

Frequently Asked Questions (FAQs) about Discriminatory Action under the *Workers Compensation Act*

1. What is discriminatory action under the *Workers Compensation Act*?

Discriminatory action under the *Workers Compensation Act* refers to employer or union retaliation (or the threat of retaliation) against a worker because the worker raised occupational health or safety concerns.

Discriminatory action includes:

- Suspension, layoff, or dismissal
- Demotion or loss of opportunity for promotion
- Transfer of duties
- Change of location of workplace
- Reduction in wages
- Change in working hours
- Coercion or intimidation
- Imposition of any discipline, reprimand, or other penalty
- Discontinuation or elimination of the job of the worker

2. When is discriminatory action prohibited?

An employer or a union (or a person acting on their behalf) must not take or threaten to take discriminatory action against a worker for:

- Exercising a right or carrying out a duty under the occupational health and safety provisions of the *Workers Compensation Act* or the Occupational Health and Safety Regulation
- Testifying in any matter, inquiry, or proceeding under the *Workers Compensation Act*, the *Coroners Act*, or on an issue related to occupational health or safety
- Giving information about conditions affecting the occupational health or safety of any worker to an employer, another worker, a union representing the worker, or an officer or other person administering the occupational health and safety provisions of the *Workers Compensation Act*

Note: In the remaining questions, when the term “employer” is used, it means either the employer or the union, whichever the complaint is against.

3. If a worker has a complaint about discriminatory action, what should the worker do?

A worker who believes they have been subjected to discriminatory action (or threatened with discriminatory action) relating to their occupational health or safety activities may phone or write to the nearest office of WorkSafeBC. For example, a worker who has been disciplined for reporting a safety hazard or for refusing to perform unsafe work can make a complaint to WorkSafeBC.

See the last page for the list of offices. Usually some details about the complaint will be taken on the phone along with a number for a WorkSafeBC Prevention Officer to reach the worker.

4. Can a union worker file a grievance with their union about discriminatory action?

A union worker has the option of filing a grievance with their union about the employer’s discriminatory action, instead of filing a complaint with WorkSafeBC. A worker cannot pursue both a grievance with their union and a complaint with WorkSafeBC about the same matter.

5. What is a failure to pay wages complaint under the *Workers Compensation Act*?

“Failure to pay wages” has a specific meaning under the *Workers Compensation Act*. These complaints are limited to situations where the employer has not paid a worker for:

- Time off work by members of joint health and safety committees
- Educational leave for joint health and safety committee members
- Accompanying a WorkSafeBC Prevention Officer on a safety inspection
- Lay off resulting from WorkSafeBC issuing a stop work order

6. What happens when a worker makes a complaint to WorkSafeBC?

Once a worker contacts WorkSafeBC, a Prevention Officer will contact the worker to:

- Discuss details of the complaint
- Explain the process for dealing with discriminatory action or failure to pay wages
- Answer questions

After discussion with the worker, the Prevention Officer will assess if the complaint seems to be “in scope,” which means there is sufficient information to indicate discriminatory action may have occurred. An assessment that a complaint is in scope is not a formal determination that discriminatory action took place. That determination is made solely by an Investigations Legal Officer (see question 12).

7. What happens if the complaint appears to be “in scope”?

Once the Prevention Officer assesses that the complaint appears to be “in scope,” the worker may wish to proceed with a formal complaint.

To do this, the worker must file a written complaint. The Prevention Officer can provide a form for the worker to use, or another written format can be used. The worker must also give written consent for WorkSafeBC to contact the employer.

8. What happens if the complaint appears to be “out of scope”?

“Out of scope” means that the employer’s actions are not covered by the discriminatory action sections of the *Workers Compensation Act* (see question 2). To assist the worker in deciding whether to proceed with a formal complaint, the Prevention Officer will advise the worker of the reasons the complaint appears to be out of scope. For example, an allegation about sexual, racial, or other discrimination is out of scope.

The worker may then:

- Choose not to proceed with the complaint, or
- Pursue the complaint by filing a written application, which the worker can provide to either the Prevention Officer or the Compliance Section of WorkSafeBC.

9. When is the employer told about the complaint?

The Prevention Officer will contact the employer when:

- The complaint appears to be “in scope”
- The worker has given written consent allowing WorkSafeBC to contact the employer

The Prevention Officer will explain the purpose of the inquiry and describe the process. The burden of proof is on the employer to show that there has been no discriminatory action or failure to pay wages. The employer can provide the Prevention Officer with information they feel is relevant to the question of scope and to the inquiry generally.

The employer is required to cooperate fully with the Prevention Officer in the investigation of complaints.

10. Is there a time limit for filing a complaint?

If the complaint is about a failure to pay wages under the *Workers Compensation Act*, the worker must file a written complaint within 60 days after the wages became payable. For all other complaints of discriminatory action, such as dismissals from work, the worker must file a written complaint within one year of the alleged discriminatory action.

11. Can a complaint be settled or withdrawn?

The parties are free to settle a complaint between themselves. If they do not reach a settlement, the Prevention Officer will forward all information gathered to the Compliance Section, where formal mediation may also be offered.

The worker may also withdraw their complaint at any time.

12. Who ultimately decides if discriminatory action took place?

Investigations Legal Officers of the Compliance Section adjudicate discriminatory action complaints.

Once the Compliance Section receives the worker’s written complaint and the Prevention Officer’s information, an Investigations Legal Officer will review the materials to see if the worker has made

out a *prima facie** case. If so, the parties may be referred to voluntary mediation.

If a mediated settlement is not possible, the complaint will be adjudicated by an Investigations Legal Officer. This will occur after an exchange of written submissions between the parties.

13. How is a complaint decided?

The *Workers Compensation Act* states the burden of proof is on the employer to prove that discriminatory action did not occur. This means that once a worker provides sufficient information to establish a *prima facie* case of discriminatory action, it is up to the employer to prove otherwise on a balance of probabilities.

The Investigations Legal Officer will either decide that discriminatory action took place and may issue remedial orders or dismiss the complaint. The Investigations Legal Officer will give a written decision in either case.

14. What happens if the Investigations Legal Officer finds that discriminatory action took place?

Where the decision is that discriminatory action took place, WorkSafeBC may order one or more of the following:

- The employer/union cease the discriminatory action
- The employer reinstate the worker to his/her former position with the same terms of employment
- The employer pay lost wages
- The union reinstate the worker's membership
- The employer/union remove any reprimand or references to the matter in the employer's or union's records on the worker
- The employer/union pay the reasonable out-of-pocket expenses that the worker incurred as a result of the discriminatory action
- The employer or union do any other thing WorkSafeBC considers necessary to secure compliance with the *Workers Compensation Act* and the regulations

15. What happens if the Investigations Legal Officer finds that discriminatory action did not take place?

No orders will be issued and the complaint will be dismissed.

16. What can the worker or employer do if they disagree with the decision?

If an employer or worker disagrees with the decision, they may appeal that decision to the Workers' Compensation Appeal Tribunal (WCAT) within 90 days of the decision.

A party subject to an order (for example, to pay lost wages) may ask WCAT for a "stay of proceedings" until the appeal has been completed. If no stay is requested, or if a stay is not granted, the orders must be complied with in the time frame specified in the decision even though the appeal is outstanding.

17. What help is available for workers and employers?

Workers may wish to get help from their union, the Workers' Advisers Office, a lawyer, or a consultant.

Employers may wish to get help from the Employers' Advisers Office, an employer association, a lawyer, or a consultant.

Workers' Advisers Office

Phone: 604 713-0360

Toll-free: 1 800 663-4261

E-mail: wao@wao-bc.org

Employers' Advisers Office

Phone: 604 713-0303

Toll-free: 1 800 925-2233

E-mail: eao@eao-bc.org

Lawyer Referral Service

Phone: 604 687-3221

Toll-free: 1 800 663-1919

* The Workers' Compensation Appeal Tribunal has explained that there are essentially three elements to establishing a *prima facie* case in a discriminatory action matter: Whether there was a discriminatory action within the meaning of the *Workers Compensation Act*; whether there is evidence that the worker has engaged in WorkSafeBC regulated health or safety activities; and whether the discriminatory action appears, on its face, to be connected to the worker's activities.

WorkSafeBC offices

Visit our web site at WorkSafeBC.com.

Abbotsford

2774 Trethewey Street V2T 3R1
Phone 604 276-3100
1 800 292-2219
Fax 604 556-2077

Burnaby

450 – 6450 Roberts Street V5G 4E1
Phone 604 276-3100
1 888 621-7233
Fax 604 232-5950

Coquitlam

104 – 3020 Lincoln Avenue V3B 6B4
Phone 604 276-3100
1 888 967-5377
Fax 604 232-1946

Courtenay

801 30th Street V9N 8G6
Phone 250 334-8765
1 800 663-7921
Fax 250 334-8757

Kamloops

321 Battle Street V2C 6P1
Phone 250 371-6003
1 800 663-3935
Fax 250 371-6031

Kelowna

110 – 2045 Enterprise Way V1Y 9T5
Phone 250 717-4313
1 888 922-4466
Fax 250 717-4380

Nanaimo

4980 Wills Road V9T 6C6
Phone 250 751-8040
1 800 663-7382
Fax 250 751-8046

Nelson

524 Kootenay Street V1L 6B4
Phone 250 352-2824
1 800 663-4962
Fax 250 352-1816

North Vancouver

400 – 224 Esplanade Ave. W. V7M 1A4
Phone 604 276-3100
1 888 875-6999
Fax 604 232-1558

Prince George

1066 Vancouver Street V2L 5M4
Phone 250 561-3700
1 800 663-6623
Fax 250 561-3710

Surrey

100 – 5500 152 Street V3S 5J9
Phone 604 276-3100
1 888 621-7233
Fax 604 232-7077

Terrace

4450 Lakelse Avenue V8G 1P2
Phone 250 615-6605
1 800 663-3871
Fax 250 615-6633

Victoria

4514 Chatterton Way V8X 5H2
Phone 250 881-3418
1 800 663-7593
Fax 250 881-3482

Head Office / Richmond

Prevention Information Line:

Phone 604 276-3100
1 888 621-7233 (621-SAFE)

Administration:

6951 Westminster Highway
Phone 604 273-2266

Mailing Address:

PO Box 5350 Stn Terminal
Vancouver BC V6B 5L5

After Hours Health & Safety Emergency

604 273-7711
1 866 922-4357 (WCB-HELP)

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