
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 to the negligent employer's cost record.

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.

Sources of information

The WSIB investigates possible negligence based on

- its own suspicions of negligence, or

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- 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.

Future costs

Once the costs determined by the degree of negligence have been transferred to the negligent employer's cost record, 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.

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Cost relief deadlines

For deadlines on cost relief for the purposes of experience rating, see 13-02-07, Adjustments to NEER Refunds and Surcharges and 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.

Document history

This document replaces 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)

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