

Section	Policy
30	31.05.15

Section Title: Finance, Assessments and Administration- Accounting & Finance
Subject: Cost Transfer - Individually Assessed Employers
Effective Date: This policy applies to all cost transfer decisions made on or after January 1, 2018 and any reconsiderations and appeals of these decisions.

A. POLICY PURPOSE

Section 73 of *The Workers Compensation Act* (the Act) groups employers into four broad classes (Classes B to E). Employers in Classes B to D are individually liable for the claim costs of their workers plus their share of administrative costs of the workers compensation system. These employers are known as Individually Assessed Employers.

This policy provides a framework for the removal of claim costs from an Individually Assessed Employer's Claim Costs Account and transferring them to another employer in Classes B to E (Cost Transfer).

Typically, claim costs are removed from an Individually Assessed Employer's Claim Costs Account only through Cost Transfer, though in some circumstances Cost Relief or Cost Recovery may be provided.

Policy 31.05.10, *Cost Relief/ Cost Transfer - Class E Employers*, provides a framework for the removal of claim costs from a Class E Employer's Claim Costs Experience through Cost Transfer or Cost Relief.

Appendix A includes a glossary of commonly used terms.

GOAL

The goal of this policy is to ensure that amounts paid by Individually Assessed Employers reflect their costs to the workers compensation system.

CIRCUMSTANCES FOR COST TRANSFER

As described in the attached Schedules, Cost Transfer may be provided to Individually Assessed Employers in the following circumstances:

- The claim involves cumulative trauma or long-latency occupational disease. See Schedule A - *Cumulative Trauma and Long-Latency Occupational Disease*.
- The claim involves negligence by another covered employer or the worker(s) of another covered employer. See Schedule B - *Negligence*.

PROCESS

The basic process for Cost Transfer is as follows:

- Initially, all claim costs are charged to the Claim Costs Account of the Accident Employer.
- Based on information provided, the WCB considers and processes Cost Transfers when the Individually Assessed Employer is eligible under this policy.
- If Cost Transfer is provided, the removed costs are transferred from one employer to another employer.

- If Cost Transfer is provided, this alters the Claim Costs Account used to calculate the employer's WCB costs.

CIRCUMSTANCES FOR COST RECOVERY

As described in the attached Schedule, Cost Recovery may be provided to Individually Assessed Employers in the following circumstances:

- The WCB pursues a Third Party action on behalf of an injured or deceased worker of an Individually Assessed Employer or cost-sharing with Manitoba Public Insurance for a motor vehicle accident. See Schedule C - *Third Party Actions and Motor Vehicle Accidents*.

The process for Cost Recovery is described in Schedule C.

CIRCUMSTANCE FOR COST RELIEF

The WCB will provide Cost Relief to Individually Assessed Employers when their workers (trainees) are injured in an accident during a work experience program described in policy 35.10.60, *Coverage under a Work Experience Program*. When Cost Relief is provided, the removed costs are charged to the Work Experience Program Fund.

B. REFERENCES

The Workers Compensation Act, sections 73, 76.1, 76.2, 76.6, 76.7, 77.1, 81(1), 81(3), 82(4), 82(5), 105

Manitoba Regulation (MR) 278/91, *Individually Assessed Employers Regulation*

WCB Policy 31.05.10, *Cost Relief/Cost Transfer- Class E Employers*

WCB Policy 35.10.60, *Coverage under a Work Experience Program*

WCB Policy 44.20.50.20, *Noise-Induced Hearing Loss*

History:

1. Policy 31.05.15, *Cost Transfer - Self Insured*, established by Board Order 16/17 on June 28, 2017, effective for all decisions made on or after January 1, 2018 and any reconsiderations and appeals of these decisions. The previous policy, 31.05.10, *Cost Relief/Cost Transfers*, covered both Class E and self-insured employers. In addition to the new Policy 31.05.15, a separate policy was created for Class E employers: policy 31.05.10, *Cost Relief/Cost Transfer - Class E*. The former policy was reissued as 31.05.10.01 *Cost Relief/Cost Transfers* and applies to decisions made from October 1, 2014 to December 31, 2017 and any reconsiderations or appeals of those decisions.
2. October 2019 - Reference to policy 44.20.50.20, *Noise-Induced Hearing Loss*, was added to the term Claim Costs Account under Appendix A.
3. Minor formatting changes were made to the policy, October, 2020.
4. In September 2022, policy revisions respond to a change in terminology that was introduced by amendments to the Act by *The Minor Amendments and Corrections Act (MACA), 2022*. The term "self-insured employer" was replaced with "individually assessed employer" wherever it occurs. The title of the policy was renamed to *Cost Transfer - Individually Assessed Employers*. The name of policy 31.05.10 was also changed from *Cost Relief/Cost Transfer - Class E* to *Cost Relief/Cost Transfer - Class E Employers*. Manitoba Regulation (MR) 278/91, *Individually Assessed Employers Regulation*, was added to the reference section. The policy was further updated to reflect the reduction of the number of classes for assessment purposes from five to four by *The Workers Compensation Amendment Act* (commonly referred to as Bill 18).

Appendix A - Glossary of Terms

Accident Employer: Generally the employer of the worker at the time of injury. For occupational disease or cumulative trauma claims, long periods of exposure or activity are often necessary before the disease/condition develops. The worker may no longer be employed with the employer where the exposure or activity occurred. In these cases, the Accident Employer will be the last employer with whom the worker had exposure or performed the activity contributing to the disease or condition.

Claim Costs Account (Individually Assessed Employer): For the applicable period, the Individually Assessed Employer's Claim Costs Account includes:

- Claim costs assigned to the individual employer; and
- Claim costs which are transferred to the Individually Assessed Employer under policy 31.05.10, *Cost Relief/Cost Transfer - Class E Employers*, policy 31.05.15, *Cost Transfer - Individually Assessed Employers* and policy 44.20.50.20, *Noise-Induced Hearing Loss*.

Claim Costs Experience (Class E Employer): For the applicable Experience Period, the Class E Employer's Claim Costs Experience includes:

- Claim costs assigned to the individual employer;
- Proxy costs which may be assigned as a result of an accepted fatality claim; and
- Claim costs which are transferred to the Class E Employer under policy 31.05.10, *Cost Relief/Cost Transfer - Class E*, policy 31.05.15, *Cost Transfer - Individually Assessed Employers* and policy 31.05.20, *Transfer of Assessment Rates and Claim Costs Experience on Change of Ownership*.

Class E Employers: Those employers who pay for the costs of the workers compensation system based on their payroll and Claim Costs Experience. These employers are subject to the collective liability provisions of the *Act*.

Cost Apportionment Fund: The fund designated in paragraph 81(1)(c) of the *Act* to cover the claim costs that are not entirely or directly assigned to Class E Employers.

Cost Recovery: The process of recovering claim costs through a Third Party action or the Cost Recovery Agreement between the WCB and Manitoba Public Insurance.

Cost Relief: The process of moving claim costs from the Claim Costs Account of the Individually Assessed Employer to a collective cost pool known as the Work Experience Program Fund.

Cost Transfer: The process of moving claim costs from the Claim Costs Account of the Accident Employer to another employer.

Costs Excluded from Rate Setting (Class E Employer): The Costs Excluded from Rate Setting for a Class E Employer are as follows:

- the costs incurred for claims with accident years outside the experience period;
- ineligible (disallowed) claims;
- translation or interpretation services;
- courier or mail delivery expenses;
- compliance investigative (surveillance) costs;
- WCB medical advisor fees;
- group life insurance benefits;
- medical review panel expenses;
- external legal counsel fees or expenses;
- wages paid for the day of the accident; and

- claim costs relieved or transferred as provided for in policy 31.05.10, *Cost Relief/Cost Transfer - Class E Employers*, policy 35.40.50, *Overpayment of Benefits*, and policy 44.20.50.20, *Noise-Induced Hearing Loss*.

Experience Period: The time period and claim accident years that will be included to determine a Class E Employer's Rate-Setting Claim Costs.

Individually Assessed Employers: Employers in Classes B to D who are individually liable for the claim costs of their workers plus their share of administrative costs of the workers compensation system.

Rate-Setting Claim Costs (Class E Employer): The Claim Costs Experience for claims in the Experience Period less the Costs Excluded from Rate-Setting.

Third Party: A Third Party is someone who is neither a worker nor an employer under the *Act*.

Work Experience Program Fund: The fund designated in paragraph 81(1)(h) of the *Act* to cover the claim costs of persons declared to be workers under a work experience program.

SCHEDULE A**CUMULATIVE TRAUMA AND LONG-LATENCY OCCUPATIONAL DISEASE****Cumulative Trauma**

When the injury is a result of cumulative trauma, claim costs will be transferred to active employers on the basis of identifiable exposure with each employer. The WCB will confirm that the worker was exposed to an occupational hazard in the employer's workplace which contributed to the development of the cumulative trauma injury.

When the Accident Employer is an Individually Assessed Employer, the employer will be responsible for the costs associated with any out-of-province exposure. The Individually Assessed Employer will receive credit for any costs reimbursed by another jurisdiction under any interprovincial cost sharing agreements.

Long-Latency Occupational Disease

While the WCB makes decisions regarding Cost Transfer on a case-by-case basis, "long latency" is generally understood as involving a period of at least two years between the worker's last exposure to the harmful substance and the manifestation of the disease.

When the accident employer is an Individually Assessed Employer, all claim costs are assigned to the Individually Assessed Employer, with the following exceptions:

- Those costs that result from an injured worker's exposure to a hazardous substance while he or she was previously employed with a Class E Employer are assigned to the Cost Apportionment Fund.
- Those costs that result from an injured worker's exposure to a hazardous substance while he or she was previously employed with another Individually Assessed Employer(s) are assigned to the other Individually Assessed Employer(s) based upon the period of exposure.

If hearing loss has developed gradually over time as a result of exposure to noxious occupational noise levels, this claim is treated by the WCB as an occupational disease. Policy 44.20.50.20, *Noise-Induced Hearing Loss*, provides the WCB with adjudicative and entitlement guidance on this type of hearing loss claim.

Costs for long-latency occupational disease claims and noise-induced hearing loss claims are transferred among employers in an identical manner. Policy 44.20.50.20 details the method for assigning costs among employers for noise-induced hearing loss claims.

SCHEDULE B**NEGLIGENCE**

Under the *Act*, an injured worker (or his or her dependants) cannot sue the worker's covered employer, another covered employer, or a fellow worker if any of them caused the work-related injury or death. The only recourse the worker (or his or her dependants) has is to claim compensation under the *Act*. Under subsection 82(4) of the *Act*, the WCB may remove the claim costs from an Accident Employer's Claim Costs Account if the worker is injured or killed due to the negligence of another employer or the worker(s) of another employer.

If the WCB determines the worker's injury or death resulted in whole or in part from the negligence of another employer or the worker(s) of another employer, claim costs are transferred to the negligent employer's Claim Costs Experience (Class E Employer) or Claim Costs Account (Individually Assessed Employer) or to Claim Costs Experience or Claim Costs Account of employers whose workers were negligent.

The claim costs are transferred to the Claim Costs Experience or Claim Costs Account of other employers in proportion to the degree of negligence of each employer or worker.

The injured or deceased worker's own negligence may have contributed to the injury or death. If this is the case, the WCB will consider to what degree the worker was contributorily negligent when it determines the amount of claim costs to transfer to other employers.

Cost Transfers will only be made when the negligence of another party is established to the satisfaction of the WCB and the worker's injury or death results in claim costs of \$10,000 or more. The \$10,000 threshold level is the net amount after all Cost Transfers.

In making its determination of negligence, the WCB may consider a determination of negligence made by other sources.

Some examples of sources the WCB may use in its determination of negligence include:

- police reports;
- Workplace Safety and Health reports;
- Transportation Safety Board of Canada reports.

In exceptional circumstances, the WCB may not transfer all or part of the claim costs to the negligent employer's Claim Costs Experience or Claim Costs Account.

The WCB may determine that a Cost Transfer to a negligent employer is not available in the following circumstances:

- a) the negligent employer is out-of-province or out-of-business, or;
- b) the identity of the negligent employer cannot reasonably be determined, or;
- c) further investigation is not feasible given the passage of time, lack of information, or excessive cost of investigation.

In such cases, the claim costs will remain with the Accident Employer.

SCHEDULE C**THIRD PARTY ACTIONS AND MOTOR VEHICLE ACCIDENTS****Third Party Actions**

Under the *Act*, an injured worker (or his or her dependants) cannot sue the worker's covered employer, another covered employer, or a fellow worker if any of them caused the work-related injury or death. Someone who is neither a worker nor an employer under the *Act* is called a "Third Party". Examples of a Third Party include members of the general public, the owner of a private residential property or an out-of-province manufacturer of a defective product.

When a worker is injured or killed through the fault or negligence of a Third Party, the injured worker (or his or her dependants) may elect to claim compensation under the *Act* or sue the Third Party. If the worker (or his or her dependants) elects to claim compensation, the right to sue belongs to the WCB. The WCB may decide to pursue legal action, in which case the WCB controls the lawsuit and bears all costs associated with it.

Individually Assessed Employers will receive credit for Third Party recoveries once such amounts are received by the WCB.

Motor Vehicle Accidents On or After March 1, 1994

The Personal Injury Protection Plan (PIPP), was implemented March 1, 1994 and is administered by Manitoba Public Insurance (MPI).

If the work-related injury or fatality involves a motor vehicle, the worker (or his or her dependants) may elect between workers compensation benefits and benefits under the PIPP system. Once a worker (or his or her dependants) elects with the WCB, the WCB will request Cost Recovery from MPI pursuant to the Cost Recovery Agreement between these two entities.

Individually Assessed Employers will receive credit for amounts recovered from MPI under the cost sharing agreement once such amounts are received by the WCB.