

**Operational
Policy**

Section

Access to Claim File Information

Subject

Disclosure of Claim File Information (Issue in Dispute)

Policy

The WSIB provides access to claim file information to the workplace parties whenever there is an issue in dispute.

Purpose

The purpose of this policy is to set out what information the WSIB may disclose to the workplace parties when there is an issue in dispute.

Guidelines

This document should be read in conjunction with 21-02-01, Disclosure of Claim File Information - General.

Definitions

Issue in dispute – an issue in dispute exists if a workplace party disagrees, in whole or in part, with a decision made by the WSIB.

Workplace parties – the workplace parties include

- workers
- workers' survivors claiming benefits under s.48 of the *Workplace Safety and Insurance Act, 1997* (WSIA)
- workers' survivors, beneficiaries or estates claiming benefits under s.45 of the WSIA
- a worker's employer, including deemed employers and successor employers, and
- third party employers for transfer of costs purposes.

For more information on deemed employers, see 12-01-01, Who is an Employer?.

For assistance in determining who is a successor employer, contact Legal Services.

Special rules apply to the disclosure of claim file information to transfer of cost employers. For more information see the **Transfer of cost employers** section below.

NOTE

In this document, any references to workers and/or employers include authorized worker or employer representatives; or, if the worker is deceased, authorized personal representatives. For information on who is an authorized representative, see 21-02-04, Disclosure of Claim File Information to Worker or Employer Representatives.

The workplace parties do not include

- placement employers for work transition (WT) purposes, or
- non-accident concurrent employers.

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Treating health professional — health professional means a member of a college of a health profession as defined in the Regulated Health Professions Act, 1991. Generally, the **treating** health professional is the person who is responsible for the ongoing care of the worker.

Appealing a decision

To appeal a decision of the WSIB, the workplace party must inform the WSIB, in writing, of its intention to appeal the decision. The WSIB calls this written communication a **notice of objection**. The workplace party must submit the notice of objection within the appeal time limit identified in the WSIB's decision letter. For guidelines on appeal time limits, see the document called Appeals System Practice and Procedures.

Worker access**Full access to be granted**

When the WSIB receives a notice of objection from a worker, or a worker's survivor, beneficiary, or estate, within the applicable time limit, the WSIB sends the worker

- a copy of all of the documents in the claim file
- an Objection Form, and
- an instruction sheet.

At the same time, the WSIB notifies the employer of the objection and provides a Participant Form on which the employer can notify the WSIB of the employer's intention to participate in the appeals process.

NOTE

The WSIB can honour verbal requests for claim file access from workers who disagree with a WSIB decision. Such requests can be processed if to do so would expedite the appeals process, and assist the worker in preparing his or her written notice of objection (as outlined above in the guideline entitled "Appealing a decision").

Exceptions to full access — deceased worker

If the worker is deceased, and the worker's survivors, beneficiaries, or estate may be entitled to payments under s.45 (loss of retirement income), the access provided by the WSIB is limited to those documents which the decision-maker considers to be **relevant** to the issue in dispute.

Exceptions to full access — harmful information

The WSIB assumes that health professionals share all health information, including harmful information, with their patients. Therefore, unless a health professional notifies the WSIB that information has not been communicated to a patient, the WSIB releases all health information in the claim file to the worker.

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Information is considered harmful if there is a significant likelihood of a substantial adverse effect on the physical or mental health of the worker, if the worker was unaware of the information prior to receiving it from the WSIB. Examples of harmful medical information may include, but are not limited to: terminal illness, serious mental illness, reference that indicates a poor prognosis (i.e., worker has major clinical restrictions and future improvement is unlikely).

Where a health professional notifies the WSIB that harmful information has **not** been communicated to the worker, the WSIB

- provides a copy of the document containing harmful information to the treating health professional (see definition above)
- releases only the non-harmful information to the worker, and
- advises the worker to contact his or her treating health professional.

Employer access**Relevant access to be granted**

When the WSIB receives a notice of objection from an employer, or when the employer has a right to access because of a decision to participate in a worker's objection, the WSIB sends the entire claim file to the worker. At the same time, the WSIB asks the worker to identify any health care information which he or she feels should not be released to the employer.

Worker's objection to release of health care information

If the worker notifies the WSIB that he or she objects to the disclosure of specified health care information, the WSIB considers the reasons for the objection before deciding whether to disclose the specified health care information.

Following the decision of the WSIB, either party has 21 days within which to appeal to the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

Releasing relevant information

The WSIB releases all **relevant** information to the employer in a single package after

- WSIAT has made a final decision on any objections raised by the worker to the release of health care information, or
- the time limit (21 days) for appealing to WSIAT on the issue has expired.

Until one of the above two conditions is met, the WSIB is prohibited from disclosing the disputed health care information.

Determining relevancy

Normally, information on file that has no bearing on a worker's entitlement to benefits would not be considered relevant to an issue in dispute and would not be released to employers.

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Examples of information that would not generally be considered relevant include, but are not limited to

- information which describes an individual's finances, banking information, direct deposit enrolment forms, copies of personal cheques
- information which verifies the status of an individual's birth, death or marriage
- support deduction orders
- garnishment orders and related documents
- other court orders
- requirement to pay notices
- social service or welfare benefit documents
- employment insurance documents
- reference to criminal records, and
- health care information that is not relevant to the administration of the claim, i.e., that would not be used to make a decision in the claim.

Such information is normally placed in the "no access" section of the claim file.

Prior or subsequent claims

If an employer requests information contained in a worker's prior or subsequent claim(s), the WSIB only releases information from that claim that is relevant to an issue in dispute in the claim under appeal.

Employer cannot disclose health care information

Section 59(6) of the WSIA prohibits employers and their representatives from disclosing health care information obtained from the WSIB without first removing all references to the worker's identity or case. For more information about offences and penalties, see 22-01-08, Offences and Penalties - Employer.

Transfer of cost employers

Access is given to transfer of cost employers to enable effective participation in the decision-making process. Therefore, the WSIB provides access to transfer of cost employers in the same manner as it does for regular employers, except that the worker can object to the disclosure of **any** information in the claim file, not just health care information.

For information on disclosure of claim file information to transfer of cost employers in the absence of an issue in dispute, see 21-02-03, Disclosure of Claim File Information to Employers (No Issue in Dispute).

Third party information

Often, the claim file contains information about or from a third party, e.g., a witness, co-worker, relative or friend. In most cases, the WSIB releases this information to the workplace parties in the normal manner.

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Occasionally, the release of such information to either workplace party could jeopardize the safety of the third party, or give rise to workplace reprisals. In these cases, the WSIB generally withholds certain parts of the information.

For example, while the name of the third party may be released upon an access request, the address and telephone number may be withheld. This compromise balances the workplace parties' right to examine all the evidence, and fully present arguments, with the third parties' right to safety and protection.

In all cases, the third party should be informed that the information they provide may be disclosed to the worker and/or the employer.

The WSIB also accepts information anonymously from third parties. In all cases (except where the third party consents) such information is vetted for personal identifiers prior to being placed in the claim file.

If anonymous information comes to the WSIB, the WSIB uses it to determine entitlement only if other information or evidence can corroborate it.

Inquiries/investigations

In some cases, access may not be provided until

- the operating area has completed an inquiry, or
- Regulatory Services or Legal Services has completed an investigation.

For more information about inquiries or investigations, see 22-01-05, Offences and Penalties - General.

Fees

The WSIB does not charge a fee for any documents released to the workplace parties because of an issue in dispute.

Application date

This policy applies to all decisions relating to the disclosure of claim file information made on or after February 15, 2013, for all accidents.

Document History

This document replaces 21-02-02 dated April 6, 2009.

This document was previously published as:

- 21-02-02 dated February 20, 2006
- 21-02-02 dated January 3, 2006
- 21-02-01 dated October 12, 2004.

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References

Legislative Authority

Workplace Safety and Insurance Act, 1997, as amended
Sections 57, 58, 59, 119, 120

Workers' Compensation Act, R.S.O. 1990, as amended
Sections 70, 71, 73

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