

COVID-19 in Construction

Compensation Claims Resource Guide

April 17, 2020
VERSION 2



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INTRODUCTION

To assist our affiliated unions through the COVID-19 crisis, the BC Building Trades Council has provided a host of resources. The purpose of this document is to ensure business managers and business agents have the information they need to inform their members about the Workers' Compensation Board's ("WorkSafeBC") claims management during the COVID-19 crisis.

This information does not replace the information available on the WorkSafeBC website. Rather, it gathers the most critical information currently available and places it at your fingertips. Given the speed at which changes are being announced, affiliates are strongly encouraged to review the WorkSafeBC's website on a regular basis (www.worksafebc.com) and seek out the information on COVID-19 protocols.

This information is provided as a Word document in order to facilitate copying and pasting. As well, hyperlinks are provided throughout this document to direct readers to more detailed information. To enable members to drill down into the hyperlink data, business managers should consider making this document available on their union website.

This is the second version of this document. Changes are set out in red. Updates will be provided as WorkSafeBC's response to the COVID-19 crisis change.

The Workers' Advocate continues to manage claims during this crisis and is available to assist business managers, business agents, and members.

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MANAGEMENT OF COMPENSATION CLAIMS – THE LAY OF THE LAND

WorkSafeBC has implemented a host of changes to the claims management regime to adjudicate claims during this unprecedented COVID-19 crisis. Many of the key changes are explained in this resource guide. While the protocols for some matters have been significantly modified, other issues may be managed differently but retain their core adjudicative rigour.

WorkSafeBC has set up a special team within the Occupational Disease Department to handle COVID-19 claims. At the time of writing this Version 2 of the guide, there were 223 registered COVID-19 claims. Thirty-four of these claims were allowed. Twenty-six disallowed. And fifty pending medical confirmation of COVID-19. The remainder are scheduled for adjudication. Not surprisingly, the great majority of these claims come from the healthcare and community services sector, but there are also claims from first responders and several construction workers. The BC Building Trades Council is in regular communication with the upper echelons of WorkSafeBC, and is keeping a close eye on the COVID-19 claims arising from construction work.

GENERAL WORKSAFE BC CLAIMS

During the COVID-19 crisis, WorkSafeBC continues to provide services to those who suffer from a work-related injury or disease. To file a new claim, workers can continue [to report a workplace injury or disease](#) online or by phone. WorkSafeBC will continue to register, adjudicate, and make payments on new time-lost claims.

WorkSafeBC staff may be contacting claimants from a private phone number during this public health emergency. If workers phones are set up to block calls from private or anonymous numbers, they may miss their call. Therefore, injured workers or recent claimants should consider changing their phone settings temporarily in order to receive service from WorkSafeBC.

WorkSafeBC is continuing to pay wage-loss and pension benefits to workers with existing claims. Injured workers can submit health care expense reimbursements to WorkSafeBC through their [online services portal](#).

Workers who have filed a claim can use WorkSafeBC's online services to [manage their claim](#). If workers still have questions after viewing their claim online, they should call their claims officer.

Workers can also contact WorkSafeBC's Call Centre if they don't have an officer's contact information or need assistance with receiving their payments through direct deposit.

MODIFIED DUTIES & GRADUATED RETURN TO WORK

If a worker's workplace shuts down temporarily while they are on modified duties or a graduated return to work, the worker will continue to receive the same benefits that they were receiving at the time of the shutdown, for the duration of their scheduled graduated return-to-work plan and/or the period of time that they are unable to work due to their injury.

Workers will continue to receive important information about their claim, including benefit and treatment plan updates from WorkSafeBC. If workers have any questions, they should contact their claims officer who is handling their claim, or the WorkSafeBC Claims Call Centre if they don't have an officer's contact information, for assistance.

WORKERS EXPOSED TO COVID-19

If a worker thinks they have had a work-related exposure to COVID-19, they should contact their union to inform them of the situation and file a claim with WorkSafeBC immediately. Workers must file their claim as they would with any other workplace injury or disease, that is, by phone or online. See [How workers report a workplace injury or disease](#).

WorkSafeBC has provided the following questions and answers to help workers determine whether they have contracted COVID-19 at their workplace. However, business managers and workers should interpret these guidelines with a great deal of caution and adhere to the precautionary principle in keeping with the Provincial Health Officer's edict.

When could COVID-19 be work related?

When a worker contracts COVID-19 as a direct result of their employment, they are entitled to compensation if the following conditions are met:

1. Evidence that the worker has contracted COVID-19, either:
 - a medical diagnosis in a medical report, or
 - non-medical factual evidence where other evidence establishes the existence of COVID-19.
2. The nature of the worker's employment created a risk of contracting the disease significantly greater than the ordinary exposure risk of the public at large.

Claims submitted for COVID-19 contracted through a work-related exposure are adjudicated on a case-by-case basis. WorkSafeBC will look at details such as whether the worker has a diagnosis of COVID-19, their symptoms, and their employment activities.

If the worker believes he or she has contracted COVID-19 while at work, they should immediately file a claim to determine if they are eligible for workers' compensation benefits.

When do workers report a case of COVID-19 to WorkSafeBC?

Workers should submit a claim for COVID-19 exposure immediately if it meets the criteria. If the worker is at significantly greater risk than the general public of contracting the virus while at work (and many building and construction workers are!), they should report the claim to WorkSafeBC. If the worker is uncertain as to whether it meets the criteria, they should err on the side of caution and submit the claim. They should also be encouraged to report their potential exposure and claim application to their union as soon as possible.

What happens if the worker was performing modified duties or a graduated return-to-work when their employer decides to shut down due to COVID-19?

The worker will be paid during the shutdown. They will not sustain any loss of benefits due to work disruptions. If their employer does not pay them during the shutdown, WorkSafeBC will provide them with wage-loss benefits for the duration of their scheduled graduated return-to-work plan and/or the period of time that they are unable to work due to your injury.

Does WorkSafeBC cover people for quarantine or a self-isolation period?

No. WorkSafeBC does not provide coverage for people who are symptom free even when quarantined, self-isolating or sent home on a precautionary basis.

COVID-19 HEALTH & TREATMENT

How can workers access doctors and health care providers during the COVID-19 pandemic?

The provincial health officer has advised health care professionals to minimize direct physical contact where possible and to provide care to patients via telephone and video technology where appropriate. During the COVID-19 pandemic, WorkSafeBC will consider medical reports involving telephone and video services when making decisions on an injured worker's claim benefits.

Most clinics are providing doctor and clinic care by telephone or video, which can be accessed through a smartphone, tablet, or computer. This allows workers to get care while maintaining physical distancing or in self-isolation or quarantine. If the worker still needs to be seen in person following the video or phone assessment, the provider may make arrangements to do so safely.

To sign up for a video or telephone appointment, the worker must contact their local health care provider and explore if they can provide clinical services remotely by telephone or video. If they need to go into an office to be seen, they should check the provider's website for instructions. If they do not have a website, workers should call the provider as there might be a message advising how to secure a phone or video appointment.

Before the appointment, workers should access the Doctors of B.C.'s [FAQs and tips on preparing to use video or telephone for clinic visits](#) (this link will take workers to an M-Files page to download the PDF).

What if the worker doesn't have access to Telehealth and cannot see his or her doctor? Will their benefits end?

WorkSafeBC is responsible for gathering the necessary information to support decisions on claim benefits. It will consider the individual circumstances of each case to determine if there is sufficient evidence when making these decisions. In all cases, decisions will be made based on the best evidence available.

WorkSafeBC considers medical and non-medical evidence when making decisions on claim benefits. While the best evidence of disability is usually medical evidence, on some occasions, particularly during the COVID-19 pandemic, evidence from the worker, employer, and other sources may be sufficient to establish existence and continuation of disability.

If the worker had difficulty accessing medical care and has questions about their claim benefits, they should contact the officer handling their claim, or contact the Claims Call Centre if they don't have an officer's contact.

What if the worker's health care or treatment provider is temporarily closed and not able to provide treatment? Will the worker's benefits be affected?

If the worker remains temporarily disabled, WorkSafeBC will continue to pay their wage-loss benefits, even if the worker is not able to attend a program with their treatment provider. Workers should discuss this matter with their claims officer, as alternate means to achieve treatment goals may be available (e.g., telephone or video conference, activity/home exercise prescription forms).

What if a worker is in a treatment program and can't attend because either they have been diagnosed with COVID-19 or are self-isolating due to potential exposure?

WorkSafeBC is assuring injured workers in treatment that the health care providers they partner with are taking appropriate precautions under the direction of the public health officials.

Workers should not attend treatment if they are ill with a cold, flu, or fever. Nor should they attend if they are at high risk of contracting COVID-19 or have recently travelled outside of the country.

If the worker is not comfortable attending or travelling to treatment because of concerns about their ability to maintain appropriate physical distancing, they are not required to attend. They should discuss these matters with their claims officer or by contacting the Claims Call Centre if they don't have an officer to contact.

How should workers fill their prescriptions? Can new prescriptions be provided during virtual care visits?

Commonly prescribed medications may be provided digitally at the doctor's discretion. However, controlled medications like opiates and stimulants are typically not provided virtually. Prescriptions may be sent directly to a specific pharmacy for pick up.

Can existing refills be provided during virtual care visits?

The provincial health officer has announced that patients are able to obtain refills of their regular prescriptions at pharmacies to reduce non-essential physician visits and build capacity for doctors to treat COVID-19 cases.

This means workers who require a refill of their regular medications do not need to visit a doctor or nurse practitioner for an updated prescription. Instead, a pharmacist can provide patients with a refill or emergency supply of their medications.

In all cases, workers should practice physical distancing while in a pharmacy or when receiving a delivery of medications. They should not visit a pharmacy in-person if they are experiencing symptoms or are self-isolating. Workers must tell their pharmacy if they are experiencing symptoms or are self-isolating and require medications to be delivered to them.

What if the worker has a fever or a new cough, flu, or cold-like symptoms?

Workers are strictly forbidden from walking into a clinic if they have a fever or a new cough, flu, or cold-like symptoms. Instead, they should book an online telephone or video appointment, or call the provider, who will book one for them.

If the worker's symptoms are moderately severe or they have pre-existing medical conditions, they should call 811 or go directly to their closest hospital emergency room.

For more information, workers should consult the [BC Centre for Disease Control website](#). If workers think they may have symptoms of COVID-19, they should be directed to the [BC COVID-19 Self-Assessment Tool](#).

Non-medical information about COVID-19 is available 7:30 a.m. to 8 p.m. at 1-888-COVID-19.

PROVINCIAL HEALTH OFFICER GUIDANCE FOR CONSTRUCTION EMPLOYERS

On March 22, 2020, Dr. Bonnie Henry, Provincial Health Officer (“PHO”), issued an order under the *Public Health Act* prohibiting the gathering of people in excess of 50 people at a place of which a person is the owner, occupier or operator, or for which they are otherwise responsible. Building and construction employers asked for clarification on what that meant for them.

While the PHO's order does not apply to construction sites as a whole, the PHO directed employers to take all necessary precautions to minimize the risks of COVID-19 transmission to themselves and their workers.

This includes:

- There should be no more than 50 people in the same space in any circumstances.
- Where possible, employees should maintain a distance of two metres apart from each other.
- Post signage that limits the number of occupants in any elevator to four people at a time.
- Reduce in-person meetings and other gatherings and hold site meetings in open spaces or outside.
- Increase the number of handwashing stations and post signage that identifies their location.
- Maintain a list of employees that are currently working on sites and update this list daily.
- All common areas and surfaces should be cleaned at the end of each day. Examples include washrooms, shared offices, common tables, desks, light switches and door handles.

- Anyone with COVID-19-like symptoms, such as sore throat, fever, sneezing or coughing, must self-isolate at home for 14 days.

Section 4.85 of the Occupational Health and Safety Regulation does provide for a minimum standard around the provision of washrooms and hand washing facilities. Where plumbed facilities are impracticable, employers must provide access to portable washroom and handwashing facilities. Those facilities must be maintained in good working order and must be provided with the supplies necessary for their use. Employers should reassess their work environment every day and keep updated with the information posted on the province's website [here](#).

WORKERS' BASIC RIGHTS AT WORK

Workers have three key rights in the workplace: the right to know about hazards in the workplace; the right to participate in health and safety activities in the workplace; and the right to refuse unsafe work.

When Should Workers NOT go to Work?

Anyone with COVID-19-like symptoms such as a sore throat, fever, sneezing, or coughing must self-isolate at home for a minimum of 10 days from onset of symptoms, until their symptoms are completely resolved.

Workers who have travelled internationally must remain away from the workplace for at least 14 days.

Workers who live in the same household as a confirmed or clinical COVID-19 case who is self-isolating should not go to work. They must call HealthLink BC at 8-1-1 for an assessment and to determine any necessary next steps.

Preventive Measures Workers Should Take at Work

Once having entered the workplace, workers should:

- Maintain the 2-metre (6 feet) social distancing requirement at all times.
- Comply with the employer's instructions to minimize exposure to COVID-19 in keeping with the guidance from the Provincial Health Officer (see above).
- Wash their hands frequently, and/or use hand sanitizer.

Right to Refuse Unsafe Work

Workers in British Columbia have the right to refuse work if they believe it presents an undue hazard. Simply put, if the worker is asked to perform unsafe work or work in an unsafe environment, they have the right to refuse to do it and be protected by the law.

In these circumstances, the worker should follow [steps within their workplace to resolve the issue](#). The worker should begin by reporting the undue hazard to their employer for investigation. The employer must then consider the refusal on a case-by-case basis which includes investigating the problem.

If the matter is not resolved, the worker and the supervisor or employer must [contact WorkSafeBC](#). A prevention officer will investigate and take steps to find a workable solution.

For more information, workers should consult the Occupational Health and Safety [Guideline G3.12](#).

Need More Information?

For information and assistance with health and safety issues in the workplace, including COVID-19, workers should contact the WorkSafeBC [Prevention Information Line](#).

REVIEW DIVISION

Submitting and Managing Claims

If workers disagree with a decision made by WorkSafeBC on a claim or health and safety enforcement matter, they can [request a review of the decision](#) from the Review Division. The Review Division is continuing to receive requests for review and are completing as many decisions as possible during the COVID-19 outbreak.

The Review Division will not be conducting in-person hearings. They will be contacting anyone with oral hearings scheduled to discuss next steps.

If the worker disagrees with a decision made by WorkSafeBC on a claim, or health and safety enforcement matter, they can [request a review of the decision](#) from the Review Division. To submit the review online, the worker will need to open an online services account with WorkSafeBC. Once they have an account, the worker can complete their request for review quickly.

Workers can also [manage their review online](#), including making submissions, requesting extensions of time on submissions, and receiving online notifications of review correspondence, including completed Review Division decisions.

Alternatively, workers can fax their request for review using the following numbers:

Fax: 604.232.7747 (Lower Mainland)

Toll-free: 1.855.433.9728 (B.C.)

To speak with a Review Division staff member, workers should use the following numbers:

Phone: 604.214.5411 (Lower Mainland)

Toll-free: 1.888.922.8804 (B.C.)

The Review Division has advised the public that it will do its best to communicate with them as promptly as possible, but they anticipate some delays as they adjust their operations.

REVIEW DIVISION TIME LIMITS

The Review Division recognizes that during this unprecedented time, there will be challenges submitting requests for review and providing submissions on reviews within the statutory time limits. Whenever possible, they are continuing to conduct and complete reviews within the statutory timelines. However, they recognize the challenges in the current environment and will be flexible and grant extensions of time on reviews where necessary and within their statutory authority.

Section 96.3 of the *Workers' Compensation Act* is clear that the time limit to request a review is 90 days after a Board decision is made, unless a shorter time frame has been prescribed by regulation of the Lieutenant Governor in Council. The Chief Review Officer has authority to extend the 90-day time limit under section 96.4 of the Act where special circumstances exist and an injustice would result.

The BC Building Trades have been advised by the Chief Review Officer that if requests for review are late due to the impacts of COVID-19, this would be a situation that would be recognized as “special circumstances”. However, if the decision was issued some time ago, and the person is submitting as reasons COVID-19, this reason would carry less weight.

A similar approach will be taken with respect to requests for extensions of time to provide submissions. If a party requests additional time for making written submissions, the parties will have to provide the Review Division with reasons for the request. Item A3.5.2, *Exceptions to the normal submissions process*, of the Review Division's *Practices and Procedures Manual*, sets out potential reasons, which includes:

- the party is seeking additional medical,
- the party needs to seek representation, or
- personal or family health problems or other emergencies.

Review Officers have discretion to accept late submissions having regard to the reason for the delay and the impact on the time limits. Given the circumstances surrounding COVID-19, if the reason for the late submission is related to COVID-19, a late submission would likely be granted. A reason might include a party is unable to obtain a specialist report as the office is closed due to COVID-19.

It may be that due to the review timelines, an extension to the 150-day time limit to complete a review (section 96.4(6) of the Act) is required. In these cases, it may be necessary for the Chief Review Officer to extend the time to complete a review. As set out in section 96.4(7) of the Act and Item A3.9.2, of the *Practices and Procedures*, the Chief Review Officer may extend the time to complete a review due to the complexity of the proceedings in a review or the matter under review makes the time period impractical. The Chief Review Officer will consider that the impacts of COVID-19 on the ability of a party to provide a submission would be considered to result in a situation where there is increased complexity in the proceedings and thereby a reason for granting an extension of time on the review.

The Chief Review Officer has underscored that information and actions to address COVID-19 are changing rapidly, and she anticipates there will be added challenges in parties ability to both submit

requests for review and submissions, and the Review Division's ability to register and complete reviews. The Review Division will be flexible during this time of crisis to ensure that all parties are able to have their disputes with Board decisions addressed.

WORKERS' COMPENSATION APPEAL TRIBUNAL

The Workers' Compensation Appeal Tribunal ("WCAT") is continuing to operate during the response to the COVID-19 pandemic.

In-Person Hearings

In support of the ongoing efforts to stop the spread of COVID-19, WCAT has made the decision to postpone all in-person hearings through May 31, 2020.

If the worker had an in-person hearing scheduled for the time period through May 31, 2020, WCAT will be contacting them (and their representative if they have one) in order to determine how their appeal will proceed.

WCAT's goal during this time of crisis is that workers' appeals will be heard either by teleconference, or by written submissions. Proceeding in this way will enable workers' appeal decisions to be made sooner. In some cases, workers' in-person hearings may need to be rescheduled to be held at a later date. Any appeals that are not able to proceed by teleconference or written submissions will be given priority for scheduling when in-person hearings are able to resume.

Notices of Appeal

Notices of Appeal from a Review Division decision must be filed with WCAT within 30 days after the decision of the Review Division was made.

Workers can file a Notice of Appeal through email at appeals@wcat.bc.ca, or fax at (604) 6647898. The Notice of Appeal form is on the WCAT website.

WCAT accepts telephone notifications of appeal for the purposes of meeting the 30-day time period, and workers will then normally have a further 21 days to file a written Notice of Appeal.

In addition to email and fax, workers can also mail their Notice of Appeal form to WCAT, although they are recommending electronic notices at this time.

If a worker's Notice of Appeal is not filed within the 30-day timeline, they can ask WCAT, in writing, for an extension of time. That form is also available on their website. WCAT will consider whether there were special circumstances that caused the worker to not be able to file their Notice of Appeal within the 30 day timeline, and whether an injustice would result if the timeline was not extended.

If the worker's ability to file their Notice of Appeal on time was affected by the COVID-19 pandemic, or any other special circumstances, the worker should explain that in their request for an extension of time. WCAT will take all submissions into account in making the decision on whether to extend the time for filing.

There are some decisions of the Workers' Compensation Board that can be appealed directly to WCAT. The deadline for filing a Notice of Appeal in those cases is 90 days, and filing can be completed in the same way as above.

Submissions & Evidence

WCAT is aware that parties may have difficulty meeting timelines set for providing submissions and evidence during the response to the COVID-19 pandemic.

If a worker is having difficulty meeting a submission or evidence timeline, they need to email, fax, mail, or call the WCAT with their request for more time. Workers should make sure to include their appeal number in their request to the WCAT. In most cases, WCAT will provide an additional 45 days to provide submissions and evidence.

If the worker needs more than the additional 45 days, they will need to provide WCAT with their reasons, including those related to the COVID-19 pandemic, for making that longer request. The vice chair assigned to their appeal will take those reasons into account when deciding whether a longer period of time to provide evidence or submissions will be allowed.

On April 9, 2020, the Chair of the WCAT, Andrew Pendray, released a letter to the public regarding developments on their electronic communication. As noted earlier, WCAT has been working to develop a process which will enable the tribunal to provide correspondence electronically during the response to the COVID-19 pandemic. The goal is to alleviate some of the pressures on individuals and organizations who may be having difficulty retrieving mail during this time. WCAT is continuing to finalize the process for proceeding in that manner.

With the implementation of that electronic correspondence process in mind, workers with claims will soon be receiving an email from WCAT requesting them to provide their consent to the tribunal issuing correspondence to them via encrypted email. Until WCAT issues a notice confirming that an electronic correspondence process has been implemented, correspondence from WCAT will continue to be issued via mail. Incoming correspondence will continue to be welcomed via email at appeals@wcat.bc.ca, or via fax at 604-664-7898. WCAT will also continue to receive mail and deliveries at the WCAT office in Richmond, British Columbia.

CONVENIENT ONLINE OPTION FOR CLAIM QUESTIONS

WorkSafeBC is actively monitoring the COVID-19 outbreak to determine they can adjust their services to better support the public. As of April, WorkSafeBC has expanded their capacity to answer claim

questions electronically. While their [Claims Call Centre](#) remains open if people prefer to speak to someone on the phone, they recognize that many people may have questions that they'd prefer to ask online. To use this option and submit claim questions confidentially and securely, go to "[Email us](#)" form and:

- Check the "General claims and injury inquiries" option;
- Submit your question in the message field; and
- Provide your contact information so WorkSafeBC can respond or follow up for more information as needed.

CONCLUSION

During this COVID-19 crisis the BC Building Trades Council is here to assist you and your members. If you need assistance with your members' WorkSafeBC compensation claims, whether it is COVID-19 related or otherwise, contact Merrill O'Donnell by email at modonnell@bcbuildingtrades.org or cell at (604) 679-9052.

Stay safe!