

Client Services Policy Manual

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

Preamble

Worker and employer information is collected by WorkplaceNL as it exercises its statutory authority. In the protection and management of personal information WorkplaceNL is subject to ATIPPA and in the protection and management of personal health information WorkplaceNL is subject to PHIA. Both statutes adhere to the following principles of privacy:

Accountability

Protecting the confidentiality of personal information and personal health information is a shared responsibility. Through ATIPPA the Chief Executive Officer (CEO), as head of the public body and WorkplaceNL's Chief Privacy Officer, is accountable for the personal information in WorkplaceNL's custody or control. In keeping with PHIA WorkplaceNL, a designated custodian has accountability for all personal health information in WorkplaceNL's custody or control. As well, all WorkplaceNL staff and contracted service providers are responsible for maintaining and protecting all confidential information under their control. Organizational accountability for the protection of privacy is supported through policies and procedures, employee education and awareness. WorkplaceNL employees, and on-site contractors must sign and abide by an oath of confidentiality pledging to protect confidentiality.

Identifying purposes

WorkplaceNL collects, uses and discloses only information necessary to administer and interpret the Act and only when authorized by law, including the Act, ATIPPA and PHIA.

Consent

WorkplaceNL only collects, uses and discloses personal information and personal health information, with the consent of the person the information is about, except where otherwise permitted or required by law.

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 and disclosure

WorkplaceNL uses and discloses personal information and personal health information only for the purposes for which it was collected, or a consistent purpose, except with the consent of the

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individual or as required or permitted by law.

Accuracy

WorkplaceNL makes every effort to keep personal and personal health information as accurate, complete, and up-to-date as possible at the time of collection, and as is necessary for the purposes for which it is used. WorkplaceNL will correct or annotate records where appropriate to ensure the accuracy of such information.

Safeguards

WorkplaceNL shall make reasonable security arrangements to protect against loss, theft, unauthorized access, disclosure, use or modification of information. WorkplaceNL will determine when it is appropriate to obtain verification through identification/authentication measures.

Personal information and personal health information is retained, transferred and disposed in a secure manner.

Openness

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

Individual access

Individuals may request access to their files at any time to review the contents and accuracy and may request amendments as appropriate.

Challenging compliance

Individuals may contact WorkplaceNL with any questions, complaints or suggestions with respect to privacy and protection of personal information and personal health information by writing WorkplaceNL's Chief Privacy Officer.

Policy Statement

WorkplaceNL collects and maintains information for the purposes of adjudicating and managing claims for injured workers or their dependents. WorkplaceNL also registers employers and collects employer assessments. For the purpose of a Certification Training Registry (CTR), WorkplaceNL also collects and maintains information on workers, employers, trainers, and training providers.

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In order to carry out all aspects of these activities, WorkplaceNL may disclose information to workers, employers, service providers and others as necessary for WorkplaceNL to administer the Act and for other parties to exercise their rights and carry out their obligations under the Act.

As a public body that collects personal information and personal health information WorkplaceNL is subject to ATIPPA and PHIA. These Acts provide access for the public to the information maintained by WorkplaceNL while at the same time protecting personal privacy.

WorkplaceNL obtains a worker's consent to collect, use and disclose personal information and personal health information for the adjudication and management of a claim under the Act. In order to process a claim for benefits WorkplaceNL requires the worker's consent in writing through an application for benefits (Form 6). If a worker is unable to complete a claim for benefits as a result of the injury, WorkplaceNL may pay the worker's claim without express consent. During this time the worker's case manager and WorkplaceNL's health care providers may be part of the "circle of care" provided for in PHIA.

Under PHIA, individuals may provide limited consent whereby the individual places a condition on the collection, use and disclosure of particular personal health information. As an administrative agency with responsibility for adjudication and powers of investigations, WorkplaceNL may not be able to process a claim for entitlement under certain consent restrictions.

This policy outlines the process for access to and disclosure of worker and employer information within the control of WorkplaceNL. Through this policy, WorkplaceNL recognizes the sensitive nature of the information it collects and the importance of protecting the privacy of individuals and ensuring the integrity of their information.

WorkplaceNL operates in an environment where it must balance the interest of workers who may be seeking or receiving benefits and services under the Act, and that of employers, who have an interest in the same matters. WorkplaceNL seeks to ensure a balance between the confidentiality of the parties involved and the rights of other interested parties to obtain the necessary relevant information in order to fulfill their statutory obligations.

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Information accessed or disclosed under this policy may only be used for purposes under the Act. WorkplaceNL expects individuals and organizations to protect this information and any violation of that principle will be viewed seriously by WorkplaceNL.

Definitions

- a) **“Access”** may include:
- obtaining general information by telephone or electronic means;
 - reviewing file documentation in person;
 - obtaining copies of documentation; or,
 - obtaining data for research or other purposes.
- b) **“Authorized Representative”** means an individual, including a spouse, with written authority from an injured worker, dependant, or employer to act on their behalf and to access information about them held by WorkplaceNL. Where a worker is mentally disabled, the individual who is selected by WorkplaceNL to receive and administer payments under s. 82(2) of the Act may act as the authorized representative; or, the selected individual may name, in writing, someone else as the authorized representative. The authorized representative of an employer, is external to that employer and can only be appointed by a proprietor, partner, director, or authorized signing officer of the employer. The authorized representative of a city or town can only be appointed by the mayor, city/town manager, or city/town clerk.

Only an individual may act as an authorized representative. WorkplaceNL does not recognize companies or organizations as authorized representatives. A worker, dependent or employer may have more than one authorized representative. Individuals who have been asked to intervene on behalf of a worker or an employer, such as federal, provincial or municipal officials (e.g. Member of the House of Assembly), Worker or Employer Advisors, lawyers, accountants or union representatives require written authorization from the worker or employer.

The designation of the authorized representative permits WorkplaceNL to share all information from a file that the consent allows.
Designation of an authorized representative does not prevent

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WorkplaceNL from dealing directly with the worker, dependent or employer where it is necessary or appropriate to do so.

Written authorizations are valid until WorkplaceNL is informed otherwise in writing. However, authority of all prior authorized representatives is revoked upon the death of a worker, dependent, or employer or when an individual is selected by WorkplaceNL under s. 82(2) of the Act.

- c) **“Certification Training Registry”** is a provincial electronic registry used to manage certification training records. It provides safe and secure storage and retrieval of training data and course listings for a variety of stakeholders, including workers, employers, trainers, and training providers.
- d) **“Claim File”** is the file for recording information used in the adjudication and management of a worker’s claim. All evidence used in decision making on a claim is contained in the claim file.
- e) **“Dependent”** as defined under section 2 of the Act.
- f) **“Disclosure”** means releasing, exchanging or providing information to anyone. Disclosure can be verbal or written and can include e-mails, faxes, photocopies, voice messaging, or teleconferencing.
- g) **“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.

Part 1 – Disclosure of Claim file Information

Outlined below are situations where WorkplaceNL can disclose claim file information. Except where permitted by law, consented to in the Form 6 – Worker’s Report of Injury, or provided for in this policy, WorkplaceNL does not disclose information to anyone else concerning a worker without the written authorization of the worker, dependent or the worker’s authorized representative.

1. Worker and Authorized Representative Access

An injured worker or their authorized representative shall have

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access to a copy of their claim file upon written request.

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 between WorkplaceNL and the worker, functional abilities information, decision letters, and appeal letters associated with their workers' claim files. Employers will also receive information on employer claim costs, which is disclosed to the employer for the purpose of verifying claim costs, and any other relevant information necessary to fulfil WorkplaceNL's obligations under the Act.

Where a worker suffers a recurrence while working for a subsequent employer (the "recurrence employer"), the original employer (the "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 when it is necessary to meet the requirements of the Act, regulations and policy. 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 requested as if they were the injury employer.

Any additional information requested by the employer not

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addressed in this policy can only be released with the written consent of the worker or if the disclosure is authorized under ATIPPA, PHIA or by law.

In all cases when information is released to an employer, the employer must provide WorkplaceNL, in writing, the name of an individual within the firm to whom WorkplaceNL may release the documentation.

Employers are expected to hold this information in the strictest confidence and to limit access to those members of the employer's firm who need the information for a purpose under the Act.

For the purpose of disclosure of relevant claim file information, all references to employer(s) include the employer's authorized representative, provided the representative follows the disclosure process established by WorkplaceNL.

2.2 Disclosure Under Internal Review

When the 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, upon written request, access to additional 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.

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 for the purpose of obtaining relevant information in the course of determining entitlement to benefits and management of a worker's claim. Generally, the injured worker is not notified each time this type of information is released as the worker consents to the disclosure of this information on their application for benefits. The amount and type of information disclosed is limited to that information WorkplaceNL deems necessary for the adjudication and management of a claim.

Requests by health care providers for information that is outside the adjudication and management of a claim will require the worker's

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consent.

4. Disclosure to Labour Market Service Providers

WorkplaceNL may disclose to labour market providers all relevant information necessary for the provider to carry out a labour market re-entry assessment and/or plan, if necessary, for the purposes of WorkplaceNL determining entitlement to benefits and managing an injured worker's claim.

5. Disclosure to Third Parties

Written authorization from the worker, or their authorized representative, must be received by WorkplaceNL before information will be disclosed following a request from a third party, such as a government agency or a private insurance company, except where WorkplaceNL is authorized by law or where WorkplaceNL is in the course of pursuing an action in the name of the worker or WorkplaceNL. The authorization must be directed to WorkplaceNL; specifically naming the third party; indicating which particular claim file or files (if relevant); and, clearly stating which information can be released.

Part II – Disclosure of Employer Information

Outlined below are situations where WorkplaceNL can disclose employer file 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.

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 "Certificates of Clearance").

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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. Industry Sector Councils:

WorkplaceNL supports the concept of industry sector councils as a means for industry to promote all aspects of occupational health and safety and return to work in the province. Therefore, for the purpose of sector council development and related operations, WorkplaceNL may disclose employer information within a specific Newfoundland Industrial Classification (NIC) code(s). Information to be 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 promotion of the industry sectoral council.

Part III – Disclosure of Information under Legislation, Written Agreements, and Court Orders

1. Legislation

WorkplaceNL may also be bound by or under the authority of other provincial and federal legislation to disclose information as required. This applies to, but is not limited to, disclosing information to the Occupational Health and Safety Branch of the Provincial Government's Department of Government Services, and the Workplace Health, Safety and Compensation Review Division. In carrying out its mandate to develop and administer certification training, WorkplaceNL collects and maintains information in a CTR and discloses the information as required.

2. Written Agreements

WorkplaceNL may enter into written information sharing agreements which are advisable for carrying out the Act, under the authority of sections 15 and 18. All collection, use, and disclosure of personal information and personal health information by WorkplaceNL pursuant to 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

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information shared is to be kept confidential and used only for the agreed purpose. Access to the information shared shall be limited to the minimum amount of information and the limited number of employees required to achieve the agreed upon purpose. 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 Interjurisdictional Agreement on Workers' Compensation to facilitate the resolution of interjurisdictional issues which arise when workers and employers under the Act perform work in other provinces or territories. 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, the Form 6 consent permits WorkplaceNL to 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 the Province elects compensation in another province or territory, WorkplaceNL may disclose information to the other province or territory for the purpose of cost 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 alternate assessment procedure for the trucking industry, WorkplaceNL will provide the information which is necessary to other workers' compensation

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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 Royal Canadian Mounted Police, Royal Newfoundland Constabulary or other appropriate authority shall be provided with all necessary information where WorkplaceNL is satisfied that evidence in its files warrants referral for criminal investigation.

Part IV – Disclosure of Generic Non-Personal Data

WorkplaceNL may release generic (i.e., non-personal) data upon request, provided 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 AWCBC for maintaining the National Work Injury Statistics Program.

Part V – Access and Disclosure of Information via Internet

To improve customer service and provide better access to services WorkplaceNL is expanding the number of services available through a secure web portal called “**connect**”. A number of security features are in place to provide a safe environment for stakeholders to interact with **connect**. Access and disclosure of information through **connect** is governed by a “Terms of Use” which all users must accept before accessing any services. The Terms of Use have strict access and privacy provisions to help protect confidentiality of claim and/or employer information. There are also safeguards in place including password protection, SSL (secure sockets layer) encryption and firewalls. SSL is an industry standard security protocol. As well, all users must appoint a representative to manage their account and **connect** will only accept transactions from a user with a valid user name and password. A copy of the Terms of Use and other information about WorkplaceNL’s web services can be accessed through **connect** at www.workplacenl.ca.

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Part VI - Unauthorized Access or Disclosure

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 individual(s) affected are notified as appropriate and WorkplaceNL takes all reasonable steps to prevent similar occurrences in the future.

Reference: *Workplace Health, Safety, and Compensation Act*, (the 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 (“ATTIPA”)
Personal Health Information Act (“PHIA”)
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

Amendment History

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