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WORKERS COMPENSATION BOARD

SPECIAL INVESTIGATIONS



**Workers Compensation
Board of Manitoba**

Objective

- To understand the role of the Special Investigations Unit and how to access investigation services.



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Agenda

- SIU duties and responsibilities
- Legislative jurisdiction and privacy issues
- How to request an investigation and what happens with the results
- The 4848 line and travel logs



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- Investigations of suspected offenses at the Workers Compensation Board of Manitoba are conducted by the Special Investigations Advisors, who report to the Director of Legal Services.
- The Investigations are conducted with reference to WCB Claims Investigation policy 22.20.



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TYPES OF INVESTIGATION

- Employers deducting from workers to cover the cost of assessment
- Employers suppressing workers from claiming
- Employers making a false statement to the Board
- Earnings related abuse:
 - worker returns to work, gets new job or starts own business without notifying the WCB



- Disability related abuse:
 - claimant involved in activities outside restrictions of injury



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WHEN DOES THE WCB INVESTIGATE?

- Files are identified for investigation by a number of means:
 - Staff identification: WCB staff, during the course of managing a case, may identify possible noncompliance or may be informed of potential improper conduct.
 - Stakeholder identification: Employers, employees, union representatives and advocates will identify employers or claimants who may be committing offenses against the Workers Compensation Act and notify the WCB.



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- Referrals from other agencies: Other organizations such as the R.C.M.P., local police, Crime Stoppers, Employment and Immigration, M.P.I.C. and Social Services will often pass on information regarding possible violations of the Workers Compensation Act.
- Anonymous calls and letters: Calls or letters are evaluated and if the information can be followed up and is of value then an investigation is initiated.



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- Any files identified by WCB staff are referred to the Special Investigations Advisor for further investigation. Staff are notified of the results of the investigation at its completion.
- Referrals and information provided from outside sources are directed to the Special Investigations Advisor for review and follow up.



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Authority

Application for compensation

- [19\(1\)](#) A worker or dependant entitled to compensation under this Part shall file with the board an application and the certificate of any health care provider, hospital or other health care facility that provides care to the worker, in a form and manner acceptable to the board, with such proof or other information as the board requires, and pending the receipt of proof or information, the board may withhold compensation.



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General jurisdiction

- [60\(1\)](#) The board has exclusive jurisdiction to examine into, hear, and determine, all matters and questions arising under this Part and as to any matter or thing in respect of which any power, authority, or discretion, is conferred upon the board; and the action or decision of the board thereon is final and conclusive and is not open to question or review in any court; and no proceedings by or before the board shall be restrained by injunction, prohibition, or other process or proceeding in any court, or are removable by certiorari or otherwise into any court.



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Particular jurisdiction

- 60(2) Without hereby limiting the generality of subsection (1), it is declared that the exclusive jurisdiction of the board extends to determining
 - (a) whether any injury or death in respect of which compensation is claimed was caused by an accident within the meaning of this Part;
 - (b) the question whether any injury has arisen out of or in the course of an employment within the scope of this Part;



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- (c) the existence and degree of disability by reason of any injury;
- (d) the existence and degree of an impairment, and whether it is the result of an accident;
- (e) the loss of earning capacity resulting from an accident;
- (f) the amount of average earnings and net average earnings;



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Employer To Report Return To Work

- **Employer's duty to report worker's return to work**

[18.1\(1\)](#) An employer must notify the board when a worker who has been unable to work as a result of an accident returns to work with that employer.

- **Administrative penalty**

[18.1\(2\)](#) An employer who fails to comply with subsection (1) is subject to an administrative penalty under subsection 109.7(1).



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18(3) The employer shall make such further and other reports respecting the accident and worker as may be required by the board.

■ **Offence and Administrative Penalty Further Reports**

18(4) An employer who fails to make a report required under this section commits an offence and is subject to an administrative penalty under subsection 109.7(1).



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Inducing worker not to make application

■ Inducing worker not to claim compensation

19(1) No employer or person acting on behalf of an employer shall attempt to compel or induce a worker by intimidation, coercion, promise, the imposition of a pecuniary or other penalty, threat, including a threat of dismissal, or by any other means, not to apply for or pursue an application that has been made for or receive compensation under this Part.



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■ No discriminatory action

19(2) No employer or person acting on behalf of an employer shall take or threaten to take discriminatory action against a person for reporting or attempting to report an alleged violation of this section to the board.

■ Offence and administrative penalty

19(3) Every person who contravenes this section commits an offence and is subject to an administrative penalty under subsection 109.7(1).



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Employer's Access to Information

101.(1.2)

- Notwithstanding subsection (1) and section 20.1 (medical reports), an employer or the agent of the employer who is a party to a reconsideration of a decision by the Board or an appeal to the Appeal Commission may examine and copy documents in the Board's possession as the Board considers relevant to an issue in the reconsideration or appeal and the information shall not be used for any purpose other than a reconsideration or appeal under this Act, except with the approval of the Board.



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Offense and Penalty

109.1(1) A person who

- (a) knowingly makes a false statement to the board affecting the person's entitlement to compensation;
- (b) deliberately fails to inform the board of a material change in circumstances affecting the person's entitlement to compensation, within 10 days of the commencement of the change;



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Offense and Penalty

- (c) knowingly makes a false statement to the board concerning an employer's report of payroll, or affecting the assessment of an employer;
- (d) knowingly makes a false statement to the board affecting a worker's entitlement to compensation;
or
- (e) deliberately fails to inform the board about a matter affecting a worker's entitlement to compensation;

commits an offence.



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WHEN DOES THE WCB RETAIN PRIVATE INVESTIGATORS?

- When required, the WCB may contract with an external investigations service that has been pre-qualified with the WCB to undertake surveillance activities.
- Situations where surveillance may be used include:



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- worker fails to report a return to work or actively attempts to conceal income from employment, while in receipt of benefits and place of employment is unknown.
- worker had recovered from the injury but misleads the WCB or is involved in activities outside the restrictions of the injury.
- case manager requests observations be made of claimant's daily activities for case management purposes.



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- *In accordance with Policy 22.20, WCB field staff do not ordinarily undertake surveillance activities.*
- *While staff specially trained for fraud investigations may conduct such surveillance, the preferred method is to contract with an external firm.*



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The selection of pre-screened investigation firms for individual investigations is determined by:

- cost
- availability in different locations
- timeliness
- resources required
- relative expertise of particular investigators



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Investigators selected by the WCB are advised of the WCB's requirements and of the following expectations:

- All investigations are to be conducted in a confidential and professional manner.
- Entrapment shall not be used and all relevant legislation, such as the Privacy Act, Petty Trespass Act and Private Investigators Act will be respected.



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- Investigators are to report on an ongoing basis throughout the investigation and at pre-arranged times.
- No opinions are to be offered and only observations are reported.



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INVESTIGATION RESULTS

- Investigation results are placed on the claim file upon completion of the investigation except for:
 - anonymous information which initiated the investigation
 - investigation results which are inconclusive



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- Information irrelevant to the management of the claim, but received as a result of the investigation is deleted from the investigation documentation prior to transfer to the claim file.
- The Board will use evidence/information provided by external parties where the source has provided permission for such use. Otherwise, the basis for any Board actions must be solely the result of the Board investigation into the matter.



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- Videotapes and other such materials which cannot physically be filed with the claim are identified in the investigation report(s) and on request, are made available to the claimant.
- The Board will advise the claimant of the outcome of an investigation and provide the claimant with an opportunity to respond to the information.



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FURTHER ACTION FOLLOWING INVESTIGATION

- After investigation, if there appears to be the elements of an offense against the Workers Compensation Act, the Special investigations Advisor recommends to the Director of Legal Services that the file be referred to the Attorney General for further consideration.
- If Counsel concurs, a Crown Brief is forwarded to the Attorney General, and specifically to a Crown Attorney assigned to handle WCB files.



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- The Crown will assess the case to determine whether charges should proceed.
- If so, the Special Investigation Advisor will prepare and lay the information, summon the defendant and subpoena witnesses as required.



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Further action

- As well certain sections of the Workers Compensation Act allow for the levying of administrative penalties as an alternative to prosecution. The SIU will make recommendations to levy administrative penalties to either the Director of Legal Services of the Vice-president of Rehabilitation and Claims, depending upon the section of the WCA violated.



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If the results of an investigation clear the claimant or do not substantiate the allegation, they are not placed on the claim file.



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Red Flags of Possible Abuse

- The following are potential indicators of abuse. Taken individually they may not be of concern; but, if two or more are present, the claim requires further investigation.
 - Un-witnessed accident
 - Accident occurred late Friday or early Monday
 - Rumours from co-workers that accident did not occur at work
 - Claimant cancels or fails to attend scheduled appointments



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- Claimant was involved in seasonal work
- Claimant was facing imminent lay-off
- Pre-accident employment may lend itself to under-the-table work
- Claimant never home when called
- Calls returned from other locations
- Calls consistently screened by answering machines or family members



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Asking Good Questions

- When asking about an incident, ask **open ended questions**:
 - “Tell me in detail what happened that day?”
 - “Tell me everything relating to the incident in the lunchroom?”
 - “Tell me about your last conversation with your employer?”



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- Use open ended clarifying questions:
 - “Could you tell me in more detail about how the accident occurred?”
 - “What specific work duties can you not do now?”
- Summarize responses to clarify or obtain more detail.
- Keeping asking yourself: “Did the person actually answer my question?” Don’t assume that they did.



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Questions ?



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