



**UPDATE ON CHALLENGE TO
RETIREMENT AGE POLICY**

S. 201 OF THE WORKERS COMPENSATION ACT

Governs determination of retirement age

Duration of permanent disability award

S. 201 was amended effective January 1, 2021

THE PICTURE BEFORE THE AMENDMENT TO S.201

An injured workers' retirement age was calculated at the same time as their permanent functional impairment award

The decision maker could only consider retirement intentions prior to the worker's injury

Younger workers had a disproportionately difficult time proving they intended to work past age 65

WORKERS' COMPENSATION AMENDMENT ACT, 2020

(AMENDED S.201 EFFECTIVE JANUARY 1, 2021)

S.18 of the Amendment Act changed s. 201 to allow the Board to:

- Make the decision on retirement age after the worker turns 63
- Consider the worker's circumstances at the time the decision is made

S. 36 of the Amendment Act is a transition provision allowing the Board to:

- Make a new decision on retirement age if the Board has already determined the retirement age for a worker before January 1, 2021



WORKERS' COMPENSATION AMENDMENT ACT, 2020

(AMENDED S.201 EFFECTIVE JANUARY 1, 2021)

18 Section 201 is amended by adding the following subsection:

(3) A determination made under subsection (1) (a) (ii) as to a date on which a worker would retire after reaching age 65 may be made after a worker has reached age 63, and the Board may, when making the determination, consider the worker's circumstances at the time of that determination.

Transition – payment period for worker disability compensation

36 A determination may be made under section 201 (3) of the *Workers Compensation Act*, as added by section 18 of this Act, whether or not a determination has been made under section 201 (1) of that Act before the date section 18 of this Act comes into force.

WCB RSCM POLICY C6-41.00

- in most cases where a worker is under 63 years old at the time of the workplace injury, the decision on the duration of permanent disability benefits is to be made when the worker is age 63.
- the determination of a worker's retirement date is made only once, unless section 36 of the Amendment Act applies. It reads:
 - the worker was under 63 years of age on the date of the injury,
 - a previous determination was made under section 201 (1) before January 1, 2021, and
 - **the worker has not reached the age of retirement as previously determined by the Board.**

THE PICTURE AFTER JANUARY 1, 2021

1. Workers who have a retirement age of 65 (or other retirement age as determined by the Board) prior to the amendments and have now reached that age and continue to work will not be permitted to have a new determination of retirement age while workers under age 65 will.
2. Workers who successfully demonstrated to the Board that at the time of injury they would have retired at an age later than 65 could be subject to a new retirement age decision at age 63.
3. WCB now decides whether the worker “**would work**” past age 65. Not whether they **would have worked past age 65** but for the injury.
4. Board timelines can result in the retirement age passing without enough time to gather and present evidence

CASE STUDY A2200795

- 54-year-old worker
- Left knee injury accepted
- Returned to work with a PFI award to age 65
- Continued working past age 65, PFI payments ceased
- Accepted left knee injury significantly worsens
- Claim reopened for wage-loss benefits and health care
- Board finds prior retirement age decision was binding because he had already passed age 65, the retirement age determined back when his original injury was accepted as a permanent condition

WCAT VICE CHAIR FINDS THE POLICY UNLAWFUL (S.304)

Nothing in the Amendment Act prohibits a new decision on retirement age being made after worker reaches retirement age determined by the Board

Policy C-41.00 Fetters or removes discretion to make a new decision in a way that is inconsistent with the legislation – it does not consider actual circumstances



- Policy cannot override the legislation
- Policy must not be incapable of being supported by the legislation

“Patently Unreasonable”

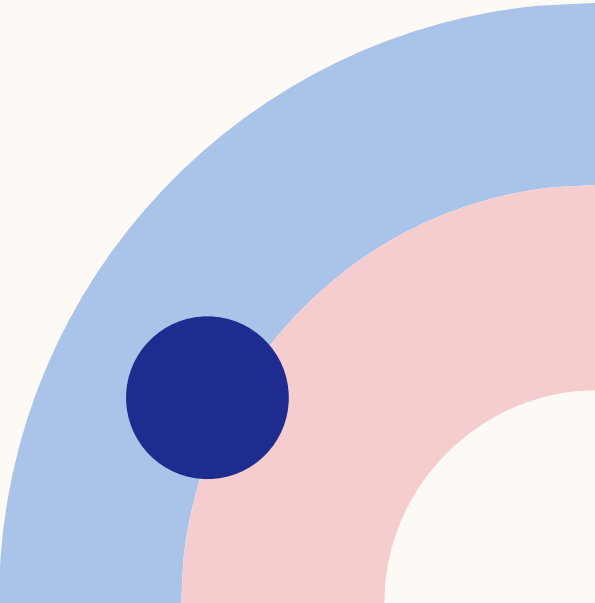
WCAT APPEAL NUMBER A2200795

Vice Chair referred lawfulness of this policy to the Chair of WCAT on February 27, 2023.

BCNU and HEU have members whose WCAT appeals are suspended pending outcome

BCNU invited to make submissions-
Completed October 2024

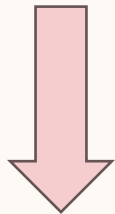
**Chair's decision
remains pending!**



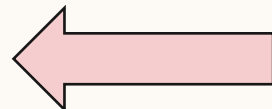
WHAT COMES NEXT?

If the WCAT Chair determines the policy must be applied

- The appeal is returned to the panel and the panel is bound to apply the policy



Judicial
Review



If the WCAT Chair determines the policy should not be applied

- The Chair sends Notice and written reasons to the WBC Board of Directors
- All affected appeals before WCAT are suspended
- Board has 90 days to determine if the tribunal can refuse to apply the policy due to it being patently unreasonable
- must give appellants opportunity to make written submissions
- Board's decision is binding on WCAT

FINAL TIPS

- Watch for this issue and cite the referral to Chair
- Older workers are vulnerable
- Educate your staff and membership
- If workers are frustrated- send them to their MLA

RESOURCES

S. 201 of the current *Workers Compensation Act*:

[Workers Compensation Act](#)

Workers Compensation Amendment Act, 2020:

[Workers Compensation Amendment Act, 2020 1347117476](#)

RSCM Policy C6-41.00:

https://api.online.worksafebc.com/ent/rscm/policyitems/chapter-6_c6-41-00-duration-of-permanent-disability-periodic.pdf

List of policies referred to WCAT Chair for decision on lawfulness:

[Lawfulness of policy decisions | Workers' Compensation Appeal Tribunal \(WCAT\)](#)

A2200795 referral to WCAT Chair on lawfulness of C6-41.00:

[Vice-Chair decision referring matter of lawfulness to WCAT Chair A2200795.pdf](#)

[IWRAP – Injured Workers' Research & Advocacy Project](#)