

**THE WORKERS' COMPENSATION BOARD  
MEETING OF THE BOARD OF DIRECTORS  
MINUTES**

<b>DATE:</b>	March 22, 2021
<b>PLACE:</b>	Zoom Video Conference
<b>TIME:</b>	12:05 p.m. to 1:10 p.m.

**BOARD MEMBERS**

Erna Ference, Chair  
Mike Boyle, Member  
William Hnydyk, Member  
Brian McConkey, Member  
Shawna Miller, Member  
Mary Phillips-Rickey, Member  
Jane Sustrik, Member

**EXECUTIVE**

Trevor Alexander, President & Chief Executive Officer \*\*  
Tarick Ahmad, Chief Technology Officer \*  
Ron Helmhold, Chief Financial Officer \*  
Wendy King, Senior Vice President, Operations and Innovation \*  
Marcela Matthew, Vice President, Millard Health and Special Care Services \*  
William P. Ostapek, Secretary and General Counsel \*  
Roxy Shulha-McKay, Vice President, Employee and Corporate Services \*

**ALSO PRESENT**

Leslie Henkel, Board of Directors' Secretariat

\* excused for *in camera* sessions during items 5.1, 5.2 and 7

\*\* excused for *in camera* sessions during items 5.1, 5.2 and item 7 (part 2)

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The Chair called the meeting to order at 12:05 p.m.

1. **Agenda**

The agenda as distributed was approved.

2. **Proposed Motions**

The list of proposed motions was received for information.

3. **Minutes of the Meeting of February 2, 2021**

**MOTION**  
2021/02/06

It was moved that,

The minutes of the meeting of February 2, 2021 be approved.

**CARRIED**

**COMMITTEE REPORTS**

4. **Policy Committee**

4.1 **Maximum Compensable Earnings – Principles**

Changes to maximum compensable earnings as a result of Bill 47 were discussed with Policy Committee at the meeting on November 23, 2020. As a result of the discussion, management committed to consulting on the approach to setting maximum compensable earnings (MCE) and subsequently drafted a principle to reflect the approach.

**Principle: Maximum Compensable Earnings**

The Board of Directors sets maximum compensable earnings annually to achieve coverage for the full wages of at least 90 per cent of workers in the province. The annual amount will change when the percentage of workers covered drops below 90 per cent.

This new principle was included as an item in the online consultation that took place from January 15 to February 15, 2021 and was discussed by the Policy Consultation Advisory Group on January 22, 2021.

**MOTION**  
2021/02/07

It was moved that,

The Board of Directors approve proposed new principle, number 13, dealing with how maximum compensable earnings are set by WCB.

**CARRIED**

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**4.2 Policy 04-02, Part II, Application 4,  
Continuation of Employment Health Benefits**

Bill 47, detailing changes to the *Workers' Compensation Act*, received Royal Assent on December 9, 2020. Amendments included the repeal of section 88.2, which provided that employment health benefits must continue to be provided to injured workers in specific circumstances.

The absence of a specific transitional provision in Bill 47 means that the provisions of the *Interpretation Act* govern the transition. Under s.35 of the *Interpretation Act*, WCB must continue to enforce rights that were “acquired, accrued, accruing or incurred” during the effective dates of s.88.2.

Public consultation was not required as the legislation is prescriptive, and the policy amendments simply reflect the new legislative requirements.

**MOTION**  
2021/02/08

It was moved that,

The Board of Directors approve the draft policy, which reflects updates to the *Workers' Compensation Act* that come into effect April 1, 2021.

The policy revisions provide:

- Section 88.2 of the *WCA*, concerning the continuation of employment benefits, came into force on September 1, 2018, and was subsequently repealed as of April 1, 2021. Although s.88.2 has been repealed, it still applies to claims with dates of accident from September 1, 2018, to March 31, 2021, inclusive. Employer and worker rights, obligations, and penalties for non-compliance provided for in the section continue for these claims as though the section were still in force.

**Effective Date:** September 1, 2018, applying to all claims with a date of accident from September 1, 2018, to March 31, 2021, inclusive.

CARRIED

**4.3 New Policy 04-11, Duty to Cooperate, and  
Repeal of Obligation to Reinstate Provisions**

Bill 47, detailing changes to the *Workers' Compensation Act*, received Royal Assent on December 9, 2020. Amendments included the repeal of section 88.1, concerning the obligation to return injured workers to work and the addition of sections 89.1, 89.2 and

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89.3, concerning duties of workers to mitigate and cooperate and duties of employers to cooperate.

Under s.89.1, workers have a duty to take all reasonable action to mitigate any earnings loss caused by work injury and, if circumstances require it, to cooperate with WCB in the development of vocational or other rehabilitation plans.

Under s.89.2, employers have a duty to cooperate with the worker and WCB in efforts to achieve the worker's early and safe return to work.

A draft Policy 04-11, *Duty to Cooperate*, was posted for online consultation from January 15, 2021, to February 15, 2021. Public consultation was not required regarding the repeal of s.88.1 as the legislation is prescriptive, and the policy amendments simply reflect the new legislative requirements.

**MOTION**  
2021/02/09

It was moved that,

The Board of Directors approve the draft policies, which reflect updates to the *Workers' Compensation Act*. Legislative changes include the additions of sections 89.1, 89.2, and 89.3 concerning duties to cooperate for workers and employers, and the repeal of section 88.1, concerning the obligation to return injured workers to work.

Policy revisions include:

- A new Policy 04-11, *Duty to Cooperate*, related to specific cooperation requirements under the *WCA* including reporting requirements, attendance and participation in medical treatment, and a duty to cooperate in return to work,
- Revisions to various policies related to the obligation to reinstate. Section 88.1 of the *WCA*, concerning the obligation to return injured workers to work, came into force on September 1, 2018, and was subsequently repealed as of April 1, 2021. Although s.88.1 has been repealed, it still applies to claims with dates of accident from September 1, 2018, to March 31, 2021, inclusive. Employer and worker rights, obligations, and penalties for non-compliance provided for in the section continue for these claims as though the section were still in force.

**Effective Date:** The effective date for all policies is April 1, 2021, except for Policy 04-05, Part II, Applications 2 and 3, which has an effective date of September 1, 2018, applying to all claims with a date of accident from September 1, 2018, to March 31, 2021, inclusive.

CARRIED

4.4 **Policy 04-05, Part II, Application 4, Egregious Conduct**

Under Bill 47, a new subsection was added to s.56 of the *Workers' Compensation Act* that may affect the benefits WCB pays an injured worker when the employer withdraws modified work or terminates the worker during modified work. The existing s.56(14) directs WCB to put the worker on full wage loss benefits in those circumstances. The new s.56(15.1) provides an exception to that rule, so that when an employer withdraws modified work or terminates the worker because of the worker's egregious conduct, s.56(14) does not apply. Instead, WCB is directed to pay benefits in accordance with s.56(13)(a) as if the worker was continuing to work and not place them back on full wage loss benefits. This change has a serious impact on the worker's financial support from WCB. To accommodate this exception, revisions to Policy 04-05, Part II, Application 4, which speaks to modified work in general, are necessary.

WCB posted a draft policy describing egregious conduct for a 30-day online consultation on January 15, 2021.

Section 56(15.1) puts WCB in the position of defining egregious for all employment situations and it must be applied to all workers consistently – regardless of the varying policies and procedures in place at various worksites. To assist in adjudication, the policy creates a framework which focuses on both the behavioural and situational context and sets out a series of factors for defining egregious conduct.

**MOTION**

2021/02/10

It was moved that,

The Board of Directors approve the proposed revisions to Policy 04-05, Part II, Application 4, to address legislative changes contained in s.56(15.1) of the *Workers' Compensation Act*.

**Effective Date:** January 1, 2021.

CARRIED

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## Board of Directors

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### 4.5 **Bill 47 Non-substantive Changes**

In accordance with Board Resolution 94/02/09 (inconsequential amendments), Strategic Management Council approved non-substantive changes related to Bill 47 legislative amendments.

### 4.6 **Fairness Review Mandate**

Under Bill 47, the external Fair Practices Office (FPO) will close. All the services of the Fair Practices Office are transferring to other existing agencies including WCB and the Appeals Commission. To replace FPO services, Bill 47 enacted new sections 23.1 and 23.2 of the *Workers' Compensation Act (WCA)*. Section 23.1 requires the Board of Directors to designate an employee of the WCB as the Fairness Review Officer, and to define the role and mandate for that position.

The mandate of the FRO is to investigate issues of fairness in service delivery to workers, employers, or dependants (including their authorized representatives) who feel they have been treated unfairly in their interactions with WCB. Thorough and timely investigations will be completed through additional staff in the designated Fair Process Review Centre (FPRC) in order to recommend solutions to the FRO.

If the FPRC finds that applicable standards of fairness were not met, the FRO will make recommendations for action to WCB on a specific claim or account and, if necessary, will raise a systemic-level recommendation to the BoD or WCB management. The FRO's recommendation function helps to continually improve administrative processes for all stakeholders of the system.

The mandate also gives a comprehensive overview of:

- the legal **jurisdiction** of the FRO, including its limitations;
- the **independence** of the FRO and how their reporting relationship to the BoD ensures that the FRO and FPRC can fulfill their mandate in a neutral, impartial and independent manner;
- the **goals** for service delivery and improvement of the workers' compensation system; and
- clear definitions for the **roles** of members of the system, specifically the BoD, FRO and the staff who will investigate fairness concerns.

The FRO will report functionally to the BoD and, much like the Chief Internal Auditor, the FRO will maintain an administrative reporting relationship with the CEO.

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**MOTION**  
2021/02/11

It was moved that,

That the Board of Directors approve:

- the Mandate of the Fairness Review Officer and the Fair Process Review Centre, which will operate under the supervision of the Fairness Review Officer pursuant to s.23.1 of the *Workers' Compensation Act*, and
- the non-substantive revisions to the Code of Rights and Conduct.

CARRIED

## 5. **New Business**

### 5.1 **Fairness Review Officer**

Effective April 1, 2021, Bill 47 enacted new sections 23.1 and 23.2 of the *Workers' Compensation Act (WCA)*. Section 23.1 requires the Board of Directors to designate an employee of the WCB as the Fairness Review Officer (FRO), and to define the role and mandate for that position. The approved mandate of the FRO provides the overarching guidance for the role of the FRO; this topic summary further outlines the skills, knowledge and attributes of the right candidate.

The core attributes and skills required from the FRO are outlined in the proposed competency matrix. This matrix has been informed by best practice research and resources, including:

- Interjurisdictional scan of fairness review functions
- Alberta Ombudsman's Administrative Fairness Guidelines
- Government of Alberta's Competency Matrix and Definitions for Agencies, Boards and Commissions
- Korn Ferry's FYI competency definitions (used by WCB for all levels)
- BoD Competency Matrix and Profile

**MOTION**  
2021/02/12

It was moved that,

That the Board of Directors approve the draft qualifications and competency matrix for the Fairness Review Officer, pursuant to s.23.1 of the *Workers' Compensation Act*.

CARRIED

### 5.3 **Fairness Review Officer Candidate Designation**

Effective April 1, 2021, Bill 47 enacted new sections 23.1 and 23.2 of the *Workers' Compensation Act*. Section 23.1 requires the Board of Directors to designate an employee of the WCB as the Fairness Review Officer. The approved mandate and

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qualifications of the FRO provide the overarching guidance for the role of the FRO, including the skills, knowledge and attributes of the right candidate.

In assessing the skills, strengths and experience required for the new FRO, it is management's opinion that Rebecca Hayes would be the appropriate and ideal candidate for this role.

**MOTION**

2021/02/13

It was moved that,

The Board of Directors designate Rebecca Hayes as the Fairness Review Officer pursuant to s.23.1 of the *Workers' Compensation Act*.

CARRIED

6. **Meeting Evaluation**

The members were asked to complete the meeting effectiveness self-assessment form.

7. **In Camera**

The Board of Directors held an *in camera* session prior to the vote on items 5.1 and 5.2 and a further *in camera* session in two parts prior to the conclusion of the meeting. In the first portions of the final *in camera* session, all of senior management was excused, except the President. During the second part, the President was also excused. The Board Secretariat was present for all of the *in camera* sessions.

There being no further business, the meeting ended at 1:10 p.m.