

Client Services Policy Manual

Policy Number: **ES-11**
Subject: **Second Injury Relief**
Chapter: **Employer Services**

Definitions

Second Injury Relief

The transfer of all or part of the cost of a claim from an employer's experience account to the general injury fund.

Disability

The loss of earning capacity of a worker as a result of a work injury.

Enhanced Disability

The situation where a current compensable injury is enhanced or intensified by a pre-existing disability covered by the Workplace Health, Safety and Compensation Act, 2022 (the Act) or by a subsequent injury resulting while a worker is participating in a rehabilitation program.

Pre-existing Disability

A previous work injury covered by the Act resulting in loss of earning capacity beyond the day of the injury.

Pre-existing Impairment

A permanent functional impairment rating as a result of a previous work injury covered by the Act.

Rehabilitation Program

A rehabilitation program is considered to be a labour market-re-entry program provided under section 102 of the Act or a program or service covered by WorkplaceNL for the treatment of a work injury or to improve the worker's functional ability (e.g. physiotherapy, occupational therapy, chiropractic care, massage therapy, etc.).

Policy Statement

Second Injury Relief provides an incentive for employers to hire injured workers, and where certain circumstances exist, allows claim costs from the current employer to be transferred to the general injury fund. It is not intended to relieve employers of claim costs for injuries to their workers where it is appropriate for that employer to be responsible for those costs. It is not intended for relief for non-compensable disabilities, which are addressed by the Proportionment Policy EN-02.

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Second Injury Relief will be given when a new work injury or a recurrence of a previous work injury covered by the Act occurs while a worker is attending at or participating in a rehabilitation program as defined in this policy.

It is also given where a worker has a recurrence of a pre-existing disability related to an injury covered by the Act that did not originate with that employer. Second Injury Relief is not available to an employer where a worker has a recurrence of an injury which originated with that employer.

Second Injury Relief is also available when the injury recovery period is extended or there are increased costs because of a pre-existing disability or pre-existing impairment (see GENERAL, Item 2).

Second Injury Relief does not apply to Self-Insurers.

General

WorkplaceNL has exclusive jurisdiction to determine "the existence and degree of disability or impairment because of an injury", as well as "the permanence of disability or impairment because of an injury".

Second Injury Relief decisions can be made when:

- a. a claim is opened;
- b. WorkplaceNL determines that an injury (including recurrence of a previous work injury) occurred during a rehabilitation program as defined in this policy;
- c. WorkplaceNL determines that a recurrence occurred related to an injury that originated with a different employer;
- d. WorkplaceNL recognizes that a recovery period is extended or that there are increased costs because of a pre-existing disability or impairment;
- e. an employer requests second injury relief.

WorkplaceNL will determine when, and to what degree, Second Injury Relief may be provided. Decisions must be made considering the real merits and justice of each case.

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Unless exceptional circumstances dictate otherwise, the following statements apply:

1. Injury or recurrence during a rehabilitation program.

Total relief will be provided where a worker suffers a new injury, or a recurrence of a previous work injury, covered by the Act while participating in a rehabilitation program as defined in this policy. All future costs attributable to the injury or recurrence will be transferred to the general injury fund. (See Examples 1 and 2 attached to this policy.)

2. Injury superimposed on pre-existing disability.

Total or partial relief may be provided when a new disabling injury is superimposed on a previous injury covered by the Act involving loss of earning capacity. The two injuries must be medically compatible.

The severity of the pre-existing disability and its impact on the earning capacity following the new injury will be considered when determining the degree of relief to be provided. Where a condition, disease or disability that existed prior to the work injury is not covered by the Act, decisions on entitlement to earnings loss must be made in accordance with Policy EN-02 "Proportionment".

The Second Injury Relief table (below) will be used for determining the degree of relief to be provided. (See also Example 3 attached to this policy.) The following definitions apply:

"Severity of Pre-existing Disability"

Minor: less than 4 weeks disability within 1 year prior to the new injury;

Moderate: 4 to 13 weeks disability within 3 years prior to the new injury;

Major: more than 13 weeks disability within 5 years prior to the new injury.

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"Severity of Subsequent Injury"

Minor: expected to cause non-disabling or minor disabling injury;

Moderate: expected to cause disabling injury;

Major: expected to cause serious disability, probable permanent disability.

| Severity of Pre-existing Disability | Severity of Subsequent Injury | Percentage of Second Injury Relief |
|-------------------------------------|-------------------------------|------------------------------------|
| Minor | Minor | 50% |
| | Moderate | 25% |
| | Major | 0% |
| Moderate | Minor | 75% |
| | Moderate | 50% |
| | Major | 25% |
| Major | Minor | 100% |
| | Moderate | 75% |
| | Major | 50% |

When a claim does not correspond with the time frames established under the "Severity of Pre-existing Disability" definition an employer must present proof of medical compatibility and continuity of medical care between the two injuries to be eligible for Second Injury Relief.

3. Pre-existing impairment causing injury.

Total relief will be provided when a pre-existing impairment covered by the Act is the primary cause of a new injury.

Primary cause means that it is more probable than not that the injury would not have occurred if it were not for the existence of the pre-existing impairment. (See Example 4 attached to this policy.)

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Second Injury Relief Examples

EXAMPLE 1 - Injury or Recurrence During a Labour Market Re-entry Plan

A worker with a compensable neck injury covered by the Act is participating in a formal training program at a provincially recognized training centre. During the labour market re-entry plan, the worker falls and injures her hip. The labour market re-entry plan is delayed for six weeks due to the intervening hip injury. Benefits paid to the worker and associated medical costs for the hip during the six-week period will be transferred to the general injury fund.

EXAMPLE 2 - Injury or Recurrence During a Health Care Rehabilitation Program

A worker with a compensable low back injury covered by the Act is participating in a physiotherapy session at a local clinic. While completing strengthening exercises with her physiotherapist, she twists and injures her neck. Her physiotherapy program is delayed for four weeks and additional treatment is needed for her neck. Benefits paid to the worker and associated medical costs for the neck during the four-week period will be transferred to the general injury fund.

EXAMPLE 3 - Injury Superimposed on Pre-existing Disability

Example 3(a)

In 2011, while with Employer A, a worker sustains a major injury (fractured humerus in left arm resulting in over 13 weeks disability), prohibiting return to work as a roofer. In 2015, while with Employer B, the worker falls and suffers the same fracture in the same arm (i.e. major injury).

Applying the Second Injury Relief table, 50% of the costs will be transferred to the general injury fund. Employer B is responsible for the other 50% of claim costs.

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Example 3(b)

Consider the case of a worker whose minor left knee injury in 2014 is superimposed on a left knee injury in 2012 for which compensation was received for 13 weeks (moderate). In this example, 75% Second Injury Relief would be provided.

EXAMPLE 4 - Pre-existing Impairment Causes Subsequent Injury

A heavy equipment operator sustains a major compensable injury in 2011, requiring below-knee amputation of the leg. The worker returned to a new occupation (warehouse dispatcher) in 2015. In the course of employment the worker trips and is injured.

Because a poorly fitted prosthesis had caused the subsequent injury, the employer is relieved of the full cost of the injury and charges are transferred to the general injury fund.

EXAMPLE 5 - Pre-existing Disability Not Covered by the Act

A worker with pre-existing, non-work-related back problems sustains a work injury. Due to the effects of the work injury, further treatment is necessary for the non-work-related back condition. Cost relief is not provided for expenses relating to treatment of the pre-existing back condition because it was not work related. In addition, decisions on entitlement to earnings loss are subject to the Proportionment Policy EN-02.

EXAMPLE 6 - Pre-existing Injury Covered by the Act But no Relief Warranted

In 2011 a worker sustains a work-related hand injury resulting in three weeks disability and no impairment.

In 2015 a new work injury occurs requiring further treatment to the same hand. There is no evidence of medical compatibility and continuity of medical care between the 2011 and 2015 injuries.

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Cost relief is not provided because there was less than four weeks disability more than one year prior to the new injury. Also, as stated, there is no evidence of medical compatibility and continuity of medical care between the two injuries.

Reference: Workplace Health, Safety and Compensation Act, 2022, Sections 2(1)(i), 20, 51, 100, 101, 99 - 102, and 138(1)(b).
Policies: EN-02 Proportionment

Amendment History

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