

## Law

*Workplace Safety and Insurance Act:*

### s.84

If the WSIB finds that an accident or disease to a Schedule 1 worker was caused by the negligence of another Schedule 1 worker or employer, the WSIB may charge all or part of the claim costs to the negligent employer's cost record.

## Policy

If negligence is determined and claims costs have already been charged to the accident employer, all or part of these costs are transferred from the accident employer's ~~cost record statement~~ [claims experience](#) to the negligent employer's ~~cost record statement~~ [claims experience](#).

## Guidelines

### Right of action/recovery

In the case of an accident or disease to a Schedule 1 worker, the injured worker does not have a right of action/recovery against another Schedule 1 worker or employer.

### NOTE

A worker **may**, however, have the right of action/recovery against third parties not covered under Schedule 1 (see 15-01-05, Third Party Rights of Action).

## Investigating possible negligence

### Definition

In common law, negligence is defined as

- failing to do something which a reasonable and prudent person would do, or
- doing something which a reasonable and prudent person would not do.

On a case by case basis, the WSIB applies common law principles to determine if another employer is negligent in a work-related accident.

### Minimum cost level

If the claim has a health care cost component only, there must be at least \$500 in costs before the WSIB investigates possible negligence.

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**Sources of information**

The WSIB investigates possible negligence based on

- its own suspicions of negligence, or
- information on the Worker's Report of Injury/Disease Form 6, or the Employer's Report of Injury/Disease Form 7, or
- information subsequently provided by the accident employer, or from any other source.

The cost adjuster investigating the claim may review information concerning the accident from the following sources:

- police reports
- Environment Canada weather reports
- interviews with witness or the injured worker
- Ministry of Labour reports
- inspection of the accident location
- discovery transcripts
- court transcripts
- inquest findings
- accident scene photographs
- reports from employers, workers, representatives, agencies, and any other relevant source.

As part of an investigation, the cost adjuster contacts the potentially negligent Schedule 1 employer and gives the employer an opportunity (usually 30 days) to

- present the facts of the accident, and
- explain why the employer was not negligent.

The accident employer, the worker, or any other source considered relevant to the investigation may also be contacted for information about the accident.

**Proof of negligence**

If the evidence indicates that it is more likely than not that the other Schedule 1 employer was negligent, the WSIB determines the degree of negligence. As a result, the WSIB may transfer all or part of the claim costs to the negligent employer.

The details of the transferred costs appear on both the accident and negligent employer's [accident cost statements](#) [claims experience](#).

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**Future costs**

Once the costs determined by the degree of negligence have been transferred to the negligent employer's ~~cost record~~[claims experience](#), any future benefits on the claim are apportioned accordingly. For example, if the WSIB finds the negligent employer was

- 100% negligent, all future costs are directly allocated to the negligent employer
- less than 100% negligent, all future costs are allocated to both the accident employer and the negligent employer according to the degree of negligence.

**Cost relief deadlines**

[For deadlines on the removal of claims experience for the purposes of employer premium adjustments, see 14-02-06, Employer Premium Adjustments.](#)

For deadlines on [the removal of costs relief](#) for the purposes of experience rating [programs](#), see [13-02-02, NEER \(New Experimental Experience Rating Plan\)](#) ~~13-02-07, Adjustments to NEER Refunds and Surcharges~~ and [13-02-06, Construction Industry Plan \(CAD-7\)](#) ~~13-02-05, Adjustments to CAD-7 Refunds and Surcharges.~~

**Application date**

This policy applies to all decisions made on or after ~~January 1, 1996~~ [January 1, 2020](#).

**Document history**

This document replaces ~~08-01-10, dated October 28, 1996~~ [14-05-01 dated October 12, 2004](#).

[This document was previously published as:  
08-01-10 dated October 28, 1996.](#)

**References****Legislative Authority**

*Workplace Safety and Insurance Act*, as amended  
Sections 26(2), 27, 28(1), (3), 29(1), (3), (4), 84

~~*Workers' Compensation Act, R.S.O. 1990, as amended  
Section 10(9), (11)*~~

**Minute**

Administrative  
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