

# Occupational Disease Policy Framework

WORKERS COMPENSATION BOARD OF MANITOBA

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## 1. Introduction

On January 1, 2022, *The Workers Compensation Act* (the Act) was amended to create an "occupational disease presumption." Subsequently, the Workers Compensation Board of Manitoba (WCB) adopted a presumptive schedule of occupational diseases in regulation (the *Occupational Diseases Regulation*, effective September 1, 2023).

This new approach to the adjudication of occupational diseases in Manitoba is meant to streamline the adjudication process and promote consistent decision making on occupational disease claims.

The *Occupational Disease Policy Framework* guides this new approach and supports occupational disease policy development. It reflects the WCB's commitment to a transparent process that is informed by high-quality scientific evidence and a consistent application of the legislative regime.

## 2. Purpose

The framework is meant to assist the WCB in identifying occupational diseases for possible addition to the schedule, and establish the criteria for alternative adjudicative approaches. To that end, the framework describes a "three-pronged" approach to the adjudication of occupational diseases (for those claims with accident dates occurring on or after January 1, 2022). The three approaches are:

- 1) Adjudication using the presumptive schedule;
- 2) Adjudication using policy guidance; and
- 3) Adjudication on a case-by-case basis.

The current presumptive schedule includes occupational diseases where a strong and consistent causal link has been established by the scientific evidence. It relies heavily on the work and experience of other compensation systems in Canada. Science is dynamic, so monitoring the evolving science plays an important role in the decision to add more diseases to the schedule.

Scientific evidence, in and of itself, is not sufficient for determining whether a particular disease is suited to be on the presumptive schedule. It must be considered along with legislative requirements, legal principles and practical considerations to determine whether listing the disease on the schedule is the best approach. In some cases, policy guidance may better serve the goal of streamlined decision making. In some cases a case-by-case adjudicative approach may be better. This framework seeks to explain all of this, while outlining the following:

- The **process** the WCB will use to *identify additional occupational diseases* that may be amenable to a streamlined adjudicative approach;
- The **criteria** the WCB will use to *determine the best approach* (i.e., if an occupational disease is well suited for inclusion in the schedule, or whether a policy approach is better, or whether it should continue to be adjudicated on a case-by-case basis).

## 2.1 Background

The WCB provides compensation to workers who experience occupational diseases<sup>1</sup> due to the nature of their employment, just as it does workers who sustain other types of work-related injuries. *Both involve answering the key question of whether employment played a causal role in the injury or disease.*

Determining causation in occupational disease claims is often challenging because many diseases are caused by a variety of contributing factors, both work and non-work-related. This is further complicated by the potential long latency period between the time of the exposure and the resulting illness. For these reasons, the Act imposes a higher standard of causation on occupational disease claims than on other types of claims, known as **"dominant cause."** This means for an occupational disease claim to be accepted, it must be established that the work exposures or activities are the main cause(s) of the disease (i.e., the combined effects of the work-related causes must exceed the combined effect of the non-work-related causes).

Prior to adoption of the schedule, occupational diseases were adjudicated on a case-by-case basis. Creation of the schedule streamlines the adjudication process by eliminating the need to analyze the scientific evidence for a causal link for each individual claim. Diseases currently on the schedule are those where there is strong and consistent scientific evidence for a causal link between the disease and a particular exposure (i.e., causation is presumed).

Not every occupational disease lends itself to this approach. If it is too easy to rebut the presumption that the worker's employment exposures or activities caused the disease, then listing the disease in the schedule may serve no practical purpose. In some cases, it may be appropriate to use a policy approach to streamline adjudication. In other cases, a case-by-case adjudicative approach may remain the best response.

## 3. Occupational Disease Legislative and Policy Context

As an adjudicative tribunal, the WCB derives its decision-making authority from *The Workers Compensation Act* (the Act), first enacted over a century ago.

### 3.1 Legislation

The current version of the Act, which contains the occupational disease presumption and empowers the creation of a schedule of occupational diseases by regulation, applies to accidents occurring on or after January 1, 2022. The Act contains the rules which govern the adjudication of occupational disease. These are:

- Defining occupational disease;
- Determining the date of accident for occupational diseases;
- The "dominant cause" standard of causation;
- The rebuttable occupational disease presumption; and
- Authority to create a schedule of occupational diseases by regulation.

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<sup>1</sup>Occupational diseases are those caused by work-related exposures or activities that are peculiar to or characteristic of a particular trade, industry, work process, or conditions of employment. An occupational disease is distinct from an "ordinary disease of life," which is a disease common in the general population and most often attributable to non-work-related factors.

### 3.2 Policy

The WCB has the power to develop policies under the Act to help guide adjudication of occupational disease claims.

The *Adjudication of Occupational Disease Claims* policy describes how occupational disease claims are generally adjudicated. Importantly, it describes how the presumption works with the schedule.

When a disease is listed on the schedule a causal link between the worker's employment and the occupational disease is presumed, *unless it can be shown that the employment is not the dominant cause of the disease* (i.e., the presumption is rebutted). Many diseases have multiple causes and non-work-related causes can be found to be the dominant cause.

The WCB has also developed a specific occupational disease policy, the *Noise-Induced Hearing Loss* policy, to provide guidance on the adjudication of those types of claims. It is anticipated under this framework that the WCB will develop other disease-specific disease policies where there is strong and consistent evidence supporting a causal link between employment and a disease, but the disease does not lend itself to being on the schedule.

## 4. Identifying Occupational Diseases

The process by which the WCB identifies additional occupational diseases that may be amenable to a streamlined adjudicative approach (by inclusion in the schedule or by policy) involves clarification of the type of disease or injury, and monitoring the evolving world of science and changing work processes.

### 4.1 Diseases vs. Injuries

For adjudicative purposes, the WCB will continue to distinguish occupational diseases from traumatic or repetitive stress injuries. This is in contrast to some jurisdictions which treat repetitive stress injuries such as bursitis, tenosynovitis, and hand-arm vibration syndrome, as occupational diseases. Under this framework, these types of claims will continue to be adjudicated under the less stringent "but for" standard of causation, not the "dominant cause" standard of causation (this is outlined in the WCB's *Decision Making* policy).

There is little practical benefit in reclassifying these types of injuries as occupational diseases and adding them to the schedule. Doing so would require adjudicators to consider rebuttal evidence, potentially leading to denial of claims if it is established that work-related activities were not the dominant cause. By continuing to treat these types of conditions as traumatic, repetitive stress injuries, adjudicators must simply establish that, but for the repetitive work related activity, the injury would not have occurred.

### 4.2 Monitoring the Evolving Environment

When new scientific evidence or employment processes demonstrate a strong and consistent causal link between a disease and work, it may be appropriate to add the disease to the schedule. The WCB will monitor the evolving scientific evidence as well as changes to workplace environments/processes, such as:

1. From Manitoba systems related to workers compensation, including:
  - WCB claims data, decisions made by the WCB, Appeals Commission, and the courts;
  - Data collected by relevant government departments, such as Workplace Health and Safety;
  - Data collected by relevant research centers such as the Occupational Disease Surveillance System reports; and
  - Stakeholder feedback.
2. From the scientific community, including:
  - Scans of scientific literature; and
  - Research from reputable agencies.
3. From other worker compensation systems, including:
  - High quality scientific research or systematic reviews undertaken by workers compensation agencies in other jurisdictions;
  - Participating in quarterly meetings on developments in occupational disease with other Canadian jurisdictions, through the Occupational Disease Sub-Group; and
  - Collaborating with other Canadian jurisdictions undertaking specific research on possible associations between occupational risk factors and a disease.

Collaboration with other jurisdictions is essential as Manitoba is a small jurisdiction. Research on occupational diseases in Canada is highly concentrated in Ontario and British Columbia.

#### 4.3 Scientific Evidence

Scientific evidence plays a critical role in identifying occupational diseases that should be adjudicated by reference in the presumptive schedule or by policy.

To identify causal links between work activities and exposures and particular diseases, the WCB generally relies on peer-reviewed published scientific research. The most persuasive evidence of the association between occupational exposure and disease is provided through well-conducted epidemiological studies. The WCB places the greatest weight on systematic reviews<sup>2</sup> when evaluating evidence, as these are widely acknowledged to be the best available method to gather high-quality evidence in the occupational disease context.

Existing authoritative research bodies that produce high-quality systematic studies include: the World Health Organization's International Organization for Research on Cancer (IARC), Health Canada, the Occupational Cancer Research Centre (OCRC), and the United States' National Institute for Occupational Safety and Health (NIOSH). Other workers compensation boards in Canada also have capacity to produce such high-quality studies.

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<sup>2</sup> A systematic review is a review of a clearly formulated research question that uses rigorous and replicable methods to identify, select and critically appraise all relevant scientific research, and to analyze data from the studies included in the review. In systemic reviews, results are vetted through peer review to check validity and quality. Systematic methods aim to minimize bias and ensure results are reproducible. Statistical methods such as meta-analyses (i.e. where statistics are used to combine data from various independent studies to calculate or arrive at an absolute or overall effect) are used where possible, to analyze and summarize the results of the included studies. See Guyatt *et al*, "Users' Guides to the Medical Literature," *JAMA* 2000.

While systematic studies represent the most reliable research, the WCB will also consider evidence from various types of observational studies, as well as expert opinion and anecdotal evidence. Evidence may be provided by stakeholders, other external sources, or by the WCB itself.

## 5. Determining the Appropriate Adjudicative Approach

The WCB will determine whether the goal of streamlined and consistent adjudication is best served by including an occupational disease in the schedule, relying on a disease-specific policy, or on a case-by-case basis. These are summarized in **Table 1**.

### 5.1 Adding Occupational Diseases to the Presumptive Schedule

The WCB will consider adding diseases to the occupational disease schedule when there is high-quality scientific evidence supporting a strong and consistent causal link between work-related exposures or activities and the disease.

The best candidates for addition to the schedule will be those where the scientific evidence shows that, in virtually every case, the disease is linked to a **single cause** associated with an employment related risk factor. If a worker contracts such a disease and was exposed to the relevant cause at work, then the presumption that the disease is work-related not only applies, but would be very difficult to rebut.

Other candidates for the schedule include diseases where the scientific evidence shows that there are multiple causes associated with the disease, with one or more of them associated with an employment-related risk factor. Diseases caused by a combination of factors, some work-related and some not, are more likely suitable to be included in the schedule if the evidence demonstrates a high rate of disease in a defined group of workers and the causes of the disease can be clearly described.

**Table 1: Summary of Approaches and Criteria**

Approach	Requirements & Criteria
<b>Presumptive Schedule</b>	<ul style="list-style-type: none"> <li>• Strong, consistent, high-quality scientific evidence to demonstrate a causal link</li> <li>• Single cause</li> <li>• Multiple causes, with one or more associated with employment-related risk factors</li> <li>• High rate of disease in a defined group of workers</li> <li>• Cause(s) of the disease can be clearly described</li> </ul>
<b>Policy</b>	<ul style="list-style-type: none"> <li>• Strong, consistent, high-quality scientific evidence exists for causal link</li> <li>• Multiple causes, at least one of which is associated with employment-related risk factor(s)</li> <li>• Difficult to identify a defined group of workers with the disease</li> <li>• It is difficult to describe the cause(s) of the disease</li> <li>• Criteria such as levels or duration of exposure, minimum latency periods can help establish causation</li> </ul>
<b>Case-by-case</b>	<ul style="list-style-type: none"> <li>• Lack of strong, consistent, high-quality scientific evidence to demonstrate causal link</li> <li>• Multiple potential causes capable of rebutting the presumption</li> </ul>

If the work-related exposures cannot be clearly described, or the disease is common in the general population and often attributable to non-occupational risk factors, the WCB will not include the disease in the schedule. The presumption that such diseases are work-related would likely be easily rebuttable, and the adjudicative process would not be streamlined by inclusion in the presumptive schedule.

Diseases with multiple causes that are difficult to describe and prevalent in the general population may be better adjudicated under a disease-specific policy (e.g., noise-induced hearing loss policy).

## 5.2 Developing Disease-specific Policies

Disease-specific policies may be developed to assist in adjudicating occupational disease claims where there is strong and consistent scientific evidence supporting multiple causes of the disease, with at least one cause being an identifiable risk of employment.

Disease-specific policies are appropriate where it is difficult to identify a defined group of workers or clearly describe the multiple employment-related processes that might cause the disease, but where scientific evidence is available that can simplify and guide the adjudicative process.

This is a more flexible approach and may include criteria such as levels of exposure, duration of exposure, minimum latency periods or other scientific evidence that can assist adjudicators in determining when the exposures are sufficient to be considered the dominant cause of the disease.

## 5.3 Case-by-Case Adjudication of Occupational Diseases

In Manitoba, the status quo approach to the adjudication of occupational disease claims has involved analyzing all available evidence, including the scientific evidence, on a case-by-case basis. Under this approach, occupational disease claims are compensable when the evidence establishes that it is more likely that the combined work-related causes exceed the combined non-work related causes.

While the case-by-case approach to adjudication is onerous, requiring adjudicators to weigh a wide range of evidence, it remains an essential tool in the new framework. Diseases that are not identified in the schedule must still be adjudicated on their own merits. Retaining the case-by-case approach also allows for flexibility. For example, new work-related exposures may emerge before their effects are reflected in the scientific evidence. A case-by-case approach is necessary to compensate workers in these situations, provided that the dominant cause test for causation is met.