

**Operational  
Policy**

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Section  
Reporting an Injury/Disease

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Subject  
**Third Party Motor Vehicle Accident Claim Costs**

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## Policy

The WSIB removes from an employer's experience rating record, part or all of the costs of motor vehicle accidents in Ontario involving a negligent third party who is not covered under Schedule 1.

### Purpose

The purpose of this policy is to provide cost relief guidelines for certain motor vehicle accident claims which involve negligent third parties.

## Guidelines

### Right of action

Before the implementation of no-fault automobile insurance, the WSIB could, on behalf of a worker, sue a non-Schedule 1 third party for negligence for motor vehicle collisions occurring in Ontario. If the legal action was successful, the WSIB used the court award to provide cost relief to the accident employer by adjusting the employer's experience rating record by the amount of the award.

With the advent of Ontario's no-fault automobile insurance legislation, in most cases, a third party cannot be sued for negligence. Since the WSIB is thus precluded from taking legal action on behalf of a worker against a non-Schedule 1 third party, it must conduct its own investigation to determine the degree of negligence for cost relief purposes.

### Cost relief

When the WSIB suspects third party negligence has contributed to a claim, that claim is initially reviewed under the policy 15-01-05, Third Party Rights of Action, since the possibility exists that the WSIB could take legal action on behalf of the worker.

However, in motor vehicle accident claims, the WSIB conducts an investigation, as described in 14-05-01, Transfer of Costs. If third party negligence is determined, the WSIB removes any benefits paid to the worker from the accident employer's experience rating record according to the degree of negligence attributed to the third party. For example, if the WSIB finds that the third party was

- **100% negligent**, all current and future costs are removed from the accident employer's cost record. Under the CAD-7 and MAP experience rating plan, the accident frequency component of the refund or surcharge calculation is also adjusted. See 13-02-06, Construction Industry Plan (CAD 7) and 13-02-04, Merit-Adjusted Premium Program.
- **less than 100% negligent**, current and future costs are removed from the accident employer's record according to the percentage of third party liability. The frequency component resulting from the accident is not adjusted.

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## Schedule 1 employers

The WSIB applies policy 14-05-01, Transfer of Costs, if at the time of the motor vehicle accident, both parties are covered under Schedule 1 and third party negligence is suspected.

## Legal action

In cases where the worker could sue the third party, but elects to claim loss of earnings benefits, the WSIB may then sue the third party for damages in the name of the worker. See 15-01-05, Third Party Rights of Action.

## Assignment of benefits

For motor vehicle claims, which require an assignment of WSIB benefits to a third party (e.g., an insurance company), refer to 18-01-06, Redirected Benefit Payments.

## Cost relief deadlines

For deadlines on the removal of costs for the purposes of experience rating, see 13-02-05, Adjustments to CAD-7 Refunds and Surcharges, and 13-02-07, Adjustments to NEER Refunds and Surcharges.

## Application date

This policy applies to all decisions made on or after January 1, 2002, for accidents on or after October 23, 1989.

## Document History

This document replaces 15-01-06 dated October 12, 2004.

This document was previously published as:  
11-01-16 dated April 11, 2003.

## References

### Legislative Authority

*Workplace Safety and Insurance Act, 1997*, as amended  
Sections 26, 27, 28, 29, 30, 31

*Workers' Compensation Act, R.S.O. 1990*, as amended  
Sections 10(1), (2), (3), (8), (9), (10), (11), (12), (17), (19), 14, 16, 17

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