Workers Compensation Board of Manitoba

Policy # **31.05.15**

Section Title:	Finance, Assessments and Administration – Accounting & Finance
Subject:	Cost Transfer - Individually Assessed Employers
Effective Date:	This policy applies to all cost transfer decisions made on or after January 1, 2023.

A. POLICY PURPOSE

Section 73 of *The Workers Compensation Act* (the *Act*) groups employers into four broad classes(Classes B to E). Employers in Classes B to D are individually liable for the claim costs of their workers plus their share of administrative costs of the workers compensation system. These employers are known as Individually Assessed Employers.

This policy provides a framework for the removal of claim costs from an Individually Assessed Employer's Claim Costs Account and transferring them to another employer in Classes B to E (CostTransfer).

Typically, claim costs are removed from an Individually Assessed Employer's Claim Costs Account only through Cost Transfer, though in some circumstances Cost Relief or Cost Recovery may beprovided.

Policy 31.05.10, *Cost Relief/Cost Transfer - Class E Employers,* provides a framework for the removal of claim costs from a Class E Employer's Claim Costs Experience through Cost Transfer orCost Relief.

Appendix A to this policy is a glossary of commonly used terms.

GOAL

The goal of this policy is to ensure that amounts paid by Individually Assessed Employers reflect their costs to the workers compensation system.

CIRCUMSTANCES FOR COST RELIEF OR COST TRANSFER

As described in the attached Schedules, the WCB will provide Cost Transfer to Individually AssessedEmployers in the following circumstances:

- The claim involves cumulative trauma or long-latency occupational disease. See Schedule A - *Cumulative Trauma and Long-Latency Occupational Disease*.
- The claim involves negligence by another covered employer or the worker(s) of anothercovered employer. See Schedule B - *Negligence*.

PROCESS

The process for Cost Transfer is as follows:

- Initially, all claim costs are charged to the Claim Costs Account of the Accident Employer.
- Based on information provided, the WCB considers and processes Cost Transfers when theIndividually Assessed Employer is eligible under this policy.
- If Cost Transfer is provided, the removed costs are transferred from one IndividuallyAssessed Employer to another employer.
- If Cost Transfer is provided, the removed cost alters the Accident Employer's Claim CostsAccount used to calculate the employer's WCB costs.

CIRCUMSTANCES FOR COST RECOVERY

As described in the attached Schedule, Cost Recovery may be provided to Individually AssessedEmployers in the following circumstances:

- The WCB pursues a Third Party action on behalf of an injured or deceased worker of an Individually Assessed Employer or negotiates cost-sharing with Manitoba Public Insurance fora motor vehicle accident. See Schedule C - *Third Party Actions and Motor Vehicle Accidents*.

The process for Cost Recovery is described in Schedule C.

CIRCUMSTANCE FOR COST RELIEF

The WCB will provide Cost Relief to deemed Individually Assessed Employers (work experienceemployers) when their workers (trainees) are injured in an

accident during a work experience program described in policy 35.10.60, *Coverage under a Work Experience Program*.

B. REFERENCES

The Workers Compensation Act, sections 73, 76.1, 76.2, 76.6, 76.7, 77.1, 81(1), 81(3), 82(4), 82(5), 105

Manitoba Regulation (MR) 278/91**,** *Individually Assessed*

Employers RegulationThe Manitoba Public Insurance

Corporation Act, section 195

Related WCB Policies:
31.05.10, *Cost Relief/Cost Transfer- Class E Employers*
35.10.60, *Coverage under a Work Experience Program*
44.05.30, *Adjudication of Psychological Injury Claims*
44.20.50.20*, Noise-Induced Hearing Loss*

History:
1. Policy 31.05.15, *Cost Transfer - Self Insured*, established by Board Order 16/17 on June 28, 2017, effective for all decisions made on or after January 1, 2018 and any reconsiderations and appeals of these decisions. The previous policy, 31.05.10, Cost Relief/Cost Transfers, covered both Class E and self-insured employers. In addition to the new Policy 31.05.15, a separate policy was created for Class E employers: policy 31.05.10, *Cost Relief/Cost Transfer - Class E*. The former policy was reissued as 31.05.10.01 *Cost Relief/Cost Transfers* and applies to decisions made from October 1, 2014 to December 31, 2017 and any reconsiderations or appeals of those decisions.
2. October 2019 - Reference to policy 44.20.50.20, *Noise-Induced Hearing Loss*, was added tothe term Claim Costs Account under Appendix A.
3. Minor formatting changes were made to the policy, October, 2020.
4. In September 2022, policy revisions respond to a change in terminology that was introduced by amendments to the Act by *The Minor Amendments and Corrections Act* (MACA), 2022. The term"self-insured employer" was replaced with "individually assessed employer" wherever it occurs.The title of the policy was renamed to *Cost Transfer - Individually Assessed Employers*. *The name of policy 31.05.10 was also changed from Cost Relief/Cost Transfer - Class E to Cost Relief/Cost Transfer - Class E Employers.* Manitoba Regulation (MR) 278/91**,**

Individually Assessed Employers Regulation, was added to the reference section. The policy was further updated to reflect the reduction of the number of classes for assessment purposes from five to four by *The Workers Compensation Amendment Act* (commonly referred to as Bill 18).

5. Policy was revised by Board Order No. 41/22 on December 15, 2022 effective for all decisions on or after January 1, 2023. Policy changes include clarifying that cost transfer is mandatory when the criteria in the various schedules have been met; providing cost transfer for situations where a worker's psychological injury is caused by exposure to a series of traumatic events with more than one employer; and raising and indexing annually the dollar threshold applicable before the WCB would provide cost transfer for claims involving negligence.

Appendix A - Glossary of Terms

Accident Employer: Generally, the accident employer is the worker's employer at the time of injury. However, in the case of cumulative trauma and occupational disease, the Accident Employerwill be the last employer at which the worker was exposed to the agent or traumatic event, or engaged in the work activity or process that caused their injury or disease.

Claim Costs Account (Individually Assessed Employer): For the applicable calendar period,the Individually Assessed Employer's Claim Costs Account includes:

- Claim costs assigned to the individual employer; and
- Claim costs which are transferred to the Individually Assessed Employer under policies31.05.10, *Cost Relief/Cost Transfer - Class E Employers*, 31.05.15, *Cost Transfer* - Individually *Assessed Employers*, and 44.20.50.20, *Noise-Induced Hearing Loss*.

Cost Recovery: The process of recovering claim costs through a Third Party action or the CostRecovery Agreement between the WCB and Manitoba Public Insurance.

Cost Relief: The process of moving claim costs from the Claim Costs Account of the IndividuallyAssessed Employer to a collective cost pool.

Cost Transfer: The process of moving claim costs from the Claim Costs Account of the AccidentEmployer to another employer.

Individually Assessed Employers: Employers in Classes B to D who are individually liable forthe claim costs of their workers plus their share of administrative costs of the workers compensation system.

Third Party: A Third Party is someone who is neither a worker nor an employer under the *Act*.

SCHEDULE A

CUMULATIVE TRAUMA AND LONG-LATENCY OCCUPATIONAL DISEASE

Cumulative Trauma

In this policy, cumulative trauma means a combination of events or conditions related to a worker's work or workplace that results in injury to a worker. Cumulative trauma may include aseries of repetitive work activities or processes. It may also include a series of traumatic eventsas that term is described in WCB Policy 44.05.30, *Adjudication of Psychological Injury Claims*.

When a worker's injury is a result of cumulative trauma experienced with more than one employer, claim costs will be transferred to employers with active WCB accounts in proportion to identifiableperiods of engagement in repetitive work activities or processes, or identifiable periods of exposure to traumatic events, with each employer. The WCB will confirm that the worker engagedin work activities or processes, or was exposed to traumatic events in the employer's work or workplace which contributed to the development of the worker's injury.

When the Accident Employer is an Individually Assessed Employer, the employer will be responsiblefor the claim costs associated with identifiable periods of out-of-province engagement or exposure.

Long-Latency Occupational Disease

While the WCB makes decisions regarding Cost Transfer on a case-by-case basis, "long latency" is generally understood as involving a period of at least two years between the worker's last exposureto an agent, or last engagement in a specific work activity or process and the manifestation of theiroccupational disease.

When the Accident Employer is an Individually Assessed Employer, all claim costs are assigned tothe Individually Assessed Employer, with the following exceptions:

- When the worker was exposed to an agent, or engaged in a work activity or process, which caused their disease while they were

previously employed with a Class E Employer, the claim costs based upon the period of exposure or engagement are assigned to the CostApportionment Fund.

- When the worker was exposed to an agent, or engaged in a work activity or process, which caused their disease while they were previously employed with another Individually Assessed Employer, the other Individually Assessed Employer is assigned its portion of theclaim costs based upon the period of exposure or engagement.

If hearing loss has developed gradually over time as a result of exposure to noxious occupational noise levels, this claim is treated by the WCB as an occupational disease. Policy 44.20.50.20, *Noise-Induced Hearing Loss,* provides the WCB with adjudicative and entitlement guidance on this type of hearing loss claim. It also details the method for assigning costs among employers for noise- induced hearing loss claims.

SCHEDULE B

NEGLIGENCE

Under the *Act*, an injured worker (or their dependants) cannot sue the worker's covered employer, another covered employer, or a fellow worker if any of them caused the work-related injury or death. The only recourse the worker (or their dependants) has is to claim compensation under the *Act*. Subsection 82(4) of the *Act* gives the WCB discretion to remove the claim costs from an Accident Employer's Claim Costs Account if the worker is injured or killed due to the negligence of another employer or the worker(s) of another employer.

If the WCB determines the worker's injury or death resulted in whole or in part from the negligence of another employer or the worker(s) of another employer, claim costs are transferred to the negligent employer's Claim Costs Experience (Class E Employer) or Claim Costs Account (Individually Assessed Employer) or to Claim Costs Experience or Claim Costs Account of employers whose workers were negligent.

The claim costs are transferred to the Claim Costs Experience or Claim Costs Account of otheremployers in proportion to the degree of negligence of each employer or worker.

The injured or deceased worker's own negligence may have contributed to the injury or death. Ifthis is the case, the WCB will consider to what degree the worker was contributorily negligent whenit determines the amount of claim costs to transfer to other employers.

Cost Transfers will only be made when the negligence of another party is established to the satisfaction of the WCB and the worker's injury or death results in claim costs that meet or exceed the monetary threshold set out in Appendix A for a given year. The monetary claim threshold level isthe net amount after all Cost Transfers under this policy.

In making its determination of negligence, the WCB may consider a determination of negligencemade by other sources.

Some examples of sources the WCB may use in its determination of negligence include:

- police reports;
- Workplace Safety and Health reports;
- Transportation Safety Board of Canada reports.

In exceptional circumstances, the WCB may not transfer all or part of the claim costs to thenegligent employer's Claim Costs Experience or Claim Costs Account.

The WCB may determine that a Cost Transfer to a negligent employer is not available in thefollowing circumstances:

a) the negligent employer is out-of-province or out-of-business, or;
b) the identity of the negligent employer cannot reasonably be determined, or;
c) further investigation is not feasible given the passage of time, lack of information, or excessive cost of investigation.

In such cases, the claim costs will remain with the Accident Employer.

Appendix A - Threshold Amount

Monetary Threshold Amount for a Given Year

Threshold Amount ($)	Year
16,750	2027
16,140	2026
15,720	2025
15,100	2024
14,430	2023

The threshold amount is set by subsection 28(2) of the Act and indexed annually. The *Adjustmentin Compensation Tables* display these threshold amounts.

Appendix A displays threshold amounts over a five-year period. A historical summary of thresholdamounts can be obtained by contacting: policy@wcb.mb.ca

SCHEDULE C

THIRD PARTY ACTIONS AND MOTOR VEHICLE ACCIDENTS

Third Party Actions

Under the *Act*, an injured worker (or their dependants) cannot sue the worker's covered employer, another covered employer, or a fellow worker if any of them caused the work-related injury or death. Someone who is neither a worker nor an employer under the *Act* is called a "ThirdParty". Examples of a Third Party include members of the general public, the owner of a private residential property or an out-of-province manufacturer of a defective product.

When a worker is injured or killed through the fault or negligence of a Third Party, the injured worker (or their dependants) may elect to claim compensation under the *Act* or sue the Third Party. If the worker (or their dependants) elects to claim compensation, the right to sue belongsto the WCB. The WCB may decide to pursue legal action, in which case the WCB controls the lawsuit and bears all costs associated with it.

Individually Assessed Employers will receive credit for Third Party recoveries once such amountsare received by the WCB.

Motor Vehicle Accidents

The Personal Injury Protection Plan (PIPP) is administered by Manitoba Public Insurance (MPI).

If the work-related injury or fatality involves a motor vehicle, the worker (or their dependants) may elect between workers compensation benefits and benefits under the PIPP system. Once aworker (or their dependants) elects with the WCB, the WCB will request Cost Recovery from MPI pursuant to the Cost Recovery Agreement between these two entities.

Individually Assessed Employers will receive credit for amounts recovered from MPI under the costsharing agreement once such amounts are received by the WCB.