

## Law

*Workplace Safety and Insurance Act:*

### s.30(1)(2)

Workers injured in work-related accidents who are entitled to take legal action against a third party, may either claim WSIB benefits or take action against the third party.

### s.30(14)

If a worker takes legal action that results in a court award of less money than the WSIB would have paid in benefits, the worker is entitled to the difference. This also applies to settlements but they must be approved by the WSIB before they are finalized.

### s.30(10)(12)(13)

If workers elect to claim benefits, the WSIB may take legal action on their behalf. When such an action results in a court award or settlement which is greater than the amount the WSIB paid out in benefits and legal costs, the WSIB pays the worker the difference. This surplus is deducted from any future benefits.

## Policy

The WSIB may remove all or part of the costs of a claim from the ~~accident cost record~~ [claims experience](#) of a Schedule 1 employer if

- the claim resulted from third party negligence,
- the third party is not covered under Schedule 1, and
- legal action results in the WSIB receiving money.

## Guidelines

### Right of action

Workers have a right of action (to sue) if their injury or disease results from the negligence of a third party, i.e., someone other than the worker or the employer, and this person is not covered under Schedule 1. Workers can either

- sue the third party, or
- claim benefits, in which case the WSIB takes over their right to sue. (See 15-01-05, Third Party Rights of Action)

### Worker sues

Workers who pursue legal action against a third party are not entitled to WSIB benefits. They are however, entitled to ask the WSIB what they would have received if they had claimed benefits. If they receive a court award or WSIB approved settlement of less than what they

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would have received in benefits, they are entitled to the difference. The WSIB charges this amount to the ~~accident cost record~~[claims experience](#) of the employer.

### Worker claims benefits & WSIB sues

If the WSIB sues on behalf of a worker and receives a court award or settlement, it then removes the amount recovered from the ~~accident cost record~~[claims experience](#) of the employer, up to the total costs of the claim.

If the court award or settlement is less than the benefits paid, the difference remains on the ~~accident cost record~~[claims experience](#) of the employer. If the court award or settlement is greater than the total costs of a claim, the surplus is paid to the worker.

### Future costs

When workers who receive a surplus payment later become eligible for more benefits, the WSIB withholds payment and keeps a tally of the benefits withheld. Once it exceeds the amount of the surplus, the WSIB starts paying benefits again and records them on the ~~cost record~~[claims experience](#) of the accident employer.

### 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 ~~claims experience costs~~ for the purpose 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 ~~08-01-11, dated October 28, 1996~~[14-05-02 dated October 12, 2004](#).

[This document was previously published as:  
08-01-11, dated October 28, 1996.](#)

## References

### Legislative Authority

*Workplace Safety and Insurance Act, 1997*, as amended  
Sections 30(1), 30(2) 30(10), 30(12), 30(13), 30(14), 83

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~~Workers' Compensation Act, R.S.O. 1990, as amended  
Sections 10(1), (2), (3), (4), 103.1~~

**Minute**

Administrative

~~#6, July 2, 2004, Page 387~~