

# **Canadian Union of Public Employees Guide to WorkSafeBC Claims, Appeals and Employers' Use of Consultants**

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Nothing in this Guide should be construed as legal advice or advocacy. The information provided is for general education purposes only and is subject to ongoing change and revision.

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## **A Guide for CUPE Members**

### **Introduction:**

There has been an increase in the use of consultants for WorkSafeBC (“WCB”) claims and appeals arising in workplaces as employers attempt to control costs associated with health care, extended health benefits, WCB claims and absences due to illness and injury. Other consultants assist CUPE members in obtaining diagnostic testing, treatment and returning to work. Issues arise where there is a premature return to work or where legitimate WCB claims and appeals are impeded. This Guide will assist CUPE members in navigating a WCB claim or appeal where an external consultant is involved.

### **Background – Who Are Consultants And Why Are They Involved:**

Since as early as 1996, external disability management consultants have contracted with a verity of employers in British Columbia to provide services related to WCB claims management (“Compensation”). This is contrasted to consultants who specialize in WCB Occupational Health & Safety issues (“Prevention”). The compensation services may include, in no particular order:

- Reducing claims and claim frequency
- Reducing the duration of claims
- Appealing claims
- Appeal representation to employers including preparing and presenting appeal submissions to the Review Division and Workers Compensation Appeal Tribunal (“WCAT”)
- Section 39 applications / Cost Relief
- Reviewing Experience Ratings and assessments
- Contesting claims

- Assisting workers to return to work to modified duties
- WCB policy interpretation
- Scrutinizing claims exceeding ten (10) weeks
- Scrutinizing Disability Awards (“pensions”)
- Developing, assisting with and implementing Return to Work Programs, Graduated Return to Work Programs, Vocational Rehabilitation and Job Demands Analysis
- Training for employers
- Expediting treatment
- Expediting diagnostic testing

These are just a few services that may be rendered depending on the consultant, the contract and whether the consultant has been directly retained by your Human Resources department.

Again, some CUPE Locals and members benefit from certain services provided by consultants such as expedited access to treatment, diagnostic testing, Job Demands Analysis testing, Return to Work programs, et ceteras. Not all consultants or the services they offer can be characterized as the same.

There are a number of firms that provide consulting services related to compensation. These include, in no particular order:

- Disability Management Institute
- Pacific Risk Management Corp.
- TeksMed / TeksMed Quikcare

Employers may also utilize the Employers’ Advisers Office (“EAO”). As per their website:

**“Employers’ Advisers** provide independent advice, assistance, representation and education to employers, potential employers and employer associations concerning workers’ compensation issues under section 94 of the *Workers Compensation Act*. In fulfilling this mandate, Employers’ Advisers:

- Assist and advise employers, potential employers, and employer associations in understanding, working and complying with WorkSafeBC issues in Claims, Assessments and Prevention.
- Respond to inquiries about workers' compensation legislation, decisions, appeals and related matters in Claims, Assessments and Prevention.
- Prepare submissions on behalf of employers to WorkSafeBC, Review Division, Workers' Compensation Appeal Tribunal (WCAT) and assist employers in cases involving complex legal, medical or policy issues.
- Conduct seminars and public speaking engagements on occupational health and safety issues, prevention, claims management, assessments and appeals.
- Consult with WorkSafeBC officials to review and make recommendations to the Policy Department, Executive and Board of Directors.
- This service is available to all employers or potential employers free of charge.”

### **WCB Claims and Appeals – Do You Have to Cooperate:**

The request to cooperate may take the form of a consultant offering to meet with you to assist in returning to work, obtaining an MRI in a timelier manner or asking you to sign Releases allowing them to have access to medical information. The role of each consultant may vary widely. Each contract, and each claim, may be different. Whether you are required to cooperate and to what degree depends upon a number of factors including:

- Is it a WCB claim or appeal?
- Is it a sick leave issue arising out of the collective agreement?
- Is it related to extended health care benefits?
- Is it related to short term, medium term or long term disability benefits?
- Is it an employer, insurance company or WCB sponsored Return to Work program or Duty to Accommodate? Each is different.
- Is it WCB Vocational Rehabilitation?

- Do you have an active or accepted WCB claim?
- Do you have an active WCB appeal?

This Guide is for WCB claims and appeals, as opposed to sick leave, collective agreement entitlements, Long Term Disability, Duty to Accommodate, et ceteras. In all cases, your Local should be contacted immediately where a consultant, whether internal or external, has become involved in your WCB claim or appeal. Second, WCB claims and appeals assistance, advice or representation do not fall under the ambit of the British Columbia Labour Relations Code and as such, Unions are not required to provide these services. Most importantly, until the exact nature of the consultant's mandate and role is determined, you should adhere to the "work now, grieve later" rule, subject to advice from your Local.

### **Actions You May Wish to Consider Taking:**

There are a number of actions that pertain to WCB claims and appeals only, that you may wish to consider taking. These include:

1. Notify your Local immediately if a consultant has contacted you or become involved in your WCB claim or appeal.
2. Notify your WCB Case Manager or Entitlement Office if a consultant has contacted you or become involved in your WCB claim or appeal.
3. Do not participate in any meetings without the designated officer or representative of the Local.
4. Be cautious about what information is disclosed or stated. You are not under any obligation to speak to your employer or their consultant regarding a WCB appeal.
5. If you are questioned regarding a WCB claim, contact your Local and your Union Occupational Health & Safety representative immediately.
6. Take detailed notes, via a diary or journal, of any discussions, meetings, emails, letters or telephone calls that occur. Copy your Local on these.
7. Ask who the consultant is and who they represent, in writing.
8. Ask what their mandate is.
9. Ask if they have been contracted to deal with your WCB claim (or appeal) or the employer in general.

10. Ask your employer what the consultant's involvement is, why, expected duration, process for protecting personal information, and the process for adhering to the Freedom of Information and Protection of Privacy legislation and WCB policy (see [http://www.worksafebc.com/regulation\\_and\\_policy/legislation\\_and\\_regulation/fipp/default.asp](http://www.worksafebc.com/regulation_and_policy/legislation_and_regulation/fipp/default.asp))
11. Do not sign any Releases, Consent Forms, forms or paperwork until it is vetted by your Local, recognizing that time lines may be in place that could affect your WCB claim or appeal.
12. Advise your physician(s) or other treatment providers that a consultant may attempt to contact them and they do not have authorization to discuss your medical history, the WCB claim, et ceteras.
13. Be careful of any statements that indicate you may get expedited treatment or testing if you agree to the consultant's involvement or you participate.
14. Ensure your physicians are fully aware of and up to date on both your limitations and restrictions.
15. It is generally recommended that you not agree to an Independent Medical Evaluation ("IME") or Functional Capacity Evaluation ("FCE").
16. Ask your employer and the consultant what precautions will be taken regarding the privacy of your medical and WCB information.

Any matters pertaining to non-WCB claims or appeals must be addressed via your Local. This Guide is limited to WCB claims and appeals.

### **What Next:**

Should there be further issues related to your WCB claim, appeal, Return to Work (WCB), Vocational Rehabilitation, Job Demands Analysis (WCB), et ceteras, you may:

1. Contact the British Columbia Workers' Advisers Office at:

## **Vancouver / Lower Mainland**

500 - 8100 Granville Avenue  
**Richmond**, BC V6Y 3T6  
Tel: 604 713-0360  
Fax: 604 713-0311  
Toll Free: 1 800 663-4261

204 - 32555 Simon Ave  
**Abbotsford**, BC V2T 4Y2  
Phone: 604 870-5488  
Toll-Free: 1 800 663-4231  
Fax: 604 870-5494

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## **Interior Region**

101 - 1726 Dolphin Avenue  
**Kelowna**, BC V1Y 9R9  
Phone: 250 717-2096  
Toll-Free: 1 866 881-1188  
Fax: 250 717-2010

102 - 70 - 2nd Avenue  
**Kamloops**, BC V2C 6W2  
Phone: 250 371-3860  
Toll-Free: 1 800 663-6695  
Fax: 250 371-3820

310 Ward Street  
**Nelson**, BC V1L 5S4  
Phone: 250 354-6933  
Toll-Free: 1 800 663-4261  
Fax: 250 354-6944

208 - 1577 - 7th Avenue  
**Prince George**, BC V2L 3P5  
Phone: 250 565-4280  
Toll-Free: 1 800 263-6066  
Fax: 250 565-4283

## **Vancouver Island**

403-3960 Quadra St,  
**Victoria**, BC V8X 4A3  
Phone: 250 952-4393  
Toll-Free: 1 800 661-4066  
Fax: 250 952-4399

504 - 495 Dunsmuir Street  
**Nanaimo**, BC V9R 6B9  
Phone: 250 741-5504  
Toll-Free: 1 800 668-2117  
Fax: 250 741-5516

205 - 1040 Shoppers Row  
**Campbell River**, BC V9W 2C6  
Phone: 250 830-6526  
Fax: 250 830-6528  
Toll-Free: 1 888 643-0013

2. Contact your WCB Case Manager or Entitlement Officer.

3. Contact the CUPE BC Regional Office National Representative WCB Advocacy, via your Local, and the National Representative, for assistance.
4. Retain legal counsel at your own cost.
5. Contact the Office of the Information and Privacy Commissioner (OIPC) at <http://www.oipc.bc.ca/>.
6. Contact the Ombudsman's Office at [www.ombudsman.bc.ca](http://www.ombudsman.bc.ca).

### **Other Resources:**

Here are several links that may assist you, recognizing that your Local has been provided a number of other guides, materials, templates, power point presentations and access to CUPE education courses and workshops:

- BC Workers' Advisers Office  
<http://www.labour.gov.bc.ca/wab/>
- BC Federation of Labour  
<http://www.bcfed.com/issues/ohs>
- Injured Workers Online  
<http://www.injuredworkersonline.org/>
- WorkSafeBC  
<http://www.worksafebc.com/>

This Guide is updated regularly. Please ensure that you have the most recent version and that you have contacted your Local on any matter pertaining to the involvement of a consultant or the WCB in your workplace.