

**Operational
Policy**

Section

Access to Claim File Information

Subject

Disclosure of Claim File Information to Employers (No Issue in Dispute)

Policy

All claim file information is considered personal information under the Freedom of Information and Protection of Privacy Act (FIPPA) and may be disclosed in limited circumstances in accordance with various exceptions listed in FIPPA. Because employers have obligations under the Workplace Safety and Insurance Act, 1997 (WSIA), and corresponding rights to reasonably monitor and participate in the WSIB's compensation process, the WSIB has to ensure that any and all disclosures of personal information to employers adhere to the privacy provisions of FIPPA.

Where a specific FIPPA exception allows for the disclosure of personal information contained in claim files, it can generally be disclosed to employers verbally, in claim file status letters, or in claim decision letters. In the absence of a formally raised issue in dispute, or of a specific legislative authority, employers are generally not entitled to receive actual copies of claim file documents.

If disclosure of personal information is allowed, the responsible WSIB employee takes steps to limit the disclosure to the information that is necessary to meet the requirements of FIPPA and the WSIA.

Purpose

The purpose of this policy is to outline and explain the legislative authority allowing the WSIB to disclose claim file information to employers in the absence of an issue in dispute.

Guidelines

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

Issue in dispute

This policy does not apply where there is an issue in dispute. For more information on disclosure of claim file information to employers where there is an issue in dispute see 21-02-02, Disclosure of Claim File Information (Issue in Dispute).

Employer

For the purposes of this policy, the term "employer" includes

- deemed employers
- successor employers
- transfer of cost employers
- placement employers for Work Transition (WT) purposes
- non-accident employers for WT purposes, and

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- non-accident concurrent employers.

For more information on deemed employers see 12-01-01, Who is an Employer? For assistance in determining who is a successor employer, contact the WSIB's Legal Services.

Special rules apply to the disclosure of claim file information to transfer of cost employers, placement employers for WT purposes, and non-accident concurrent employers. For more information see the section entitled "Special cases," below.

References to workers/employers

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.

Actual claim file documents not to be provided

Employers who have a right to personal information under this policy are entitled to verbal status information about the claim, written status information, and/or copies of decision letters. They are generally not entitled to copies of actual claim file documents.

The few instances whereby the WSIB can provide actual copies of claim file documents under this policy include when

- a worker has not provided documents to an employer that he or she is required to provide, e.g., Form 6 - Workers Report of Injury/Disease
- a treating health professional has not provided an employer with a copy of the Functional Abilities Form for Planning Early and Safe Return to Work (FAF)
- an employer is requesting documents that he or she provided to the WSIB, e.g., Form 7 - Employer's Report of Injury/Disease, or
- the WSIB needs to share WT documentation with the injury employer, or with placement employers for WT purposes. Such documentation may include Transferable Skills documents, WT Summary Assessment documents, and/or WT Plan documents.

Disclosure under FIPPA

The relevant FIPPA exceptions permitting disclosure of claim file information to employers can be summarized as follows:

Consent

Disclosure is allowed if the individual about whom the information relates consents to the disclosure.

No consent required

Federal or provincial law

The WSIB does not require the worker's consent to disclose personal information to employers where such disclosure is for the purpose of complying with a federal or provincial law, including the WSIA.

For example, specific provisions under the WSIA require the WSIB to provide employers with copies of claim decision letters.

Purpose of collection and consistent purpose

A specific FIPPA exception allows for the disclosure of personal information to employers that has been obtained indirectly, (i.e., from someone other than the worker), where such disclosure is for the purpose for which the information was collected, or for a consistent purpose.

Where personal information has been obtained directly from the worker, disclosure to employers is generally allowed if it is

- for the purpose for which the information was collected, or
- for a consistent purpose, and
- the worker might reasonably have expected such disclosure.

In either case, if the specific FIPPA exception is met, the WSIB does not require the worker's consent to disclose personal information to the employer.

For more information on collection purposes, consistent purposes, and workers' reasonable expectations see 21-02-01, Disclosure of Claim file Information - General.

Disclosure examples

The following tables provide examples of specific types of claim file information that can generally be disclosed to the employer without consent (Table 1), and examples of specific types of claim file information that generally cannot be disclosed (Table 2). Both tables, however, **provide general guidelines only** and their specific application depends on the facts and circumstances of each claim. In all cases, the disclosure requirements of FIPPA, outlined above, must be satisfied.

If the special circumstances of the case, the especially sensitive nature of the information, or concerns around the health and safety of any individual raises questions about disclosability, guidance should be sought from the WSIB's Privacy Office before disclosing any information, including information from either Table 1 or Table 2.

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Table 1 - Disclosure generally permitted

Claim File Status Information
Entitlement to Benefits/Services
Information which the employer already has, such as a claim number, Form 7 information, or Social Insurance Number (SIN).
History of accident/disease, i.e., date and location of incident, factors precipitating event, content of statements made by workers, employers and witnesses.
Diagnosis of injury/disease.
Names of health care providers, i.e., hospitals, doctors, or clinics.
Reasons/rationale for allowance/denial of benefits/services.
Results/conclusions of a WSIB investigation, e.g., a claim listed for investigation as a result of significant delays between when a work-related accident occurred, and when the worker reported the accident to his/her employer and sought initial medical attention.
Ongoing Claims Management
Diagnosis of re-injury or recurrence.
Confirmed involvement of a specific type of health care provider, such as a physiotherapist or orthopaedic specialist.
General type of treatment, i.e., physiotherapy, surgery, or chiropractic.
Date and type of relevant work-related diagnostic testing.
Frequency and/or duration of treatment.
Whether the worker is co-operating with treatment.
WSIB appointment and/or referral, i.e., Regional Evaluation Centre, Specialty Clinic Program.
General prognosis, e.g., whether complete recovery is expected.
Physical limitations/clinical restrictions (functional abilities).
Extent and percentage of permanent disability (PD) or permanent impairment (PI).
Confirm/deny whether worker is claiming for a particular injury/condition.
Payment/Account Information
Type of benefit, i.e., total or partial.
Payment history, i.e., from and to dates.
Whether a benefit-related debt has been created and, if so, what period it relates to.
Arrears information (date/explanation) if the worker has not fulfilled his/her obligation to repay a benefit-related debt.
Reason health care payment charged to account and category that payment comes under, i.e., physiotherapy, prescriptions, orthotics, etc.
Work Reintegration (WR) Information
General health condition as it relates to co-operation in WR.

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Whether worker is co-operating in all aspects of WR.
General type of WT program/plan undertaken including time-frames and the names of specific institutions (if any).
WT Summary Assessment or WT Plan information which would assist the employer in being able to provide suitable work, or in understanding how WT costs have been assessed.
Expected date of completion of WT plan.
Whether a referral for counselling has been made.
Allocation of Costs/SIEF Information
Confirm/deny previous employment exposure (apportionment of costs).
Confirm/deny pre-existing condition (if such condition may impact entitlement in the claim—see NOTE below).

NOTE

Where the WSIB determines that a pre-existing condition may have prolonged or caused a work-related injury, the accident employer may be advised that there is evidence of a pre-existing condition but generally may not be told what the condition is or any further details. For more information on the impact of pre-existing conditions on claims see 14-05-03, Second Injury and Enhancement Fund (SIEF), 15-02-03, Pre-existing Conditions and 15-02-04, Aggravation Basis.

Table 2 - Disclosure generally not permitted

Table 2 contains examples of claim file information which generally **cannot be disclosed to employers**. The only exception is when the information is **necessary**, for the purposes of a WSIB decision letter, to support and explain the decision being made.

Claim File Status Information
Entitlement to Benefits/Services
Specific clinical findings relating to the work injury/disease, such as signs, symptoms, results of tests, x-rays, CT scans, etc.
Particulars regarding emergency treatment, if any.
Ongoing Claims Management
Particulars of treatment, i.e., names of drugs prescribed/details of surgery, etc.
Specific details regarding pre-accident work-related conditions including diagnosis, specific clinical findings (such as signs and symptoms) and nature of treatment.
Specific details regarding non-work-related conditions (whether pre- or post-accident) including diagnosis, specific clinical findings (such as signs and symptoms) and nature of treatment.
Specific details regarding a worker's non-co-operation in health care treatment.

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Specific details regarding a worker's lack of co-operation in WR activities (when such non-co-operation is due to non-work-related circumstances), e.g., diagnosis of non-work-related health condition.
Specific details regarding why a worker has been referred to a specialist or sent for a WSIB appointment.
Physical findings from PD assessment.
Specific information about a worker's previous employment history, such as names of previous employers, except as it is relevant to an allocation of costs inquiry.
Specifics regarding a referral for social or psychological counselling.
Payment Information
Information relating to assignments, garnishments or the re-direction of WSIB benefits (see NOTE below).
When or if worker was on social assistance or employment insurance (see NOTE below).
Allocation of Costs/SIEF Information
Specific details of previous employment exposure (apportionment of costs).
Specific details, including diagnosis, specific clinical findings, and nature of treatment, with respect to pre-existing work-related and non-work-related condition(s).

NOTE

Payment information is normally placed in the "no access" section of the claim file. Employers are generally not entitled to any information placed in this section of the claim file. The only exception is when the information is necessary for the purposes of a WSIB decision letter. For more information on other types of information normally included in the "no access" section, see the section entitled "Determining relevancy" in 21-02-02, Disclosure of Claim File Information (Issue in Dispute).

Employer cannot disclose health care information

It is an offence under the WSIA for an employer or its representative to disclose health care information obtained from the WSIB, without first removing all references to the worker's identity or case. For more information on offences and penalties see 22-01-05 Offences and Penalties - General.

Special cases

Transfer of cost employers

In the absence of an issue in dispute [see 21-02-02, Disclosure of Claim File Information (Issue in Dispute)], transfer of cost employers are only entitled to claim file status information that allows them to understand why claims-related costs have been accrued. Such information may generally include

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- an explanation respecting costs that have been assessed against the transfer of cost employer and what they relate to
- what the worker's clinical restrictions/functional abilities are
- whether the regular employer has offered suitable work, and
- if the worker is participating in a WT plan, what the goal of the WT plan is and the date the goal is expected to be achieved.

NOTE

When a written decision is issued in a claim which directly affects the accident costs assessed in the claim, the decision-maker should provide written notice of the decision to the transfer of cost employer. This notice should also inform the transfer of cost employer of its right to object to the decision. In general, the content of the notice of decision should be limited to the conclusion(s) reached and would not normally include any supporting evidence or findings of fact.

For more information on a transfer of cost employer's right to object to a WSIB decision see 21-02-02, Disclosure of Claim File Information (Issue in Dispute). For more information on transfer of costs generally see 14-05-01, Transfer of Costs.

Non-accident employers

Non-accident employers, e.g., non-accident concurrent employers, placement employers for WT purposes and post-accident recurrence employers, are only entitled to claim file information that assists them in their efforts to provide suitable work for the worker, or to comply with their obligations under the Ontario Human Rights Code or the Canadian Human Rights Act. Normally such information is limited to the worker's functional abilities, technical and transferable skills, and/or accommodation needs or requirements.

Application date

This policy applies to all decisions relating to the disclosure of claim file information made on or after January 1, 2015, for all accidents.

Policy review schedule

This policy will be reviewed within 1 year of the application date.

Document History

This document replaces 21-02-03 dated July 15, 2011.

This document was previously published as:

21-02-03 dated July 18, 2008

21-02-03 dated August 1, 2007.

21-02-03 dated January 3, 2006.

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Legislative Authority

Workplace Safety and Insurance Act, 1997, as amended
Sections 37(4), 47, 59(6), 131(4), 150(1), 181

Workers' Compensation Act, R.S.O. 1990, as amended
Sections 42, 71(7), 72(2), 114, 155(1)

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, as amended
Sections 20, 21(1), 42, 43

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