

WORKSAFEBC COMPENSATION CLAIMS FOR WORKPLACE SEXUAL HARASSMENT: PROCESS GUIDE

A. Who can make a WorkSafeBC claim?

If you have been **injured** at work as a result of workplace sexual harassment, you can make a claim for compensation (money) with [WorkSafeBC](#) (also known as the “Workers’ Compensation Board” or “WCB”).

B. What Counts as an injury?

An injury includes:

- a. **physical injuries** (for example, from an assault);
- b. **psychological injuries or mental health conditions** that result from harassment and bullying in the workplace (for example, anxiety and depression).

If you are injured at work, you should tell your doctor and report all symptoms.

C. What counts as Sexual Harassment?

Sexual harassment is:

- Any unwanted comments, behaviour or actions that are sexual or related to your sexuality, sexual orientation, gender, or gender identity or expression.
 - For example: sexual comments, touching, threats, stalking, sharing sexual photos or texts, crude jokes, repeatedly asking you for a date after you have said no, or saying negative things about your sexual orientation or gender expression or identity.
- This behaviour is having a negative effect on you.
 - For example: it could be causing you stress or sadness, affecting your work, causing medical problems, affecting your self-confidence, or other things.
- It can be just one incident, or it can be an ongoing pattern of behavior.

D. How do I receive compensation for mental health conditions?

- To get compensation for psychological injuries from WorkSafeBC you must be diagnosed with a mental health condition by a psychologist or psychiatrist.
- The mental health condition must be the result of either:
 - a. A reaction to a **traumatic event** at work (including bullying and harassment);
 - An event is “traumatic” when it is emotionally shocking

- b. Caused by a **significant work-related stressor or a series of stressors** (including bullying and harassment)
 - A stressor is “significant” when it is more intense or longer in duration than what is experienced normally in the workplace

E. What counts as the Workplace?

The “workplace” can be:

- a. your actual work location, like an office, shop or construction site.
- b. times and places that are connected to work, like going for lunch with your coworkers, attending work-related training or social events.
- c. social media related to your work or communication from coworkers or bosses outside of work hours.

You can start a claim even if you do not have a diagnosis yet. WorkSafeBC will send you for an assessment with a psychologist or psychiatrist.

F. What are the possible solutions (Remedies) available through a WorkSafeBC compensation claim?

You can receive certain types of benefits if your compensation claim is approved:

- **Temporary disability (also known as “wage loss”) benefits:** If you are unable to work or only able to work part time due to the injury, you may be able to get compensation for your decreased wages.
- **Permanent disability benefits:** If your injury becomes permanent you may be able to get compensation to cover your loss of wages on an ongoing basis (until retirement age).
- **Vocational rehabilitation:** This is training to help you go back to your job or training for a new job.
- **Health Care:** You may be able to get coverage for related health care costs.

G. When do I need to start a Claim?

- You should start your claim as early as possible.
- You must start a claim **within one year** of last traumatic event or the last significant work stressor.
- You must file within the **one-year timeline** regardless of whether or not you have been diagnosed with a mental disorder or missed time from work.

You should also make sure to see your doctor about the injury, tell your doctor about all of your symptoms, and tell your doctor it happened at the workplace.

H. How do I start a claim?

You can start a claim three ways:

1. By **phone**: 1-888-WORKERS (1.888.967.5377)
2. **Online**: <https://www.worksafebc.com/en/claims/report-workplace-injury-illness/how-workers-report-workplace-injury-illness>
3. **By mail or fax**, using an Application for Compensation (Form 6) available online.

I. Completing the Application Form

If you make a claim by mail or fax, you must use the “Application for Compensation”, also known as “Form 6.” You can download Form 6 [here](#).

1. INFORMATION ABOUT YOU – STEP 1

This asks for basic information about:

- i) **yourself as the worker** (including name, address, phone number, PHN and social insurance number);
- ii) **your employer** - the individual or company who employs you (including their name, type of business, address, phone number and contact information); and
- iii) **your employment** - your occupation and type of employment (including length of employment, type of employment and number of employers).

2. INFORMATION ABOUT YOUR INJURY – STEP 2

The second part of Form 6 asks for information about your workplace injury. This section of the form is made up of both blank text boxes and check boxes. Ensure you fill out every section.

In completing this part of the form, make sure you include:

- **Date of the Incident** and whether or not anyone told the employer. If you have experienced harassment over a period of time, describe all the incidents and try to provide dates or time periods. For example, “between May and July, Bob would make comments to me that made me uncomfortable”.
- In the section “**Describe how the incident happened**”, you should write what happened to cause your injury. It is helpful to be specific. For example, “every day comments were made about my body, about my ‘sexy legs’, how I looked in my clothes....”
- In the section “**Describe the injury in detail**”, explain the injuries (physical or mental) that resulted from the incident. Here you should write how the incident caused your injury. For example, “I have

trouble sleeping. I jump when someone comes too close to me. I have heart palpitations. The sexual comments made me anxious and depressed.” If you have been diagnosed by a doctor include information about your diagnosis: “I have been diagnosed with anxiety by my family doctor.”

- Describe **where** the incident occurred.
- In the section “**Contributing Factors**”, there are a number of check boxes. There is no box for “bullying and harassment”. You can add “bullying and harassment” to one of the blank boxes and check that off.
- Complete the remaining sections which contain yes or no questions about the incident and injury.

3. INFORMATION ABOUT YOUR WAGES AND RETURN TO WORK – STEP 3

The final part of Form 6 asks for information about your wages and return to work information. Ensure you answer all of the questions.

- The **Wage Information** section asks about your base salary or wage, total earnings with your employer, additional compensation (if any).
- The **Return to Work** section asks if (a) you have returned to work; or (b) if your employer has modified duties for you.

Once you have completed Form 6, you can submit it to WorkSafeBC.

J. What happens Next?

Now that you have filed your Form 6, you may be wondering “what happens next?”

- After you make a claim, you will be assigned a **Case Manager**.
- The Case Manager will make the **initial decision** about your claim, including what **benefits** you will receive.
- If you are **unable to work**, you may receive **temporary wage loss benefits**.
 - These can be up to 90% of the amount you were earning prior to the injury.
- You may also receive payments for **other services** including counselors, psychological and vocational rehabilitation, and medical expenses such as prescriptions.
- You may be referred to a psychologist or psychiatrist for an assessment.

During this stage, you may receive letters from your Case Manager. If you disagree or don’t understand them, it is important to get legal advice right away.

1. Can my benefits be discontinued?

Yes. Your benefits will be discontinued if WorkSafeBC decides you have recovered from your injury and can return to work.

If you disagree with this decision and do not feel able to return to work, it is important for you to get legal advice as soon as possible.

2. What happens if my injury is permanent?

Your injury may be considered permanent. If WorkSafeBC determines your injury is **permanent**, they will compensate you for the permanent injury using one of two methods:

- a. **Loss of Function:** This calculation is based on your loss of function from your injury. WorkSafeBC will evaluate your symptoms and, using a table, assign a percentage that represents how much function you lost. This is the percentage of your earnings you will get until retirement. This is the usual method.
- b. **Loss of Earnings:** WorkSafeBC pays you your actual lost earnings (as a result of not being able to work or not being able to work full time).

It is very important for you to get legal advice as soon as possible if you get a letter from WorkSafeBC saying that they have used the “Permanent Functional Impairment” method or if you get a letter with a disability amount or wage rate that you disagree with (a list of free legal services is included below).

3. What if I disagree with a decision of WorkSafeBC?

STEP 1 – REVIEW DIVISION

- If you disagree with a decision, usually the first step is to apply to the WorkSafeBC [Review Division](#) for a review **within 90 days of the date of the decision.**
- If you miss the deadline, you will **lose** your right to review.

STEP 2 – WORKERS’ COMPENSATION APPEAL TRIBUNAL

- If you disagree with the result of the Review Division, you can appeal it to the [Workers’ Compensation Appeal Tribunal](#) **within 30 days of the date of the Review Division’s decision.**
- If you miss the deadline, you will **lose** your right to appeal.

You should get legal advice as soon as possible if you need to review or appeal a decision and you should make sure you do not miss the deadlines (a list of free legal services is included below).

K. How long does the claim process take?

- The timelines are different from case to case. You will receive a series of decisions and your case could be finalized in a few months or it could last up to several years.
- Your case may be longer if it is a complex file or if you need to appeal decisions.

L. What if the employer tries to stop me from reporting an injury?

- It is against the law for the employer to stop you or discourage you from reporting an injury.
- In addition to compensation claims, WorkSafeBC also enforces occupational health and safety laws. Please refer to the process guide on "Occupational Health and Safety" for more information on your rights and options for dealing with workplace health and safety issues.
- If this is happening, you should also get legal advice on your rights.

M. Does a compensation claim affect other legal options?

- There are other legal options, like human rights, employment standards and civil claims that you may also be able to pursue.

You should get legal advice to help you decide which options make sense for you.

- Generally, you cannot have the same remedy twice.
 - For example: if you received two weeks' worth of payment for lost wages from the Employment Standards Branch, you cannot get those same two weeks in your workers' compensation claim.
 - However, you could still claim other weeks and other remedies like health care expenses or permanent disability benefits.

These other options can sometimes give you access to different remedies than the ones available in a workers' compensation claim. Please refer to our other process guides for various remedies to consider before deciding upon which ones are the best match for your case.

N. Where can I get more help with this?

Detailed process guides on other topics are available at: [Stand Informed Resources](#).

You can get free legal advice at:

Workers' Advisors Office BC

The Workers' Advisors Office (WAO) advises, assists and represents workers anywhere in BC and their dependents on workers compensation issues **free of charge**. WAO provides free legal advice to workers who disagree with a decision of WorkSafeBC. It is independent from WorkSafeBC.

Call: 604-335-5931 or 1-800-663-4261

Website: <http://www.gov.bc.ca/workersadvisers>

Law Students' Legal Advice Program (LSLAP)

This program provides free legal advice and representation (by supervised law students) in the Lower Mainland.

Call: 604-822-5791

Website: <https://www.lslap.bc.ca>

Access Pro Bono

This program provides free summary advice from a lawyer, as well as several other legal assistance programs.

Call: 604-878-7400 or 1-877-762-6664

Email: appointments@accessprobono.ca

Website: <https://accessprobono.ca>

You can also **find advocates** across BC by using PovNet's "Find an Advocate" Tool, available online: <https://www.povnet.org/find-an-advocate>.

RESOURCES

Workers' Advisers Office Factsheets (on many aspects of the workers' compensation process):

<https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/personal-injury-and-workplace-safety/factsheets>

WorkSafeBC Claims Reviews and Appeal Guide:

<https://www.worksafebc.com/en/resources/about-us/guides/claims-review-and-appeal-guide-for-workers-and-dependants?lang=en>

Dial-a-Law Information: Appealing a Workers' Compensation Decision:

<https://dialalaw.peopleslawschool.ca/workers-compensation-appeals/>

Workers Compensation Appeal Tribunal Info Sheets:

<https://www.wcat.bc.ca/home/resources/>

Workers Compensation Appeal Tribunal Decisions:

<https://www.wcat.bc.ca/home/search-past-decisions/>

The Law Students' Legal Advice Program chapter on Workers Compensation is available online:

<https://www.lslap.bc.ca/manual.html>

The BC *Workers Compensation Act* is available online:

<https://canlii.ca/t/984d>

WorkSafeBC's Rehabilitation Services and Claims Manual is available online:

<https://www.worksafebc.com/en/law-policy/claims-rehabilitation/compensation-policies/rehab-claims-volumeii>

WorkSafeBC's Practice Directives are available online:

<https://www.worksafebc.com/en/law-policy/claims-rehabilitation/practice-directives>