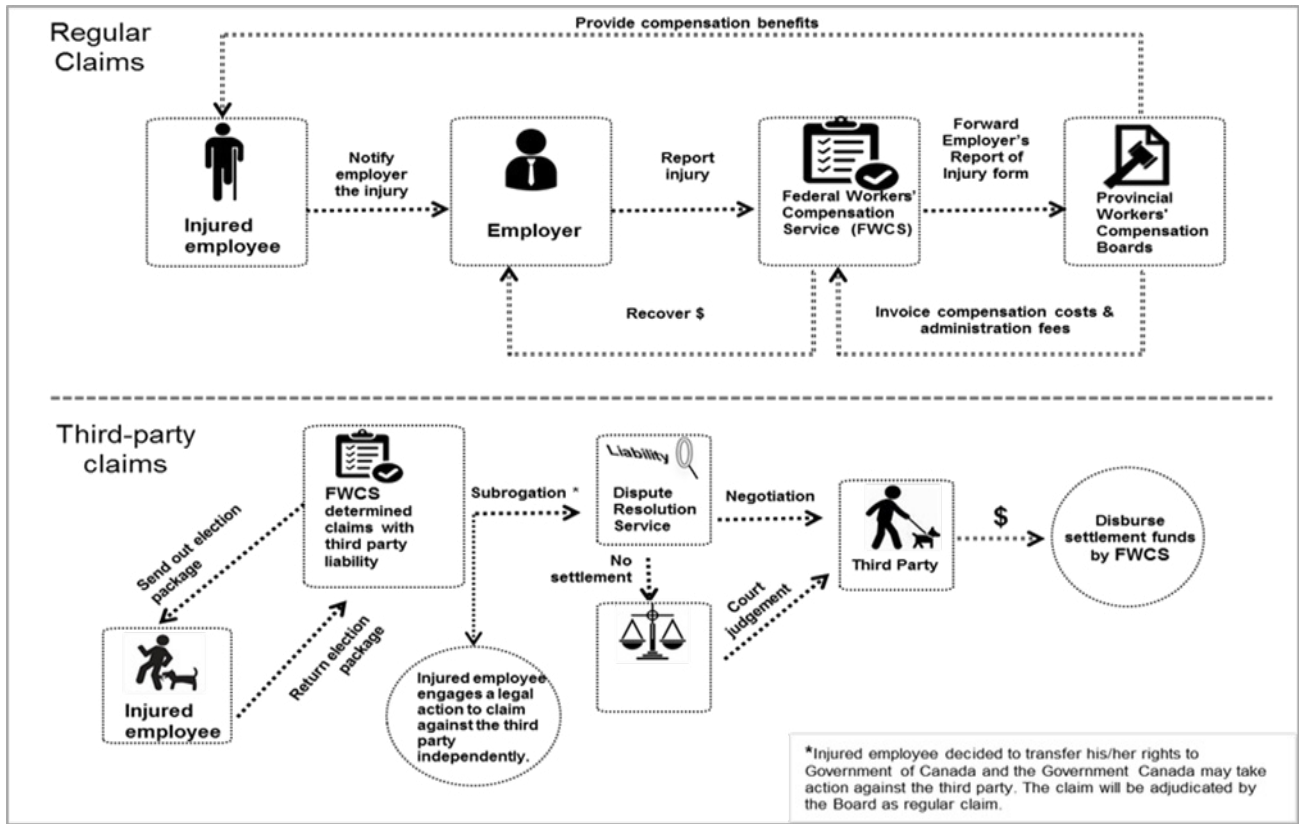
### **I have chosen to file for workers' compensation benefits and transferred my right to sue the third party to the federal government represented by ESDC-Labour Program. What will the federal government do after that?**

Where the circumstances appear favourable, ESDC – Labour Program will endeavour to obtain a settlement directly with the third party. In the more serious and complicated cases, action for recovery may be taken in the courts by the Department of Justice. Should the amount recovered and collected from the third party exceed the amount of compensation to which the employee or his/her dependents are entitled under the *GECA*, ESDC – Labour Program may pay to the employee or dependents a portion of the excess. However, this payment may be deducted from any subsequent benefits to which the employee or dependents might become entitled to under the *GECA* for the same accident.

## Q.29

### **Is there a flow chart illustrating the complex workers' compensation system established between the federal government and the provincial workers' compensation boards to adjudicate federal claims?**

Yes. It was developed by ESDC-Labour Programs. It provides an example of how a claim makes its way through the system and includes the process where a third party is involved as a cause of the injury.



## Q.30

**Where can I obtain more information about workers' compensation benefits or the handling of my claim?**

The claim process is different for each province and territory. Each specific claims process is clearly explained on the respective workers' compensation web portal. For assistance, please contact your PSAC regional office.

Links to every provincial and territorial workers' compensation authority are available on the portal for the Association of Workers' Compensation Boards of Canada.

**The following is a list of resources and services.**

# List of Workers Compensation Boards

## Association of Workers' Compensation Boards of Canada (AWCBC)

<https://awcbc.org/en/boardscommissions/>

## Employment and Social Development Canada - Labour Program

### Federal Workers' Compensation Service

Headquarters:

165 Hôtel-de-Ville, Place du Portage, Phase II, 9th Floor (L911)

Gatineau, QC, K1A 0J2

Toll-free: 1-855-535-7299

By Email: [NC-FWCS-SFIAT-CLAIMS-RECLAMATIONS-GD@hrsdc-rhdcc.gc.ca](mailto:NC-FWCS-SFIAT-CLAIMS-RECLAMATIONS-GD@hrsdc-rhdcc.gc.ca)

To submit general questions and comments about the Federal Workers' Compensation Service, use the inquiry form:

[https://srv144.services.gc.ca/cgi-bin/ContactForm-FormulaireContact/index.aspx?GoCTemplateCulture=en-CA&section=work\\_comp](https://srv144.services.gc.ca/cgi-bin/ContactForm-FormulaireContact/index.aspx?GoCTemplateCulture=en-CA&section=work_comp)

## List of Regional Offices for ESDC-Labour Program

<https://www.canada.ca/en/employment-social-development/services/labour-contact.html>

# Union Assistance and Services

## Union Local in your Workplace

- The first point of contact for injured members; will provide advice on recourses when injured on the job;
- Can assist in all discussions with the employer;
- Can monitor to ensure that all relevant information is sent to the appropriate health and safety committee.

## Health and Safety Committee

- Has a legal right to review all reports including accident reports;
- Must participate in all investigations;
- Must participate in all hazard assessments;
- Can monitor injury data and assess injury trends in your workplace;
- Monitors the health and safety training required in every workplace;
- Documents all health and safety issues;
- Ensures that record keeping is maintained by the employer and accesses the information as required.

## Component Offices

- Can assist in filing reports and claims for benefits;
- Can provide advice on wording of injury reports;
- Can assist in all discussions with your employer on the application of the collective agreements;
- Can assist members in exercising their right to return to work after the injury;
- Can represent members with the grievance procedure (leave provisions, return-to-work, etc.);
- Ensures that rights under collective agreements and employers' policies are respected;
- Can assist in developing solutions to emerging health and safety problems;
- Supports the local and health and safety committees.

**Contact list of PSAC components:** <https://psacunion.ca/components>

## PSAC Regional Offices

- Assist and represent members in appealing workers' compensation claims (in some regions, in others, the existing work's advocate offices/office of the worker's advisor represent members);
- Provide dedicated health and safety resources in each region of PSAC;
- Assist members in mobilization actions for health and safety issues;
- Provide union education on many health and safety issues;
- Participate in many regional health and safety events and activities;
- Collaborate with provincial and territorial labour organizations.

**Contact list of PSAC regional offices:**

<https://psacunion.ca/health-and-safety-assistance-your-region>

## National Health and Safety Program

- Works with the elected officials and staff in promoting health and safety issues;
- Works with PSAC Regions and Components in addressing health and safety issues;
- Collaborates with regional health and safety representatives on various issues;
- Provides advice to elected officers, PSAC and Component staff on occupational health and safety issues and concerns;
- Participates in the drafting of national legislation, regulations and standards on health, safety and worker's compensation;
- Assists in developing new collective bargaining language;
- Participates on health and safety committees at the National Joint Council;
- Liaises with central employer agencies on issues relating to service-wide employer practices and policies;
- Assists in the development of tools, education and training materials.

## PSAC Legal Services

- PSAC provides advice and representation on health and safety cases as required.

# List of Other Resources

## Office of the Workers' Advisor

Some provinces and territories have workers' advocate offices. They are funded by provincial governments. In some cases, workers' advocates can represent both unionized and non-unionized workers during the appeal process of a claim. However, in some provinces, the advocates will not represent unionized workers. Workers' advocates are quite adept in legal matters but do require assistance to understand particular working environments.

## The Canadian Centre for Occupational Health and Safety

The Canadian Centre for Occupational Health and Safety (CCOHS) supports the fundamental right of all workers in Canada to a healthy and safe work environment. For more than 40 years, CCOHS engages and shares information with employers, workers, and stakeholders across the country, providing a national perspective on current and emerging issues.

## The Association of Workers' Compensation Boards of Canada

The Association of Workers' Compensation Boards of Canada (AWCBC) was founded in 1919 as a non-profit organization to facilitate the exchange of information between Workers' Compensation Boards and Commissions. It provides many resources including comparative injury data and various reports on a wide range of workers' compensation issues.