



Policy 07-02, Part II, Application 6 – third party recoveries and Policy 05-02, Part II, Application 1 – general (cost relief)

Background

Policy 07-02, Part II, Application 6, provides policy direction for third party recoveries. Under this policy, when a worker is injured in a motor vehicle accident, WCB may pursue recovery of the claim costs if the other party was at fault and is not also covered under the *Workers' Compensation Act*. If the action for recovery results in a settlement or judgment, then the employer will have costs of the claim relieved from their record, either in the amount of the settlement or the percentage of liability.

In cases where the third party is uninsured or is unknown (as happens when the party flees the scene), there is little to no chance of recovering WCB costs from a third party, so those costs remain on the employer's experience record.

Employers may not be able to control situations where their workers are involved in motor vehicle accidents. We can reduce the impact of those risks by giving cost relief to employers where an uninsured or unidentified third party is the cause of the accident. This will mirror the practice with insured third parties.

Proposal

WCB proposes to revise the current policy to include a provision that the costs of a claim from a motor vehicle accident, in which the third party is unknown or uninsured, may be relieved from the employer's experience record, provided WCB is satisfied there would have been a reasonable likelihood of recovering its costs arising from the accident had the third party been identified or insured. Wording was added to Question 12 of Policy 05-02, Part II, Application 1, in support of this change.

The impact of providing cost relief to employers for claims where the drivers are uninsured or unknown does not happen frequently, but it could be impactful to the employer's own circumstances. In addition to possibly reducing their premiums, it may have other tangible benefits, including:

- Some principals choose to hire contractors based on their experience rating status. Removing these costs will ensure these employers are not unfairly impacted by these claims.
- Employers with similar situations (workers injured by an at-fault third party) will be treated equally in terms of experience records and premiums. The status of the third party will not impact their premiums.

In keeping with WCB's usual practice, costs will be relieved at the employer level, but will remain in the rate group. With this approach, the premium rate for the industry would be unchanged.

See the policy drafts, attached below.



We welcome your feedback, ideas, and suggestions.

This posting will be open until **October 4, 2021.**

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EXPERIENCE RECORDS

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BoD Resolution 99/13/86

December 13, 1999

APPLICATION 6: THIRD PARTY RECOVERIES

1. *What is a third party, and how is an employer's experience record affected by a third-party recovery?*

For WCB purposes, a third party is a person not covered under the WCA who causes or contributes to an accident.

When action against a third party results in a settlement or judgment, the employer's experience record may be credited for the greater of:

- the amount actually received by WCB for claim costs, or
- an amount equivalent to the percentage of liability for the accident which is attributed or attributable to third parties.

For example, a worker is injured when the pilot car the worker is driving is broadsided by a car driven by a person not covered under the WCA. WCB charges the full amount of the claim to the experience record of the worker's employer. The driver of the other vehicle is neither a worker nor an employer and is therefore not protected. WCB recovers the full amount of the claim from the other driver's insurance company and credits the experience record of the injured worker's employer with the full amount of this settlement.

Where WCB is unable to recover its costs of a claim arising from a motor vehicle accident because the third party is unknown or uninsured, the costs of the claim may be relieved from the employer's experience record, provided WCB is satisfied it would have had a reasonable likelihood of success in recovering its costs had the third party been identified or insured.

A Restitution Order made by a court in a criminal or quasi-criminal matter is considered a judgment for the purposes of this policy.

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APPLICATION 6: THIRD PARTY RECOVERIES

2. *Can a third-party recovery result in cost relief for more than one claim?* When two or more workers of an employer are injured in the same accident and a settlement or judgment is received for one worker, WCB may relieve the costs of all or part of any additional claims arising out of the accident.
3. *Can an employer obtain cost relief before the settlement or judgment is awarded?* Generally, cost relief is awarded only after the settlement or judgment is received. However, in the case of a motor vehicle accident, an employer may obtain full or partial cost relief before the settlement or judgment is received when all of the following conditions are met:
1. the employer requests early cost relief
 2. WCB determines that
 - the likelihood of some recovery is clear, and
 - it appears the third party is at least 50% or more liable for the accident
 3. the third party was insured at the time of the accident
 4. the employer agrees that if that employer is determined to be wholly or partially liable for the accident, the corresponding claim costs will be reassigned to the experience record
4. *When is this policy application effective?* This policy application (Application 6 – Third Party Recoveries) is effective ~~January 1, 2000~~, except when noted otherwise in a specific policy section(s).

Previous versions

- [Policy 0702 Part II - April 2018](#)
- [Policy 0702 Part II - August 2015](#)
- [Policy 0702 Part II - January 2004](#)
- [Policy 0702 Part II - January 2000](#)
- [Policy 0702 Part II - March 1999](#)

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APPLICATION 6: THIRD PARTY RECOVERIES

- [Policy 0702 Part II \(consolidated manual 1st Issue\) - June 1998](#)

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COST RELIEF

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BoD Resolution 2017/04/16 — May 16, 2017

APPLICATION 1: GENERAL

1. *Are there any employers who are not eligible for cost relief?*

Employers are not eligible for cost relief if their industry has chosen not to participate in cost relief under Industry Custom Pricing. The cost relief elements waived under Industry Custom Pricing may vary according to the specific agreement. See Policy 07-02, Part II, Application 7, Industry Custom Pricing (ICP).

Except for overpayments, WCB does not provide cost relief to the following self-insured employers who maintained deposit accounts on the date of accident:

- the Government of Canada
- the Government of Alberta (any claims with accident dates prior to April 1, 1986 are excluded from cost relief)
- Telus Communications Inc. (any claims with accident dates prior to January 1, 1988 are excluded from cost relief)

2. *If there is a prolonged period of disablement due to a pre-existing condition, does WCB provide cost relief to eligible employers?*

When a compensable accident aggravates a pre-existing condition and the period of disablement is a reasonable consequence of the accident, claim costs resulting from the effects of the aggravation are not relieved (see Policy 03-02, *Aggravation of a Pre-existing Condition*).

When there is medical evidence of a pre-existing condition, WCB may relieve claim costs if the pre-existing condition causes an increase to the period or degree of disablement. The pre-existing condition may have been a separate factor or aggravated by the accident. The resulting costs from the prolonged period are relieved from the accident employer's experience account.

Different criteria apply to claims for back injuries with pre-existing conditions (see Application 3 for more information on back injuries).

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APPLICATION 1: GENERAL

3. *Does WCB provide cost relief when the worker's period of disablement is prolonged because of a concurrent condition?*

When the worker's period of disablement is prolonged because of a concurrent condition, WCB may relieve the costs that are attributable to the prolonged period (see Policy 04-02, Part II, Application 1, Question 11).

Cost relief is not provided for personal risk factors such as obesity, smoking, and alcohol or drug addiction, unless the risk factor results in a delay in the worker's ability to participate in treatment for the compensable injury or return-to-work services. Examples include a delay in undergoing surgery until the worker ceases smoking; a delay in surgery or other treatment until the worker loses weight; a delay in participation in return-to-work services while the worker is undergoing treatment for addiction.

Cost relief may be granted when the concurrent condition is a disease arising from one of these risk factors (for example, Type 2 diabetes, lung cancer, cirrhosis of the liver).

4. *Does WCB provide cost relief when there is a delay in recovery due to the worker's error in judgement?*

When recovery has been prolonged due to a worker's error in judgement, WCB may relieve the costs that are attributable to the prolonged period (see Policy 04-02, *Temporary Benefits*).

5. *What cost relief does WCB provide when there is a delay in hospital admission?*

When the worker is temporarily totally disabled as a result of the compensable injury, claim costs incurred while waiting for hospital admission are distributed as follows:

- periods up to and including 90 calendar days from the date the worker's doctor indicates the need for hospitalization will be charged to the accident employer's experience account
- any period in excess of 90 calendar days up to, but excluding, the date of hospital admission will be relieved and those costs will be charged to the accident

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APPLICATION 1: GENERAL

Cost relief for delay in hospital admission (continued)

employer's industry

If the worker is not totally disabled, but continues to be entitled to compensation pending hospital admission, costs are distributed as follows:

- periods up to and including 30 calendar days from the date the worker's doctor indicates the need for hospitalization will be charged to the accident employer's experience account
- any period in excess of 30 calendar days up to, but excluding, the date of hospital admission will be charged to the accident employer's industry.

Costs for the compensation period from the date of hospital admission will be charged to the accident employer's experience account.

6. Does cost relief apply when there is an enhancement factor?

Costs resulting from the application of an enhancement factor are relieved from the employer's experience account, unless the costs result from a single accident causing multiple injuries (see Policy 04-04, *Permanent Disability*).

7. Does WCB apply cost relief when a worker is injured during an epileptic seizure?

Epilepsy itself is not compensable unless it resulted from a compensable head injury. Costs for epilepsy or epileptic seizures resulting from a compensable head injury will be charged to the accident employer's experience account. Full cost relief applies only when there is no compensable head injury but a seizure occurs during the course of employment, causing other injuries (see Policy 02-01, *Arises Out of and Occurs in the Course of Employment*).

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8. *How is cost relief applied to second injury claims?*

Costs resulting from the acceptance of a second injury claim (see Policy 03-01, *Injuries*) will be relieved from the employer's experience account and charged to the industry of the primary accident employer.

The same applies when a worker suffers a new injury or aggravates a pre-existing condition while participating in a WCB sponsored training program. The resulting costs are removed from the accident employer who provided the training or assessment services.

9. *Does cost relief apply to any supplements or allowances?*

Section 65 of the WCA was repealed as of September 1, 2018; however, s.65 supplements in effect prior to that date are not affected by repeal of the section.

WCB will relieve costs resulting from a supplement granted under s.65 (see sidebar) of the WCA (see Appendix H for Policy ADJ-30, rescinded effective January 1, 1995). Costs resulting from a Rehabilitation Surgery Allowance or a Level 1 Home Maintenance Allowance are charged to the accident employer's industry (see Policy 03-02, *Aggravation of a Pre-existing Condition* and Policy 04-10, *Other Home Services*).

10. *Under what conditions does an employer receive cost relief for compensation overpayments?*

If the employer did not contribute to the overpayment by providing incorrect information, WCB may remove the amount of the overpayment from the employer's account (see Policy 05-01, *Compensation Overpayments*).

When changes to benefit amounts are effective the date of the amended decision, there is no overpayment for benefits paid to that date. WCB may still remove the benefit costs provided the employer did not contribute to the overturned decision by supplying incorrect information. WCB will calculate the difference in benefits as though the decision has been retroactive and may remove that amount from the employer's account.

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APPLICATION 1: GENERAL

11. Does WCB relieve costs when the worker has concurrent earnings?

Concurrent earnings are earnings at the date of accident from employment sources other than the accident employer (see Policy 04-01, *Establishing Net Earnings*).

When concurrent earnings are used to establish the worker's compensation rates, the costs resulting from the concurrent earnings are relieved from the accident employer's experience account.

12. What happens in the case of third-party recoveries?

WCB may provide cost relief when a settlement or judgement is received from a third party concerning a worker's claim **or, in the case of an uninsured or unknown driver, when WCB is satisfied it would have had a reasonable likelihood of success in recovering its costs had the third party been identified or insured.** WCB may consider early cost relief in third-party motor vehicle accidents (see Policy 07-02, *Experience Records*).

13. How does WCB distribute claim costs when the compensable accident was due to the negligence of another employer?

When there is an application for cost transfer and WCB determines that the accident was due to the negligence of another employer under the WCA or the worker of another employer under the WCA, all or part of the claim costs will be transferred from the accident employer's account to the other employer who has caused or contributed to the accident (see Policy 07-02, *Experience Records*).

14. How does WCB distribute claim costs that arise out of fatal accidents?

With the exception of Government of Canada claims, each year WCB distributes the cost of all capitalized awards for fatal claims. The costs of the capitalized awards made in a calendar year are distributed equally amongst all fatal accidents accepted in the same calendar year (see Policy 07-02, *Experience Records* for more information).

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15. *Are the costs of a no-time-loss claim charged to the employer's experience account?*

WCB does not charge the costs to the employer's experience account provided **all** of the following conditions are met:

- the worker did not miss time from work as a result of the compensable accident,
- the costs are for medical aid only, and
- the costs are less than the prescribed amount established by WCB.

16. *Are costs relieved if wage loss benefits are paid during a medical investigation?*

Costs may be relieved when wage loss benefits are paid during a medical investigation to determine entitlement or continued entitlement to benefits.

If the results of the medical investigation indicate the worker's condition is **not** compensable, costs are relieved from the employer's experience account. If the results of the medical investigation indicate the worker is entitled to WCB benefits, costs are charged as usual.

17. *When is this policy application effective?*

This policy application (Application 1 – General) is effective **June 1, 2017**, and applies to all claims with a date of accident on or after that date, except when noted otherwise in a specific policy section(s).

Previous versions

- [Policy 0502 Part II - April 2018](#)
- [Policy 0502 Part II - June 2017](#)
- [Policy 0502 Part II - August 2015](#)
- [Policy 0502 Part II - December 2014](#)
- [Policy 0502 Part II - June 2011](#)
- [Policy 0502 Part II - December 2010](#)
- [Policy 0502 Part II - January 2007](#)
- [Policy 0502 Part II - January 2004](#)

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- [Policy 0502 Part II - January 2002](#)
- [Policy 0502 Part II - August 2000](#)
- [Policy 0502 Part II - January 2000](#)
- [Policy 0502 Part II - June 1999](#)
- [Policy 0502 Part II \(consolidated manual 1st Issue\) - February 1997](#)

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