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Legislative Assembly of British Columbia

BILL 41

**WORKERS COMPENSATION
AMENDMENT ACT (No. 2), 2022**

Honourable Harry Bains
Minister of Labour

Explanatory Notes

- CLAUSE 1: *[Workers Compensation Act, heading to Division 10 of Part 2]* is consequential to amendments made by this Bill to the Act.
- CLAUSE 2: *[Workers Compensation Act, section 73]* prohibits employers and supervisors from discouraging workers or dependants of workers from making or maintaining applications for compensation or receiving compensation.
- CLAUSE 3: *[Workers Compensation Act, section 145]* permits the Workers' Compensation Board to amend Schedule 2 of the Act, by regulation, to set a maximum percentage of disability in relation to non-traumatic hearing loss.

BILL 41 – 2022

**WORKERS COMPENSATION
AMENDMENT ACT (No. 2), 2022**

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

- 1 The heading to Division 10 of Part 2 of the Workers Compensation Act, R.S.B.C. 2019, c. 1, is repealed and the following substituted:*

Division 10 – Employer Accident Reporting, Investigation and Related Prohibitions .

- 2 Section 73 is amended*

(a) by renumbering the section as section 73 (1), and

(b) by adding the following subsection:

(2) An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from

- (a) making or maintaining an application for compensation under the compensation provisions, or
- (b) receiving compensation under the compensation provisions.

- 3 Section 145 (3) (b) is repealed and the following substituted:*

(b) the percentages of disability, including the maximum percentages of total disability; .

CLAUSE 4: *[Workers Compensation Act, Division 3.1 of Part 4]* adds a Division to the Act which does all of the following:

- adds a definition and provides an interpretive rule for the purposes of the Division;
- in relation to an injured worker, imposes a duty to cooperate in the worker's early and safe return to, or continuation of, work;
- provides for dispute resolution in relation to the duty to cooperate;
- enables the Workers' Compensation Board to reduce or suspend compensation if a worker fails to comply with the duty to cooperate;
- in specified circumstances, imposes duties to offer work to an injured worker based on the worker's fitness;
- in specified circumstances, imposes a duty to accommodate an injured worker;
- sets out the powers and duties of the Workers' Compensation Board in relation to the duties to offer work and accommodate;
- provides for the termination of the duties to offer work and accommodate;
- deems that an employer fails to comply with the duties to offer work to an injured worker if the worker is terminated within a specified period unless the employer can establish the termination is unrelated to the worker's injury;
- in specified circumstances, enables the Workers' Compensation Board to pay an additional amount to an injured worker;
- provides a rule in the event of a conflict between sections 154.2 and 154.3, as added by this Bill to the Act, and an applicable collective agreement;
- authorizes the Workers' Compensation Board to impose administrative penalties for a failure to comply with a provision of section 154.2 or 154.3, as added by this Bill to the Act;
- establishes rules in relation to the administrative penalties, including the maximum amount of administrative penalty that can be imposed;
- authorizes the Lieutenant Governor in Council to make regulations for the purposes of section 154.3, as added by this Bill to the Act.

4 *The following Division is added to Part 4:*

Division 3.1 – Return to Work and Other Duties in Relation to Injured Workers

Definition and application

- 154.1** (1) In this Division, “**injury**” includes an occupational disease and a mental disorder.
- (2) This Division applies in relation to an employer and a worker of the employer if, because of an injury that arose out of and in the course of the worker’s employment, the worker has been disabled from earning full wages at the work at which the worker was employed at the time of the injury.

Duty to cooperate

- 154.2** (1) An employer must cooperate with a worker and the Board in the worker’s early and safe return to, or continuation of, work by doing the following:
- (a) subject to subsection (3), contacting the worker as soon as practicable after the worker is injured and maintaining communication with the worker;
 - (b) identifying suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker’s pre-injury work;
 - (c) providing the Board with information the Board requires in relation to the worker’s return to, or continuation of, work;
 - (d) any other thing required by the Board.
- (2) A worker must cooperate with an employer and the Board in the worker’s early and safe return to, or continuation of, work by doing the following:
- (a) subject to subsection (3), contacting the employer as soon as practicable after the worker is injured and maintaining communication with the employer;
 - (b) on request of the employer, assisting the employer to identify suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker’s pre-injury work;
 - (c) providing the Board with information the Board requires in relation to the worker’s return to, or continuation of, work;
 - (d) any other thing required by the Board.
- (3) The obligations referred to in subsections (1) (a) and (2) (a) do not apply if, having regard to all of the circumstances, contact and communication between the employer and the worker are likely to imperil or delay the worker’s recovery.

CLAUSE 4: *[Workers Compensation Act, Division 3.1 of Part 4 – continued]*

- (4) The Board must determine whether an employer or worker has failed to comply with this section if
 - (a) the employer or worker notifies the Board of a dispute regarding compliance, and
 - (b) the dispute cannot otherwise be resolved.
- (5) A determination under subsection (4) must be made within 60 days after the Board is notified of the dispute or within a longer period that the Board may determine.
- (6) If a worker fails to comply with subsection (2), the Board may reduce or suspend payments of compensation to the worker until the worker complies.

Duty to maintain employment

- 154.3**
- (1) Except as provided in subsection (2), this section applies in relation to an employer and a worker of the employer if the worker has been employed by the employer, on a full- or part-time basis, for a continuous period of at least 12 months before the date the worker was injured.
 - (2) This section does not apply in relation to the following:
 - (a) a person who is a worker only because the person is deemed under the Act to be a worker;
 - (b) an employer who regularly employs fewer than 20 workers;
 - (c) a class of employers or workers or an industry or class of industries prescribed by the Lieutenant Governor in Council.
 - (3) If a worker is fit to work but not fit to carry out the essential duties of the worker's pre-injury work, an employer must offer to the worker the first suitable work that becomes available.
 - (4) If a worker is fit to carry out the essential duties of the worker's pre-injury work, an employer must
 - (a) offer that pre-injury work to the worker, or
 - (b) offer to the worker alternative work of a kind and at wages that are comparable to the worker's pre-injury work and wages from that work.
 - (5) An employer must, to the point of undue hardship, make any change to the work or the workplace that is necessary to accommodate a worker.
 - (6) An employer's obligations under this section end as follows:
 - (a) all of the employer's obligations under this section end on the second anniversary of the date a worker is injured if the worker has not returned to work by that date;
 - (b) the employer's obligation under subsection (4) ends on the second anniversary of the date a worker is injured if, by that date, the worker is carrying out suitable work.

CLAUSE 4: *[Workers Compensation Act, Division 3.1 of Part 4 – continued]*

- (7) The Board must, if an employer and a worker disagree with each other, determine
 - (a) whether the worker is fit to carry out suitable work or fit to carry out the essential duties of the worker's pre-injury work, and
 - (b) whether suitable work is available.
- (8) If an employer terminates a worker's employment within 6 months after the worker begins to carry out suitable work or begins to carry out the essential duties of the worker's pre-injury work or alternative work, the employer is deemed to have failed to comply with subsection (3) or (4), as applicable.
- (9) Subsection (8) does not apply if the employer can establish, to the Board's satisfaction, that the termination was unrelated to the worker's injury.
- (10) The Board must, on the request of a worker, determine whether an employer has failed to comply with this section.
- (11) The Board is not required to consider a request under subsection (10) if
 - (a) the Board considers the request has no merit, or
 - (b) both of the following apply:
 - (i) the worker's employment is terminated within 6 months after the worker begins to carry out suitable work or begins to carry out the essential duties of the worker's pre-injury work or alternative work;
 - (ii) the request is made more than 3 months after the worker's employment is terminated.
- (12) The Board may pay to a worker, for a period of up to one year, an amount equal to the compensation to which the worker was entitled under section 191 [*temporary total disability*] or 192 [*temporary partial disability*], as applicable, if
 - (a) an employer has failed to comply with this section, and
 - (b) the worker is no longer entitled to the compensation under section 191 or 192.

Conflict with collective agreement

- 154.4** (1) If section 154.2 or 154.3 conflicts with a term of a collective agreement that is binding on an employer in relation to a worker, the section in conflict prevails to the extent that it affords the worker a greater benefit than the term of the collective agreement.
- (2) Subsection (1) of this section does not operate to displace a term of the collective agreement that deals with seniority.

CLAUSE 4: *[Workers Compensation Act, Division 3.1 of Part 4 – continued]*

CLAUSE 5: *[Workers Compensation Act, section 198]*

- makes housekeeping amendments;
- provides that the maximum percentage of total disability for non-traumatic hearing loss is specified in Schedule 2 of the Act.

Administrative penalties respecting this Division

- 154.5** (1) The Board may, by notice sent to an employer, impose on the employer an administrative penalty determined by the Board if the Board is satisfied on a balance of probabilities that the employer has failed to comply with a provision of section 154.2 [*duty to cooperate*] or 154.3.
- (2) A notice under subsection (1) must be in the form and contain the information required by the Board.
- (3) An administrative penalty under this section must not be greater than the maximum wage rate as determined under section 209 [*maximum wage rate for average earnings*].
- (4) An employer on whom an administrative penalty is imposed under this section must pay the amount of the penalty to the Board for deposit into the accident fund.
- (5) If an administrative penalty under this section is reduced or cancelled by a Board decision, on a review under Part 6 [*Review of Board Decisions*] or on an appeal to the appeal tribunal under Part 7 [*Appeals to Appeal Tribunal*], the Board must
- (a) refund the required amount to the employer, and
 - (b) pay interest on that amount calculated in accordance with the policies of the board of directors.

Regulations in relation to the duty to maintain employment

- 154.6** The Lieutenant Governor in Council may make regulations prescribing classes of employers or workers, or prescribing industries or classes of industries, for the purposes of section 154.3 (2) (c) [*duty to maintain employment*].

5 Section 198 is amended

(a) by adding the following subsection:

- (1.1) If there is no loss of earnings resulting from the worker's hearing loss, the compensation payable to the worker is the amount determined under subsection (2) or (3). ,

(b) by repealing subsections (2) and (3) and substituting the following:

- (2) If the worker's hearing loss amounts to a complete loss of hearing, measured in the manner described in Schedule 2 [*Non-Traumatic Hearing Loss*] of this Act, the compensation is the amount calculated as if for a disability equivalent to the maximum percentage of total disability specified in that Schedule.

CLAUSE 5: *[Workers Compensation Act, section 198 – continued]*

CLAUSE 6: *[Workers Compensation Act, section 231.1]*

- adds a definition for the purposes of the section;
- requires the payment of interest on specified amounts of compensation;
- provides for the calculation of that interest;
- eliminates the potential for the duplication of interest on the same amount of compensation over the same period.

CLAUSE 7: *[Workers Compensation Act, section 268]* is consequential to amendments made by this Bill to the Act.

CLAUSE 8: *[Workers Compensation Act, section 301]* makes a housekeeping amendment.

- (3) If the worker’s hearing loss does not amount to a complete loss of hearing, measured in the manner described in Schedule 2 of this Act, the compensation
 - (a) must be less than the amount of compensation determined under subsection (2) of this section, and
 - (b) unless otherwise ordered by the Board, is the amount calculated as if for a disability equivalent to the percentage of total disability determined in accordance with Schedule 2. , *and*
- (c) *in subsection (4) by striking out “or reduction” and by striking out “as provided under this Division” and substituting “as otherwise provided under this Division”.*

6 *The following section is added:*

Payment of interest

- 231.1** (1) In this section, “**effective date**”, in relation to a payment of compensation, means the date on which entitlement to the payment of compensation arises, as determined by a review officer or the appeal tribunal.
- (2) Interest must be paid on any amount of compensation that
 - (a) is determined to be payable following a review under Part 6 [*Review of Board Decisions*] or an appeal under section 288 [*review decisions that may be appealed*], and
 - (b) remains unpaid for a period of at least 180 days after the effective date.
- (3) Interest payable under subsection (2) must be calculated in accordance with the policies of the board of directors and begins on the effective date.
- (4) Despite this section, if interest is payable on an amount of compensation under section 312 [*payment of compensation following appeal*], interest is not payable under this section on that amount of compensation in respect of the same period.

7 *Section 268 (1) (c) is amended*

(a) *by repealing subparagraph (ii) and substituting the following:*

- (ii) an administrative or other monetary penalty, ,

(b) *by adding “, or” at the end of subparagraph (iii) (C), and*

(c) *by adding the following subparagraph:*

- (iv) a matter set out in section 154.2 [*duty to cooperate*] or 154.3 [*duty to maintain employment*].

8 *Section 301 (1) is amended by striking out “on the request of the appeal tribunal”.*

CLAUSE 9: *[Workers Compensation Act, section 302]*

- makes amendments consequential to amendments made by this Bill to the Act;
- requires the Workers' Compensation Appeal Tribunal to retain a health professional to provide independent assistance or advice in an appeal in specified circumstances;
- authorizes specified parties to an appeal to request that a health professional be retained to provide independent assistance or advice in an appeal;
- sets out how such a request must be made.

CLAUSE 10: *[Workers Compensation Act, section 334]* changes the rules respecting annual adjustments to periodic payments of compensation by doing the following:

- eliminating the requirement to subtract 1% from the percentage change in the applicable consumer price index;
- permitting the Workers' Compensation Board to determine a percentage in specified circumstances;
- establishing limits on the percentage determined by the Workers' Compensation Board;
- making amendments consequential to amendments made by this Bill to the Act;
- clarifying how the periodic payments of compensation are to be adjusted.

9 Section 302 is amended

(a) in subsection (1) by adding “, on its own initiative,” after “Subject to subsection (8), if” and by striking out “from the list under section 301”, and

(b) by adding the following subsections:

- (1.1) Subject to subsection (8), the presiding member must retain a health professional to provide independent assistance or advice in an appeal if all of the following apply:
 - (a) the appeal tribunal receives a request under subsection (1.2) from an employer, a worker or a dependant of a deceased worker;
 - (b) the medical condition of the worker is at issue in the appeal;
 - (c) the appeal tribunal determines that the independent assistance or advice would assist in reaching a decision on the appeal.
- (1.2) If an employer, a worker or a dependant of a deceased worker is a party to an appeal, the employer, worker or dependant may request that the appeal tribunal retain a health professional to provide independent assistance or advice in the appeal.
- (1.3) A request under subsection (1.2) must be made in writing or in another form authorized by the appeal tribunal’s rules.
- (1.4) A health professional may be retained from the list established under section 301.

10 Section 334 is amended

(a) by repealing subsections (1) and (2) and substituting the following:

- (1) On or before January 1 of each year, the Board must
 - (a) determine the percentage change in the consumer price index for Canada, for all items, for the 12-month period ending on October 31 of the previous year, and
 - (b) if the percentage change under paragraph (a) is greater than 4%, determine a percentage in accordance with subsection (2).
- (2) The percentage determined by the Board under subsection (1) (b) must be at least 4% and must not be greater than the percentage change determined under subsection (1) (a).

(b) in subsection (3) by striking out “the periodic payments of compensation made in respect of an injury or a death” and substituting “the periodic payments of compensation to be paid in the calendar year in respect of an injury or death”, and

CLAUSE 10: *[Workers Compensation Act, section 334 – continued]*

CLAUSE 11: *[Workers Compensation Act, Division 7 of Part 8]* adds a new Division that does all of the following:

- adds definitions for the purposes of the Division;
- provides for the appointment of a fair practices commissioner and establishes the term of the appointment;
- provides that the *Labour Relations Code* does not apply to the fair practices commissioner;
- sets out the mandate of the fair practices commissioner and the limits of that mandate;
- authorizes the Lieutenant Governor in Council to make regulations in relation to the mandate of the fair practices commissioner;
- requires the fair practices commissioner to report annually to the board of directors of the Workers' Compensation Board;
- requires the board of directors to provide the report to the minister and to publish the report on a specified website.

(c) by repealing subsection (4) and substituting the following:

- (4) For the purposes of subsection (3), the periodic payments of compensation must be adjusted as follows:
- (a) if the percentage change determined under subsection (1) (a) is negative, the adjustment is 0%;
 - (b) if the percentage change determined under subsection (1) (a) is greater than 4%, the adjustment is equal to the percentage determined under subsection (1) (b);
 - (c) in any other case, the adjustment is the percentage change determined under subsection (1) (a).

11 The following Division is added to Part 8:

Division 7 – Fair Practices Commissioner

Definitions

355 In this Division:

“**fair practices commissioner**” means an officer of the Board who is appointed as the fair practices commissioner under section 356 (1);

“**personal information**” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

Fair practices commissioner

- 356** (1) The board of directors must appoint an officer as the fair practices commissioner to advise the Board on matters of fairness.
- (2) The fair practices commissioner is to be appointed for a term of 3 years and may be reappointed for additional 3-year terms.
- (3) The *Labour Relations Code* does not apply to the fair practices commissioner.
- (4) The fair practices commissioner may do the following:
- (a) investigate complaints by employers, workers and dependants of workers regarding alleged unfairness in their dealings with the Board;
 - (b) make recommendations to the Board to
 - (i) resolve complaints referred to in paragraph (a), or
 - (ii) address systemic problems with the fairness of the Board’s dealings as indicated by such complaints;
 - (c) make recommendations to the Board about systemic problems with the fairness of
 - (i) the application of policies of the board of directors, or
 - (ii) practices and procedures of the Board;

CLAUSE 11: *[Workers Compensation Act, Division 7 of Part 8 – continued]*

- (d) undertake any other activity prescribed by regulation of the Lieutenant Governor in Council.
- (5) Despite subsection (4), the fair practices commissioner may not comment on or make recommendations respecting the following:
 - (a) the merits of a Board decision under the OHS provisions or the compensation provisions, or the merits of a decision of a review officer or the appeal tribunal;
 - (b) a matter that is the subject of a proceeding or a decision of a court or tribunal, as defined in section 1 of the *Judicial Review Procedure Act*;
 - (c) the setting or revision of a policy of the board of directors under section 319 [*policies of the board of directors*];
 - (d) the carrying out of a matter for which the board of directors is responsible under section 320 [*general responsibilities of the board of directors*];
 - (e) any other matter prescribed by regulation of the Lieutenant Governor in Council.
- (6) The Lieutenant Governor in Council may make regulations respecting any matter contemplated by this section.

Annual report of fair practices commissioner

- 357**
- (1) On or before April 30 of each year, the fair practices commissioner must
 - (a) prepare a report that includes the information required by the board of directors, other than personal information, in relation to the preceding calendar year, and
 - (b) provide a copy of the report to the board of directors.
 - (2) After receiving the report under subsection (1), the board of directors must promptly
 - (a) provide a copy of the report to the minister, and
 - (b) publish the report on a publicly accessible website.

CLAUSE 12: *[Workers Compensation Act, Schedule 2]* repeals and replaces Schedule 2 of the Act.

12 *Schedule 2 is repealed and the following substituted:*

SCHEDULE 2

NON-TRAUMATIC HEARING LOSS

Interpretation of table

- 1** In the table in this Schedule,
- (a) a range of decibels set out in column 1 reflects hearing loss measured in accordance with section 2 of this Schedule,
 - (b) a percentage of disability set out in column 2 opposite a range of decibels set out in column 1 is the percentage of disability for the ear most affected by the hearing loss, and
 - (c) a percentage of disability set out in column 3 opposite a range of decibels set out in column 1 is the percentage of disability for the ear least affected by the hearing loss.

Measuring hearing loss

- 2** (1) Loss of hearing is measured
- (a) by calculating the average of the threshold of hearing in each ear measured at the frequencies of 500, 1 000 and 2 000 Hertz, in turn, by pure-tone air-conduction audiometry, and
 - (b) using an audiometer calibrated by a facility that meets the requirements established by the Board.
- (2) For the purposes of section 198 (2) of this Act, a loss of hearing in the range of decibels set out in column 1 of item 10 of the table in this Schedule constitutes a complete loss of hearing.

Percentage of total disability

- 3** For the purposes of section 198 of this Act,
- (a) the percentage of total disability is the sum of the percentage of disability for the ear most affected by the hearing loss and the percentage of disability for the ear least affected by the hearing loss,
 - (b) the maximum percentage of total disability for a complete loss of hearing in one ear and no loss of hearing in the other ear is 3%, and
 - (c) the maximum percentage of total disability for a complete loss of hearing in both ears is 15%.

CLAUSE 12: *[Workers Compensation Act, Schedule 2 – continued]*

CLAUSE 13: *[Transition – duties to cooperate and maintain employment]*

- provides that section 154.2 of the Act, as added by this Bill, applies in relation to a worker who is injured no more than 2 years before the date that section comes into force and modifies the interpretation of that section for that purpose;
- provides that section 154.3 of the Act, as added by this Bill, applies in relation to a worker who is injured no more than 6 months before the date that section comes into force;
- provides that section 154.3 (8) of the Act, as added by this Bill, does not apply in relation to a worker whose employment is terminated before the date that section comes into force.

TABLE

Item	Column 1 Range of Hearing Loss (decibels)	Column 2 Percentage of Disability for Ear Most Affected	Column 3 Percentage of Disability for Ear Least Affected
1	0–27	0	0
2	28–32	0.3	1.2
3	33–37	0.5	2.0
4	38–42	0.7	2.8
5	43–47	1.0	4.0
6	48–52	1.3	5.2
7	53–57	1.7	6.8
8	58–62	2.1	8.4
9	63–67	2.6	10.4
10	68 or more	3.0	12.0

Transitional Provisions

Transition – duties to cooperate and maintain employment

13 (1) In this section:

“**injury**” has the same meaning as in section 154.1 (1) [definition and application] of the *Workers Compensation Act*, as added by this Act;

“**worker**” has the same meaning as in section 1 of the *Workers Compensation Act*.

(2) Section 154.2 [duty to cooperate] of the *Workers Compensation Act*, as added by this Act, applies in relation to a worker who sustained an injury no more than 2 years before the date that section comes into force except that the obligation to contact referred to in subsections (1) (a) and (2) (a) of that section applies as soon as practicable after that section comes into force and not as soon as practicable after the worker is injured.

(3) Section 154.3 [duty to maintain employment] of the *Workers Compensation Act*, as added by this Act, applies in relation to a worker who sustained an injury no more than 6 months before the date that section comes into force.

(4) Despite subsection (3) of this section, section 154.3 (8) of the *Workers Compensation Act*, as added by this Act, does not apply in relation to a worker whose employment is terminated before the date that section comes into force.

CLAUSE 14: *[Transition – interest]* provides that section 231.1 of the Act, as added by this Bill, does not apply in relation to compensation determined to be payable before that section comes into force.

CLAUSE 15: *[Transition – independent assistance or advice]* provides that section 302 of the Act, as amended by this Bill, applies in relation to an appeal to the Workers' Compensation Appeal Tribunal that is filed before the date that section comes into force but is not finally decided.

Transition – interest

- 14** (1) In this section, “**compensation**” has the same meaning as in section 1 of the *Workers Compensation Act*.
- (2) No interest is payable under section 231.1 [*payment of interest*] of the *Workers Compensation Act*, as added by this Act, in relation to an amount of compensation that is, before the date that section comes into force, determined to be payable.

Transition – independent assistance or advice

- 15** (1) In this section, “**appeal tribunal**” has the same meaning as in section 1 of the *Workers Compensation Act*.
- (2) Section 302 [*health professional assistance in specific cases*] of the *Workers Compensation Act*, as amended by this Act, applies in relation to an appeal to the appeal tribunal that, on the date that section comes into force, has been filed but not finally decided.

Commencement

- 16** The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Section 4	By regulation of the Lieutenant Governor in Council
3	Section 6	April 3, 2023
4	Section 7	By regulation of the Lieutenant Governor in Council
5	Sections 8 and 9	April 3, 2023
6	Section 11	May 1, 2023
7	Section 13	By regulation of the Lieutenant Governor in Council
8	Sections 14 and 15	April 3, 2023