

THIRD-PARTY ACTIONS

OVERVIEW:

When a worker is injured or killed through the fault or negligence of someone who, under the *Workers' Compensation Act (WCA)*, is neither a worker nor an employer (called a "third party"), a civil action may be possible under s.22 of the *WCA*, in addition to the compensation benefits paid under the claim.

1. *When does a third-party action arise?*

There are two criteria:

- the accident must entitle you or your dependants to compensation under the *WCA*, and
- the accident must be caused by the fault or negligence of a third party who is not a participant in the workers' compensation system in Alberta.

Examples of circumstances in which third-party actions may be possible include: motor vehicle accidents, slips and falls on personal property, dog bites, product liability, airplane and helicopter crashes.

2. *What rights do I have and what rights does WCB have in a third-party action?*

When you have a work accident, WCB is required under the *WCA* to pay benefits for your injuries that resulted from the accident. Because of this requirement, any civil action for damages resulting from those injuries “vests” or is transferred to WCB. This means WCB may advance, negotiate, and settle the third-party action.

As the claimant, you:

- may select the lawyer who is retained to pursue the action (see Question 6),
- will be consulted before any settlement is made (see Question 7),
- will receive part of the proceeds (see Question 3), and
- are not responsible for paying any court costs or damages awarded against you (WCB will pay the costs on your behalf).

THIRD-PARTY ACTIONS

3. ***What happens to any money received as a result of the third-party action?*** WCB distributes the money according to a formula set out in the *WCA* and the *Workers' Compensation Regulation (WC Regulation)*.

Generally, when WCB brings the action, you or your dependants will receive 25% of the settlement, after payment of legal disbursements and any costs or damages awarded against you.

After you are paid 25% of the balance, WCB pays the legal fees from the remaining funds and recovers the compensation costs it has paid or may pay, including the capitalized costs of any permanent disability awards.

You will receive any excess funds remaining after all costs have been paid.

For additional information, contact the Legal Services Department at WCB-Alberta.

4. ***If I am partially at fault in the third-party action, will it affect the distribution of a settlement or judgment?*** Funds recovered in third-party actions are distributed according to the formula set out in the *WCA* and the *WC Regulation* in all cases. Just as fault and negligence on the worker's part are not considered in the payment of benefits, they are not considered in determining the amount to be recovered by WCB from the proceeds of the civil action.

5. ***If the lawsuit is settled, am I still eligible for WCB benefits?*** Yes, you are still eligible for any WCB benefits resulting from your work-related injury. The settlement does not affect your eligibility for benefits; however, if an excess was paid to you (see Question 3), it will affect the way in which future benefits are paid.

If an excess was paid to you, and at a later date future WCB benefits become payable (benefits that were not included in WCB's cost recovery), WCB will offset the excess paid to you from the benefits payable at that future date.

THIRD-PARTY ACTIONS

6. ***Who does the legal work?*** WCB has a staff of lawyers and paralegals to handle third-party actions. However, if you prefer, a private lawyer may be appointed to handle the action. It is your choice whether to use a WCB lawyer or a private lawyer.
- You may select the private lawyer retained to pursue the action. Private lawyers handling third-party actions must be approved by WCB Legal Services Department and be retained and instructed by WCB on terms satisfactory to WCB.
7. ***Will I be involved in the lawsuit process?*** Although the lawyer who handles the action, whether an in-house lawyer or a private lawyer, will consult with you, WCB has final say on all matters relating to the action. WCB will generally not settle an action without your agreement.
8. ***Can I just sue the other driver and not report the accident to WCB, or sue the other driver and withdraw my WCB claim?*** No, if you sustain a work-related personal injury you have a statutory obligation to report the accident to both your employer and WCB. The *WCA* applies on a mandatory basis and replaces any right of action you or your dependants may have in respect of an injury or death with no-fault statutory benefits. Where an action is possible, that action is transferred to WCB.
9. ***Does the WCA allow me to pay back the claim costs to date and, by not taking any more benefits, take over the third-party action?*** No, the *WCA* requires WCB to pay compensation in cases of work-related injury or death. Neither workers nor employers can "opt out" of the legislative requirements.
10. ***What happens if the compensable accident occurs outside of Alberta?*** When you have a compensable accident outside Alberta and elect to claim compensation under the Alberta *WCA*, you (or your dependants) may also have a cause of action in the jurisdiction where the accident happened. WCB has the same rights regarding out-of-province accidents as it has regarding accidents that happen in Alberta.

For more information on out-of-province accidents, see Policy 06-01, *Employers and Workers*.

THIRD-PARTY ACTIONS

11. *What are my responsibilities in a third-party action taken under the WCA?*

It is in your financial interests to fully co-operate with WCB and the lawyer appointed to handle the action, during all phases of the action. For example, you may be asked to provide information or documents, or to attend meetings, examinations for discovery, or medical examinations.

If you do not cooperate, WCB may exercise its discretion to withhold a portion of the proceeds or temporarily suspend compensation payments while you are not cooperating; however, WCB will not suspend your medical aid benefits.

12. *What happens if my employer doesn't want me to cooperate in the lawsuit?*

It is unlawful for an employer to directly or indirectly impede, hinder, or dissuade a claimant from participating in or cooperating with WCB in pursuing a third-party action. If an employer does so, it is an offence that may be prosecuted in Provincial Court.

If your employer engages in such conduct, you should report it immediately to the lawyer handling the action.

13. *Where can workers or employers get additional information on third-party actions?*

Additional information on third-party actions is available in ss.21, 22, 22.1, and 23 of the *WCA*, and in ss.20.1, 20.2, and 21 of the *WC Regulation*.

For more detailed information and advice, contact the Legal Services Department of the Workers' Compensation Board-Alberta.