

This *Court Action Guide* answers questions you may have about the Workers' Compensation Appeal Tribunal's certification to court process.

What is a certification to court?

A worker (or their dependents or family members) cannot sue an employer or another worker who may have caused or contributed to their injury, disability or death if that worker could otherwise claim compensation under the *Workers Compensation Act* (Act). Section 127 of the Act limits the rights of workers (or their dependants or family members) to bring a cause of action against another worker, their employer, or other employers.

If an action is started because of a personal injury, death or disability caused by occupational disease, the court or any party to the court action may request a decision from WCAT about whether the injury, death or disability is work-related. For example:

- Whether a person was a worker at the time of the incident.
- Whether the injuries suffered by a worker arose out of and in the course of their employment.
- Whether a person or firm is an employer at the time of the incident.
- Whether the employer was engaged in an industry within the scope of the compensation provisions of the Act at the time of the incident.

While WCAT makes the decision about the status of the parties to the court action, the court determines the effect of the determinations on the court action.

How do I apply for a certification to court?

Any party involved in a court action, or the court, may request a certification to court. To apply, email, fax or mail a completed [application for certification to court form](#) along with a copy of all the court documents that have been filed in the court action, such as the *Notice of Civil Claim* (or equivalent) and any responsive pleadings. Please ensure that you fill out the application form in its entirety.

On the application form, we will ask you if you want the matter to proceed by written submissions or by oral hearing. The panel will make the decision about how the application proceeds, and who to invite. WCAT will arrange for disclosure by the Board of any relevant claim files.

When should I apply for a certification to court?

If you will require a certification to court in the court action, you should apply as soon as possible, after the court action has commenced. If you are not yet ready to proceed with the application, you can request that it be placed in a "holding period."

Currently, WCAT has a backlog of cases. If we are aware of an impending trial date, we will try to make the determination before the trial date. You should apply and be ready to proceed with

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your application at least eight months before your trial/hearing date so that WCAT has enough time to process the application and make a decision.

Do I need to file a WorkSafeBC claim?

The parties to the court action do not have to file a WorkSafeBC claim to request a certificate to court. However, if WCAT determines that the injury, disability or death arose out of and in the course of employment, you may not be able to claim workers compensation benefits if you have not made a claim within **one year**.

To preserve your rights to workers compensation benefits in the event that the injury, disability or death is determined to be work-related, you should start a WorkSafeBC claim for compensation on a provisional basis within a year of the incident. Making a claim will not affect the certificate to court application.

If WorkSafeBC has paid workers' compensation benefits to someone, and that person later starts a court action related to the same incident, WorkSafeBC must authorize the court action. If you have an accepted claim, WCAT may only process a request for certificate to court once the WorkSafeBC legal department has authorized the court action.

Who can participate in a certification to court application?

WCAT will invite all the parties named in the court action to participate in the certification to court application. We will also invite persons who the decision may affect, even if they are not a party to the court action, for example, the employer of a party who may have been a worker at the time of the injury.

If there is a related court action or other WorkSafeBC claim resulting from the same accident or event, we will also invite the involved parties to participate in the certification to court application.

Please provide the respondents and participating parties with copies of all your correspondence with us, including your submission. You do not need to provide them with copies of the transcripts of examinations for discovery conducted in the court action, as they are responsible for obtaining their own copies.

How does WCAT make a decision?

The WCAT panel will consider the evidence and submissions provided by all parties and evidence in the WorkSafeBC file, if there is one. The panel will also apply WorkSafeBC policies relevant to the application, including old versions of the policies that were in effect at the time of the incident.

If the evidence is evenly weighted on a compensation issue, the decision will be made in favour of the worker's compensation. On other issues, the decision is made on a balance of probabilities.

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What happens after WCAT makes its decision?

The final decision with supporting reasons is mailed to all parties. It is also published on the WCAT website. We will mail our decision with reasons to all the parties in the court action, and to any interested persons who participated in the court action. Since these decisions are filed in court and become public documents, we will publish them on our website without editing.

For actions started in British Columbia, we will file the certificate in the court registry and provide filed copies to you and the other parties. For actions started outside of British Columbia, it is the applicant's responsibility to file the certification to court in the proper court.

Where can I find more information?

You will find our *Manual of Rules of Practice and Procedure* (chapter 18.00 on Certification to Court), forms, other information guides, and WCAT decisions on our website.

More information about WorkSafeBC is available on their website: www.worksafebc.com. This includes the *Rehabilitation Services and Claims Manual*, the *Assessment Manual*, the *Prevention Manual*, and previous WCAT or Appeal Division decisions.

WCAT Contact Information

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If you have a
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to access our
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