

Policy Number: **GP-01**
Subject: **Information Protection, Access and Disclosure**
Chapter: **General**

Preamble

WorkplaceNL collects, uses and discloses personal information and personal health information to administer the Workplace Health, Safety and Compensation Act (the Act).

WorkplaceNL is responsible for protecting all personal information and personal health information in its custody and control. This includes protecting the privacy of its clients and maintaining the confidentiality of the information it collects. These actions are governed by both the Access to Information and Protection of Privacy Act (ATIPPA) and the Personal Health Information Act (PHIA).

Policy Statement

WorkplaceNL collects, uses, maintains and discloses personal and other confidential information for the following purposes:

- Making decisions and managing claims for injured workers and their dependents;
- Registering employers and collecting employer assessments; and
- Providing Occupational Health and Safety education, support and certification.

In order to carry out all aspects of these activities, WorkplaceNL may disclose information to workers, employers, service providers and others as necessary to administer the Act.

This policy is divided into four sections:
Part I: Privacy Guidelines
Part II: Disclosure
Part III: Unauthorized Access or Release
Part IV: Complaints and Inquiries

When collecting, using and disclosing information, WorkplaceNL adheres to the guiding principles of the Canadian Standards Association (CSA) Model Code for the Protection of Personal Information. These principles are incorporated throughout this policy.

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Definitions

- a) **“Authorized Representative”** means an individual, who has written authority from an injured worker, dependent, or employer to act on their behalf. WorkplaceNL does not recognize companies or organizations as authorized representatives; however, a worker, dependent, or employer may have more than one authorized representative. All authorized representatives, including spouses, lawyers and provincial officials such as Members of the House of Assembly, require written authorization.
- b) **“Claim File”** holds all information and evidence used in making decisions on claims for injured workers.
- c) **“Disclosure”** means releasing, exchanging or providing information to anyone. Disclosure can be verbal or written and can include e-mails, instant messages, faxes, photocopies, voice messaging, or teleconferencing.
- d) **“Employer File”** is the file for recording employer-specific information used in the assessment and management of an employer’s business with WorkplaceNL. This may include, but is not limited to, assessment, claim costs and prevention information.
- e) **“Personal Information”** is recorded information about an identifiable individual such as name, address, telephone number, age, race, ethnicity, religious or political beliefs, sex, sexual orientation, marital status, identifying numbers, criminal background, educational and employment history.
- f) **“Personal Health Information”** is recorded health information about an individual such as details about an individual’s physical or mental health, the provision of health care, the identity of health care providers, registration information (e.g., MCP number), prescriptions for drugs and health care devices, or the identity of an authorized representative.

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Part I – Privacy Guidelines

Accountability and Transparency

Protecting the confidentiality of personal information and personal health information is a shared responsibility among all WorkplaceNL employees and contracted service providers. Organizational accountability for the protection of privacy is supported through WorkplaceNL's privacy management practices which include the following:

- Designating employees to lead privacy such as the Chief Executive Officer (CEO) as WorkplaceNL's Chief Privacy Officer, and the Privacy Analyst as a dedicated resource;
- Operating a Privacy Oversight Committee;
- Developing privacy policies, procedures and guidelines;
- Providing privacy education and training;
- Signing oaths of confidentiality for employees and contractors;
- Completing privacy impact assessments and security risk assessments;
- Signing information sharing agreements;
- Adhering to an established privacy breach protocol; and
- Developing reporting mechanisms for privacy compliance.

Information about WorkplaceNL's policies and practices relating to the management of sensitive information is available to the public. This information is available at www.workplacenl.ca or upon request.

Consent

WorkplaceNL obtains consent in order to collect, use and disclose personal information and personal health information unless otherwise permitted or required by law.

Depending on the function or service, consent is obtained in several ways, such as:

- Worker's Report of Injury (Form 6)
- Authorized Representative Form (Form 13)

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- Employer Registration Application
- Digital Terms of Use for secure websites such as the Certification Training Registry, Connect, the Injured Worker Portal, and the Enterprise Resource Planning system.

Limiting Collection

WorkplaceNL works with its stakeholders to limit the collection of personal information and personal health information to only that which is necessary to administer and interpret the Act.

Limiting Use

WorkplaceNL uses personal information and personal health information for the purpose for which it was collected. The only exception is with the consent of the individual or as required or permitted by law.

Accuracy and Access

WorkplaceNL makes every effort to keep personal and personal health information accurate, complete, and up-to-date. Individuals may request access to their files at any time.

Protection

WorkplaceNL protects the information it collects by putting in place safeguards to prevent against loss; theft; and, unauthorized access, disclosure, use or modification of information. These include:

- Limiting access of information to only employees who are required to use it to carry out their job functions;
- Ensuring security of buildings and systems;
- Conducting mandatory privacy training for all employees;
- Implementing procedures related to the use of email and other technology for transmitting information;

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- Monitoring and enforcing privacy and security policies; and
- Developing retention schedules for the secure disposal of records.

WorkplaceNL is continuously expanding its use of technology to improve customer service and provide better access to services. Advancements in technology include the use of secure websites, secure email and file transfer, and third-party cloud-based service providers. In order to protect information that is collected, accessed and disclosed over the Internet, WorkplaceNL and its service providers have implemented robust technological safeguards including:

- Password protection;
- Encryption tools;
- Networks that block unauthorized access (i.e., firewalls);
- Role-based access that is monitored;
- Multi-factor authentication;
- Fully encrypted internet connection; and
- Continuous automatic upgrades.

Part II – Disclosure

A. Disclosure of Claim File Information

WorkplaceNL does not disclose information to anyone concerning a worker without the written authorization of the worker, dependent or the worker's authorized representative. The only exceptions include: if permitted by law; as identified on the consent form (Form 6); or as outlined in this policy.

WorkplaceNL can disclose claim file information in the situations outlined below:

1. Worker and Authorized Representative Access

An injured worker or their authorized representative shall have access to a copy of their claim file upon written request.

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2. Employer and Authorized Representative Disclosure

2.1 General Disclosure

WorkplaceNL discloses to employers, copies of all return-to-work plans, summaries of Labour Market Re-entry (LMR) cost benefit analyses, approved LMR plans, functional abilities information, decision letters, and appeal letters associated with their workers' claim files. Employers will also receive information on employer claim costs, and any other relevant information necessary to fulfil WorkplaceNL's obligations under the Act.

Where a worker experiences a recurrence while working for a subsequent employer (i.e., recurrence employer), the original employer (i.e., injury employer) will continue to receive all information as if the worker was still employed with the injury employer.

There are also situations where an employer, other than the injury employer, may be able to obtain information or communicate with WorkplaceNL. For example:

- A recurrence employer would be entitled to receive functional abilities information, necessary to facilitate return to work.
- If a worker is working for two separate employers at the time of the injury, the non-injury employer may also be contacted to obtain wage information to calculate the worker's benefits.
- When decisions are made concerning Policy ES-11 Second Injury Relief, a subsequent employer may be entitled to information that a pre-existing work-related condition exists.
- Where an employer is determined to be responsible for claim costs in accordance with PR-04 PRIME Employer Groupings, they will be entitled to receive relevant information as if they were the injury employer.

In all cases when information is released to an employer, the employer must provide WorkplaceNL with the name of a

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specific individual within the firm to whom the information may be released.

The authorized representative of an employer, is external to that employer and can only be appointed by an owner, director or other signing officer of that employer. The authorized representative of a city or town can only be appointed by the mayor, city or town manager, or city or town clerk.

All persons receiving information on behalf of an employer are expected to hold this information in the strictest confidence and to limit access to those who need the information for a purpose under the Act.

2.2 Disclosure Under Internal Review

When a worker, dependent or employer requests an internal review of a decision on a worker's claim, the employer, or an employer's authorized representative, may be granted access to relevant claim file information. WorkplaceNL shall determine relevance in terms of information which relates to, or which is necessary to address, the disputed issue(s). Workers are notified when relevant information is released to an employer or to an employer's authorized representative.

2.3 Disclosure to the Workplace Health, Safety and Compensation Review Division (WHSCRD)

When a worker, dependent or employer requests that the WHSCRD review a decision on a worker's claim, the WHSCRD will be granted access to all claim file information.

3. Disclosure to Health Care Providers

WorkplaceNL will disclose health care information regarding the injury, treatments, examinations, diagnoses, or investigations to health care providers and hospitals. This information is disclosed to manage a worker's recovery and return to work and assist in determining eligibility for benefits. Generally, the injured worker is not notified each time this type of information is released as the worker consents to the

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disclosure of this information on their application for benefits. The amount and type of information disclosed is limited to the information WorkplaceNL deems necessary for making decisions and managing a claim.

Requests by health care providers for additional information, besides that used in making decisions and managing a claim, will require the worker's consent.

4. Disclosure to Labour Market Re-entry Service Providers

WorkplaceNL may disclose all relevant information necessary for labour market re-entry providers to complete a labour market re-entry assessment, labour market re-entry plan and employment readiness services.

5. Disclosure to Third Parties

WorkplaceNL may only disclose information to a third party, such as a government agency or a private insurance company, with written authorization from the worker, or their authorized representative. Written authorization is not required where WorkplaceNL is authorized by law to disclose the information or is in the course of pursuing an action in the name of the worker or WorkplaceNL. The authorization must be directed to WorkplaceNL and specifically name the third party. It must also indicate which particular claim file(s) are relevant, and clearly state which information can be released.

6. Disclosure to Administrator

Under section 82(2) of the Act, WorkplaceNL may select an individual to receive and administer payments for a worker with a mental disability. The selected individual may act as the authorized representative; or the selected individual may name, in writing, someone else as the authorized representative.

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B. Disclosure of Employer Information

Except where permitted by law or provided for in this policy, WorkplaceNL does not disclose information to anyone else concerning an employer without the written authorization of the employer or the employer's authorized representative.

WorkplaceNL can disclose employer file information in the situations outlined below:

1. Employer and Authorized Representative

The employer or employer's authorized representative shall have a copy of the employer file upon written request.

2. Employer Account Status

Other employers or legal counsel may request information regarding an employer's status or account balance. WorkplaceNL releases this information in accordance with legislation and policy (refer to Policy ES-16 Clearance). WorkplaceNL may also disclose to the principal contractor the amount their subcontractor owes WorkplaceNL related to their contract if a Clearance has not been issued for the subcontractor.

3. Financial Audits

Subject to approval by the employer, a WorkplaceNL auditor conducting a financial audit of an employer's account is permitted to discuss the audit results with the employer's accountant.

4. Licensed Insolvency Trustees

Licensed Insolvency Trustees administer consumer proposals and bankruptcy. WorkplaceNL may disclose employer or director information to a Licensed Insolvency Trustee for the purposes of collecting a debt and enforcing a legal right of WorkplaceNL against the employer or director. Information

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released may include proof of claim, account balance and details, date(s) of reporting and any other information deemed necessary for the purpose of collecting the debt or enforcing WorkplaceNL's legal rights. The disclosure of personal information must be limited to the minimum amount of information necessary to accomplish the purpose of collecting the debt or enforcing WorkplaceNL's legal rights.

5. Industry Sector Councils

For the purpose of promoting and maintaining industry sector safety councils, WorkplaceNL may disclose employer information within a specific Newfoundland Industrial Classification (NIC) code(s) to the Sector Council. Information that is disclosed may include employer name, contact information and NIC code. The amount and type of information disclosed and the person(s) who it is released to, is limited to what WorkplaceNL deems necessary, for the effective operations of the industry sector council.

C. Disclosure of Information under Legislation, Written Agreements, and Court Orders

1. Legislation

WorkplaceNL may also be required to disclose information as required by provincial or federal legislation. This applies to, but is not limited to, disclosing information to the Occupational Health and Safety Branch of the Provincial Government and the WHSCRD. In carrying out its mandate to develop and administer certification training, WorkplaceNL collects and maintains information in a Certification Training Registry and discloses the information as required.

2. Written Agreements

WorkplaceNL may enter into written information sharing agreements under the authority of sections 15 and 18 of the Act. All collection, use, and disclosure of personal information and personal health information by WorkplaceNL following

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written information sharing agreements must be in compliance with ATIPPA and PHIA. Information sharing agreements shall limit the disclosure of such information to the minimum amount necessary to accomplish the purpose for which it is disclosed. The personal information and personal health information shared is to be kept confidential and used only for the agreed purpose. Access to the information shall be limited to the minimum amount of information and the limited number of employees required to achieve the agreed upon purpose. The party to the agreement must also ensure adequate safeguards are in place to protect the information from unintended disclosure. Any information sharing agreement must be approved by WorkplaceNL's Board of Directors.

3. Canadian Workers' Compensation Commissions, Boards, Associations

WorkplaceNL is a signatory to the Interjurisdictional Agreement on Workers' Compensation. In order to exercise its rights and fulfill its obligations under this Agreement, WorkplaceNL discloses information to other workers' compensation boards as permitted by our provincial privacy laws.

When a client of WorkplaceNL resides in or visits another province or territory, WorkplaceNL may disclose the necessary information to another board to assist in the provision of health care or related services. When a client of another board visits or resides in the province of Newfoundland and Labrador, WorkplaceNL may provide assistance to the other board in the provision of health care or related services to the worker. In such cases, WorkplaceNL may collect from and disclose to, the health care provider and the other board, the necessary information to facilitate the requested service.

When a worker who is entitled to compensation in Newfoundland and Labrador, elects compensation in another province or territory, WorkplaceNL may disclose information to the other province or territory for the purpose of cost

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reimbursement. In cases where there may be entitlement to claim compensation in more than one jurisdiction, WorkplaceNL discloses the necessary information to avoid charging duplicate assessments to employers and to avoid duplicate services to injured workers. Any further personal and health information details will require the written consent of the worker, dependent or employer.

In the case of employers who elect the Alternative Assessment Procedure for the trucking and transport industry, WorkplaceNL will provide information to other workers' compensation boards for the effective application of coverage for that employer.

4. Law Enforcement Agency

Information will be disclosed to a law enforcement agency only with the written authorization of the individual worker, dependent or employer, unless the law enforcement agency provides a search warrant or other Court Order, or if the inquiry is a necessary part of an investigation initiated by WorkplaceNL. The law enforcement agency shall be provided with all necessary information where WorkplaceNL is satisfied that evidence in its files warrants referral for criminal investigation.

D. Disclosure of Generic Non-Personal Data

Upon request, WorkplaceNL may release generic (i.e., non-personal) data for research purposes and inquiries from the press. Such data will only be released if the information cannot be used to identify an individual worker, dependent or employer. WorkplaceNL will remove all individual identifiers from data which is released and may place conditions upon the subsequent use of the information generated from the data.

General statistical information is released to the Association of Workers' Compensation Boards of Canada (AWCBC) for their publication. Injury statistics are also provided to the

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AWCBC for maintaining the National Work Injury Statistics Program.

Part III: Unauthorized Access or Release

In the event of unauthorized access or disclosure of personal information and personal health information, WorkplaceNL takes steps to contain the unauthorized access or disclosure and to recover the personal information. The situation is evaluated to determine the individuals affected, type of information, and the cause of the unauthorized access or disclosure. The affected individual(s) are notified as appropriate, and WorkplaceNL takes all reasonable steps to prevent similar occurrences in the future.

Part IV: Complaints and Inquires

Individuals may contact WorkplaceNL with any questions, complaints or suggestions with respect to privacy and the protection of personal information and personal health information. Complaints can be directed to WorkplaceNL's Chief Privacy Officer (i.e., the CEO). If an individual is not satisfied with WorkplaceNL's response to the complaint, they have the right to file a complaint with the Office of the Information and Privacy Commissioner of Newfoundland and Labrador.

Merits and Justice

It is important to consider Policy EN-22 Merits and Justice when making a decision under this policy.

Reference: Workplace Health, Safety, and Compensation Act, Sections 5, 14 – 19, 27, 55, 58, 60, 69, 82(2) and 101
Workplace Health, Safety and Compensation Review Division Regulation 1117/96, Section 7
Access to Information and Protection of Privacy Act, 2015
Personal Health Information Act
Occupational Health and Safety Act and Regulations
Policies: EL-05 Assignment/Attachment Compensation Benefits
EN-11 Investigations
RE-03 Functional Abilities Information for Return to Work
ES-11 Second Injury Relief
ES-16 Certificates of Clearance
PR-04 PRIME Employer Grouping
PR-05 PRIME Reporting
EN-22 Merits and Justice

Amendment History

Original Effective Date	1998 09 01
Revision #1	2009 06 25
Revision #2	2011 06 14
Revision #3	2015 10 22
Revision #4	2021 12 15

Next Review Date	2026 12 15
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