

Injured Worker Advisory Committee (IWAC) Position Paper

Consultation on Policy 21-100: Conditions for Entitlement – General Principles

Overview

The Injured Workers Advisory Committee appreciates the opportunity to provide feedback on the proposed revisions to **Conditions for Entitlement – General Principles**.

This policy is important because it sets out the general framework WorkSafeNB uses to determine whether a worker is entitled to compensation. It explains the legal tests that must be met, how evidence is considered, and how WorkSafeNB applies the statutory presumption that connects an accident to employment.

IWAC supports efforts to make the policy clearer, more consistent and easier to follow. Workers benefit when decision-making policies are transparent and written in a way that helps them understand what information is needed, how decisions are made, and how their evidence will be considered.

At the same time, IWAC believes several areas should be strengthened to ensure the policy is applied fairly and does not create unintended barriers for injured workers.

Overall position

IWAC is generally supportive of the proposed revisions, particularly the clearer sequencing of decision-making and the added direction that decision-makers must actively search for missing evidence before making a decision.

However, IWAC recommends that the final policy include stronger worker-focused language to ensure:

1. Workers are not disadvantaged by gaps in information that are outside their control;
2. The statutory presumption is applied in a meaningful and worker-protective way;
3. “Evidence to the contrary” is not interpreted too broadly;
4. Decision-makers consider the realities workers face when reporting injuries and gathering evidence; and
5. Workers receive clear explanations when their claims are denied.

1. Active evidence gathering should be emphasized

IWAC supports the proposed language stating that when there are gaps in information, it is the decision-maker's responsibility to actively search for the missing evidence before making a decision.

This is an important safeguard. Many injured workers are unfamiliar with the compensation system and may not know what information is needed to support a claim. Workers may also face barriers such as limited access to medical appointments, incomplete employer reporting, language barriers, trauma, fear of reprisal, or uncertainty about how to describe what happened.

IWAC recommends strengthening this section to make clear that a claim should not be denied simply because information is missing, especially when that information could reasonably be obtained by WorkSafeNB.

Recommendation:

Add language confirming that decision-makers must make reasonable efforts to obtain missing information from all relevant sources before denying a claim because of insufficient evidence.

Possible wording:

When there are gaps in information, the decision-maker must make reasonable efforts to obtain the missing evidence from all relevant sources before making a decision, including from the worker, employer, health care providers, witnesses, and any other relevant parties.

2. The statutory presumption must remain meaningful

IWAC supports the proposed explanation of the statutory presumption. The policy states that if the evidence demonstrates that the accident arose out of employment, WorkSafeNB will presume it occurred in the course of employment, and vice versa, unless there is evidence to the contrary.

This presumption is important for workers. It recognizes that work-related injuries do not always fit neatly into legal categories and that workers should not have to prove every element separately when one part of the connection to employment has already been established.

IWAC is concerned that the policy's discussion of "evidence to the contrary" could unintentionally weaken the presumption if it is applied too broadly. The presumption should not be rebutted by speculation, minor inconsistencies, incomplete information, or assumptions about what may have happened.

IWAC supports the proposed statement that equivocal evidence does not suffice as evidence to the contrary. This is a helpful and important clarification.

Recommendation:

Retain the statement that equivocal evidence is not enough to rebut the presumption, and consider adding plain-language guidance that evidence to the contrary must be relevant, reliable and significant enough to rebut the presumption.

Possible wording:

Evidence to the contrary must be relevant, reliable and sufficient to rebut the presumption. Speculation, assumptions, minor inconsistencies, or incomplete information are not enough to rebut the presumption.

3. Examples of evidence to the contrary should not create unfair assumptions

The proposed policy provides examples of evidence that may rebut the presumption, including evidence related to time, place, activity, prior symptoms or treatment, and specific non-work-related incidents.

IWAC understands the value of examples but recommends caution. Examples can help decision-makers, but they can also become shortcuts if not applied carefully.

IWAC is concerned about the example involving prior symptoms, functional limitations or treatment. Many workers have pre-existing conditions or prior symptoms but are still able to work. A prior condition should not be used to deny entitlement unless the evidence shows the work did not aggravate, accelerate or contribute to the injury.

Workers should not be penalized for having a medical history.

Recommendation:

Clarify that prior symptoms, prior treatment or a pre-existing condition should not rebut the presumption unless the evidence shows the work did not contribute to, aggravate or exacerbate the condition.

Possible wording:

The existence of prior symptoms, treatment, functional limitations or a pre-existing condition does not, on its own, constitute evidence to the contrary. The evidence must show that work activities did not cause, aggravate, accelerate or exacerbate the condition.

4. Reporting and application requirements should be applied fairly

The proposed policy adds a section on considerations prior to adjudication, including whether the application for benefits was made within the required timeframe and whether the employer was notified of the accident within the required timeframe.

IWAC understands that reporting requirements are part of the compensation system. However, workers may delay reporting for many legitimate reasons. They may believe the injury is minor, fear consequences at work, lack information about their rights, or not immediately understand the connection between their condition and their employment.

IWAC recommends that the policy avoid presenting reporting requirements in a way that appears overly rigid. Workers should be given an opportunity to explain delays, and decision-makers should consider the circumstances before refusing to proceed.

Recommendation:

Ensure the policy or related guidance makes clear that workers must have an opportunity to explain delays in reporting or applying for benefits, and that these explanations must be considered before a claim is refused or denied.

5. Medical evidence is important, but workers' evidence also matters

The proposed policy states that medical evidence is critical when establishing whether there is a personal injury, and when determining whether the personal injury or death was caused by the reported accident.

IWAC agrees that medical evidence is important. However, workers' own evidence is also important. A worker's description of what happened, symptom onset, changes in function, and impact on work should be considered carefully.

Not all workers can access timely medical care. Some medical reports may be brief or incomplete. In some cases, medical evidence may confirm the injury but not fully explain the work relationship. Decision-makers should consider the full picture and not rely only on whether a medical report uses specific wording.

Recommendation:

Add language confirming that medical evidence must be considered alongside the worker's evidence, employer information, witness information, and other relevant evidence.

Possible wording:

Medical evidence is considered together with all other relevant evidence, including the worker's account of the accident, symptom onset, functional changes, employer information, witness information, and any other information relevant to the claim.

6. Workers should receive clear reasons for decisions

Because this policy deals with the foundation of entitlement, IWAC recommends adding a commitment to clear communication. When a claim is denied, workers should be told which legal test was not met, what evidence was relied on, what evidence was missing, and how conflicting evidence was weighed.

This is especially important where WorkSafeNB finds evidence to the contrary or decides that the preponderance of evidence does not support the claim.

Clear reasons help workers understand the decision and decide whether they need to provide more information, seek reconsideration, or appeal.

Recommendation:

Add a statement that entitlement decisions must clearly explain the evidence considered, the applicable legal test, and the reasons for the decision.

Possible wording:

Decisions must clearly explain the evidence considered, the legal test applied, how conflicting evidence was weighed, and the reasons for accepting or denying the claim.

Conclusion

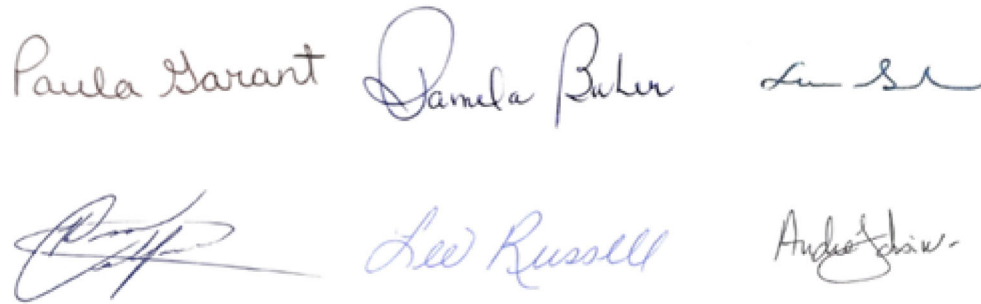
IWAC supports the goal of making **Conditions for Entitlement – General Principles** clearer and more transparent. The proposed revisions improve the structure of the policy and provide helpful direction on the decision-making sequence.

However, IWAC recommends strengthening the final policy to better protect workers by ensuring active evidence gathering, preserving the meaningful application of the statutory presumption, avoiding unfair reliance on prior medical history, considering barriers to timely reporting, and requiring clear explanations for entitlement decisions.

These changes would help ensure the policy is not only clearer, but also fairer and more accessible for injured workers.

Sincerely,

The Injured Worker Advisory Committee

The image shows six handwritten signatures in blue ink, arranged in two rows of three. The first row contains the signatures of Paula Garant, Pamela Baker, and Leica Gahan. The second row contains the signatures of Kirk Westfield, Lee Russell, and André Jobin. The signatures are written in a cursive, flowing style.

Paula Garant, Pam Baker, Leica Gahan, Kirk Westfield, Lee Russell, André Jobin