



NOVA SCOTIA

Legal Services for Injured Workers

Workers' Advisers Program

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Introduction

Injured workers covered under Nova Scotia's Workers' Compensation Act are protected through benefits and services available under a no-fault insurance system. Through what is known as the historic trade-off, workers and their families give up the right to sue for the consequences of work-related injuries in return for compensation payable regardless of fault and without the need to pursue a lawsuit in court. The other side of the historic trade-off is that employers must pay assessments to cover the cost of the system in return for immunity from civil liability arising from work-related injuries.

The Workers' Compensation Board of Nova Scotia (WCB) is established under Part I of the Workers' Compensation Act. The WCB is the policy-leader for the workers' compensation system and investigates and adjudicates workers' claims in the first instance. The WCB also administers the Accident Fund, which is made up of employers' assessments and covers the costs of the workers' compensation system.

Workers and employers may appeal WCB final decisions to the Nova Scotia Workers' Compensation Appeals Tribunal (WCAT), which is set up under Part II of the Workers' Compensation Act. There is a limited right of appeal from WCAT decisions to the Nova Scotia Court of Appeal.

The Workers' Advisers Program of Nova Scotia is established under Part III of the Workers' Compensation Act. The Program is an independent legal clinic that provides free assistance, advice, and representation to injured workers and their families claiming workers' compensation benefits and who meet the Program's eligibility criteria.

The Chief Worker Adviser supervises the Program and reports to the Minister of Nova Scotia's Department of Labour and Advanced Education. The Program's head office is in Halifax with a second office in Sydney.

Responsibilities of the WCB

The WCB administers Part I of the ***Workers' Compensation Act***. The WCB's responsibilities include implementing policies, investigating and deciding workers' claims, collecting assessments from employers for the Accident Fund, facilitating workers' return to work after an injury, and promoting workplace safety.

When the WCB makes decisions, it must apply the ***Workers' Compensation Act***, the regulations, and its policies in a fair and reasonable manner and in accordance with the real merits and justice of the case.



Responsibilities of the Worker

A worker must report a work-related injury to his or her employer as soon as practicable, file a claim for compensation with the WCB, provide any other information required for the proper administration of the claim, and cooperate in reducing the impact of the injury.

While the Workers' Advisers Program is helping a worker, he or she must keep the Program advised regarding any communication on the claim and any change in the worker's contact information. The Program will usually require personal instructions from a worker before Program staff can file an appeal or other documents, so it is important to be able to contact the worker quickly.

The Program's inability to contact a worker for instructions may lead to a withdrawal of services and advising the WCB or WCAT, as the case may be, that the Program no longer represents the worker.

Responsibilities of the Employer

An employer shares responsibility with the worker for filing a claim for compensation. When an injury occurs, the employer is required to notify the WCB within five business days of the date of accident. The employer must complete the WCB Accident Report and provide any other information required by the WCB.

Time limits apply with respect to reporting and making a claim for compensation.

Appealing a decision

An initial decision by WCB staff dealing with an issue in a claim may be appealed to a Hearing Officer at the WCB's Internal Appeals Department. A worker or an employer can appeal to a Hearing Officer from a WCB staff decision.

A Hearing Officer's decision is considered to be the WCB's final decision on an issue in a claim.

A worker or an employer may appeal from a Hearing Officer's decision to WCAT.

A worker, an employer, or the WCB may appeal from a WCAT decision to the Nova Scotia Court of Appeal on a question of law or jurisdiction, but not on a question of fact.

Once a written decision is received, there are 30 days to appeal at any of these levels. An extension of this time to appeal may be requested under special circumstances, but a request to extend the time may not be granted.

Who are we?

The Workers' Advisers Program is a public legal clinic established to help eligible injured workers and their families seeking compensation under the Workers' Compensation Act.

The Program provides free legal services independent of the WCB and WCAT. Clients of the Program are in a solicitor-client relationship with the Program and its staff, in the same way as they would be with any other lawyer or law firm in Nova Scotia.

The Program provides legal services to eligible injured workers and their families at all levels of appeal in the workers' compensation system, including at Court in special cases.

Who is eligible?

In general, in order to qualify for services, an injured worker must have a reasonable expectation of success in obtaining at least \$500 or the equivalent in an appeal from a written decision.

What does it cost?

The Program's services are provided free of charge. The Program covers the costs of certain medical reports and other information necessary for an appeal if Program staff request this information and agree beforehand to pay for it.

The Program receives a grant from the Accident Fund to cover the costs of its operations.



Requests for assistance

The Program's Intake Clerk will first determine if the worker's request for service results from a written WCB decision. If the worker does not have a written decision, the Intake Clerk will usually refuse service.

If the worker has a written WCB decision, the Intake Clerk will obtain the necessary information from the worker and open a file, which will be assigned to a Workers' Adviser. Workers' Advisers are lawyers and non-lawyers with the necessary training and experience to provide legal services to injured workers and their families relating to workers' compensation matters.

A Workers' Adviser will review the file and contact the worker to advise whether the Program will provide legal services.

A worker refused service from the Program may request that the Chief Worker Adviser give further consideration to the request for legal services. The Chief Worker Adviser's determination in this regard is the final determination on whether the Program will provide services in the case.

Part III of the *Workers' Compensation Act* states that it does not give any person a right to legal advice or representation under the Program.

If the Program denies legal services, the worker may continue to pursue the appeal on his or her own and the worker may retain legal representation at his or her own expense. The Program's denial of services has no impact on the status of a worker's appeal.

What do we do?

Workers' Advisers are lawyers and non-lawyers with the necessary training and experience to provide legal services to injured workers and their families in workers' compensation matters.

Workers' Advisers assist and represent injured workers and their families pursuing workers' compensation benefits and services at all levels of appeal in the workers' compensation system.

Workers' Advisers review claim files and other information, consult and meet with workers and others, attend meetings and hearings around Nova Scotia, and obtain evidence and present it to workers' compensation decision-makers.

Workers' Advisers have access to research and other resources required to pursue appeals and they are familiar with the issues and pressures impacting on injured workers and their families.

What we don't do?

The Workers' Advisers Program does not represent injured workers as a special interest group or lobby government for changes to legislation. The Program does not pursue matters outside of workers' compensation claims, such as Canada Pension Plan benefits, Unemployment Insurance benefits, or Social Assistance benefits.

The Workers' Advisers Program does not represent employers, the government or other organizations.

Frequently asked questions

Q. What if I have questions about my claim and compensation but I have not received a written decision?

A. The WCB will answer questions about your claim and workers' compensation. However, if you would like general information from an independent source, you may call the Office of the Workers' Stakeholder Counsellor at **(902) 455-5455** or **1-877-220-2722** (toll free in Nova Scotia).

Q. I've received a decision I don't agree with and want to appeal. Can the Workers' Advisers Program help me?

A. The Workers' Advisers Program can only help you with an appeal if you satisfy the Program's eligibility criteria under the *Workers' Compensation Act* and regulations. This means you must have a decision in writing that denies you workers' compensation benefits. Also, the benefits you are claiming must be worth at least \$500 or the equivalent. The Workers' Adviser assigned to your appeal will determine if there is a reasonable expectation that your appeal will be successful.

Q. I think I qualify. What's next?

A. Everyone who wants to be a client of the Program must go through our "intake process". Once you receive a written decision, you can call the Program. We will need your claim number, the date of the decision, and your contact information when you call. We will request your permission to access your WCB claim file. When we have access to your claim file, our Intake Clerk will contact you to process your request for service.

Q. What does a Workers' Adviser do to prepare my case?

A. A Workers' Adviser does research on the type of injury or disease that affects you and researches the law. The necessary evidence is collected and arguments prepared. This could mean preparing written arguments in cases where an appeal consists only of the review of file material. If an oral hearing is scheduled, you and your Workers' Adviser will discuss how the hearing will proceed and the Workers' Adviser will attend the hearing with you. Importantly, your Workers' Adviser will keep you informed of the progress and status of your appeal.

Q. How will I know the status of my claim?

A. You will receive copies of all correspondence and documents sent out by your Workers' Adviser concerning your appeal. As well, when we receive medical information relating to your appeal, we will send you a copy. Your Workers' Adviser is available by telephone to answer your questions and will contact you by telephone or in writing to update you when things change.

Q. What does the Workers' Advisers Program expect from me?

A. You must provide the Program with any information the Workers' Adviser may need to assess eligibility and to represent you. As your case moves ahead, your Workers' Adviser must be informed about any letters or calls you receive from the WCB.

You must also keep your Workers' Adviser up-to-date about any changes in your condition. In some cases, you may have to attend a medical appointment set up by your Workers' Adviser. You must keep these appointments.

Q. Will the Workers' Advisers Program reimburse or pay for my travel expenses?

A. The Program does not pay Workers' travel expenses to attend meetings, medical appointments or hearings.

Q. Do I have a right to representation?

A. *Part III of the Workers' Compensation Act provides that there is no right to legal advice or representation under the Program.* To be eligible for legal services from the Program, your appeal must have a reasonable expectation of success with a possible recovery of at least \$500.00 or its equivalent.

You are also required to cooperate with your assigned Workers' Adviser. The Program may withdraw as your legal representative if you are not cooperative, if we determine your appeal does not have a reasonable expectation of success, or where, given the nature of the matter, the amount of assistance, advice, and representation received is unreasonable.

Q. Do I need to use the Workers' Advisers Program to file an appeal or can I do it on my own or with someone else's help?

A. You are not required to use the Program's services to deal with the WCB or pursue an appeal. If the Program denies you legal services or withdraws as your legal representative, you can proceed or continue on your own. If you wish, you can also retain your own legal representative at your own expense.

Q. Will the Workers' Advisers Program represent me on all my claims?

A. In agreeing to help with a certain workers' compensation issue, the Program is not agreeing to help with every other workers' compensation issue that might arise in that same claim.

The Program's primary role is to help workers with their appeals and we usually do this on an issue-by-issue basis. When a worker contacts the Program for help, it is typically because of a particular issue relating to a claim. When this issue is resolved in the worker's favour or if the Workers' Adviser determines there is no reasonable expectation of success in an appeal, we will close the file for services. If the Workers' Adviser decides to keep the file open for a specific reason, the worker will be notified of that fact.

Q. Will the Workers' Advisers Program represent me on future appeals?

A. After we close your file, you are solely responsible for meeting any deadlines for filing appeals or other documents. If later you receive a decision relating to the claim which might have to be appealed, you can contact our Intake Clerk and request further services.



For more information

To see if you are eligible for our services,
contact our Halifax office at:

Phone: **1-800-774-4712**

(toll free in Nova Scotia)

or **902-424-5050**

Fax: 902-424-0530

Halifax office:

Workers' Advisers Program
5670 Spring Garden Road, Suite 502
PO Box 1063
Halifax, NS B3J 2X1

Sydney office:

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338 Charlotte Street, 2nd Floor
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