

**Chapter:** Claims for Compensation

**Legislative authority:** N/A

*Prevention statement*

*Preventing injuries is one of the most important responsibilities in the workplace. The Workers' Safety and Compensation Act (the '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.*

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## Purpose

This policy provides information regarding when subsequent injuries, disorders or conditions resulting from a work-related injury may be compensable.

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## Definitions

**AMA guide** means the most current edition of the American Medical Association's Guide to Evaluation of Permanent Impairment

**board** means the Workers' Safety and Compensation Board

**chronic pain** means pain that persist over a longer period of time than would be medically expected for the usual duration of injury recovery and is resistant to most health care treatments

**marked life disruption** means the effect of pain experienced on the individual's activities of daily living, vocational activity, physical and psychological functioning, as well as social and family relations

**permanent impairment** in respect of a worker means a permanent physical or functional abnormality or loss, including disfigurement, that results from a work-related injury

**subsequent injuries, disorders or conditions** means an injury, disorder or condition (secondary or tertiary) that may arise out of a work-related injury. Categories of subsequent injuries, disorders or conditions include, but are not limited to, pain disorders, drug dependency, further physical injury and psychological injuries

**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

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**Effective date:** July 1, 2022

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## Policy statement

### 1. General

The Act provides 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. An injury is considered to be work-related if it arises out of and in the course of a worker's employment, resulting from:

- a. a chance event occasioned physical or natural cause;
- b. a wilful and intentional act, not being the act of the worker;
- c. a disablement; or
- d. an occupational disease;

but does not include:

- e. mental stress; or
- f. an injury resulting from any decision by the worker's employer relating to the worker's employment, including a change in the work to be performed or working conditions, or promotion, transfer, demotion, lay-off, discipline, suspension or termination.

In some cases, a worker who has suffered a work-related injury may develop – as a direct consequence of that injury - subsequent injuries, disorders or conditions that may be compensable. These may range from subsequent pain disorders to injuries incurred during treatment or travel for rehabilitation.

The board may accept responsibility for a subsequent injury, disorder or condition – as defined in this policy – when it results from a work-related injury and where there is evidence establishing the causal link of the subsequent injury, disorder or condition to the work-related injury.

This policy recognizes that subsequent injuries disorders or conditions which have been determined to be compensable (i.e. they are a direct result of the work-related injury) shall be integrated with the treatment plan for the work-related injury resulting from a work-related incident.

## 2. Subsequent injuries, disorders or conditions

The following lists some aspects of subsequent injuries, disorders or conditions that will be considered by the board in adjudicating claims for subsequent injuries:

### *2.1 Subsequent pain disorders (chronic pain)*

Chronic pain may be compensable if it:

- a. stems directly from a work-related injury; and
- b. is confirmed as a diagnosis by a medical practitioner at a chronic pain rehabilitation program, psychologist or psychiatrist.

In addition:

- c. The board recognizes the consequences of chronic pain and chronic pain syndrome, and encourages any necessary intervention to be given early in the course of treatment of the physical injury. Where it is found that the condition interferes with the worker's rehabilitation, appropriate care will be offered.
- d. In rating any permanent impairment, once the worker has reached maximum medical recovery and has had adequate chronic pain intervention, the continued pain may be considered in addition to any signs of impairment that are found.
- e. When the worker cannot return to their job following the provision of the return to work services, the board may consider the chronic pain in the process of estimating the worker's post-injury earning capacity. If the evidence suggests that the continued pain has increased the worker's functional limitations, this may affect the identification of a suitable occupation and estimation of the worker's earning capacity.

### *2.2 Subsequent injuries resulting from travel*

Injuries which occur while a worker is traveling for approved treatment, diagnosis or rehabilitation (for example, a traffic collision that occurs while traveling to a specialist appointment) may be compensable. Whether such an injury is compensable is determined by the board under policy 2.1 Arising Out Of and In The Course of Employment.

### *2.3 Subsequent drug dependency*

A drug dependency condition or disorder may be compensable if it is directly related to the work-related injury (for example, a person with no history of drug abuse develops a dependency on prescription drugs prescribed for a painful back injury), and impair the worker's ability to effectively function in the workplace or result in a marked life disruption.

### *2.4 Subsequent physical injuries, disorders or conditions*

Physical injuries, disorders or conditions must be directly related to a work-related injury (for example, infection subsequent to a work-related injury, or hospitalization).

### *2.5 Subsequent psychological injuries, disorders or conditions*

Psychological injuries, disorders or conditions may be compensable if they are directly related to a work-related injury and meet the criteria set out in policy 2.4 Adjudicating Psychological Injuries.

### *2.6 Subsequent injuries, disorders or conditions and return to work*

Subsequent injuries, disorders or conditions arising directly from the work-related injury may occur following a worker's return to work. In this event the subsequent injury or condition would not be considered a 'new' injury.

Should a subsequent injury, disorder or condition arise during the worker's employment with an employer different than the pre-injury employer, the cost of the claim will not be applied against the new employer's claim history. For example, a worker breaks a hip at employer A, is hired by employer B as part of a return-to-work program, and develops a subsequent condition of arthritis in his hip requiring time off work for medical treatment. Any associated costs would be attached to the initial claim.

## **3. Causation**

The board will consider a claim for compensation for a subsequent injury, disorder or condition based on whether it relates directly to an accepted work-related injury. This case-by-case determination is based on available evidence (see policy 2.2 Merits and Justice of the Case). The principal test for determining if an injury is subsequent is whether it would have been likely or unlikely to occur if there had been no initial work-related injury (or triggering event, in the case of post-traumatic stress disorder).

*For example, a worker undergoes surgery to repair a work-related broken leg and subsequently develops an infection that requires the leg to be amputated. In this case, the amputation would be secondary to the work-related injury and therefore, compensable.*

A distinction must be made whether the injury, disorder or condition is subsequent to the work-related injury or whether there was a pre-existing condition. A pre-existing condition is a condition that existed prior to the work-related injury (see policy 2.3 Pre-Existing Conditions), and is not considered to be compensable; whereas a secondary condition can be adjudicated under this policy.

#### 4. Acceptable evidence

Eligibility for compensation for a subsequent injury, disorder or condition is determined on the basis of whether there is evidence confirming that, on the balance of probabilities, the subsequent injury or disorder arose directly (direct cause and effect) from a work-related injury (see policy 2.2 Merits and Justice of the Case).

#### 5. Early intervention

Each worker is required to participate actively and communicate with their case manager during the recovery and return to work process. This will help to ensure that the likelihood of subsequent injuries, disorders or conditions is minimized, and any concerns are addressed early during the worker's treatment.

#### 6. Permanent impairment benefit

If a worker's subsequent injury, disorder or condition has been determined to be work-related by the board, that worker may qualify for a permanent impairment benefit for the subsequent injury, disorder or condition – regardless of whether the worker qualifies for such a benefit for the work-related injury. This award will be assessed using policy 3.5 Permanent Impairment.

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### History

EN-10 Subsequent Disorders or Conditions Resulting from a Work-Related Injury, effective July 1, 2008, revoked July 1, 2022