

2020/07/22-01**WORKERS' COMPENSATION BOARD****RESOLUTION OF THE BOARD OF DIRECTORS****RE: Adding Infections Caused by Communicable Viral Pathogens, Including COVID-19, to Schedule 1 of the *Workers Compensation Act*****WHEREAS:**

Pursuant to section 138(1) of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 (*Act*), the Board of Directors of the Workers' Compensation Board (WorkSafeBC), on behalf of WorkSafeBC may, by regulation, add to or delete from Schedule 1 of the *Act* a disease that in the Board of Directors' opinion is an occupational disease, add to or delete from Schedule 1 a process or an industry, and set terms, conditions and limitations for doing so;

AND WHEREAS:

Pursuant to section 319 of the *Act*, the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting occupational health and safety, compensation, rehabilitation and assessment;

AND WHEREAS:

On April 20, 2020, the Board of Directors directed the Policy, Regulation and Research Division (PRRD) to amend Schedule 1 of the *Act* on an expedited basis to add a presumption for COVID-19 and similar diseases;

AND WHEREAS:

The Evidence Based Practice Group conducted rapid reviews of the expert medical and scientific research relating to COVID-19, SARS, and H1N1;

AND WHEREAS:

The PRRD has proposed amendments to Schedule 1 of the *Act* to add a presumption for infections caused by communicable viral pathogens, which are the subject of a BC-specific emergency declaration or notice;

AND WHEREAS:

Consequential amendments to Item C4-28.00, *Contagious Diseases*, and Appendix 2 of the *Rehabilitation Services & Claims Manual, Volume II (RS&CM)* are required to reflect the Schedule 1 amendments;

AND WHEREAS:

The PRRD has undertaken stakeholder consultation on this issue and has advised the Board of Directors on the results of the consultation;

AND WHEREAS:

Pursuant to section 114 of the *Act*, a regulation amending Schedule 1 must specify the date on which the regulation comes into force, which date must be at least 90 days after its deposit under the *Regulations Act*;

AND WHEREAS:

Pursuant to the Provincial Government's *Regulatory Reform Policy*, the Board of Directors has evaluated the proposed regulatory amendments according to the established regulatory criteria;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. Effective October 26, 2020, Schedule 1 is amended as set out in Appendix 1 attached to this resolution.
2. Consequential amendments to Item C4-28.00, *Contagious Diseases* and Appendix 2 of the *RS&CM*, as set out in Appendix 2 attached to this resolution, are approved, and apply to all decisions made on or after October 26, 2020.
3. This resolution is effective October 26, 2020.
4. This resolution constitutes a policy decision of the Board of Directors.

I, Lee Loftus, hereby certify for and on behalf of the Board of Directors of WorkSafeBC that the above resolutions were duly passed at a meeting of the Board of Directors held in Richmond, British Columbia on July 22, 2020.

Lee Loftus
Acting Chair, Board of Directors
Workers' Compensation Board

APPENDIX 1

REGULATION OF THE WORKERS' COMPENSATION BOARD

The Workers' Compensation Board orders that, effective October 26, 2020, Schedule 1 of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, is amended by adding the following item as indicated:

Item	Column 1 Description of Disease	Column 2 Description of Process or Industry
20	Infection that is (1) caused by communicable viral pathogens, and (2) the subject of one or more of the following: (a) notice given under section 52(2) of the <i>Public Health Act</i> ; (b) a state of emergency declared under section 9(1) of the <i>Emergency Program Act</i> ; (c) a state of local emergency declared under section 12(1) of the <i>Emergency Program Act</i> ; (d) an emergency declared under section 173 of the <i>Vancouver Charter</i> .	Where (a) there is a risk of exposure to a source or sources of infection significantly greater than that to the public at large, (b) the risk of exposure occurs during the applicable notice or emergency under column 1, and (c) the risk of exposure occurs within the geographical area of the applicable notice or emergency under column 1.

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BACKGROUND

1. Explanatory Notes

This policy provides guidance for adjudicating contagious diseases recognized as an occupational disease.

2. The Act

Section 136, in part:

- (1) Compensation is payable under this Part [Part 4 – Compensation to Injured Workers and Their Dependants] in relation to an occupational disease, as if the disease were a personal injury arising out of and in the course of a worker's employment, if
 - (a) as applicable,
 - (i) the worker has an occupational disease that disables the worker from earning full wages at the work at which the worker was employed, or
 - (ii) the death of the worker is caused by an occupational disease, and
 - (b) the occupational disease is due to the nature of any employment in which the worker was employed, whether under one or more employments.
- (2) For the purposes of subsection (1), the date of disablement must be treated as the occurrence of the injury.

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Section 137(2):

If, on or immediately before the date of the disablement, the worker was employed in a process or industry described in column 2 of Schedule 1 opposite the occupational disease that has resulted in the disablement, the occupational disease must be presumed to have been due to the nature of the worker's employment unless the contrary is proved.

Section 138(1):

The Board may, by regulation, do the following:

- (a) add to or delete from Schedule 1 of this Act a disease that, in the opinion of the Board, is an occupational disease;
- (b) add to or delete from that Schedule a process or an industry;
- (c) set terms, conditions and limitations for the purposes of paragraphs (a) and (b) of this subsection.

POLICY

A. CONTAGIOUS DISEASES RECOGNIZED BY INCLUSION IN SCHEDULE 1

The following contagious diseases are recognized as occupational diseases by inclusion in ~~item 2 of~~ Schedule 1:

- **Item 2:** Infection caused by
 - (1) Psittacosis virus
 - (2) Salmonella organisms, Staphylococcus aureus, Hepatitis B virus
 - (3) Brucella organisms, including Undulant fever
 - (4) Tubercle bacillus.

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- **Item 20: Infection that is**

- (1) **caused by communicable viral pathogens, and**
- (2) **the subject of one or more of the following:**
 - (a) **notice given under section 52(2) of the *Public Health Act*;**
 - (b) **a state of emergency declared under section 9(1) of the *Emergency Program Act*;**
 - (c) **a state of local emergency declared under section 12(1) of the *Emergency Program Act*;**
 - (d) **an emergency declared under section 173 of the *Vancouver Charter*.**

The general application of the Schedule 1 presumption for establishing work causation is discussed in Section A. of Item C4-25.20 such that the worker must be employed in the process or industry described in column 2 of the Schedule.

B. CONTAGIOUS DISEASES RECOGNIZED BY REGULATION

The following contagious diseases have been designated or recognized as occupational diseases by regulation of general application, under section 138(2) of the Act:

- Campylobacteriosis (diarrhea caused by Campylobacter)
- Chicken Pox
- Giardia Lamblia Infestation
- Head lice (Pediculosis Capitis)
- Hepatitis A
- Herpes Simplex
- Legionellosis
- Meningitis
- Mononucleosis
- Mumps
- Red Measles (Rubeola)
- Ringworm
- Rubella
- Scabies

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- Shigellosis
- Staphylococci infections
- Streptococci infections
- Typhoid
- Whooping Cough
- Yersiniosis

For occupational diseases recognized by regulation under section 138(2), there is no presumption in favour of work causation, so a worker is not entitled to compensation simply because the worker contracted the disease while at work. For the disability to be compensable, there must be something in the nature of the employment which had causative significance. Thus, in these cases of contracting a contagious disease at work, it is a requirement for compensation that either:

1. The nature of the employment created for the worker a risk of contracting a kind of disease to which the public at large is not normally exposed; or
2. The nature of the employment created for the worker a risk of contracting the disease significantly greater than the ordinary exposure risk of the public at large. In this category, it would not be sufficient to show only that the worker meets more people than workers in other occupations, but it would be significant to show that in the particular employment the worker meets a much larger proportion of people with the particular disease than is found in the population at large.

It may help to illustrate these principles:

Example 1 — Suppose an outbreak of meningitis is affecting the community at large. The disease may be spreading at places of work, in the home, at schools, at churches, at social events, at sporting events, and every place where people meet. The Board would not, with regard to each worker who has the disease, seek evidence to decide whether that worker contracted the disease at work or elsewhere. The disease would be viewed as a public health problem, not a disease due to the nature of any particular employment, and compensation for the workers involved must be found under general systems relating to sickness benefits, not under workers' compensation.

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Example 2 — Suppose there are three cases of meningitis reported in the community. Victim 1 is a tourist from abroad. Victim 2 is a nurse who was engaged in the treatment of Victim 1. Victim 3 is a nurse who was working closely with Victim 2. Here the employment involved a risk of contracting a disease of a kind to which the public at large are not exposed, and the contracting of the disease by Victims 2 and 3 was due to the nature of their employment.

Example 3 — Suppose a courier develops mononucleosis and claims compensation on the ground that in the job the courier meets more people than workers in most occupations and therefore has a greater risk of exposure to contagious diseases. Such a claim would not be allowed. The disease is one that spreads in the population at large, and claims of this nature cannot be allowed or denied by estimating the extent to which each employment involves mixing with the public.

i. Scabies

The Board recognizes scabies as an occupational disease by regulation of general application under section 138(2) of the *Act*.

Claims for scabies will be accepted if the following three conditions are met:

1. The worker is employed in a hospital, nursing home, or other institution where there is a recognized hazard of contracting an infectious disease, or is directly involved in transporting patients or residents to or from such facilities.
2. There is satisfactory evidence the worker has had contact with an infected patient, resident or co-worker at the place of employment and the condition has occurred within a reasonable period of time following such contact (measured against the known incubation period for scabies). Evidence that there were persons in the place of employment known to have scabies is sufficient for this purpose if the worker would normally have direct contact with such persons in the performance of employment duties.

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3. The diagnosis of scabies is confirmed by a staff occupational health nurse, or by a physician or other qualified practitioner, and is not simply speculative. Skin scrapings need not be taken in order to give a positive diagnosis of scabies.

If any of the three conditions have not been met, the evidence is unlikely to support a finding that the worker has scabies due to the nature of the worker's employment.

As noted in Section D. of Item C4-25.10, many contagious diseases recognized as occupational diseases by regulation of general application are not likely to be "...due to the nature of any employment in which the worker was employed..." except for hospital employees, or workers at other places of medical care.

C. CONTAGIOUS DISEASES RECOGNIZED BY ORDER IN A SPECIFIC CASE

A worker may contract a contagious disease at work that the Board has not recognized as an occupational disease by inclusion in Schedule 1 or by regulation. The worker is not entitled to compensation simply because the worker contracted the disease while at work. The Board applies the policy in Section E. of Item C4-25.10 to recognize or designate the contagious disease as an occupational disease. The Board applies the principles set out above in Section B. of this policy to determine if the disability is compensable.

It may help to illustrate these principles:

Example 1 — Suppose the disease is one of a low order of contagiousness, and one that does not normally spread through the public at large, but which can be contagious when there is exceptionally close contact, such as may come from two workers constantly holding materials together, or sharing the same room. If, in this situation, a worker catches the disease from a fellow worker, from the employer, or from a client of the employer, with whom the worker has been placed in exceptionally close proximity, it may well be concluded that the disease is due to the nature of the employment. For example, where two workers share sleeping quarters on board a ship, and one contracts tuberculosis (which is also recognized by regulation as an occupational disease) from the other, the worker who contracted tuberculosis from the shipmate may be compensated.

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Example 2 — Suppose a maintenance mechanic from British Columbia is sent to repair machinery in use by a customer overseas. While there, the worker contracts a disease that is commonly found among the population at large in that country, but which is not a common disease in British Columbia. That would be compensable. The nature of the employment has exposed the worker to a disease of a kind to which the people of British Columbia are not normally exposed.

D. ESTABLISHING WORK CAUSATION

There is no requirement that a worker with a contagious disease should name a contact, but there should be some evidence of a contact. For example, if the worker was employed in a hospital, and there were three patients known to be in the worker's working area of the hospital who have the disease, an inference may be drawn from the circumstantial evidence that the worker contracted the disease there, even though the worker may not remember the names of the patients, or may not remember whether there was actual contact with them. The strength of this circumstantial evidence would obviously depend partly on the strength of evidence relating to alternative possibilities, such as whether the disease is extremely rare or one that is common in the community elsewhere. In other words, where there is no solid evidence of actual contact, the Board must still weigh the possibilities on the circumstantial evidence of possible contact and not simply reject the claim without weighing the possibilities.

EFFECTIVE DATE:	April 6, 2020 October 26, 2020
AUTHORITY:	Sections 136, 137, and 138 of the Act.
CROSS REFERENCES:	Item C4-25.10, <i>Has a Designated or Recognized Occupational Disease</i> ; Item C4-25.20, <i>Establishing Work Causation</i> ; Appendix 2, Schedule 1, of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	October 26, 2020 – consequential amendment resulting from amending Schedule 1 to include infections caused by communicable viral pathogens that are the subject of a BC-specific emergency declaration or notice. April 6, 2020 – This policy resulted from the consolidation of former policy items #28.00 and #28.10, consequential to the implementation of the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1.

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APPLICATION:

February 1, 2020 – Former policy item #28.10 was amended to provide guidance on the legal issues of standard of proof, evidence, and causation.

This Item applies to all decisions, ~~including appellate decisions,~~ made on or after April 6, 2020 **October 26, 2020**.

APPENDIX 2

OCCUPATIONAL DISEASES LISTED
IN SCHEDULE 1 – ITEM C4-25.10, SECTION C.

SECTION 138(1)

DESCRIPTION OF DISEASE

DESCRIPTION OF PROCESS
OR INDUSTRY

...

20. Infection that is

(1) caused by communicable viral pathogens, and

(2) the subject of one or more of the following:

(a) notice given under section 52(2) of the *Public Health Act*;

(b) a state of emergency declared under section 9(1) of the *Emergency Program Act*;

(c) a state of local emergency declared under section 12(1) of the *Emergency Program Act*;

(d) an emergency declared under section 173 of the *Vancouver Charter*.

Where

(a) there is a risk of exposure to a source or sources of infection significantly greater than that to the public at large,

(b) the risk of exposure occurs during the applicable notice or emergency under column 1, and

(c) the risk of exposure occurs within the geographical area of the applicable notice or emergency under column 1.