



## Policy Amendment Proposal EN-07 Pre-Existing Conditions

This policy amendment proposal relating to pre-existing conditions 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 Pre-Existing Conditions 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 direction concerning claims that may involve pre-existing conditions.

### Relevant sections of the Act

The following sections of the Act are relevant:

- 86 entitlement to compensation

**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-07 Pre-Existing Conditions](#)

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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](mailto:Policy.Feedback@wcb.yk.ca)
2. Emailing comments directly to [Policy.Feedback@wcb.yk.ca](mailto: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](http://www.wcb.yk.ca)

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**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.

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### Purpose

This policy provides direction concerning claims that may involve pre-existing conditions.

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### Definitions

**aggravation** means a permanent worsening of a pre-existing condition due to a work-related injury

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

**causative significance** means the employment duties or nature of employment contribute to a significant degree in causing the injury, or worsening a pre-existing condition to the point of injury, such that the injury would not have occurred but for the employment

**exacerbation** means a temporary worsening of a pre-existing condition due to a work-related injury

**maximum medical improvement** means the point at which the worker has recovered to the best possible condition, has stabilized at that condition and is unlikely to significantly improve

**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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## 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. 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;



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- c. a disablement; or
- d. an occupational disease.

but does not include:

- e. mental stress;
- 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.

A work-related injury may cause a pre-existing condition to get worse. In such cases, a worker may be entitled to compensation in relation to the worsening of the pre-existing condition. This worsening may be either temporary (exacerbated) or permanent (aggravated).

### 2. Claim Adjudication

Whether or not a pre-existing condition exists, all claims for compensation are adjudicated in accordance with policy [EN-01 Arising Out of and In the Course of Employment](#).

#### *A pre-existing condition causes an injury*

A pre-existing condition may cause an injury to occur. In such cases, the decision maker will decide if the injury is work-related based on whether the worker's job duties, nature, or conditions of employment had causative significance – the injury would not have occurred but for the employment.

#### *The nature or conditions of employment cause an injury*

If a sudden or distinct incident occurs in the workplace, and an injury results, it is usually simple to conclude the incident caused the injury.

A worsening of a pre-existing condition may constitute an injury whether or not a specific incident occurred, and whether or not the worker sustained a separate and distinct work-related injury. It is not a bar to compensation if a worsening of a pre-existing condition, to the point of injury, results from the worker performing job duties over a period of time rather than from a specific incident. To be compensable as an injury, however, the evidence must warrant a conclusion that there was something in the nature or conditions of the employment that had causative significance in causing the injury.

#### *Work-related pre-existing conditions*

If a worker had an accepted claim for an injury or disease in the past, it may be considered a work-related pre-existing condition and may be compensable.



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If a new work-related injury makes a compensable pre-existing condition worse, the worker may be entitled to compensation for the new work-related injury and the worsening of the work-related pre-existing condition. If the work-related pre-existing condition recurs or worsens for other reasons, such as recreational activities, the decision maker will determine the worker's entitlement to compensation according to this and other appropriate **board** policies.

### *Non-work-related pre-existing conditions*

Pre-existing conditions that did not arise out of and in the course of a worker's employment are not compensable. However, if a work-related injury makes a non-compensable pre-existing condition worse, the worker is entitled to compensation for the work-related injury and the worsening of the pre-existing condition.

### **3. Managing Claims with Pre-Existing Conditions**

When a work-related injury makes a pre-existing condition worse, benefits continue until there is evidence the work-related injury is no longer contributing, in whole or in part, to the worker's loss of function or earning capacity.

**The board** may authorize treatment for the pre-existing condition, if it is worse because of the work-related injury, and treating it will speed healing time or prevent further injury. In such cases, **the board** is not responsible to treat the pre-existing condition into the future.

### *The pre-existing condition is not worsened, but it prolongs healing time*

In some cases, a work-related injury does not make a pre-existing condition worse. However, the nature of the pre-existing condition might make treatment and rehabilitation take longer than expected. In these cases, loss of earnings benefits and medical treatment continue until the worker recovers from the work-related injury.

### *Exacerbation: temporary worsening of a pre-existing condition*

A work-related injury may worsen a pre-existing condition temporarily. **The board** is responsible to compensate the worker until **they have** recovered from the work-related injury, and returned to the same level of function and earning capacity as before the work-related injury occurred – a signal the pre-existing condition has returned to the pre-injury state.

The decision maker will evaluate evidence of the worker's level of function and earning capacity before the work-related injury based on factors such as, but not limited to:

- a. whether the pre-existing condition required treatment;
- b. the nature of any symptoms and whether they had any effect on the worker's functioning;



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- c. whether the worker required workplace accommodations; and
- d. whether the condition caused any measurable impairment.

### *Aggravation: Permanent worsening of a pre-existing condition*

A work-related injury may make a pre-existing condition worse permanently. The worker may never return to the same level of function and earning capacity as before the work-related injury. When the worker has reached maximum medical improvement, they may be entitled to a partial permanent impairment benefit

The board is responsible to return the worker as closely as possible to the level of function as before the work-related injury. If the permanent worsening of a pre-existing condition results in a loss of earning capacity, the board is responsible to compensate the worker for that loss.

### *Degenerative or deteriorating pre-existing conditions*

Some pre-existing conditions are degenerative, and expected to deteriorate over time. A worker's pre-existing condition may have been stable and without symptoms before the work-related injury, or it may have already been causing the worker some impairment or disability. Either way, a degenerative pre-existing condition may deteriorate naturally during rehabilitation for a work-related injury.

If this happens, the decision maker will seek evidence of how the worker's condition would have likely progressed if the work-related injury had never happened. This may include a specialist's opinion, an opinion or resources considered reliable by the board's medical consultant, a medical-legal opinion, or any other evidence the board considers reliable. The board will continue to assist the worker until they return to the level of function and earning capacity that would be expected had the work-related injury never occurred.

The worker may be entitled to a partial permanent impairment benefit for the work-related injury, less any impairment that existed before the work-related injury.

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## Related Policies

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

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