

Transferring claims costs due to negligence

The core principles of the workers' compensation system ensure workers receive benefits for work-related injuries, and that they and their employers have no-fault protection against related lawsuits. However, it would not be fair to charge the costs of a claim to one employer's account if the accident was caused due to the negligence of another employer and/or their workers.

Can costs be transferred if another employer was negligent?

Section 95(2) of the *Workers' Compensation Act* allows WCB to transfer costs of a claim to another employer if it can be shown another employer or their workers were negligent in the cause of an accident. If the accident was a result of a combination of people and events, the costs can be shared accordingly (i.e., transferred to multiple employers).

If you believe negligence has occurred, you can ask WCB to review the evidence provided by all involved parties. If negligence is proven, costs can be transferred to the other employer's account.

How does WCB define negligence?

The *Act* doesn't define negligence, so we use the most common definition which is "doing, or not doing, what a reasonable person would do, or not do, in the same or similar circumstances."

For example: While on the job site of a new building, your workers fail to properly cover, secure and mark a hole in the floor. As a result, a worker from another company falls through the hole and fractures their ankle.

As it was reasonable for your workers to have covered and secured the hole and post obvious warnings about the hazard, they would be considered negligent.

How does WCB determine negligence has occurred?

As the *Act* doesn't specify how to determine negligence, we look to other appropriate legislation in Alberta to help, including the:

- *Occupational Health & Safety Act*
- *Traffic Safety Act*
- *Occupiers' Liability Act*

Examples of evidence that may support negligence

- A collision report confirming what occurred in a minor motor vehicle accident.
- An occurrence report, providing detailed information from complex motor vehicle accidents.
- Accident investigation reports.
- Photos of the site at the time of the accident.
- Witness statements, especially from unbiased third parties.
- Occupational Health and Safety reports.
- While not conclusive, a letter from the other party's insurance company accepting liability.

Will WCB gather the evidence for me?

We are a neutral decision maker and do not advocate for either party. It is the responsibility of each party to supply evidence to support their position. In some cases we may request information from a third party, such as the police.

How do I request a cost transfer?

Complete the [claim cost transfer form](#) and submit it to us along with all your supporting documentation*. You must include supporting evidence with your request in order to substantiate any allegation of negligence.

**Please include your WCB account number on all submission documents.*



What can I expect once I submit a claim cost transfer application?

1. We will review your application to ensure all the evidence required has been submitted. You will receive an acknowledgement letter from us.
2. We will send a letter containing the claim transfer request form and all evidence you supplied to the other party so they have an opportunity to respond.
3. If the response and accompanying evidence from the other party is substantially different from the submission provided by you, we may refer the submission back to you.
4. Once we determine we have received all information, we will make a decision and both parties will be notified in writing of the result.