



## WORKERS' COMPENSATION

## A Guide for New Brunswick Employers



[worksafenb.ca](http://worksafenb.ca)

Revised April 2017

**DISCLAIMER** New Brunswick law protects employers' and workers' rights under four pieces of legislation: the *Workplace Health, Safety and Compensation Commission Act*, the *Workers' Compensation Act*, the *Occupational Health and Safety Act* and the *Firefighters' Compensation Act*.

This guide is for information purposes only and must not be interpreted as the legislation and policies administered by WorkSafeNB.



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# Our **VISION**

## *Healthy and safe workplaces in New Brunswick*

### **MISSION**

WorkSafeNB is a partner in promoting a safe and healthy work environment to the workers and employers of New Brunswick and efficiently provide quality services and fair administration of the legislation.

### **CORE VALUE**

The client is the priority.

### **VALUES**

#### **RESPECT**

Treat everyone with respect – workers, their families, employers, stakeholders, and our colleagues.

#### **SAFETY**

Passionately protect the safety of our clients and colleagues.

#### **CARING SERVICE**

Create an exceptional service experience by treating clients with kindness and concern.

#### **TEAMWORK**

Optimize the service experience through collaboration and by leveraging the unique talents of each team member.

#### **ACCOUNTABILITY**

Adhere to evidence-based disciplines, share all results, and communicate honestly and transparently.

#### **EXCELLENCE**

Aspire to flawless execution and never take shortcuts on quality.

#### **INTEGRITY**

Demonstrate the highest standards of professionalism, ethics, and personal responsibility.

#### **INNOVATION**

Transform the way we work, inspiring each other to continuously improve and empowering colleagues to offer creative ideas.



# WorkSafeNB

## WHAT IS WORKSAFENB?

WorkSafeNB is dedicated to promoting a safe and healthy work environment and providing services to employers and workers in New Brunswick.

WorkSafeNB is an employer-funded Crown corporation, and not a provincial government department.

WorkSafeNB reports to the New Brunswick Legislature through the Minister of Post-Secondary Education, Training and Labour, and provides cost-effective disability and liability insurance to approximately 14,500 employers and approximately 350,000 workers in New Brunswick.

## WorkSafeNB administers four acts:

- (1) **The Occupational Health and Safety (OHS) Act and regulations**
- (2) **The Workers' Compensation (WC) Act and regulations**
- (3) **The Workplace Health, Safety and Compensation Commission and the Workers' Compensation Appeals Tribunal (WHSCC and WCAT) Act**
- (4) **The Firefighters' Compensation (FC) Act**

## THE OCCUPATIONAL HEALTH AND SAFETY (OHS) ACT

The *OHS Act* asserts that every worker is entitled to a safe and healthy workplace. This Act places primary responsibility for occupational health and safety in the hands of workers and employers, and grants workers three basic rights:

- The right to know about workplace hazards.
- The right to participate in solving health and safety problems.
- The right to refuse dangerous work.

For more information on your rights and responsibilities under the *OHS Act*, please call 1 800 999-9775, or visit our website at: [worksafenb.ca](http://worksafenb.ca).

This guide primarily addresses the legislative requirements of the *WC Act*.

## THE WORKERS' COMPENSATION (WC) ACT

Like other pieces of workers' compensation legislation in Canada, the *WC Act* of New Brunswick is founded on the Meredith Principles, which formed the basis of a historic agreement between labour and business. According to the Meredith Principles, employers agreed to fund the workers' compensation program and, in exchange, workers gave up the right to sue employers for compensation of work-related injuries. In New Brunswick, workers' compensation is administered through a no-fault insurance system set up under the *WC Act*.

## THE WORKPLACE HEALTH, SAFETY AND COMPENSATION COMMISSION AND WORKERS' COMPENSATION APPEALS TRIBUNAL (WHSCC and WCAT) ACT

The *WHSCC and WCAT Act* sets out the operational guidelines for WorkSafeNB, empowers it to administer the *OHS* and *WC Acts*, and provides for an independent appeals tribunal.

## THE FIREFIGHTERS' COMPENSATION (FC) ACT

WorkSafeNB is responsible for administering the *FC Act*. This includes the payment of benefits to firefighters or former firefighters and dependants, and levying and collecting assessments from municipalities, rural communities, and local service districts.

## **GUIDING PRINCIPLES OF WORKERS' COMPENSATION**

**No-fault compensation:** Workers are eligible to receive benefits for work-related injuries or occupational diseases, no matter who is at fault.

**Collective liability:** All employers (in covered industries) share responsibility for fully funding the cost of workers' compensation insurance.

**Immunity from suit:** Participating employers and their workers have universal immunity against lawsuits for work-related accidents.

**Exclusive judicial jurisdiction:** The *WC Act* gives WorkSafeNB exclusive legal authority to make all decisions arising under the *Workers' Compensation Act*, subject to the rules of natural justice.

**Fair compensation and premiums:** Compensation should be fair, and should account for the nature of the injury as well as the impact on employment earnings. Furthermore, premiums should be fair and competitive, and account for the full cost of the system including claims, reserves and administration.

**Benefit of doubt to worker:** Adjudication decisions favour the injured worker where all evidence for and against is equally balanced.

**Prevention and disability management:** In accordance with the *OHS Act* and associated regulations, WorkSafeNB provides a comprehensive range of services to both prevent injuries and manage disabilities.

**Sustainability:** The system is operated to ensure its long-term stability, financial security and cost-effectiveness.

*Workers' compensation in New Brunswick is guided by principles formulated by the former Chief Justice of Ontario, Sir William Meredith, a century ago.*



*WORKSAFENB'S RESPONSIBILITY IS TO PROVIDE HIGH QUALITY ACCIDENT PREVENTION, OCCUPATIONAL HEALTH AND SAFETY ASSISTANCE, COST-EFFECTIVE WORKERS' COMPENSATION AND RELATED SERVICES TO EMPLOYERS AND WORKERS.*

### **Who pays for workers' compensation?**

New Brunswick's participating employers pay for workers' compensation. Registered employers are grouped according to industry and associated risk, and are assessed a premium based on their rate group and yearly payrolls. Employers cannot collect compensation contributions from workers.

### **What is the principle of collective liability?**

The workers' compensation system operates on the principle of collective liability for employers. That means the premiums collected from all assessed employers are pooled, and used to pay the present and future costs for injured workers and the administration costs of the compensation system. The system does not balance each insured employer's payment exactly to their costs, but groups and assesses employers by similar industry and accident risk.

## ROLES AND RESPONSIBILITIES

WorkSafeNB's responsibility is to provide high quality workers' compensation and related services to employers and workers. Employers, workers and health-care providers are also responsible for supporting the workers' compensation system.

### **WorkSafeNB** must:

- Provide injured workers with clear, timely information.
- Provide injured workers with effective compensation and rehabilitation services to help them return to work.
- Collaborate with workers, employers and labour organizations to promote injury prevention and develop effective disability management services.
- Maintain sound financial and administrative management practices.

### **Employers** must:

- Pay assessment premiums.
- Report injuries to WorkSafeNB.
- Help injured workers return to work by offering modified or alternative employment.

### **Injured workers** must:

- Participate fully in their rehabilitation plan.
- Maintain regular contact with their employer, WorkSafeNB, and their health-care providers.

### **Health-care providers** must:

- Support the injured worker's recovery and return to work.
- Send progress reports to WorkSafeNB.



# Coverage and Reporting

## COVERAGE AND REPORTING OF ACCIDENTS

How does a compensation claim get started?

| WORKER:                                                                                                                                                                                                           | EMPLOYER:                                                                                                                                                                                                                                                                                                                                                                         | DOCTOR:                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Tell your employer.</li> <li>Complete <i>Form 67 – Report of Accident or Occupational Disease</i> with employer.</li> <li>Tell your doctor it occurred at work.</li> </ul> | <ul style="list-style-type: none"> <li>Complete <i>Form 67 – Report of Accident or Occupational Disease</i> with worker.</li> <li>Send the form to WorkSafeNB as soon as possible, but no later than three days after the accident.</li> <li>Immediately report to WorkSafeNB any accident that causes or may cause a fatality, loss of limb, or occupational disease.</li> </ul> | <ul style="list-style-type: none"> <li>Complete and send form(s) to WorkSafeNB.</li> <li>Advise when worker can return to work.</li> </ul> |
| <b>FORM 67</b>                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                   | <b>MEDICAL FORM</b>                                                                                                                        |

**WORKSAFE NB:**

- Claim created and assigned to staff member.
- WorkSafeNB will contact the worker, the employer or the doctor if more information is needed.

### CLAIM NOT ACCEPTED:

- Employer/worker advised in writing
- Option to appeal within one year



### CLAIM ACCEPTED:

Benefits and services may include:

- Wage loss replacement
- Medical costs
- Case management services
- Long-term disability benefits

## DEFINITION OF AN “EMPLOYER”

**Under the *WC Act of New Brunswick*, an “employer” is:**

- Every person having in their service under contract of hire or apprenticeship, written or oral, expressed or implied, any worker engaged in any work in or about an industry.
- A municipal corporation, commission, committee, body or other local authority established or exercising any powers or authority with respect to the affairs or purposes, including school purposes, of a municipality.
- A person who authorizes or permits a learner to be in or about an industry for the purposes mentioned in the definition “learner”.
- A deemed employer.
- The Crown in right of the Province of New Brunswick, and of Canada, and any permanent board, commission, or corporation established by the Crown in right of the Province of New Brunswick, or of Canada, in so far as they, or either of them, in their capacity as employers, submit to the operation of this Act.

## DEFINITION OF A “WORKER”

**The *WC Act of New Brunswick* states that a “worker” means a person who has entered into or works under a contract of service or apprenticeship, written or oral, expressed or implied, whether by way of manual labour or otherwise, and includes:**

- A learner.
- An emergency services worker within the meaning of any agreement made under the *Emergency Measures Act* between the Government of Canada and the Government of New Brunswick in which provision is made for compensation with respect to the injury or death of such workers.
- A member of a municipal volunteer fire brigade.
- A person employed in a management capacity by the employer, including an executive officer of a corporation, where that executive officer is carried on the payroll.

# WORKSAFE NB Coverage

More than 14,500 businesses in New Brunswick are covered by workers' compensation insurance – a system that operates on the principle of collective liability for employers.

## What are the advantages of coverage with WorkSafeNB?

Workers' compensation insurance offered through WorkSafeNB is designed to compensate injured workers and protect employers from being sued by workers who are injured on the job. A worker covered by workers' compensation, in exchange for compensation and rehabilitation services provided by WorkSafeNB, has no right of legal action against other employers or workers within the compensation system. The inability to sue relieves both employers and workers from the financial risks associated with workplace injuries and illnesses.

## How do I know if I need workers' compensation insurance?

Under the *WC Act*, all employers with three or more workers at any time during the year must register for coverage with WorkSafeNB. These workers may be full-time, part-time, casual workers or non-registered contractors, subcontractors or brokers. This is referred to as mandatory coverage.

*Exception:* An employer in the fishing industry must register for mandatory coverage when 25 or more workers are employed.

## Can I apply for workers' compensation coverage even if I do not require mandatory coverage?

When fewer than three workers are employed, voluntary coverage may be requested. Employers are eligible for voluntary coverage if they have two or more work contracts (for example, not working exclusively for one principal contractor). Payment of the assessment must accompany the application. *Exception:* An employer with fewer than three workers working exclusively for one

principal will not be granted voluntary coverage. The principal is responsible for all such subcontractors.

## What other types of coverage are available?

Once mandatory or voluntary coverage is established, personal coverage may be requested for (i) a non-salaried officer of a limited or incorporated company and (ii) a proprietor, partners and spouses of a proprietor or partner. The coverage requested may not be less than \$12,000 or greater than the maximum annual assessable earnings.

*Note:* To determine loss of earnings, WorkSafeNB uses the lesser of personal coverage purchased and actual earnings.

## How are contractors hired by my business covered?

Contractors and subcontractors who are not individually registered with WorkSafeNB are considered to be your workers for the purposes of workers' compensation insurance, since these contractors will meet the definition of "workers" in this situation.

## What if I am self employed?

Personal coverage is also available for self-employed individuals if they have two or more work contracts. The coverage requested may not be less than \$12,000 or greater than the maximum annual assessable earnings.

### CONTRACTORS FROM NEW BRUNSWICK

If your business has awarded a contract to a New Brunswick contractor, one of the following two situations will apply:

#### Unregistered Contractor

If the contractor you are doing business with is not registered with WorkSafeNB because they employ fewer than three workers, you (as the contractor's principal employer) will be assessed for their coverage, based on the gross amount of the contract.

#### Registered Contractor

If the contractor you are doing business with requires mandatory coverage with WorkSafeNB due to the number of workers they employ, you may not be assessed for their coverage. However, the principal may be liable for any unpaid assessment of a registered broker or contractor (please see Clearance Certificates, p. 14).

### CONTRACTORS FROM OUTSIDE NEW BRUNSWICK

If the contractor you are dealing with is outside of New Brunswick, this contractor must register with WorkSafeNB if:

- They have three or more workers; and
- The duration of the job exceeds five days.

If the contractor is not required to register, you will be responsible for their coverage, as noted in the Unregistered Contractor section (see above).

To avoid being assessed for unregistered out-of-province contractors, you should request a letter from the workers' compensation board or commission where the contractor operates. This letter should indicate that the contractor's account is in good standing and that coverage has been extended while work is being conducted in New Brunswick. A copy of the letter should be submitted with the list of contractors reported on the *Form 100 – Employer Payroll Report* to avoid further assessment in New Brunswick.

#### What about students and part-time workers?

If you are registered for coverage for workers' compensation insurance, all your workers are covered whether they are a full-time, part-time, temporary or casual workers.

#### Who is not covered?

The *WC Act* does not cover domestic servants, Armed Forces personnel, professional athletes and members of the RCMP. If your business is either a proprietorship or partnership, spouses and children residing with you under 16 years of age are not covered.

#### Can I recover my costs for workers' compensation coverage?

Workers' compensation is an employer expense and cannot be deducted from workers' wages or salaries. However, an exception to this rule is outlined below.

### COST RECOVERY FROM UNREGISTERED CONTRACTORS

If you are doing business with an unregistered contractor, you will be assessed for their coverage based on the gross amount of the contract. You are allowed to deduct or recover the portion of the assessment for labour and materials, hired equipment, courier or mail service and janitorial services from the contractor. Labour-only contracts cannot be charged back.

## Coverage Inquiries

If you are unsure of your coverage, call Assessment Services at 1 800 999-9775.

### What if I want to cancel my coverage?

The following reasons most frequently apply to situations where a business must close its account with WorkSafeNB:

- Going out of business.
- Business status change (please see Factors Affecting Coverage, p. 10).

### If my company is going out of business, how do I close my account?

You can cancel your account with WorkSafeNB at any time if your business has no workers. You will need to advise WorkSafeNB in writing, and supply actual assessable earnings information up to the date of your business closure. With this information, WorkSafeNB can close your account and perform a final calculation of your premium for the calendar year that just ended to ensure that you have not been over or undercharged for your coverage.

### Can I cancel coverage due to staff reductions or business status change?

Once you have obtained compensation coverage, it cannot be cancelled during the calendar year (January 1 to December 31).

If you need to set up a new account to reflect a new business structure (such as going from a proprietorship to an incorporated or limited company), you need to advise WorkSafeNB of the actual payroll from January 1 to the date of business status change. You will need to complete a new application form under the incorporated or limited name. Afterwards, a new employer number will be assigned.

If the account closure is due to a reduction in staff, you will only be allowed to close the account on December 31. When you receive your *Form 100* in January of the following year, you will have to indicate the actual assessable earnings for the previous year, and that coverage is not requested for the upcoming year since the business is no longer in a position that requires mandatory coverage.

## Assessed Premium

The assessed premium for a contract is calculated using the following guide:

|                                |                                                                                                                                                        |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| Labour only .....              | 100% of the contract value                                                                                                                             |
| Janitorial service .....       | 80% of the contract value                                                                                                                              |
| Labour and materials .....     | 50% of the contract value                                                                                                                              |
| Courier and mail service ..... | 40% of the contract value                                                                                                                              |
| Hired equipment .....          | 25% of the gross earnings for each worker,<br>not to exceed the yearly maximum<br>(includes trucks and/or brokers, tractors, backhoes, skidders, etc.) |

Therefore, if your business has an agreement with a contractor to provide snow removal services totalling \$2,000, the assessment amount will be derived using 25% of the contract value, or \$500 multiplied by your assessment rate. You are entitled to recover 100% of that assessed premium from the contractor.

# Factors Affecting Coverage

A number of factors can affect your WorkSafeNB coverage. These are outlined below.

## WORKERS' COMPENSATION COVERAGE

Workers' compensation is in place for your workers from the time they arrive on your property or job site until the time they leave (provided they are there for work-related purposes).

### Are my workers covered when travelling?

If one of your workers is in an accident while travelling to and from their usual place of employment, they are not covered by workers' compensation. However, if the worker is injured while travelling at your request and not during their daily commute, they may be covered. WorkSafeNB reviews each case individually.

### Are my workers covered while working outside of New Brunswick?

Workers' compensation insurance coverage may be extended beyond New Brunswick in cases where a worker is employed by a New Brunswick employer and works temporarily outside the province.

There are two types of coverage a New Brunswick worker can receive when working outside of the province:

## TEMPORARY COVERAGE FROM THE RECEIVING JURISDICTION

The employer must find out from the receiving jurisdiction (commission or board of destination) whether coverage is mandatory in that jurisdiction. If it is, the employer must obtain temporary coverage in that jurisdiction. When coverage in the receiving jurisdiction is not mandatory, WorkSafeNB can recommend that coverage be extended.

## EXTENDED WORKSAFENB COVERAGE

To apply for extended WorkSafeNB coverage, the employer must:

- Be a registered WorkSafeNB employer.
- Maintain a business operation within the province of New Brunswick.
- Provide WorkSafeNB with a written request for coverage with the names of the workers to be covered.
- Ensure that these workers are included and reported in the payroll.

To qualify for this coverage, the worker's usual place of employment must be within the province of New Brunswick.

### Notification process

In either of the above cases, the employer must provide a written request – before the worker leaves New Brunswick – to WorkSafeNB, or the board in question. It must contain the names of the workers requiring coverage, their destination and corresponding time period.

**WORKERS' COMPENSATION INSURANCE COVERAGE MAY BE EXTENDED BEYOND NEW BRUNSWICK IN CASES WHERE A WORKER IS EMPLOYED BY A NEW BRUNSWICK EMPLOYER AND WORKS TEMPORARILY OUTSIDE THE PROVINCE.**

### **IMMUNITY ISSUES**

It is important to note that an extension of coverage for workers temporarily outside New Brunswick does not provide either employers or workers with immunity from litigation outside the province. Only registration with the other jurisdiction provides such immunity.

#### **What if my worker is injured while working outside of New Brunswick?**

If you are not required to register, or are not granted registration in the province where the accident occurred, your worker's claim must be made with WorkSafeNB regardless of the accident province.

If your worker is covered by workers' compensation in the accident province and in New Brunswick, the worker can choose to receive compensation benefits from one province or the other, but not both.

To apply for benefits from another province, the worker must sign a *Form of Election* (affidavit) indicating that they are not applying for benefits in New Brunswick.

There are some instances where neither one of these situations applies. In such cases, decisions on specific claims are based on individual circumstances.

#### **When are my workers not covered?**

Injuries or occupational diseases that are not work-related are not covered by workers' compensation insurance. If the injury was caused by the worker's serious and wilful misconduct, the worker may not be eligible for benefits.



# Registering

To establish workers' compensation coverage, you must register your business with WorkSafeNB. The following sections include information that will guide you in this process.

## **When should I open an account with WorkSafeNB for workers' compensation coverage?**

### **NEW EMPLOYERS**

New employers who qualify for mandatory coverage must register with WorkSafeNB within 15 days of the first day of operation, and must provide specific information about their operations and an estimate of the assessable earnings for the calendar year.

### **GROWING BUSINESSES**

Employers who qualify for mandatory coverage as a result of hiring their third worker must register with WorkSafeNB within 15 days of when the third worker starts, and must provide specific information about their operations and an estimate of the assessable earnings for the calendar year.

### **CONTRACTORS FROM ANOTHER JURISDICTION**

If you are a contractor from another jurisdiction, who employs three or more workers, and the job you have been hired to complete will exceed one week, you must register with WorkSafeNB for coverage using the *Application for WorkSafeNB Coverage* form. If these circumstances do not apply to your situation, you are not required to register for coverage.

## **Can I open an account in anticipation of business and staffing increases?**

No. Some unregistered New Brunswick businesses and entrepreneurs request WorkSafeNB coverage because it is a required component of a tender opportunity. WorkSafeNB can only extend coverage to businesses that meet the requirements (number of workers) outlined in the WorkSafeNB Coverage section of this publication.

## **What are the benefits of registration?**

If you are required to register for workers' compensation coverage with WorkSafeNB, and you do not, you expose yourself and your business to the risk of litigation by workers who may be injured on the job.

## **What if an accident happens at my job site before my coverage is established?**

Should a work-related accident occur before registration, WorkSafeNB might charge you the full cost of the accident and make a retroactive assessment to the date coverage became mandatory. Depending upon the severity of the injury, this could be extremely costly for you.



**NEW EMPLOYERS WHO QUALIFY FOR MANDATORY COVERAGE MUST REGISTER WITH WORKSAFENB WITHIN 15 DAYS OF THE FIRST DAY OF OPERATION.**

### **What information do I need to provide to open an account?**

To open an account for workers' compensation coverage with WorkSafeNB, you must complete an *Application for WorkSafeNB Coverage* form.

The application form will ask you for an estimate of your assessable earnings for the calendar year. If the business starts operating that year, the estimate only begins with the first day of operation. If three workers will not be working between January 1 and December 31, the estimate should only include the time that three workers will be working. In the case of voluntary coverage, the estimate begins when you apply for coverage. This application can be downloaded and printed online.

It will also ask you to provide a description of your business. It is extremely important to be as detailed as possible, because this information is used to determine the assessment rate code for your business.

### **What information will I receive from WorkSafeNB?**

When WorkSafeNB receives your new application for registration, an employer number will be assigned to your business. This number identifies you, and should be provided on all future correspondence and payments sent to WorkSafeNB.

### **FACTORS AFFECTING YOUR ACCOUNT**

There are a variety of business circumstances that will affect your WorkSafeNB coverage. If your business experiences any of the following scenarios, please contact WorkSafeNB immediately.

#### **What if my company changes its structure?**

If your company changes its structure (for example, incorporates), it may be considered a new employer for WorkSafeNB purposes, and requires a new account.

#### **What if my company goes out of business?**

If your company has ceased operations, your annual WorkSafeNB premium may be adjusted to reflect coverage for the period leading up to the last day of operations.

#### **What if my company purchases another business?**

Before purchasing any existing business, you should obtain a clearance certificate (please see Clearance Certificates, p. 14) from WorkSafeNB. This letter will ensure that there are no outstanding premiums owed by the previous owner.



**BEFORE DOING BUSINESS WITH ANOTHER COMPANY OR CONTRACTOR FROM NEW BRUNSWICK OR ANY OTHER JURISDICTION, YOU SHOULD REQUEST THEIR WORKERS' COMPENSATION CLEARANCE CERTIFICATE.**

### **CLEARANCE CERTIFICATES**

A clearance certificate is a WorkSafeNB document stating that the business in question does not have outstanding premiums owed to WorkSafeNB. Boards and commissions that provide workers' compensation insurance across Canada use clearance certificates or clearance letters to show that an employer's account is in good standing.

#### **Why are clearance certificates important?**

If a business does not have a clearance certificate (from WorkSafeNB or their local board or commission), anyone dealing with that business is liable for (i) their unpaid assessments and (ii) any assessment related to work carried out.

#### **How do I request a clearance certificate?**

Before doing business with a third party (another business or contractor) from New Brunswick or any other jurisdiction, you should request their workers' compensation clearance certificate. If they do not have a copy available, you can contact WorkSafeNB at 1 800 999-9775 (option 4).

You can also get a clearance certificate by visiting [worksafenb.ca/MyServices](https://worksafenb.ca/MyServices) and selecting **Clearance certificate** under **Online services for employers**.



# Premium Calculation

Many factors determine an employer's premium for workers' compensation insurance coverage. The system is not intended to balance each insured employer's premium payment exactly to the insured employer's costs, but to group and assess employers by similar industry and accident risk.

## Important Dates

### January

*Form 100 – Employer Payroll Report* is sent to all annually assessed (non-MAAP) registered employers.

### February 28

Deadline for submitting completed *Form 100* to WorkSafeNB.

### March 31

Deadline for paying total annual premium amount plus any carry-forward balances. If the date of the assessment notice plus 30 days is later, the latter date will take precedence (Payment option A).

Deadline for paying 100% of last year's adjustments and carry forward balance plus 50% of the current year's assessment, unless the date of the assessment notice plus 30 days is later. Then the latter date takes precedence (Payment option B).

### August 31

Deadline for paying the remaining 50% of total annual premium amount plus accumulated interest (Payment option B).

### November 30

Deadline for reporting an increase in payroll estimates originally submitted for that year.

### **CALCULATING YOUR ASSESSMENT RATE**

WorkSafeNB premiums are calculated by determining an overall assessment rate, which is then charged to the employer per \$100 of assessable earnings. The resulting number is the premium your business must pay to WorkSafeNB. Several factors influence the amount of each employer's overall assessment rate, as outlined below.

#### **What are assessment rates, and how often do they change?**

WorkSafeNB sets assessment rates each year in the fall. Several factors influence rates, such as the current financial obligations of WorkSafeNB, the prevailing economic environment, the cost of health care services, current adjudication policies, and injury trends. Overall, each year's assessment rates must generate enough revenue to cover all current and future costs of workers' compensation for accidents occurring in that year (plus all of the expenditures for safety and prevention programs, all administrative expenses, and any funding deficiencies from the previous year's assessments).

#### **What is the provisional average assessment rate?**

The provisional average assessment rate is obtained using the total forecasted assessment revenues divided by the total forecasted assessable payrolls.

#### **What is the actual average assessment rate?**

The actual average assessment rate is obtained using the total actual assessment revenues divided by the total actual assessable payrolls.

#### **What is the classification system, and how does it affect my premium?**

Instead of taking a 100% collective liability approach, where all employers are assigned a common assessment rate, WorkSafeNB uses a classification system to group employers according to their accident risk and injury costs. This system creates incentives for firms engaged in high-risk activities to improve their occupational health and safety performance. The classification applied to

your business will be used along with the assessment rate to determine your premium for workers' compensation coverage.

### ***EMPLOYERS ARE ASSIGNED TO ONE OF APPROXIMATELY 20 RATE GROUPS, ACCORDING TO THEIR ACCIDENT OR HAZARD RISK.***

The classification system is intended to be dynamic. A review of cost experience trends is required each year to determine if changes in the industry and rate group structures are required. Any issues raised during the past year regarding classification are also reviewed. As a result of this review, employers may occasionally be classified into a different industry group. Industry groups may be moved out of their current rate group and into another more appropriate rate group if a change in accident experience occurs. The objective is to maintain stability, and make changes only when warranted.

*INSTEAD OF TAKING A 100% COLLECTIVE LIABILITY APPROACH, WHERE ALL EMPLOYERS ARE ASSIGNED A COMMON ASSESSMENT RATE, WORKSAFE NB USES A CLASSIFICATION SYSTEM TO GROUP EMPLOYERS ACCORDING TO THEIR ACCIDENT RISK AND INJURY COSTS.*

### **What is the industry classification code?**

New Brunswick's more than 14,500 registered employers are each assigned a classification code. They are classified based on their primary business activity, and not by the occupation of each worker.

### **What is the industry group?**

Employers are sorted into one of approximately 75 industry groups, according to their five-year accident costs, type of risk and other factors.

### **What is the rate group?**

Employers are assigned to one of approximately 20 rate groups according to their accident or hazard risk. For each of these groups, a basic rate of assessment is assigned, and is levied per \$100 of assessable earnings. The resulting amount is the premium that must be paid.

## **SPECIAL CLASSIFICATION CONSIDERATIONS**

As a general rule, employers are not assigned multiple classifications. The following situations apply where clear direction cannot be obtained through the use of classification codes.

### **CAPITAL CONSTRUCTION**

If an employer undertakes capital construction using its own workers to expand, or replace facilities necessary for the operation of the business, this activity will be classified separately from the normal business activity.

## **CLASSIFICATION OF EMPLOYER AFFILIATES**

Employer affiliates receive the same classification and are combined for accident history and rate-setting purposes.

Employers are considered affiliated, even though they are separately registered, when there is a degree of common ownership and they are operating businesses that are contributing to the production of common goods or services.

Employers are considered to have a degree of common ownership when they are members of the same family, or one employer owns controlling interest (more than 50%) in the other employer's company.

Employers may also be considered affiliated when there is a degree of common ownership and the businesses share employees, or there is an indication of employee transfers from one company to the other.

## **OPERATIONS IN MORE THAN ONE JURISDICTION**

If an employer operates partly in New Brunswick and partly outside the province, then the employer will be classified on the basis of the business activity conducted within New Brunswick. For example, an out-of-province manufacturer with a New Brunswick retail sales outlet will be classified based on the retail sales activity.

### MULTIPLE BUSINESS ACTIVITY

An employer's business activity may be assigned a separate classification if certain conditions are met. Consideration will only be given if an employer has more than one primary business activity (which would be classified separately if it was the employer's only activity). Certain factors must be considered. These include:

- If more than 50% of the revenue is generated from non-affiliated customers.
- The kinds of products or services that the business activity produces or provides.
- If the product or service is used in the employer's principal business activity.
- If the business activity is a retail store or wholesale outlet, and if that outlet is in a separate location or in a separate area within the manufacturing plant producing the goods.
- If less than 50% of the goods being sold are provided by affiliated manufacturing divisions, and if retail activity is incidental to manufacturing.
- Whether the business activity is performed by specific personnel as their sole function.
- If each business activity has the same personnel performing functions for each one, but at different times of the year.

Non-office personnel who intermingle between two or more activities will be assigned to the highest rated activity, unless 90% or more of the time is spent in another activity.

### SUPPORTIVE BUSINESS ACTIVITY

If a business activity has been determined by WorkSafeNB to be supportive of another, then it is assigned to the classification of the activity being supported. Certain factors must be considered. These include whether the business activity is supportive of more than one classification, which is the predominant activity, and whether the highest rated classification is at least 40% of all classifications being supported by this business activity. A business activity that supports two or more classified activities will be assigned to the highest rated one, if it is at least 40% of the group being supported.

Earnings of office personnel of a multi-industry employer are no longer included in the lowest rated industry administered by these persons. Such earnings will be allocated as per above.

### INTERMINGLED BUSINESS ACTIVITY

When two or more business activities cannot be classified separately because of personnel intermingling, they will be combined into one classification. The highest rated classification will be used if it accounts for at least 40% of the intermingled group of activities.

### OUT-OF-PROVINCE ADMINISTRATION

Out-of-province administration situations apply where a significant portion of an employer's administrative staff are assigned to operations outside New Brunswick. An employer who submits an application may be considered for a separate rate for administration of out-of-province operations if the following apply:

- More than 30% of the employer's total payroll is payable to operations located outside New Brunswick.
- A significant portion of the administrative workers located in New Brunswick are directly involved in the operations located outside the province.
- Separate and distinct payroll records are maintained to segregate administrative and operations workers, by province or country. WorkSafeNB will apply a mathematical formula to apportion administrative payrolls.

### MANAGEMENT COMPANY

Management companies are assigned to the same classification as their associated companies. They are normally combined with the associated companies for accident cost history and rate-setting purposes.

### What is the Experience Rating System?

WorkSafeNB introduced the Experience Rating System in 1990. The two main purposes of the system are to improve equity in sharing workers' compensation costs among employers, and to improve awareness of safety in the workplace by providing discounts and surcharges based on employers' claim costs.

### How does the Experience Rating System work?

The Experience Rating System has been designed with the collective liability principle in mind. The system introduces individual assessment rates for participating employers, allowing their basic assessment rate (assigned at the classification stage) to be adjusted upward or downward to reflect their actual claims cost experience relative to their assigned rate group.

Only costs and assessable earnings from the previous three years are used in the calculation. For example, for 2017 rates, 2013, 2014 and 2015 assessable earnings and costs paid on 2013, 2014 and 2015 accidents are used.

An employer's total claims costs are divided by their total assessable earnings to arrive at an employer ratio. The same calculation is performed for the rate group as a whole, and the two ratios are compared. An employer will receive a discount or surcharge of 1% for each 2.5% variance from the rate group ratio.

The assessment rate adjustment is limited to a maximum discount of 40%, or a surcharge of 80%. This limit provides incentive for employers to improve their claims experience, while ensuring that all employers support the ongoing costs of workers' compensation.

Employers averaging \$2,000 of assessments will participate at the minimum level of 25%. The participation level will increase by 1% for every additional \$750 of average annual assessments, up to the full participation rate of 100%. Non-participating employers are simply assessed at the basic group rate.

## Experience Rating

### How do I find out about my experience rating?

In the fall of each year, employers receive an Experience Rating Statement that provides a detailed listing of claims costs, total assessable earnings, and the experience rating adjustment to be applied to the following year's basic assessment rate.

**EMPLOYERS AVERAGING \$2,000 OF ASSESSMENTS WILL PARTICIPATE AT THE MINIMUM LEVEL OF 25%.**

### **What is a Cost of Claims Statement?**

An employer will be issued a Cost of Claims Statement monthly when WorkSafeNB has made any payments that are applicable to an employer's account. The employer is encouraged to scrutinize the statement for accuracy and report any discrepancies to the appropriate case manager at WorkSafeNB.

The information included in the Cost of Claims Statement is used to set the basic assessment rate and, if applicable, the experience rating applied to your business.

### **DETERMINING AND REPORTING ASSESSABLE EARNINGS**

#### **How are earnings reported for an incorporated business, limited company or incorporated association?**

An employer who operates as a limited company must include in their assessable earnings all individuals receiving salary from the company, regardless of age. This includes the owners, executive officers, directors and managers. The employer must also report all subcontractors who worked for the company during the year.

#### **How are earnings reported for proprietorships and partnerships?**

An employer who operates as a proprietorship or partnership must *not* include amounts paid to the proprietor, partners, spouses and children under the age of 16 residing with the employer as assessable earnings. However, the employer must report all subcontractors who worked for the business during the year.

### WHAT ARE ASSESSABLE EARNINGS?

Generally speaking, assessable earnings are all payroll and payroll-related monies up to an annual limit for the year in question. That means an employer is assessed on the gross earnings of a given worker, up to the yearly maximum, regardless of the period worked.

Assessable earnings may include:

- Wages
- Salaries
- Commissions
- Bonuses
- Vacation pay
- Statutory holiday pay
- Overtime pay
- Sick leave benefits
- Honorariums
- Directors' fees
- Distribution of profits reported on a T-4 or T-4A
- Tips and gratuities included on T-4
- Call in/call back pay
- Shift premiums
- Labour value of contract workers (the value of the labour portion of a contract)
- Municipal councillor allowances reported on a T-4 or T-4A
- Employer's portion of RRSP contribution if available to the recipient before age 65
- Any other financial remuneration reported as income and paid by the employer

### WHAT ARE NON-ASSESSABLE EARNINGS?

Non-assessable earnings include:

- Taxable allowances for:
  - Travel
  - Tools
  - Clothing
  - Dry cleaning
  - Use of vehicle
- Dividends reported on a T5
- Retirement allowances
- Severance pay
- Any other taxable benefits which are not monetary
- Employer's portion of RRSP contribution if locked in until age 65
- Earnings for proprietors, partners, their spouses and their children under the age of 16 residing at home
- Amounts in excess of the maximum assessable earnings

### What is the maximum assessable earnings amount for each worker on my payroll?

The maximum assessable earnings amount for each worker on your payroll is equal to 1.5 times the New Brunswick Industrial Aggregate Earnings (NBIAE) amount.

### How do I calculate the assessable earnings for each of my workers?

Assessable earnings for the year in question are totalled for each worker. If the amount is less than the maximum assessable earnings amount, you should report the total calculated. If the amount is more, then you should simply report the maximum assessable earnings amount for that worker.

### How do I report these earnings?

Each year in early January, a *Form 100 – Employer Payroll Report* is sent out to each annually registered (non-MAAP) employer. This form is used to report your workers' actual assessable earnings in the previous year, and to estimate their assessable earnings for the current year. WorkSafeNB must receive this form on or before February 28 of each year, even if the employer's operation is seasonal or has ceased operations.

## Form 100

You can fast file your *Form 100 – Employer Payroll Report* online. This will save you time this year and next when some information fields are already populated. Use your employer number and the access PIN printed on your *Form 100*, and go to [worksafenb.ca/MyServices](https://worksafenb.ca/MyServices) and select File your *Form 100 – Employer Payroll Report*. You can also send your *Form 100* by mail or fax (506 632-2819).

### What is a *Form 100*?

WorkSafeNB uses the information on *Form 100* to:

- Perform a final calculation of WorkSafeNB premium for the calendar year just ended, and ensure that you have not been over or undercharged for your workers' compensation insurance.
- Estimate your payroll for the coming year, to prepare your WorkSafeNB Assessment Notice (your estimated premium amount) for the current calendar year.
- Close your account, if your business has ceased operations.

### Are there late reporting penalties?

Yes. Any *Form 100* received after February 28 will be subject to a minimum penalty of 5% of the total premium for that year. The penalty will increase to 10% if the *Form 100* is not received more than 30 days past the February 28 deadline. The penalty will be limited to \$500 for every operation assigned.

### What information will I need to have to fill out *Form 100*?

To complete *Form 100* you should have:

- Previous year's financial records, T4 and T4 summaries.
- Records of all contracts and payments made to individuals and companies.
- Specific records that show the number of workers employed during the previous year.
- Any information or records you need to estimate your current year's assessable earnings.
- A copy of last year's *Form 100* (if applicable).

### How do I report the earnings of hired contractors?

WorkSafeNB can provide a form for you to list all contracts awarded to individuals or companies during the year. This will allow WorkSafeNB to calculate assessable earnings related to these workers.

### How do I estimate earnings for the current year?

Using your business' payroll records, sales forecasts, and other market information, you should be able to develop a reasonably accurate estimate of the assessable earnings for each of your workers over the current calendar year. This amount should be reported on a *Form 100*.

**ANY FORM 100 RECEIVED AFTER FEBRUARY 28 WILL BE SUBJECT TO A MINIMUM PENALTY OF 5% OF THE TOTAL PREMIUM FOR THAT YEAR.**

### **What happens if I underestimate my earnings?**

Underestimating your current year's assessable earnings will result in a 12% penalty, if the actual total assessable earnings for all your workers is 25% greater than the estimate filed.

### **What happens if my business grows over the year, and results in underestimated earnings?**

If your business grows over the course of the current year, and the total assessable earnings for all your workers is 25% greater than the estimate filed, you have until November 30 to report the increase to WorkSafeNB without penalty.

### **Should I pro-rate my workers' earnings?**

No. You should calculate your workers' assessable earnings individually.

### **Can I report my actual earnings monthly, rather than estimating them for the entire year?**

Yes. WorkSafeNB has developed an alternative reporting method called the Monthly Assessments on Actual Payroll (MAAP) Program. The MAAP Program allows employers to use an online tool to report actual monthly payroll amounts, and then automatically pay a monthly premium using pre-authorized electronic funds transfer.

### **How does the Monthly Assessments on Actual Payroll (MAAP) Program work?**

- The employer files an electronic statement of their actual payroll by the 15th of the following month.
- WorkSafeNB returns a statement of account to the employer.
- The employer has three business days to review and verify the statement.
- The assessed amount is deducted from the bank account of the employer's choice.

### **How do I access MAAP?**

Only employers whose account is in good standing can participate in the MAAP program. Participation would begin at the start of the year, or at the start of operation for newly registered employers. Annually assessed employers usually cannot switch mid-year.

To learn more about the MAAP program, or to request password access to the website, please contact Assessment Services.

### PAYROLL AUDITS

#### What is a payroll audit?

Payroll audits ensure the correct classification of an employer and the accuracy of the payroll and contractor information reported. Under the *WC Act*, payroll and contractor records must be made available to WorkSafeNB employer services representatives upon request for audit purposes.

#### How long am I required to keep payroll information?

Employers must keep five years of payroll and contractor information, not including the year in progress. The employer does not need WorkSafeNB's permission to dispose of any records which are outside the five-year retention period, but it is the employer's responsibility to ensure that disposing of these records does not constitute a contravention of any other provincial or federal legislation, regulation or policy.

### PREMIUM CALCULATION AND PAYMENT

You will receive an Assessment Notice advising you of the amount due once WorkSafeNB has processed your *Form 100*. In the fall of each year, employers will receive a notification of their assessment rate for the following year.

#### What are the payment options for annually assessed employers?

Assessments may be paid by cash, cheque or money order by mail or in person at any SNB or WorkSafeNB office, using one of the following two options:

##### Option A

The total amount noted on your assessment notice(s) plus any carry forward balance may be paid in full within 30 days of the billing date of the assessment notice, or March 31, whichever date is later. Interest will not be levied on the total assessment notice(s) if the full payment is received by this date.

##### Option B

The total amount noted on your assessment notice(s) plus carry forward balance might be paid in two installments:

- 100% of last year's adjustments and carry forward balance plus 50% of this year's assessment is due within 30 days of the billing date or March 31, whichever date is latest.
- The remaining 50% of this year's assessment balance (plus accumulated interest) is due no later than August 31 of the current year.

*Note:* Interest will be levied monthly on the unpaid outstanding amount, based on the applicable interest rate at that time.

**EMPLOYERS MUST KEEP FIVE YEARS OF PAYROLL AND CONTRACTOR INFORMATION, NOT INCLUDING THE YEAR IN PROGRESS.**

If your first payment is not received in time, the full balance will become due and payable. If that happens, WorkSafeNB will immediately take appropriate action to collect the full outstanding balance.

*Note:* If an employer has ceased operations or has not renewed an application for voluntary coverage, full payment is due upon receipt of the assessment notice and Option B is not available.

#### How are payments made using the MAAP Program?

Employers who use the MAAP Program will have their monthly assessment amounts automatically deducted from the bank account of their choice, using a pre-authorized electronic funds transfer. Monthly cheques are not allowed.

Employers who pay their premiums using the MAAP program will benefit from improved cash flow.



# Job Site Health and Safety

## HEALTH AND SAFETY AT YOUR JOB SITE(S)

Improving your health and safety record is an investment that will pay off for your business, both in the long and short term. WorkSafeNB offers many different resources to help employers in this regard. Please contact us to find out more.

### What are my responsibilities as an employer?

#### Under the *OHS Act*, employers must:

- Take every reasonable precaution to ensure their employees' health and safety.
- Comply with the *OHS Act* and regulations, and any order made in accordance with them.
- Ensure that their employees comply with the Act and regulations, and any order made in accordance with them.
- Maintain the necessary systems of work, tools, equipment, machines, devices and materials in good condition and at minimum risk to health and safety when used according to supplier's directions.
- Acquaint an employee with any workplace hazards in connection with the use, handling, storage, disposal and transport of any tool, equipment, machine, device or biological, chemical or physical agent.
- Provide the information, instruction, training and supervision necessary to ensure an employee's health and safety.
- Provide and maintain in good condition such protective equipment as is required by regulation and ensure that such equipment is used by an employee in the course of work.
- Co-operate with a committee, where such a committee has been established, a health and safety representative, where such a representative has been elected, and with any person responsible for the enforcement of this Act and the regulations.

- Post a copy of the *OHS Act* and regulations in a prominent place where workers can see them.
- Draft and implement policies and procedures which become the safety program in the workplace. If the workplace has 20 or more employees, the company's safety policy must be submitted to WorkSafeNB and a Joint Health and Safety Committee (JHSC) must be formed.

### What rights do my workers have under the *OHS Act*?

The *OHS Act* is based on the premise that every worker is entitled to a safe and healthy workplace. This Act places primary responsibility for health and safety issues in the hands of the people in the workplace and gives them three basic rights:

- The right to know about workplace hazards.
- The right to participate in solving health and safety problems.
- The right to refuse dangerous work.

### **What is arbitration?**

Arbitration is a process provided for in the *OHS Act*. It is a quasi-legal process that typically involves a hearing convened to hear and resolve complaints by workers who feel they have been discriminated against for exercising their rights under the Act.

### **What is my role in the arbitration process?**

If one of your workers requests arbitration, you will be invited to attend, and will be asked to provide your side of the issue either orally or in writing. An arbitrator will listen to both sides and then deliver a decision that is binding to both parties.

### **Do I need to have a Joint Health and Safety Committee (JHSC) for my business?**

If you employ more than 20 workers, the *OHS Act* states that a JHSC must be formed. The committee should be made up of an equal number of worker and management representatives, and meet on a regular basis to discuss and resolve health and safety issues at your job site. Information on forming and maintaining a successful JHSC is available through WorkSafeNB.

### **What if I employ fewer than 20 workers?**

If you employ fewer than 20 workers, you have no legal obligation to have a JHSC at your job site. However, it is a good idea to appoint a Health and Safety Representative, who can bring health and safety issues to the attention of both workers and management as required.

***AN ARBITRATOR WILL LISTEN TO BOTH SIDES AND THEN DELIVER A DECISION THAT IS BINDING TO BOTH PARTIES.***

### **Is training available for JHSC members?**

Yes. WorkSafeNB can provide you with additional information on training available for JHSC members.

### **What if a health and safety officer visits my job site?**

WorkSafeNB's health and safety officers have legal authority to enter and inspect the province's workplaces to ensure a worker's right to a safe and healthy work environment. As an employer, you will find that a productive working relationship with these officers can reduce accidents over the long run.

### **What if I receive an order or recommendation from a health and safety officer?**

While visiting your premises, a health and safety officer may issue you an order or stop-work order to correct unsafe or unhealthy situations on your job site. If you do not comply with an order written by a health and safety officer, you could be charged under the *OHS Act*, and face significant fines or imprisonment.

### **Where can I get more information?**

If you have any questions about WorkSafeNB's inspection services, a health and safety officer's visit, or an order that may have been written, please contact your regional WorkSafeNB office (See page 39).

### Why would my company be chosen as a WorkSafeNB focus firm or as part of a WorkSafeNB focus industry?

Some industries and workplaces have significantly high accident records. Through statistical analysis, WorkSafeNB identifies these industries and companies, and focuses the attention on their health and safety practices. WorkSafeNB works to improve the accident records of these companies and industries through inspections, consultations and business case models.

### WorkSafeNB selects individual companies from the focus industry for special attention.

Employees from WorkSafeNB's WorkSafe Services Division approach these companies for intensive intervention, and encourage them to implement full and improved health and safety programs. Health and safety officers, health and safety consultants, ergonomic consultants and education consultants are all available to help these companies, depending upon their individual needs.

## WORKSAFENB HEALTH AND SAFETY RESOURCES

There are a wide variety of health and safety resources available through WorkSafeNB, including:

- **Guide to Workplace Health & Safety Programs**

To create a good safety culture, you need a plan. A health and safety program is an organized, written action plan to identify and control hazards, define safety responsibilities and respond to emergencies that result in the prevention of accidents and occupational diseases. The objective of a program is to integrate safety and health into all work practices and conditions. This guide describes the elements of a formal health and safety program, and the roles and responsibilities of those preparing and maintaining the program. It will also assist your workplace in complying with the requirements of the *Occupational Health and Safety (OHS) Act* to develop and implement an effective health and safety program.

- **Other WorkSafeNB publications**

WorkSafeNB publishes a wide variety of documents to help employers improve health and safety. WorkSafeNB's website ([worksafenb.ca](http://worksafenb.ca)) contains materials on several subjects, including:

- Hazard alerts that pinpoint and inform about risks and hazards in a wide variety of New Brunswick industries.
- WorkSafeNB's newsletter.
- Links to the *Occupational Health and Safety Act*, the *Workers' Compensation Act*, the *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act*, and the *Firefighters' Compensation Act*.
- Guidelines for specialized prevention initiatives such as ergonomics.
- Booklets covering subjects such as JHSC formation and management.

- **Annual WorkSafeNB Health and Safety Conference**

Each year WorkSafeNB holds one of the largest health and safety conferences in Atlantic Canada. Expert speakers conduct workshops on all aspects of health and safety, and workshops are designed to deliver both the fundamentals and more sophisticated information that will help you implement and apply the building blocks of health and safety at your workplace.



# In Case of an Accident

## DEFINITION OF AN ACCIDENT

Under the *WC Act*, an *accident must arise out of employment and in the course of employment*, and includes one of the following:

- A wilful and intentional act, not being the act of the worker who suffers the accident.
- A chance event or incident occasioned by a physical or natural cause.
- A disablement caused by an occupational disease.
- A disablement or disabling condition caused by employment.

An accident does not include the disablement of mental stress or caused by mental stress, unless it resulted from an acute reaction to a traumatic event.

## What is an occupational disease?

An occupational disease is a disease declared to be an occupational disease by regulation, a disease peculiar to or characteristic of an industrial process, trade, or occupation, or a disease that arises out of and in the course of employment.

## What if there has been an accident at my job site, and how soon do I need to report the accident to WorkSafeNB?

There are separate accident reporting requirements under both the *WC Act* and the *OHS Act*. Certain accidents, involving an employer or a worker who is subject to the *WC Act*, must be reported to WorkSafeNB. Notification to WorkSafeNB under the *WC Act* may still require notification under the *OHS Act*. Both workers and employers are responsible for reporting accidents.

In the event of an accident, injury or industrial disease at your job site, you must immediately:

- Provide or pay the cost of immediate transportation from the injury site to a medical treatment facility.
- Report the injury to WorkSafeNB:
  - **Immediately**, if the accident results in or may result in a fatality, loss of limb, occupational disease, or hospitalization.
  - **Within 24 hours of occurrence**, in the case of an accidental explosion or an accidental exposure to a biological, chemical or physical agent at a workplace.

Under the *WC Act*, all employers with three or more usually employed workers (full- or part-time) are required to register with WorkSafeNB. Only these insured employers and those who voluntarily apply for coverage are required to file a *Form 67*. Under the *OHS Act*, however, **ALL** employers, regardless of size, must report to WorkSafeNB any injuries or illnesses that occur at the workplace.



Immediate notification can be made by faxing toll-free 1 888 629-4722, or calling 1 800 999-9775, indicating the location, name of person injured, if any, employer name, contact person and a brief description of the event.

In addition to the above, where the employer is insured under the *WC Act*, a *Form 67* must be sent to WorkSafeNB **within three days of receiving notification that the work-related injury resulted in:**

- Wage loss
- Injured worker is unable to perform the regular work duties beyond the date of accident.

### Do I always need to fill out a *Form 67*, even for minor accidents that do not require medical attention?

A *Form 67* does not have to be filed for accidents when no medical costs or loss of wages are incurred, or when the injured worker is able to continue regular job duties. Even though notification of the event to WorkSafeNB may not be required, you must record the accident and obtain the following information in case the event becomes a reportable incident.

- How the accident happened and the nature of the accident.
- When it happened (date and time).
- Why it happened.
- The worker's name and address.
- Where it happened.
- The date the record was made.

This record must be kept for five years after the date it was made.



## YOU MUST REPORT WORK-RELATED ACCIDENTS OR DISEASES.

The following list outlines the types of injuries that can occur on your job site.

- a) **Traumatic injuries** happen quickly, causing trauma to the body. Examples include broken bones, severe cuts and burns.
- b) **Repetitive strain injuries** include strains or sprains caused by repeatedly performing the same activity. For example, an assembly line worker may develop a repetitive strain injury in their wrist as a result of performing job duties.
- c) **Occupational diseases** are caused by a work site condition. For example, workers repeatedly exposed to toxic materials in the workplace may develop conditions that affect their health.
- d) **Recurrences and difficulties with an old work-related injury.** The acceptance of a claim for recurrence of an injury is based on the continuity of symptoms, as well as the medical relationship between the present condition and the past injury.

### What other information should I collect related to the accident?

When completing the *Form 67*, it is important that you obtain information about the events leading up to the injury. You should ask the injured worker if there were any witnesses to the accident and what specific activities they were engaged in at the time of injury, including their physical body movements. You should also speak with the injured worker's co-workers and any witnesses.

### What if my worker and I disagree about the accident?

A complete report of the accident, using a *Form 67*, must be made even if there is disagreement between you and your employee.

Situations may arise where there is doubt about whether an employee sustained a work-related injury, or whether the employee's symptoms relate to a pre-existing condition, and not to activities at work. In other words, did work cause the injury?

WorkSafeNB considers two things when determining a claim. It must be shown that the injury:

1. Occurred in the course of employment.
2. Was caused by activities performed as part of the job.

The employer has the right to contest a worker's claim, however a *Form 67* must still be completed and submitted to WorkSafeNB. The *Form 67* provides for the indication of disagreement by the employer. The employer may provide information on the nature of the disagreement with the information on the form.

### What happens if I do not report the accident?

If the accident is reportable under the *OHS Act*, and it is not reported, you may be charged with failing to comply with the requirements. If convicted, you are liable to:

- A fine of not more than \$250,000. If you do not pay the fine, you are liable to the procedures laid down in the *Provincial Offences Procedure Act*.
- Maximum of six months in prison.
- Both of the above.

### Can my worker and I agree not to report the accident?

No. You and your worker are required by law to report all work-related injuries meeting the criteria to WorkSafeNB.

### **POST-ACCIDENT RESPONSIBILITIES FOR EVERYONE INVOLVED**

#### **The employer must:**

- Provide or pay the cost of immediate transportation from the injury site to a medical treatment facility.
- Report the injury to WorkSafeNB within the appropriate notification period.
- Keep accurate first aid records.
- Work with the injured worker, their health care providers, and WorkSafeNB to develop an effective return-to-work plan.
- Make every effort, short of undue hardship, to accommodate the injured worker if they experience a work restriction (as per provincial human rights legislation).
- Maintain regular contact with the injured worker and WorkSafeNB.

#### **If ongoing medical treatment is needed, the injured worker must:**

- Keep appointments with health care providers (physicians, physical therapists, chiropractors).
- Ask their health care providers to send reports to WorkSafeNB.
- Follow the treatment plan developed by their health care providers.
- Discuss their progress with their physician so they understand when they can return to work.
- Inform their WorkSafeNB adjudicator or case manager of any changes in their medical recovery.
- Regularly discuss their progress, a possible return-to-work date, and, if necessary, alternative work options with their employer.
- Regularly contact their adjudicator or case manager.
- Inform their adjudicator or case manager when their doctor tells them that they are fit to return to work.
- Understand and follow all work restrictions so their re-employment is safe for everyone, if they return to work early.
- Advise WorkSafeNB if they stop working or need to change their duties because of their injury.
- Keep receipts for expenses directly related to their workplace injury.
- Use their claim number when writing letters to, or calling, WorkSafeNB.
- Advise their adjudicator or case manager if they will be leaving the province or if they are moving out of the province.
- Participate fully in modified work accommodations made available by their employer and supported by their treating physician.



**WORKSAFE NB HAS THE RIGHT UNDER THE *WC Act* TO GATHER EVIDENCE AND INVESTIGATE WORKPLACE ACCIDENTS IF IT IS NECESSARY TO ADJUDICATE AND MANAGE A CLAIM.**

### **Health-care providers must:**

- Send their reports to WorkSafeNB as soon as possible.
- Help the injured worker understand what is wrong and what can be done to assist in their recovery.
- Work together with the injured worker, their other health care providers, and WorkSafeNB to develop an effective return-to-work plan.
- Provide such information as may be required by WorkSafeNB from time to time.

### **WorkSafeNB must:**

- Provide the injured worker with clear information about their case and the available services.
- Provide the injured worker with effective compensation and rehabilitation services to help them return to work.
- Ensure that the injured worker receives appropriate medical treatment.
- Involve the injured worker, their employer and their health care providers in the return-to-work process.
- Help the injured worker return to work safely and efficiently.
- Expedite medical management when necessary.
- Provide vocational support and conduct job modifications to assist in the return to work.

### **What if WorkSafeNB investigates the accident?**

WorkSafeNB has the right under the *WC Act* to gather evidence and investigate workplace accidents if deemed necessary to help adjudicate and manage a claim, or to detect possible cases of fraud. Health and safety officers may also visit the accident site to determine if the accident occurred as a result of a violation of the *OHS Act*.



# Compensation and Rehabilitation

## **BENEFITS AN INJURED WORKER CAN RECEIVE**

An injured worker whose claim has been accepted by WorkSafeNB may be entitled to some or all of the following benefits, provided for under the *WC Act*:

- Payment for lost work-related earnings
- Medical treatment and health care expenses
- Transportation allowances
- Personal care allowances
- Loss of opportunity award
- Long-term disability benefits
- Benefits to dependants of fatally injured workers
- Assistance with funeral expenses

### **Can I continue paying a worker receiving WorkSafeNB benefits?**

You may choose to continue paying the injured worker full salary while they are off work, recovering from their accident.

The injured worker must report to WorkSafeNB all employment-related income they receive while on compensation. The amount of post-injury income earned by the injured worker affects their loss of earnings benefits, but has no effect on other benefits the injured worker might be eligible for under the *WC Act*.

### **What is top-up?**

An injured worker may receive top-up from their employer only when their pre-accident earnings exceed the maximum compensation for the year of the injury. If the total top-up plus WorkSafeNB entitlement exceeds 85% of pre-accident net earnings, income will be deducted from the worker's loss of earnings benefits.

### **What if an injured worker is off for more than six weeks?**

If an injured worker is off work for six weeks or more, or suffers a serious injury, the case is assigned to a case management team.

After a workplace accident, WorkSafeNB's goal is to return the injured worker to work safely and efficiently. A case management approach is WorkSafeNB's way of co-ordinating everyone involved in the case (you, the workers, and the health care providers), and assuring that the goal of returning to work is achieved.

### **What is a case management team?**

The team may include the injured worker's case manager, an occupational therapist, a medical advisor and a rehabilitation specialist, dedicated to their recovery.

### **How am I involved in the case management process?**

A member of the injured worker's case management team works with both you and your worker to ensure a safe return to work. They may visit your job site to determine if changes must be made to help the worker get back on the job, and may also arrange a gradual return-to-work schedule.

### What are the benefits of returning an injured worker to work?

Welcoming an injured worker back to the job site benefits you as the employer, allowing you to retain a skilled, valuable worker who is familiar with and actively involved in your business.

### Who decides when the injured worker should return to work?

The injured worker's doctor and other health care providers send progress reports to their adjudicator or case manager, who will use that and other information to determine when the worker is fit to return to work.

### What rights do injured workers have to their pre-accident jobs?

You have a legal obligation to make every reasonable effort, short of undue hardship, to accommodate an injured worker if they suffer a temporary or permanent disability resulting from a work-related accident. These obligations stem from Section 3 of the *Human Rights Act of New Brunswick* and Subsection 42.1 of the *WC Act*.

### What are my responsibilities in the return-to-work process?

If you have between 10 and 20 workers, you must hold the position the worker held immediately before the accident for one year, and allow the injured worker to resume work in that position.

If you have 20 or more workers, you must hold the position the worker held immediately before the accident for two years, and allow the injured worker to resume work in that position.

### MODIFIED EMPLOYMENT

If, in the opinion of WorkSafeNB, the worker is unfit to perform the pre-accident duties, the employer must provide a suitable position with no loss of seniority or benefits.

If your worker has a temporary work restriction, their case manager will discuss modified work options with you. Modified work promotes an early and gradual return to pre-accident employment.

If your worker suffers a permanent work restriction, their case manager will discuss alternative work options with you that match their functional abilities.

*Note:* The rules are different for workers doing construction work in the construction industry.

### ALTERNATE EMPLOYMENT

If, in the opinion of WorkSafeNB, the worker is unfit to perform the pre-accident duties, and the employer cannot accommodate the worker in a suitable modified position, WorkSafeNB will help the worker find alternate employment.

## Subsection 42.1(2)

"No employer shall dismiss, suspend, lay off, penalize, discipline or discriminate against a worker because the worker suffered a personal injury by accident in respect of which the worker is, in the opinion of WorkSafeNB, entitled to make application for compensation."

*Workers' Compensation Act, Subsection 42.1(2)*

### **What is the Workplace Accommodation Process?**

The Workplace Accommodation Process is a proactive way for employers to meet their duty to accommodate injured workers. Workplace accommodation emphasizes two key components:

- Early intervention and timely return to work for injured or ill employees.
- WorkSafeNB education consultants and workplace co-ordinators (or teams) will work with both the employer and worker to help the injured or ill employee return to productive work as quickly and safely as possible.

### **What is on-the-job training?**

In an effort to find an injured worker a new job, WorkSafeNB rehabilitation specialists might recommend a training-on-the-job scenario to help the worker develop new skills in a workplace environment.

The On-the-Job Training Program is designed to reintroduce the injured worker to regular employment, and give them the opportunity to learn the tasks associated with a new job, while providing the employer with a low-risk introduction to a potential new employee.

### **ACCESS TO INFORMATION**

WorkSafeNB's Access to Information policy provides the injured worker and the employer or their representatives access to a claim or employer file, or to relevant parts of the file. There is a fee for this information. Forms for Access to Information are available at any WorkSafeNB office.



# Appeals

## QUESTIONING A DECISION

### What if I disagree with a decision made related to my WorkSafeNB premium amount or classification?

Employers can appeal WorkSafeNB's decisions concerning assessments or classification. If you feel your classification or assessment is unfair or incorrect, you should first ensure that all relevant information has been provided to the assessment services department. Next, you can request a re-examination of the initial decision in writing to the assessment services department. Finally, you can request an appeal through the Workers' Compensation Appeals Tribunal (WCAT).

### What if I disagree with a decision on a claim?

If you wish to make a complaint about a decision regarding your claim, or you are dissatisfied with the quality of service you have received, you can:

- Contact the person who made the decision or provided the service (for example, the adjudicator or case manager). If you are still dissatisfied. . .
  - Ask to speak to their supervisor. If you are still dissatisfied. . .
- Contact WorkSafeNB's Issues Resolution Office (IRO). Read the next section for more information on accessing its services.
- Submit an appeal to the Workers' Compensation Appeals Tribunal (WCAT). Read the next section for more information.
- Contact the Office of the Employers' Advocates. Employers' advocates help New Brunswick employers in matters concerning workers' compensation through communication, consultation and education, and by advising and representing them on issues before WorkSafeNB and, in particular, the appeals process. Read page 38 for more information.

### What is the Issues Resolution Office (IRO)?

At WorkSafeNB, we understand that our clients may sometimes disagree with a claim-related decision, or be dissatisfied with a service. The IRO can help. The IRO reviews claim-related decisions and investigates service-related complaints. However, the IRO does not have jurisdiction to determine matters related to assessments or OHS decisions.

Guided by the principles of fairness and service excellence, the IRO is committed to working with our clients in a timely, responsive and open manner to address their concerns.

### How can I access the IRO?

- Complete the Issues Resolution form found on our website ([worksafenb.ca](http://worksafenb.ca)) and send it to:  
Issues Resolution Office  
WorkSafeNB  
P.O. Box 160  
Saint John, N.B. E2L 3X9
- Contact the Issues Resolution Office by phone at 1 800 999-9775 (option #5) or 506 738-4317, by fax at 506 642-0720 or by email at [iro.bpr@ws-ts.nb.ca](mailto:iro.bpr@ws-ts.nb.ca) to discuss your request.

### What is the WCAT?

Independent of WorkSafeNB, the appeals tribunal's primary responsibility is to provide timely, fair, consistent and impartial decisions when resolving appeals of WorkSafeNB decisions.

### Is there a time limit for appeals?

Legislation effective April 2015 imposed a time limit on appeals. As of that date, you have one year from the date of the decision to file an appeal.

### **THE WCAT HOLDS HEARINGS IN REGIONS THROUGHOUT THE PROVINCE IN THE OFFICIAL LANGUAGE CHOSEN BY THE PERSON SUBMITTING THE APPEAL.**

#### **What is an appeal hearing?**

The WCAT will consider your appeal at a hearing. While most hearings proceed by way of a face-to-face meeting, the WCAT may choose to conduct a paper review of the file without oral presentations from you or any of the other affected parties. All hearings are chaired by either the WCAT's chairperson or a vice-chairperson. The chairperson and vice-chairpersons are appointed by government to these roles. The WCAT, the chairperson, the vice-chairpersons and all WCAT staff are independent of WorkSafeNB. The WCAT holds hearings in regions throughout the province in the official language chosen by the person submitting the appeal. Tribunal decisions are final and delivered in writing.

#### **What about new documents or reports?**

All relevant information should be submitted to the original decision-maker.

#### **Is there someone that can help me with my appeal?**

Employer advocates are located throughout the province to help you on matters pertaining to the *WC Act* and, in particular, with the appeals process. They will help you prepare your appeal (See Employer Advocates section, p. 38). Employer advocate services are available to you at no charge.

### **AFTER A WCAT HEARING**

After your hearing is finished, the WCAT is required to issue a written decision within 90 days of the day of the last hearing or the day when written submissions were received. The WCAT will inform all parties, in writing, of the decision and reasons. If your appeal is accepted, it will be sent to WorkSafeNB for implementation.

If your appeal is not accepted, you may want to consider the following two options.

#### **Court of Appeal**

Any decision, order or ruling of the WCAT is final and subject only to an appeal to the Court of Appeal for questions as to jurisdiction or law. Any party intending to appeal to the Court of Appeal must apply to the WCAT for a Statement of Facts within 30 days of notice of the WCAT's decision, order or ruling.

#### **Reconsideration**

WCAT decisions are final and delivered in writing. However, the WCAT does have jurisdiction to reconsider decisions when it receives new information that substantially affects the original outcome.

#### **Can my worker appeal a decision?**

Yes. You and your worker both have an interest in your claim with similar rights to fair and equal treatment. You are both entitled to appeal a decision made on the worker's claim, and will be notified in the event that an appeal is filed. As well, you are both entitled to attend any appeals hearing relating to the worker's claim.

If your worker files an appeal relating to the claim, you can access the free services of an employer advocate, or elect to retain the services of a lawyer or other representative at your own expense. Like you, your worker can also enlist assistance with an appeal. They can access the services of a worker advocate, free of charge, or they can retain the services of a lawyer or other representative at their expense.

#### **How do I contact the WCAT?**

Telephone: 506 738-6444

Toll free: 1 844 738-6444

Fax: 506 738-4104 (Workers' Compensation Appeals Tribunal-related matters only)

Email: [WCAT.TAAT@gnb.ca](mailto:WCAT.TAAT@gnb.ca)

Mailing Address

P.O. Box 5001

3700 Westfield Road

Saint John, N.B. E2L 4Y9



# Employer Advocates

## RESPONSIBILITIES OF EMPLOYER ADVOCATES

Employer advocates are in place to help you with matters pertaining to the *WC Act*, as well as with the appeals process.

The advocates are employees of the Department of Post-Secondary Education, Training and Labour, and are independent of WorkSafeNB.

*Note:* Advocates have full access to all WorkSafeNB files and records relating to your worker's claim, and to your appeal.

### Is there a fee for their service?

The services of an employer advocate are available at no charge.

### How can an employer advocate help me?

An employer advocate can help you by:

- Providing general information about the workers' compensation system, policies and procedures.
- Advising you on what actions to take and helping to gather the necessary information.
- Determining if there are problems with the worker's claim that can be resolved through an appeal.
- Helping to prepare a written or oral appeal.
- Appearing with you, or as your representative, at an appeal hearing.

### How do I access an employer advocate?

Contact the Office of the Employer Advocate nearest you. You will need to give them some basic information concerning the claim and the nature of the problem.

Always refer to your WorkSafeNB claim number or, when your concern is with your assessment or classification, refer to your employer number. State what you want clearly. Please call and arrange an appointment with an advocate before coming to the office.

## CONTACT INFORMATION

### Offices of the Employer Advocate Department of Post-Secondary Education, Training and Labour

Chestnut Complex, Room LG20  
470 York Street  
P.O. Box 6000

**Fredericton**, N.B. E3B 5H1

Phone: 506 457-3510

Fax: 506 453-3990

Counties/Cities served: Carleton, York (Fredericton),  
Sunbury, Queens

Place 1604, Room 320  
200 Champlain Street  
P.O. Box 5001

**Dieppe**, N.B. E1A 1P1

Phone: 506 856-3176

Fax: 506 869-6608

Counties/Cities served: Westmorland (Moncton), Albert,  
Kent, Madawaska (Edmundston), Victoria (Grand Falls)

Harbourview Place, Room 216  
275 Main Street  
P.O. Box 5001

**Bathurst**, N.B. E2A 1A9

Phone: 506 547-2267

Fax: 506 549-5351

Counties/Cities served: Gloucester, Restigouche  
(Campbellton), Northumberland (Miramichi)

Provincial Lab Building, 2nd Floor  
8 Castle Street  
P.O. Box 5001

**Saint John**, N.B. E3L 4Y9

Phone: 506 643-2115

Fax: 506 643-2820

Counties/Cities served: Kings (Saint John), Charlotte

# How to Contact WorkSafeNB

## **Toll-free number for all locations and emergencies: 1 800 999-9775**

All written correspondence with WorkSafeNB should be mailed to:

### **WorkSafeNB**

1 Portland Street  
P.O. Box 160  
Saint John, N.B. E2L 3X9

## **WorkSafeNB office locations and phone/fax numbers:**

### **Head Office**

Assessment Services  
Claims Inquiry  
Phone: 506 632-2200  
Toll-free fax for all claims: 1 888 629-4722

### **Grand Falls**

166 Broadway Blvd., Suite 300  
Phone: 506 475-2550  
Fax: 506 475-2568

### **Dieppe**

30 Englehart Street, Suite F  
Phone: 506 867-0525  
Fax: 506 859-6911

### **Bathurst**

Place Bathurst Mall  
1300 St. Peter Avenue, Suite 220  
Phone: 506 547-7300  
Fax: 506 547-7311 or 506 547-2982

### **WorkSafeNB's Rehabilitation Centre**

3700 Westfield Road  
Grand Bay-Westfield  
Phone: 506 738-8411  
Fax: 506 738-3470



Notes: