

**Operational  
Policy**

Section

Non-Economic Loss (NEL) (Accidents from 1990)

Subject

**Effect of Pre-existing Impairment**

## Policy

When calculating NEL benefits for workers who have a pre-existing permanent impairment, the WSIB

- rates the area of the body affected by the new permanent impairment
- disregards any pre-existing permanent impairments affecting other areas of the body, and
- factors out pre-existing permanent impairments affecting the same area of the body.

If there is a NEL benefit for the pre-existing permanent impairment, the WSIB calculates a second NEL benefit for the new permanent impairment.

### NOTE

The WSIB only combines values when rating multiple impairments eligible for a NEL.

## Guidelines

### General

Pre-existing permanent impairments include

- non-work-related impairments
- work-related impairments for which there is a permanent disability pension, and
- work-related impairments for which there is a NEL benefit.

### Pre-existing non-work-related impairments

#### New injury affecting a different area of the body

If a worker has a pre-existing permanent impairment that is not work-related, and a new work-related permanent impairment to a different area of the body, the WSIB rates the work-related impairment on its own.

#### New injury affecting the same body area

If both impairments affect the same area of the body, and the pre-existing impairment is measurable, the WSIB

- rates the total impairment to the area
- determines the rating for the pre-existing impairment, and
- subtracts the rating for the pre-existing impairment from the total impairment rating to get the rating for the new work-related impairment.

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If the pre-existing impairment is not measurable, the WSIB

- rates the total area's impairment, and
- reduces this rating according to the significance of the pre-existing impairment (see pre-accident disability in 14-05-03, Second Injury and Enhancement Fund).
  - if minor, there is no reduction
  - if moderate, there is a 25% reduction
  - if major, there is a 50% reduction.

**NOTE**

A pre-existing impairment is "measurable" or non-measurable" depending on whether it can be rated using the American Medical Association's Guides to the Evaluation of Permanent Impairment, 3rd edition (revised). This determination is based strictly on the clinical information available at the time of the work-related injury.

**Pre-existing permanent disability pensions  
New injury affecting a different area of the body**

If a worker suffered an injury before January 2, 1990 which resulted in a permanent disability pension, and then suffers a work-related permanent impairment to a different body area on or after January 2, 1990, the WSIB rates the post-January 2, 1990 impairment on its own.

**New injury affecting the same area of the body**

If a worker suffered an injury before January 2, 1990 which resulted in a permanent disability pension, and then suffers a work-related permanent impairment to the same body area on or after January 2, 1990, the WSIB

- rates the total impairment to the area, and
- subtracts the permanent disability rating from the total area's rating.

**Pre-existing NELs****New injury affecting a different area of the body**

If a worker with a pre-existing NEL benefit has a new permanent impairment that affects another area of the body, the WSIB determines the second NEL benefit by

- rating the new impairment independently of the prior impairment
- combining the old and new ratings using the Combined Values Chart (see 18-05-04, Calculating NEL Benefits), and
- subtracting the prior impairment's rating from the combined value.

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**Effect of Pre-existing Impairment****New injury affecting the same area of the body**

If a worker with a pre-existing NEL benefit has a new injury that results in an increased impairment to the same area of the body, the WSIB determines the second NEL benefit by

- rating the total impairment to the area, and
- subtracting the existing NEL rating from the total rating (see 18-05-04, Calculating NEL Benefits).

**NOTE**

The WSIB may redetermine a NEL benefit if an impairment worsens as a result of a recurrence or deterioration (see 18-05-09, Redeterminations and Recalculations).

**New injury to the same and different body areas**

If a worker with a pre-existing NEL benefit has a new injury resulting in both an increased impairment to the same area of the body, and a new impairment to a different area of the body, the WSIB determines the second NEL benefit by

- rating the total impairment to the area for which a NEL already exists, and subtracting the pre-existing NEL
- rating the impairment to the different area of the body, and
- combining the above values, using the Combined Values Chart.

**Example**

In 1993, Mac had an injury to his right knee which resulted in a 5% NEL. In 1998, Mac had another accident, injuring his right knee again and injuring his left elbow. At MMR, the WSIB rates Mac's right knee (in its totality) at 12%, and his left elbow at 6%. To determine the new rating for the knee, the WSIB subtracts the pre-existing 5% from the knee's total rating of 12%. The WSIB then combines the resulting 7% with the elbow's 6% rating. The combined value, 13%, is Mac's second NEL rating.

**Occupational disease**

For occupational disease claims, a permanent impairment for a non-work-related disease is factored out of a work-related occupational disease rating only if

- the diseases are the same, and
- the pre-existing non-work-related disease is measurable.

**Document history**

This document replaces 18-05-05 dated June 15, 1999.

This document was previously published as:

6.4\* dated January 1, 1998

05-06-07\* dated September 4, 1991.

\* These documents were replaced by 18-05-05 dated June 15, 1999.

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**Application date**

This policy applies to all decisions made on or after January 1, 1998, for accidents on or after January 2, 1990.

**References**

**Legislative authority**

*Workplace Safety and Insurance Act, 1997*, as amended  
Sections 46, 47

O. Reg. 175/98  
Section 18

*Workers' Compensation Act, R.S.O. 1990*, as amended  
Section 42

R.R.O. 1990, Reg. 1102  
Section 15

**Minute**

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