



Policy Amendment Proposal EN-16 Recurrence of Injury

This policy amendment proposal relating to recurrence of injury will reflect the issues consulted on during the engagement for the *Workers' Safety and Compensation Act* (the 'Act') and will align the amendments made in the new legislation.

The new Act comes into force July 1, 2022. The intended effective date of the proposed policy amendments will be July 1, 2022.

The proposed amended Recurrence of Injury policy will reflect minor changes to ensure consistency with the provisions of the Act.

A five-year policy review plan will be developed later in 2022. After July 1, 2022, all amended policies to align with the new Act will be prioritized for a more detailed review.

The purpose of this policy is to provide information on determining whether a worker is experiencing a recurrence of their work-related injury.

Relevant sections of the Act

The following sections of the Act are relevant:

- 86 entitlement to compensation
- 105 recurrence of loss of earning capacity

Proposed minor changes to this policy are highlighted in yellow

- changes to section references, language and definitions

Board Orders/Regulations

N/A

Current policy

[EN-16 Recurrence of Injury](#)



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The board of directors is providing this policy amendment proposal to stakeholders seeking their input, comments, questions and suggestions.

Some questions for consideration:

1. Are there any general comments about this policy proposal?
2. Are there any gaps in this policy proposal?
3. Additional comments?

The views of our stakeholders are important to us. All feedback will be considered prior to the board of directors approving any amendments.

Engagement on this policy proposal closes on **April 30, 2022**. Please provide your feedback by:

1. Downloading a [fillable form](#) on our website and sending it as an attachment to Policy.Feedback@wcb.yk.ca
2. Emailing comments directly to Policy.Feedback@wcb.yk.ca
3. Receipt in our building by April 30, 2022, by mail or drop off at
*Yukon Workers' Compensation Health and Safety Board
401 Strickland Street
Whitehorse, Yukon Y1A 5N8*

By the end of May a summary of all feedback on this policy amendment proposal will be published on our website at www.wcb.yk.ca



Policy Amendment Proposal

EN-16 Recurrence of Injury

Preventing work-related injuries is the most important job in any workplace. The *Workers' Safety and Compensation Act* establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

Purpose

This policy provides information on determining whether a worker is experiencing a recurrence of their work-related injury.

Definitions

board means the Workers' Safety and Compensation Board

end date of benefits means the last day that the worker received any compensation benefits (e.g., loss of earnings benefits, health care benefits)

intervening factor means a new injury, incident, or exposure; or a new or pre-existing health condition

recurrence of injury means a situation where a worker experiences an unexpected return or worsening of symptoms associated with a work-related injury that meets the criteria set out in this policy

worker means a person who performs work or services for an employer under a contract of service or apprenticeship, written or oral, express or implied and as further defined in section 77 of the Act

Policy Statement

1. General

The Act states that worker who suffers a work-related injury is entitled to compensation unless the work-related injury is attributable to conduct deliberately undertaken for the purpose of receiving compensation.

The Act further states that when a worker returns to employment after a work-related injury and subsequently suffers a recurrence of that work-related injury that results in a loss of earning capacity, the worker's average earnings before the work-related injury in respect of the recurrence are the greater of the worker's average earnings at the date of the work-related injury or the worker's average earnings at the date of the recurrence of the work-related injury.



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In some cases, a worker who recovers from a work-related injury and returns to work suffers a recurrence of that original work-related injury. When this happens, a decision-maker under the Act must determine that a recurrence has occurred and ensure the worker receives appropriate benefits.

Criteria

All of the following criteria must be met in order for a decision maker under the Act to determine that a worker has suffered a recurrence of a work-related injury:

- a. at least 180 days have passed from the most recent end date of benefits related to the work-related injury;
- b. the work-related injury stabilized or resolved, or the worker returned to work with or without accommodations;
- c. there have been no significant intervening factors, such as a new incident or injury, either work-related or not work-related; and
- d. there is objective medical evidence that establishes a connection between the work-related injury and the recurrence.

Evidence

The board assesses relevant information in order to make a determination of recurrence of injury. Information will be requested from the appropriate source, that being the worker, medical practitioners, health care providers, or the employer. Information requested may include, but is not limited to:

- a. an explanation of what happened to cause the recurrence;
- b. the worker's current symptoms and how they are related to the work-related injury;
- c. employment history since the work-related injury;
- d. any health care treatment related to the original work-related injury since the end date of benefits;
- e. an explanation of any significant intervening factors, such as a new incident or injury, or a new or pre-existing health problem that may be impacting the work-related injury;
- f. a summary of any new job modifications or accommodations required;
- g. medical evidence of the worker's current functioning, based on a physical examination of the worker;



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- h. results of any diagnostic tests performed in the evaluation and diagnosis of the worker's condition, as well as a comparison to tests performed in the past; and
- i. proof of the worker's current earnings, consistent with policy [EL-01 Loss of Earnings Benefits](#) or [EA-03 Optional Coverage](#).

Benefits

In the case of a recurrence, the board will determine eligibility for benefits. Loss of earnings benefits will be determined in accordance with policy [EL-01 Loss of Earnings Benefits](#).

Health care benefits are determined under **the relevant provisions of the Act**, and those policies that address health care treatment and benefits (see policies HC-01 through HC-08). Loss of earnings benefits are determined under **the relevant provisions of the Act**, and policies [EL-01 Loss of Earnings Benefits](#) and [EL-04 Recovery of Overpaid Compensation](#).

Employer's obligation to re-employ

The Act specifies conditions and timelines within which the employer is obligated to offer to re-employ the worker. If a worker experiences a recurrence of a work-related injury, the re-employment timelines are not re-set to start at the date of the recurrence. The start date of the re-employment obligation remains the date of the **initial** work-related injury and the end date does not change due to the recurrence.

Where the employer at the time of the recurrence is the injury employer, there is an obligation to re-employ the worker in relation to the recurrence. Where the employer at the time of the recurrence is not the injury employer, there is no obligation on that employer to re-employ the worker in relation to the recurrence. (See policies [RE-04 Employer's Obligation to Re-Employ – Overview](#) and [RE-07-1 Compliance with the Re-Employment Obligation](#)).

2. Situations other than recurrence of injury

When a worker is not experiencing a recurrence of injury, as determined by a decision-maker under the Act, the claim will be further investigated and eligibility for benefits determined according to the provisions outlined below.

Continuation of injury

Continuation of injury is a situation where a worker requests benefits (loss of earnings benefits or health care benefits or both) within 180 days of the most recent end date of benefits.

A new claim is not required to be filed in the case of a continuation of a work-related injury.

Health care benefits in the case of a continuation of injury does not require a new entitlement decision if the proposed treatment is within the treatment guidelines set out in the Health Care



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Services policies (HC-01 through HC-08). If treatment exceeds the guidelines, the decision maker will investigate and make a new decision. Authorization of health care benefits is required by the board.

Loss of earnings benefits as a result of a continuation of injury are determined in accordance with board policy [EL-01 Loss of Earnings Benefits](#).

New injury

It is possible to recover from a work-related injury, and then sustain another injury to the same part of the body. A new injury is an injury resulting from a new and separate incident, with no other intervening factors, and without a direct cause-and-effect relationship to the original work-related injury. A new injury as a result of a new and separate incident requires that the worker file a new application for compensation.

Decisions will be determined under policy [EN-01 Arising Out Of and In The Course Of Employment](#).

For example, the construction worker who broke his wrist has no further problems for two years. Then, he slips on the tailgate of his pick-up and falls down, fracturing the same wrist again. This is a new injury, and it requires a new application for compensation be filed and a new entitlement decision by the board.

Known or anticipated future treatment

In many cases, future health care treatment can be planned or anticipated based on the nature of the injury or accepted treatment protocols. Such treatment does not require a new application for compensation to be filed. It is important to document known or anticipated future treatment so the link can easily be made to the initial work-related injury when the need for such treatment arises.

For example, the construction worker who broke the same wrist twice requires a surgical repair including pins. The surgeon needs to see the worker again in one year to determine whether the pins should be removed. This is known or anticipated future treatment, and does not require a new application for compensation to be filed in order to authorize the treatment.

Subsequent injury, disorders and conditions

A subsequent injury, disorder or condition may arise out of the initial work-related injury. Such an injury, disorder or condition is related to, but different from, the initial work-related injury.

Subsequent injuries, disorders and conditions are determined under policy [EN-10 Subsequent Injuries, Disorders or Conditions](#).



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For example, the construction worker with the broken wrist develops post-traumatic arthritis in that wrist several years later. The decision maker must investigate to determine whether the arthritis is a subsequent condition that arose as a result of the initial work- related injury.

Aggravation of a Pre-Existing Condition

It is possible for a new injury, or an intervening incident or exposure, to cause an aggravation of a pre-existing condition. Aggravations are determined under policy [EN-07 Pre-Existing Conditions](#).

Not all aggravations are compensable, even if the pre-existing condition is work-related. For example, aggravations caused by recreational activities are not generally compensable.

For example, the construction worker with the work-related post-traumatic arthritis in his wrist experiences a flare-up of symptoms after using a jackhammer at work. If his work-related pre-existing condition is aggravated, entitlement to benefits for the aggravation is determined under the provisions of policy [EN-07 Pre-existing Conditions](#). If he experiences an aggravation of his arthritis after playing in a hockey tournament, he may not be entitled to benefits for the aggravation.

Related Policies

[EA-03 Optional Coverage](#)

[EL-01 Loss of Earnings Benefits](#)

[EL-04 Recovery of Overpaid Compensation](#)

[EN-01 Arising Out Of and In the Course of Employment](#)

[EN-07 Pre-Existing Conditions](#)

[EN-10 Subsequent Injuries, Disorders or Conditions](#)

[HC-01 overview: Provision of Health Care Assistance](#)

[HC-02 Safe Use of Medications](#)

[HC-03 Physiotherapy](#)

[HC-04 Chiropractic Treatment](#)

[HC-05 Therapeutic Massage](#)



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[HC-06 Activities of Daily Living](#)

[HC-07 Alternate Treatment](#)

[HC-08 First Nations or Inuit Traditional Healing](#)

[RE-04 Employer's Obligation to Re-Employ – Overview](#)

[RE-07-1 Compliance with the Re-Employment Obligation](#)
