

Client Services Policy Manual

Policy Number: **ES-12**
Subject: **Transfer of Injury Costs**
Chapter: **Employer Services**

Background

Section 128 of the Workplace Health, Safety and Compensation Act, 2022 allows for the transfer of the costs of an injury from the experience account of one employer to that of another employer where it appears to the satisfaction of WorkplaceNL that a worker of an employer was injured or killed owing to the negligence of another employer and/or his or her worker.

Definitions

Causation: It can be established that the alleged negligent employer and/or his or her worker caused, partly or wholly, an injury to the worker of another employer.

Duty of Care: The alleged negligent employer and/or his or her worker had a responsibility to the injured person to avoid causing them harm.

Negligence: Negligence, for the purpose of this policy is defined through the establishment of a duty of care, standard of care and breach of that standard causing injury.

Standard of Care: There is a duty in pursuing an activity to take reasonable care to avoid harm to others. The level of the standard of care varies with the activity.

Policy Statement

Negligence will be determined by WorkplaceNL upon the request of the injured worker's employer or where deemed appropriate by WorkplaceNL. Although WorkplaceNL will attempt to identify cases where there is the potential of applying Section 128, the primary responsibility rests with the injury employer to request a determination.

All employer requests for cost transfer due to negligence will be considered even if the employer is not eligible for participation in the Experience Rating Plan at present since all employers have the potential to meet the eligibility requirements at a future date.

General

Prior to each negligence investigation, WorkplaceNL will review the situation for evidence of negligence and materiality.

For those cases where negligence is to be determined, Investigative Services will be consulted to determine whether a

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WorkplaceNL investigation into the incident is warranted. All parties likely to be affected by the determination will be given an opportunity to review the available evidence and make representations to WorkplaceNL about the application of Section 128.

Where more than one employer (including the accident employer) is found to be negligent in a particular case, the past and future injury costs of the claim will be apportioned among the negligent employers based on degree of negligence. Where WorkplaceNL is satisfied that the injury or death of a worker is due to the negligence of more than one employer, and degrees of negligence cannot be determined, the costs of the injury will be charged to the employers involved in equal proportions.

Reference: *Workplace Health, Safety and Compensation Act, 2022, Section 128*

Amendment History

<i>Original Effective Date</i>	1998 11 17
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*This policy is effective on November 17, 1998. Requests for Section 128 relief for injuries occurring prior to the effective date will be considered for a six month period after the effective date.

For injuries occurring on or after November 17, 1998, requests for Section 128 relief will only be considered during the six month period following the date of injury, unless new evidence submitted after this time period establishes that there was negligence.