

CUPE BC Region Guide

Employers' Use of Consultants in WCB Claims and Appeals

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Nothing in this Guide should be construed as legal advice or advocacy. The information provided is for general education purposes only and is subject to ongoing change and revision.

Introduction:

WorkSafeBC ("WCB") and appellate tribunals data shows employers are increasingly being represented in WCB claims and appeals. Employers attempt to control costs associated with health care, extended health benefits, WCB claims and absences due to illness and injury. Consultants may assist CUPE members in obtaining diagnostic testing, treatment and returning to work; not all consultants are used for WCB claims or appeals. Issues arise where there is a premature return to work, where legitimate WCB claims and appeals are impeded or appealed, and where the WCB appeal process is used to incorporate discipline, retaliation, discriminatory action and prohibited action. This can cause or exacerbate mental health issues and existing health problems for workers. It may also extend the duration of the WCB claim, lead to new WCB claims or sick leave.

Who Are Consultants and Why Are They Involved:

Disability management consultants, including law firms, have contracted with a verity of employers in BC to provide services related to WCB claims management. The consulting companies mentioned in this Guide are not alleged to or inferred to engage in activities that negatively impact workers. They are mentioned for illustration purposes only. Services may include:

- Reducing claims and claim frequency.
- Reducing the duration of claims.

- Appealing claims.
- Appeal representation to employers including preparing and presenting appeal submissions to the Review Division and Workers Compensation Appeal Tribunal ("WCAT").
- Section 39 applications / Cost Relief.
- Reviewing Experience Ratings and assessments.
- Protesting claims e.g. where fraud is suspected.
- Assisting workers to return to work to modified duties.
- WCB policy interpretation.
- Scrutinizing claims exceeding ten (10) weeks.
- Scrutinizing Disability Awards ("pensions").
- Developing, assisting with and implementing Return to Work Programs, Graduated Return to Work Programs, Vocational Rehabilitation and Job Demands Analysis.
- Training for employers.
- Expediting treatment.
- Expediting diagnostic testing.

These are just a few services that may be rendered depending on the consultant, the contract and whether the consultant has been directly retained by the Human Resources department.

Some CUPE Locals and members benefit from certain services provided by consultants such as expedited access to treatment, diagnostic testing, Job Demands Analysis testing, Return to Work programs, etc. Not all consultants or the services they offer can be characterized as the same. Many assist workers. For example, the Employers' Advisors Office ("EAO") has numerous, expert, free seminars for workers on health and safety and workers compensation matters. They provide assistance to a variety of organizations. Examples that follow are for illustration purposes only.

There are a number of non-government consulting firms that provide consulting services related to compensation. These include, in no particular order (sample list only):

- Disability Management Institute <https://www.disabilityinstitute.com/>.
- Morneau Shepell / LifeWorks <https://lifeworks.com/en>.
- TeksMed <https://teksmed.com/>.

As per the 2018 government EAO website (which was subject to revision per the link below) a number of services are provided to employers:

Employers' Advisers provide independent advice, assistance, representation and education to employers, potential employers and employer associations concerning workers' compensation issues under section 94 of the *Workers Compensation Act*. In fulfilling this mandate, Employers' Advisers:

- Assist and advise employers, potential employers and employer associations in understanding, working and complying with WorkSafeBC issues in Claims, Assessments and Prevention.
- Respond to inquiries about workers' compensation legislation, decisions, appeals and related matters in Claims, Assessments and Prevention.
- Prepare submissions on behalf of employers to WorkSafeBC, Review Division, Workers' Compensation Appeal Tribunal (WCAT) and assist employers in cases involving complex legal, medical or policy issues.
- Conduct seminars and public speaking engagements on occupational health and safety issues, prevention, claims management, assessments and appeals.
- Consult with WorkSafeBC officials to review and make recommendations to the Policy Department, Executive and Board of Directors.
- This service is available to all employers or potential employers free of charge.

For more information on the EAO current mandate see

<https://www2.gov.bc.ca/gov/content/employment-business/employers/employers-advisers-office>.

WCB Claims and Appeals – Do Workers Have to Cooperate (WCB claims only, not Health and Safety matters):

This Guide is for WCB claims and appeals, as opposed to sick leave, Collective Agreement entitlements, Long Term Disability, Duty to Accommodate, etc. In all cases, the Local should be contacted immediately where a consultant, whether internal or external, has become involved in a WCB claim or appeal. WCB claims and appeals assistance, advice or representation do not fall under the ambit of the British Columbia Labour Relations Code and, as such, Unions are not required to provide these services. Most importantly, until the exact nature of the consultant's mandate and role is determined, workers should adhere to the "work now, grieve later" rule, subject to advice from the Local and relevant legislation such as the Right to Refuse Unsafe Work (OHS Regulation 3.12). Health and safety matters may require worker cooperation.

The request to cooperate may take the form of a consultant offering to meet with workers to assist in returning to work, obtaining an MRI in a timelier manner or asking workers to sign Releases allowing them to have access to medical information. These are a few examples to illustrate their role. The role of each consultant may vary widely. Each contract and each claim may be different. Whether workers are required to cooperate and to what degree depends upon a number of factors including:

- Is it a WCB claim or appeal?
- Is it a sick leave issue arising out of the Collective Agreement?
- Is it related to extended health care benefits?
- Is it related to short term, medium term, or long term disability benefits?
- Is it an employer, insurance company or WCB sponsored Return to Work program or Duty to accommodate? Each is different.
- Is it WCB Vocational Rehabilitation?
- Does the worker have an active or accepted WCB claim?
- Does the worker have an active WCB appeal?

Actions Workers May Wish to Consider Taking:

There are a number of actions that workers may wish to consider taking. These include:

- Notifying the Local immediately if a consultant has contacted the worker or become involved in a WCB claim or appeal, especially if the worker is asked to do a Functional Capacity Evaluation, see a physician at the employer's request (IME), etc.
- Notifying the WCB Case Manager or Entitlement Office if a consultant has contacted the worker or become involved in the WCB claim or appeal.
- Be cautious of participating in any meetings without the representative of the Local (subject to the caveats in this document e.g. labour relations matters, health and safety matters, etc).
- Be cautious about what information is disclosed or stated. Workers are not under any obligation to speak to the employer or their consultant regarding a WCB appeal other than where WorkSafeBC may be involved e.g. Prevention Officers, etc.
- If workers are questioned regarding a WCB claim, contact the Local and the Union Occupational Health & Safety representative immediately.
- Take detailed notes, via a diary or journal, of any discussions, meetings, emails, letters or telephone calls that occur.
- Ask who the consultant is, who they represent, what their mandate is and if they have been contracted to deal with the WCB claim (or appeal) or the employer in general.
- Ask the employer what the consultant's involvement is, why, expected duration, process for protecting personal information and the process for adhering to the Freedom of Information and Protection of Privacy legislation and WCB Policy.
- Do not sign any Releases, Consent Forms, forms or paperwork until it is vetted by the Local, recognizing that time-lines may be in place that could affect the WCB claim or appeal.
- Advise the physician(s) or other treatment providers that a consultant may attempt to contact them and they do not have authorization to discuss the medical history, the WCB claim, etc.

- Be careful of any statements that indicate the worker may get expedited treatment or testing if the worker agrees to the consultant's involvement or to participate.
- Ensure the physicians are fully aware of and up to date on both the limitations and restrictions.
- It is generally recommended that workers not agree to an Independent Medical Evaluation or Functional Capacity Evaluation (subject to the caveats in this Guide).
- Ask the employer and the consultant what precautions will be taken regarding the privacy of the medical and WCB information e.g. collection, use, storage, retention, disposal, etc.

Any matters pertaining to non-WCB claims or appeals e.g. labour relations or human rights, must be addressed via the Local. This Guide is limited to WCB claims and appeals.

What Next? Other Actions:

Should there be further issues related to the WCB claim, appeal, Return to Work (WCB), Vocational Rehabilitation, Job Demands Analysis (WCB), etc, workers may:

- Contact the British Columbia Workers' Advisers Office.
- Contact the WCB e.g. the WCB Case Manager.
- Submit a complaint to the Fair Practices Office at <https://www.worksafebc.com/en/about-us/fairness-privacy/fair-practices-office/raise-issue-complaint> (See Figure 1).
- Contact the National Representative for the Local and use Collective Agreement entitlements.
- Contact the Office of the Information and Privacy Commissioner (OIPC) at <http://www.oipc.bc.ca/>.
- Submit a Prohibited Action Complaint if applicable at <https://www.worksafebc.com/en/for-workers/just-for-you/prohibited-action-complaints/submitting-complaint#:~:text=of%20Prohibited%20Action.-,You%20can%20submit%20your%20Prohibited%20Action,using%20our%20secure%2C%20online%20portal.&text=You%20may%20also%20submit%20your,4040>.

Figure 1

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We are committed to fairness & privacy

Fair Practices Office

Raise an issue or complaint

Access to information

Protection of your privacy

Raise an issue or complaint

You can make a complaint to the Fair Practices Office by phone or in writing. We will contact you by phone within one business day after we receive your complaint.

Making a complaint by phone

To make your complaint by phone, please call the Fair Practices Office at 604.276.3053 or toll free at 1.800.335.9330.

Making a complaint in writing

We recommend using our [complaint form](#) to make a written complaint. You can type your information in the form online. Once completed, you can attach any additional documents and submit online, or you can print the form and fax or mail it to us at:

Fax:	604.276.3103
Mail:	Fair Practices Office WorkSafeBC PO box 5350 Stn Terminal Vancouver, BC V6B 5L5

If you'd prefer to write us a letter, please review our complaint form first so you will know what information to provide.

Resources

Complaints to the WorkSafeBC Fair Practices Office (form 15B3)

To register a complaint with the WorkSafeBC Fair Practices Office (FPO), please complete this form. Before you begin, it may be helpful to review the Fair...

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[https://cupe.sharepoint.com/sites/BritishColumbiaRegionalOffice/Health_Safety/WCB/Forms and
Guides/CUPE_Guide_WorkSafeBC_Claims_Appeals_Employers'_Use_Consultants_2021_07.docx](https://cupe.sharepoint.com/sites/BritishColumbiaRegionalOffice/Health_Safety/WCB/Forms_and_Guides/CUPE_Guide_WorkSafeBC_Claims_Appeals_Employers'_Use_Consultants_2021_07.docx)
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