

# Board of Directors' Meeting of March 30, 2010

## Website Summary

### Policy 02-01, Part II, Application 3, Travel – Dual Purpose Travel

#### Decision

The Board of Directors approved the changes to the policy.

#### Rationale

Dual purpose travel includes situations where: a) a worker's travel has both a personal purpose and a business purpose; or b) a driver in the course of personal travel transports a passenger on a work-related errand. A policy amendment will clarify when workers are covered and when they are not covered.

The difficulties adjudicating dual purpose travel situations are illustrated by the decision of the Court of Appeal of Alberta in *Nabors Canada LP and the Workers' Compensation Board v. Appeals Commission and Lorrie Sitler*, 2006 AB. C.A. 371 (hereinafter referred to as *Nabors Canada*). The Court of Appeal found a driver, en route to his home, to be in the course of work-related travel because he was transporting a passenger found to be on work-related travel. Furthermore, the court found that the driver's work-related travel continued after dropping off the passenger and through the remainder of his trip home. The driver was covered even though he may not have known that the passenger's travel had a business purpose.

Consequently, *Nabors Canada* had the effect of:

- extending coverage to workers in situations not originally intended by the policy, and
- creating confusion as to when coverage ensues for drivers and passengers in dual purpose travel situations.

The WCB completed a 60-day Stage 2 consultation on proposed changes to Policy 02-01, from October 1, 2009 to November 30, 2009. Generally, the response to the changes was receptive and the weight of stakeholder opinion supported the changes. No major issues were raised that would impact implementation of the proposed changes.

The current policy fails to specify what portion of travel is covered when it is for mixed personal and business purposes. Given the current case law, there is also a risk that drivers on personal travel may be found to be in the course of employment merely because they are transporting a passenger on business travel.

The proposed amendments clarify that, when part of a worker's travel is for a personal purpose and part for a business purpose, coverage begins when the worker leaves

personal travel to commence a work-related deviation. Coverage continues until the worker completes the work-related deviation and returns to personal travel.

The amendments also specify that drivers who voluntarily transport passengers on business errands are not covered unless directed by the employer to undertake the travel. All other passengers on personal travel are not covered.

The amendments fill a gap in the policy and treat business deviations from personal travel in a manner consistent with how personal deviations from business travel are treated.

Given the rationale for the amendments, the weight of stakeholder opinion, and the lack of major issues raised during consultation it is recommended that the proposed amendments be approved.