



Stakeholder Feedback

Online consultation on the topic below was posted from January 15 to February 15, 2021. The verbatim comments received by WCB-Alberta during online consultation are reproduced below.

Bill 47 – Egregious conduct – Policy 04-05, Part II, Application 4

<i>Stakeholder</i>	<i>Category</i>	<i>Comments</i>
Paragon Ventilation Ltd.	Employer	<p>This would be a welcome change to your policies. We are the construction industry and safety is first and foremost, and coming to work "fit for duty" is paramount considering the nature of our work. Fit for duty would include not being impaired while at work.</p> <p>In 2018 we had two claims for employees who had incidents caused by being impaired at work (proven by post- incident drug tests). Both of these employees were offered modified work to but neither could pass a return to work drug test, thus the modified work offers were rescinded.</p> <p>In both cases, WCB accepted the claims regardless of the worker's unwillingness or inability to comply with our safety policies. Both cases reached the MPCC so we are now paying a surcharge as a result.</p> <p>We would consider this egregious conduct, and would expect that the WCB not continue to support the workers in this case.</p>
STEP Energy Services	Employer	<p>Policy 04-05 - Egregious conduct - noted I section 5.0 - benefits - perhaps a reference to the "maximum compensable wage rate" could be added to clarify the top end revision. We also have concerns over the reinstatement or continuation of wages due to circumstances beyond the employers control - in that the compensated amount should not be applied to the employers experience rating as compensation paid.</p> <p><i>[This feedback was submitted under the Fairness Review consultation. It is being included here as it relates to egregious conduct.]</i></p>
WestJet	Employer	<p>"Egregious" is defined in draft policy using the Canadian Courts definition and specific examples of what would constitute egregious are cited. This is not an all-inclusive list and should be expanded to include additional examples, relevant to workers' compensation context.</p> <p>Consideration should be given to expanding the definition of</p>

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		<p>“egregious” for purposes of this policy. If a termination or suspension is upheld under Labour Standards, it should be upheld by WCB as being egregious conduct as well.</p> <p>If an employee is terminated/suspended with cause, it’s likely because the employee violated a term/condition within their employment contract and against our internal policies. WCB needs to support employers by trusting our decision to terminate/suspend subsequently meets the threshold for egregious. In most cases, a termination for cause has already been reviewed by employer legal representatives. In the event there’s a delayed legal decision confirming the act wasn’t egregious, it would be up to the worker to follow up with WCB on any benefit eligibility.</p> <p>Is a decision on whether something is deemed egregious appealable? If so, this should be stipulated in policy.</p> <p>How does the new policy on egregious conduct align with, or against policies on removing oneself from the course of employment and/or serious and willful misconduct? Some of the examples used are the same as in Policy 02-01 Part II Application 6. Can this distinction be made in policy?</p> <p>Can more be stated about worker responsibility? It should be clear there is an obligation on the worker to continue following workplace policies, safety rules, professional standards, etc., whether on modified duties or not.</p> <p>The policy needs to recognize any differences in accepted standards or definitions between federally and provincially regulated employers.</p> <p>The policy should be explicit in stating a worker violation which doesn’t meet the test for egregious conduct will be addressed under Duty to Cooperate.</p> <p>Page 4 of 11 - draft policy indicates WCB does not consider it a withdrawal of modified work if the employer suspends the worker for disciplinary reasons, provided the period of suspension is consistent with the employer’s normal practices. Policy should also include the WCB will only look at the employer’s specific policies and practices to verify they in fact exist. WCB should not judge the appropriateness of the practice itself.</p> <p>Page 6 of 11 - Benefits should not be paid to the worker by WCB until the investigation is complete and a decision rendered.</p>

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<p>Northland Forest Products Ltd.</p>	<p>Employer</p>	<p>Egregious Conduct</p> <ul style="list-style-type: none"> • “Egregious” is defined in draft policy using the Canadian Courts definition and specific examples of what would constitute egregious are cited. It was noted this is not an all-inclusive list and there are other actions that could be deemed suitable reason for suspension or termination. We believe the list should be expanded to include additional examples that will be relevant in the workers’ compensation context to better inform the parties. • Consideration should be given to expanding the definition of “egregious” for purposes of this policy. If a termination or suspension will be upheld under labour standards it should be upheld by WCB as being egregious conduct also. We do not support using the drug and alcohol violation as an example of what is not egregious conduct. This is likely to be one of the more common situations encountered and it is imperative that this policy align with and support other statutes and requirements (e.g. a safe workplace). • If something occurred the Employer thought was “egregious” but it is not cited as a specific example under policy, can the employer provide details to WCB and request an opinion on whether the behavior would meet the threshold of egregious conduct for WCB purposes? This would avoid a situation where a worker was terminated only to learn after the fact WCB is not satisfied the behavior was egregious. • Is a decision by the WCB that an action is not egregious appealable? If so, this should be noted in the policy. • The policy should be explicit in stating that a worker violation that does not meet the test for egregious conduct will be addressed under Duty to Cooperate. • How does this new policy on egregious conduct align with the current policies on removing oneself from the source of employment and serious and willful misconduct? Some of the examples used are the same as in Policy 02-01 Part II Application 6. Perhaps a question could be added to address the continuum. • The policy needs to recognize any differences in accepted standards or definitions between federally and provincially regulated employers. • Page 5 of 11, #8 - we suggest that the context around termination of modified work be changed. For this exemption, the focus should more clearly be on worker responsibility and the behaviour and actions of the worker as being the reason modified work ending. It must be clear that there is an obligation on the worker to follow workplace policies, safety rules, professional standards, etc. Employers rules/rules of

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		<p>employment/licensing body rules must be followed at all times whether a worker is on modified duties or not.</p> <p>The WCB is not in a position to judge the merits of the workplace rule, only to verify that a rule exists. For example, driving a passenger vehicle has far less risk associated with it than driving a bus full of passengers or a truck hauling hazardous materials. The employer is in the best position to judge the risk and consequences, and determine whether the behaviour is egregious. This is recognized in the health and safety realm. As an illustration, a minimum safety standard could be that a 6-foot perimeter be maintained, but the employer safety rule is a 10-foot perimeter. OHS will recognize and accept that 10 feet is the standard to be met on that employer’s site (not the minimum standard). WCB should also recognize and accept established employer standards and the consequences of violation by a worker.</p> <ul style="list-style-type: none"> • Page 4 of 11 - draft policy indicates the WCB does not consider it a withdrawal of modified work if the employer temporarily suspends the worker for disciplinary reasons, provided the period of suspension is a reasonable period consistent with the employer’s normal practices. Policy should indicate the WCB will only look at the specific employer’s policies and practices in determining what is reasonable. The role of the WCB is not to judge the appropriateness of the employer practice, only to verify that a practice exists. • Page 6 of 11 - benefits should not be paid to the worker until the investigation is complete and a decision made as to what is reasonable. Benefits should only be paid retroactively if an investigation confirms the employer decision is not reasonable. • Page 7 of 11 - the discussion draft includes an example that a drug and alcohol test being positive would be interpreted grounds for disciplinary action, but it is not, by itself egregious but being severely intoxicated in the workplace and causing serious injury to another worker “could” be egregious conduct. Again, we have concerns with using this example as stated. We also encourage the WCB to refrain from references to intoxication; impairment versus fitness for work are more appropriate when dealing with substance use in a broader sense. In many cases if a worker is involved in an onsite incident, in accordance with employer policy, a worker will be tested on site to determine if there is a case for drugs or alcohol being a potential cause of the incident. If the person was in an incident causing property damage and/or injury and it is determined that being impaired at the time of the incident is partially responsible for the damages or injuries this should be considered egregious. What would normally happen in this case is that a worker is immediately suspended once the results are

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		<p>verified by a Medical Review Officer, and they are referred to a Substance Abuse Professional. They would be off work with no pay until such time as they have completed all treatment recommendations. If WCB then pays that worker while on suspension, it creates an unfair system for the person on WCB vs. the person who is not on WCB. We agree with the other examples, but the drug and alcohol issues need to be looked at more closely so that there is less room for interpretation either by the employee, the employer or the WCB.</p> <ul style="list-style-type: none"> • Page 8 of 11, second last bullet - we question why the impairment needs to “visibly apparent” and propose removal of these words. Actions while impaired that lead to serious environmental issues should also be cited as an example. Wording should also be changed to include near miss incidents that could result in severe injury or death; current wording implies that someone else was actually endangered. • Page 8 of 11 last bullet - we propose removing the work “reasonably”. As noted earlier, WCB is not in a position to judge the merits of an employer’s safety rule. • It is also critical that there are sufficient resources available within the WCB to support decision makers in making determinations of egregious conduct. They should have access to an internal team (i.e. the legal department) who can assist to avoid a situation where case managers are making decisions outside their area of expertise.
ITF	Employer Association	<ul style="list-style-type: none"> • “Egregious” is defined in draft policy using the Canadian Courts definition and specific examples of what would constitute egregious are cited. It was noted this is not an all-inclusive list and there are other actions that could be deemed suitable reason for suspension or termination. We believe the list should be expanded to include additional examples that will be relevant in the workers’ compensation context to better inform the parties. • Consideration should be given to expanding the definition of “egregious” for purposes of this policy. If a termination or suspension will be upheld under labour standards it should be upheld by WCB as being egregious conduct also. We do not support using the drug and alcohol violation as an example of what is not egregious conduct. This is likely to be one of the more common situations encountered and it is imperative that this policy align with and support other statutes and requirements (e.g. a safe workplace).

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Alberta Forest Products Association (AFPA)	Employer Association	<p>“Egregious” is defined in draft policy using the Canadian Courts definition and specific examples of what would constitute egregious are cited. It was noted this is not an all-inclusive list and there are other actions that could be deemed suitable reason for suspension or termination. We believe the list should be expanded to include additional examples that will be relevant in the workers’ compensation context to better inform the parties.</p> <ul style="list-style-type: none"> • Consideration should be given to expanding the definition of “egregious” for purposes of this policy. If a termination or suspension will be upheld under labour standards it should be upheld by WCB as being egregious conduct also. We do not support using the drug and alcohol violation as an example of what is not egregious conduct. This is likely to be one of the more common situations encountered and it is imperative that this policy align with and support other statutes and requirements (e.g. a safe workplace). • If something occurred the Employer thought was “egregious” but it is not cited as a specific example under policy, can the employer provide details to WCB and request an opinion on whether the behavior would meet the threshold of egregious conduct for WCB purposes? This would avoid a situation where a worker was terminated only to learn after the fact WCB is not satisfied the behavior was egregious. • Is a decision by the WCB that an action is not egregious appealable? If so, this should be noted in the policy. • The policy should be explicit in stating that a worker violation that does not meet the test for egregious conduct will be addressed under Duty to Cooperate. • How does this new policy on egregious conduct align with the current policies on removing oneself from the source of employment and

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Health Sciences Association of Alberta	Labour Union	<p>Egregious Conduct:</p> <p>I believe the draft policy covers the intent and meaning of egregious conduct. The policy provides a balanced prospective for both workers and employers.</p> <p>However, I would like to see the following reflected in the policy.</p> <p>#10 of the policy under the examples of behaviours that could be considered egregious conduct. Bullet point 6 states “visibly apparent impairment while at work, endangering the safety of the worker and others, where there is no mitigating circumstance such as addiction requiring accommodation”.</p>

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		<p>There also needs to be a bullet point to include mental health issues.</p> <p>There should be a reference to also incorporate protected grounds covered under the Alberta Human Rights.</p> <p>Additional Comments:</p> <p>Employers may or may not have policies around egregious conduct and WCB does not have the authority to obligate employers to have specific policies. However, since grants are allocated to safety associations, distribution of accident fund surplus, or grants offered for different programs, we are wondering if there is a way for WCB to ensure employers understand and comply with the WCB policy for egregious conduct.</p> <p>It is important for this not to be used as a reason to terminate. It needs to be validated and substantiated.</p> <p>Privacy concerns need to be considered when sharing information.</p> <p>We need to remember and consider there are other legislations such as Employment and Labour Standards that govern such circumstances and terminations.</p> <p>What will happen when a terminated employee sues an employer for wrongful dismissal due to egregious conduct and a decision is rendered in favour of the employee.</p> <p>The Meredith Principles outline a no-fault benefit. How will this policy align with these principles.</p>
Individual	Other	<p>Who decides what egregious conduct is. If it is the employer, there would have to be a thorough investigation to ensure a worker is not accused of doing something they never did. WCB fails miserably by believing an employer over a worker and rarely if ever performs a thorough investigation.</p>
Individual	Other	<p>THANK YOU for finally addressing the egregious conduct of workers while on benefits!!! For far too long some workers have been allowed to believe that they are exempt from the normal rules of the workplace and discipline policies because they thought they were protected by WCB (and unfortunately - they were right in many cases!!!).</p> <p>Please ensure that case managers actually support / enforce this policy</p>

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		and that the bar isn't set so high so as to allow such extreme behaviour to be unwittingly encouraged by the system as it has in the past!!!
BCL Consulting Group Inc.	Other	<p>Under draft Policy 04-05, Part II, Application 4, Question 9, we suggest more clearly defining what is meant by "appropriate benefits" in the final paragraph of Page 6 of 11.</p> <p>It is our position that if a worker is terminated due to egregious behavior, any costs accrued to the file, that would have otherwise not accrued had the worker's employment not been terminated, should be charged to industry and not borne by the employer.</p>
Individual	Worker	It would be nice if this policy spoke to permanent disability and not just temporary. There should be transparency on what happens with permanent injuries. I expect VR payments would continue. Also, it may be easier to transfer/administratively flip a non-permanent injury to permanent. Employers should be aware of this to keep these workers job-attached. Also if there was a process to try to get the employer's to re-hire the workers after a 'cooling period' or maybe if the worker requires training before returning to work. This would be an internal process/responsibility but the WCB helps with initiatives like that.
Individual	Worker	From an employer standpoint, this policy has potential to be useful when appropriate employee termination occurs. Unfortunately this policy currently lacks what WCB will define as egregious conduct and therefore leaves it to the interpretation of the claim owner. If the criteria has been met, to terminate an employee either by human rights, employment standards, collective agreements, etc. then WCB should be in agreement. Worker should only be entitled to medical benefits and not TD-01 or TD-02 if they have removed themselves from modified work. The policy also does not clearly state what this will address - will this include safety absolutes and violations; harassment and bullying; employment violations such as alcohol and drug policy, etc. Policy has good intentions, just needs to be defined better.
Individual	Worker	<p>(13)(b) if the worker refuses the work, the Board shall continue to pay periodic compensation to the worker in accordance with clause (a) as if the worker had accepted the work. So, if the worker refuses the work because he doesn't want to work or feels he/she is above the work or for whatever reasoning they shall continue to get compensation? This is not clear to me and is open to interpretation to much.</p> <p>(14) Notwithstanding subsection (13), if the worker' employment is subsequently terminated or the work is withdrawn by the employer, the Board shall pay compensation for temporary total disability until the Board determines the worker is capable of other suitable employment. I believe that if they are terminated for 'just cause' that this should not</p>

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		<p>fall on the employer and the worker shall not get compensation until other 'suitable employment' is there. This is not clear to me and is open to interpretation to much. In my opinion, the thoughts on this one are that if I am hurt that I can do whatever I want whenever I want which is not giving the right interpretation.</p> <p>(15) Subsection (13) applies regardless of whether the work is in an industry to which this Act applies. (15.1) Notwithstanding subsections (13) and (14), if the worker's employment is subsequently terminated, or the work is withdrawn by the employer, due to the worker's egregious conduct the Board shall continue to pay periodic compensation to the worker in accordance with section 13(a) as if the worker was continuing to work. So if an employee behaves badly at work, an employer really can't do anything about it? If we let the worker go, he will stay on WCB and our rates will continue to rise or we keep him and worry about our other workers who follow the rules and abide by what we are asking to meet the OH&S legislation, Human Rights as well as WCB requirements or our rates will be high for at least 3 years as a result of the one individual?</p> <p>Yes WCB is for the worker, but it should also look out for the companies. Most companies don't want to loose the hard working individuals and work hard to have a return to work plan in place and work with the WCB and doctors to do what is best for the individual, however I have seen individuals take advantage of both WCB and the employer because some individuals feel that it is easy money; a guaranteed income if cut backs are coming; way to may an income on shorter jobs; don't have to do what had to before; etc.</p>

Online consultation posted from January 15, 2021, to February 15, 2021.