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*An electronic newsletter for Island Employers on Workers Compensation and Occupational Health and Safety Matters*

[princeedwardisland.ca](http://princeedwardisland.ca)  
search: Office of the Employer Advisor

**July 2019, Vol. 15 Issue 7**

***Did you know? As of July 15<sup>th</sup> 2019 there are some changes to WCB's "PRE-EXISTING CONDITIONS" policy (POL-61). Specifically, the policy has been revised to clarify:***

- **what is meant by a "pre-existing condition"**
- **how medical information is evaluated**
- **how evidence is weighed**
- **conditions for ongoing entitlement**
- **duration of compensation**

The new policy was developed after consultation with stakeholders, and addresses potential issues and concerns that arose over the years. Below are some of the highlights of this important policy.

*What is a "pre-existing condition"?*

- A pre-existing condition is any condition inherent in the worker at the time of a work-related accident.
  - To be confirmed as pre-existing condition, there must be medical evidence that the condition pre-dates, or occurred prior to, a workplace injury.
  - The worker may not even have been aware of any pre-existing condition, yet it may still be present.

A couple of the key provisions of the revised policy include the following conditions, all of which must be met before a worker is entitled to compensation for a workplace injury that has been aggravated by a pre-existing condition:

- There must be evidence of an accident
- Objective medical evidence must support a finding of a separate and distinct new injury as a result of that accident
- There must be evidence the new injury was aggravated by a pre-existing condition
- The new injury must be work-related

**However it is important to keep in mind that:**

- The existence of a pre-existing condition does *not necessarily* mean that there is an aggravation to the workplace injury.
- Where the pre-existing condition has no impact on the workplace injury, there is no effect on entitlement to compensation.

With respect to duration of compensation where pre-existing injury is found, the revised policy maintains that a worker is entitled to compensation for the "full injurious result". This means compensation is payable to the worker for the full result of the injury.

Specifically, the "full result" of injury is defined under the new policy to include:

- the direct effects of the workplace injury; and
- the aggravation of the workplace injury by the pre-existing condition(s).

For employers, it is important to remember that WCB may provide treatment for a worker's pre-existing condition where it is necessary for the recovery of a compensable injury. But a worker is not entitled to benefits *solely* as a result of treatment for the pre-existing condition. This is a careful distinction to be borne in mind when dealing with such scenarios.

Finally, for employers there is a significant cost relief aspect to POL-61. Specifically, if a worker's loss of earning capacity or impairment is found to be due partly to a workplace accident, and due partly to other factors, then WCB must:

- determine what portion of the injury is a result of a cause other than the accident; and,
- charge that portion against the employer's rate group.

**These are a few of the more important aspects of the revised "Pre-existing conditions" policy. Should you have any questions about the interpretation or application of this or other aspects of the revised policy, please do not hesitate to contact the Office of the Employer Advisor at 902-368-6132.**

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**August 2019, Vol. 15 Issue 8**

**Did you know? As of July 15<sup>th</sup> 2019  
there are changes to WCB's  
"TRANSPORTATION  
ASSISTANCE" policy (POL-73).  
Specifically, the policy has been revised to  
clarify:**

- eligibility criteria
- conditions for approval
- consideration of assistance for workers with temporary transportation needs
- commercial transportation as the first option for assistance
- increased assistance for workers to buy their own vehicle, for modification

The new policy was developed after consultation with stakeholders, and addresses potential issues and concerns that arose over the years. Below are some of the highlights.

*What is the purpose of the policy?*

- As a result of a work injury, a worker may require assistance with transportation to return to work, or to maintain personal independence.

*When is the policy engaged?*

- The policy may be engaged when, as a result of an accident that is work-related:
  - a worker has an impairment (or impairment is anticipated);
  - a worker has significant mobility restriction;
  - a worker has new or altered transportation needs

*Are there any exceptions?*

- Where there is no impairment, a worker may still qualify for transportation assistance if the Board determines, on weight of medical evidence, that a worker is likely to have "significant temporary restrictions" as result of a work injury. The key to this exception is that such provisioning must be only *temporary* in nature, to meet a temporary need.

*What types of transportation assistance is covered by the new policy?*

The types of transportation covered by the new policy include:

- costs for publicly available commercial transportation (e.g.—taxi cabs);
- modifications to a worker's vehicle; or assistance with the purchase of a suitable vehicle to be modified.

Each case will be considered according to its particular facts, and the Board will evaluate:

- severity of the injury;
- worker's functional ability (i.e.—physical limitations that may affect ability to drive a car);
- demonstrated transportation needs;
- financial feasibility of the request.

In every instance the Board will decide what is the most "appropriate and feasible" option, based on the evidence and the foregoing considerations.

*When would vehicle modifications be authorized?*

If the worker's transportation needs cannot reasonably be met by commercial transportation, then the WCB consider authorizing modifications. Modifications are approved for only one vehicle, and the worker does not have to be the driver of the vehicle.

*What conditions must be met before vehicle modifications are authorized?*

There are ten (10) conditions that must be met before vehicle modifications are authorized.

Finally, there is provisioning in the policy for vehicle purchase and maintenance. Purchases are authorized only where the work injury requires the worker to use a power wheelchair or a manual wheelchair (where but is unable to self-transfer from the chair to the vehicle).

**These are a few of the more important aspects of the revised "Transportation Assistance" policy.**

**Should you have any questions about the interpretation or application of this or other aspects of the revised policy, please do not hesitate to contact the Office of the Employer Advisor at 902-368-6132.**

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## September 2019, Vol. 16 Issue 9

### **Direct Access to Physiotherapy is now available for injured workers.**

Workers on Prince Edward Island now have direct access to approved Physiotherapists for assessment of work-related injuries. If a worker is injured at work, first they must be provided first aid, and the injury should be reported to the employer. With regard to next steps:

- **It is important the worker have their injury assessed as soon as possible, as early access to care has a significant positive impact on recovery.**
- **The worker may contact a physiotherapy clinic from the list provided (below), and request an assessment.**
- **An appointment will be provided within 48 hours of request.**
- **The worker must fill out and file a Form 6 (Worker's Report) with WCB, as per usual.**

There are many positive health benefits – to both workers and employers – to staying at work and returning to work as soon as possible following an injury.

- Modified duties are a safe and effective way for workers to remain at work while recovering.
- Following return to work recommendations prescribed by a physiotherapist will ensure the best results and a safe recovery.
- If a worker is receiving treatment, they should attend all scheduled appointments.
- Workers should complete any home exercise program provided by the attending physiotherapist.

Participating physiotherapy clinics are listed below:

**You Move Physio**  
370 Main St., Alberton  
(902) 853-1622

**Reactive Health-Summerside**  
216 Green St., Summerside  
(902) 436-2151

**CBI Health Centre-Summerside**  
454 Granville St., Summerside  
(902) 724-3003

**Kensington Physiotherapy**  
55 Victoria St. East, Kensington  
(902) 836-1021

**Aspire Physio | Wellness**  
14 Kinlock Rd., Suite 10, Stratford  
(902) 628-1991

**CBI Health Centre-Grafton Street**  
199 Grafton St., Charlottetown  
(902) 370-5200

**Charlottetown Physiotherapy**  
28 Garfield St., Charlottetown  
(902) 566-2700

**Reactive Health-Stratford**  
252 Stratford Rd., Stratford  
(902) 370-7322 (Ext. 1)

**Reactive Health-Charlottetown**  
78 Euston St., Charlottetown  
(902) 370-7322 (Ext. 2)

**Reactive Health-Cornwall**  
401 Trans Canada Hwy, Cornwall  
(902) 370-7322 (Ext. 3)

**Reactive Health-UPEI**  
550 University Ave., Charlottetown  
(902) 370-7322 (Ext. 4)

**CBI Health Centre-Linden Avenue**  
24 Linden Ave., Charlottetown  
(902) 566-5212

**CBI Health Centre-Montague**  
169 Queens Road, Montague

\* \* \*

WCB is currently seeking feedback from employers and all other interested stakeholders on a new draft policy and proposed legislative changes. Specifically:

- **A new policy on Massage Therapy has been approved, in principle. It is currently posted on the WCB website until October 27<sup>th</sup>, 2019. The purpose of this policy is to explain how WCB determines an injured worker's entitlement to massage therapy services and to outline treatment approval.**
- **Proposed changes to the *Occupational Health & Safety* "General Regulations for Asbestos" have been posted to the WCB website until October 13<sup>th</sup>, 2019. Highlights of these proposed changes include (but are not limited to):**
  - "asbestos containing material" will be defined as material containing 1% or more asbestos;
  - differentiation of various levels of risk of exposure to asbestos during asbestos removal operations (Type 1, 2, 3);
  - the requirement for daily air sampling outside of an enclosure;
  - expiration periods for asbestos abatement contractors' certificates and renewals;
  - more prescriptive requirements for ventilation, including annual certification; and,
  - enhanced requirements for medical surveillance for consistency in the industry.
- **Proposed changes to the *Workers Compensation Act* have been posted to the WCB website until October 26<sup>th</sup>, 2019. These important changes include:**
  - An amendment to clarify the definition of "accident";
  - An amendment to enhance (and clarify) the definition of "worker";
  - Amendments to provide clarity on benefits for injured workers confined to a jail, penitentiary, place of detention, mental health care unit, hospital or facility; and,
  - Amendments to treat the construction industry in the same manner as employers in all other covered industries and occupations with respect to the right to return to work and re-employment of injured workers.

Please visit: [www.wcb.pe.ca/](http://www.wcb.pe.ca/) for more information, and to provide feedback.



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**October 2019, Vol. 17 Issue 10**

***Psychological safety in workplace – Bill 42  
one step closer to becoming law – Will  
amend Workers Compensation Act –  
Employers must implement policies for  
prevention and investigation of harassment  
in workplace***

On October 15<sup>th</sup> 2019 an Order-in-Council declaration was made for an amendment to the *Workers Compensation Act*. Bill 42 received Royal Assent on December 5<sup>th</sup>, 2018, and the amendment to the Act will become law on **July 1<sup>st</sup>, 2020**. This gives employers time to prepare and implement harassment policies in their workplace to comply with the new legislation.

Highlights of the new provisioning include:

- Employers must devise a policy to prevent workplace harassment
- Employers must implement a policy to investigate occurrences of harassment
- Workers will be required to comply with any policy created by the employer under the new statutory provisions
- WCB will have the authority to make regulations concerning measures that employers must establish to prevent and investigate workplace harassment
- “Harassment” has been defined in the new law as including both single occurrences of bullying as well as repeated instances, and includes any conduct or action that could have a harmful effect on a worker's psychological or physical health
- A reasonable action taken by an employer or supervisor relating to the management and direction of the workers or of the workplace is not workplace harassment
- Confidentiality must be maintained at all times by both the employer and the worker in regard to any complaint of harassment
- An employer will be required by law to do an investigation “appropriate to the circumstances”, once a harassment complaint is made

The new legislation is significant for the fact that it establishes certain positive obligations on an employer to prevent and investigate workplace bullying and harassment, and a duty on an employer who knows – or ought reasonably to know – that harassment is occurring in their workplace. With respect to the duties of

employees, the new legislation requires workers to cooperate in the investigation of a complaint of workplace harassment and to keep the details of any investigation confidential.

\* \* \*

***Did you know?***

Bill 42 is the second significant legislative amendment to the *Workers Compensation Act* to have been approved or proclaimed in 2019. On January 1<sup>st</sup>, 2019 Bill 40 was proclaimed, amending the *Workers Compensation Act* by extending the definition of “impairment”. Under the old definition, impairment was defined as a “medically measurable permanent anatomical loss or disfigurement”. Impairment has now been legislatively redefined as “loss of physiological function, anatomical function or anatomical structure, or abnormality of psychological function, physiological function, anatomical function or anatomical structure”. This is a broader term than formerly used.

The new enactment earlier this year also enlarged the scope of the *Workers Compensation Act* concerning volunteer firefighters. Specifically, a municipal government that maintains a volunteer fire department is considered to be an employer.

Furthermore, the new law creates a presumption that where a firefighter has been diagnosed with a prescribed disease, a statutory presumption exists whereby a firefighter is presumed to have an occupational disease caused by their employment. The result of this change is that the worker's employment is presumed to be the “dominant cause” of the occupational disease, which signifies an important development of the law in this regard.

\* \* \*

The Workers Compensation Board (WCB) of Prince Edward Island is seeking stakeholder feedback on the **Experience Rating Program** for employers. The program offers a financial incentive for employers to create safer workplaces by adjusting assessment rates based on their claims costs history.

The consultation document has been posted on the Policy Consultation page of the WCB website at [www.wcb.pe.ca/Information/PolicyConsultation](http://www.wcb.pe.ca/Information/PolicyConsultation), under the heading, “Employer Experience Rating Program Review.” The WCB encourages stakeholders to provide feedback on the program by **November 29, 2019**, using the online feedback form.

Please visit: [www.wcb.pe.ca/](http://www.wcb.pe.ca/) for more information, and to provide feedback.

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**November 2019, Vol. 16 Issue 9**

## POLICY UPDATE

The Workers Compensation Board has approved, in principle, amendments to the Medical Cannabis policy (POL-153).

Generally, the changes include:

- *Amendments to the definition of medical cannabis.*
- *Addition of nurse practitioners as authorizing health care providers.*
- *Content related to medical cannabis treatment to improve quality of life.*
- *Removal of medical cannabis treatment for harm reduction.*
- *Removal of coverage for vaporizers due to the associated health risks.*
- *Requirement for treatment protocol is to start with the lowest quantity required to achieve treatment goals.*
- *Adjustment to the coverage of costs.*

The purpose behind these changes is to keep pace with the emerging body of medical research and the evolving regulatory environment, against a backdrop of increasing medical cannabis use in society at large.

Some specific highlights of these changes to the medical cannabis policy include:

- WCB will not cover costs of a cannabis vaporizer
- The requirement of a **detailed risk assessment**, completed by an authorizing physician or nurse practitioner, before the Board will consider granting a three-month trial of medical cannabis for chronic neuropathic pain
- An authorizing physician or nurse practitioner will not be required to register the cannabis authorization with the PEI College of Physicians and Surgeons
- With regard to “considering medical cannabis as part of a harm reduction strategy for those injured workers on excessive doses of opioids or narcotics”, the new draft policy proposes to remove those provisions

The risk assessment provisioning comprises an important aspect of the Medical Cannabis policy. This is motivated by concern for the individual health of the worker, and also concern for maintaining safety in the workplace.

The policy requires that certain factors **must be considered** in the risk assessment, including the effects of medical cannabis on:

- young brains (under 25 years);
- those with a history or a family history of psychosis;
- cognitive function;
- pregnancy and breastfeeding;
- cardiovascular and respiratory disease;
- addiction with possible substance abuse; and
- potential impairment in driving or safety sensitive work.

The risk assessment is not limited to the above factors.

**These are a few of the more important aspects of the recently amended “Medical Cannabis” policy.**

**Should you have any questions about the interpretation or application of this or other aspects of this policy, please do not hesitate to contact the Office of the Employer Advisor at 902-368-6132, or [employeradvisor@gov.pe.ca](mailto:employeradvisor@gov.pe.ca).**

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## WCB ANNOUNCES SURPLUS DISTRIBUTION AND 2020 AVERAGE RATE DEDUCTION

On November 5<sup>th</sup> the Workers Compensation Board (WCB) announced that it has once again reduced the average assessment rate for Island employers. The average assessment rate for 2020 will be \$1.52 per \$100 of payroll, which is a six cent decrease from the 2019 rate.

The required average assessment rate is \$1.60, based on budgeted costs and investment returns, but because of its strong funded position, the WCB was able to apply an eight cent downward funding policy adjustment to achieve a rate of \$1.52 for 2020.

Also in accordance with WCB Funding Policy, a surplus distribution may be considered if the funding status is greater than 140%. The funding status at December 31, 2018 was 146.3 %. As a result, the Board has approved a \$20 million surplus distribution to employers.

At this time a surplus distribution is not anticipated in 2020, according to the WCB news release.

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**December 2019, Vol. 17 Issue 10**

## POLICY UPDATE

As of December 12<sup>th</sup>, the Workers Compensation Board has approved and issued a new **Massage Therapy** policy (POL-158).

The purpose of this new policy is to explain how the Workers Compensation Board determines an injured worker's entitlement to massage therapy services and to outline treatment approval. Some highlights include:

- *The Workers Compensation Board recognizes massage therapy as an acceptable form of medical aid when it is prescribed by a treating physician, nurse practitioner, chiropractor or physiotherapist and is provided by a licensed massage therapist.*
- *The Workers Compensation Board will establish a service standard and a fee schedule agreement with the Prince Edward Island Massage Therapy Association.*
- *The Workers Compensation Board will approve payment of an initial assessment following referral and diagnosis and where a worker has filed a Worker's Report (Form 6) with the Board.*
- *Massage therapy must be in conjunction with treatment or conditioning program such as physiotherapy or chiropractic treatment, to be considered for approval.*
- *The Workers Compensation Board will approve treatment based on credible, evidence based disability guidelines and will advise the massage therapy clinic of the number of treatments approved for payment and the associated timeframe.*
- *The Workers Compensation Board is not responsible to pay for treatment beyond the initial assessment unless it has pre-approved payment of further treatment.*
- *The Workers Compensation Board is not responsible to pay for treatment that exceeds the amount approved.*
- *The Workers Compensation Board will notify the massage therapy clinic where it determines it is not responsible for providing benefits to a worker (for example, if a claim is not accepted) and will not be responsible for payment of treatments beyond the date of notification.*

## WCB SEEKING FEEDBACK ON AMENDED HEALTH CARE PROVIDER POLICY (POL-64) BEFORE JANUARY 20<sup>TH</sup>, 2020

WCB has announced it is seeking feedback on its recently amended **Health Care Provider** policy (POL-64) before January 20<sup>th</sup>, 2020. The amendments have been approved in principle. The purpose of this policy is to explain who the Workers Compensation Board considers to be "health care providers", and how those providers can bill for services.

Health care providers are recognized by the Workers Compensation Board to provide health care services to workers if they are governed by legislation and a self-regulating body, and licensed by a recognized licensing body to practice in Prince Edward Island. Or the health care provider must be certified by a recognized national body that has standards that meet the minimum requirements acceptable to the Workers Compensation Board.

Exceptions to this requirement include health care providers who are considered as being authorized to provide services to workers if they hold the appropriate certification or registration, such as: Orthotists, Prosthetists, Audiologists, Hearing Instrument Specialists, and, as per the recent amendments, Kinesiologists who are affiliated with the Canadian Kinesiology Alliance and providing services under the supervision of a health care provider who meets the criteria noted above. Also recognized by the Board are Counsellors certified by the Canadian Counselling and Psychotherapy Association, with a Canadian Certified Counsellor designation.

In addition to the conditions set out above, to be recognized as a health care provider a registered massage therapist must be a member in good standing with the College of Massage Therapists of PEI and the PEI Massage Therapy Association.

This is a summary of the more notable aspects of the **Health Care Provider** policy. If you wish to access this policy and provide comment to WCB you may do so at: <http://www.wcb.pe.ca/Information/PolicyConsultation>.

Should you have any questions about the interpretation or application of this or other policies, please do not hesitate to contact the Office of the Employer Advisor at 902-368-6132, or [employeradvisor@gov.pe.ca](mailto:employeradvisor@gov.pe.ca). Please note that our offices are relocating to the 3<sup>rd</sup> Floor of the Aubin Arsenault Building at 3 Brighton Road, Charlottetown, effective December 18<sup>th</sup>.