

### **Policy Background Paper**

**Determining Accident Date** 

December 2024

#### 1. Introduction

The Workers' Compensation Act (the "Act") sets out the eligibility requirements for benefits and services for injured workers in Nova Scotia. It also establishes the framework for the collection of employer premiums to fund the Workplace Safety and Insurance System (WSIS). A worker's eligibility for benefits is in part determined by some important dates – including accident date, injury date, and permanent medical impairment (PMI) effective date. These dates are also important to employers because they determine if a claim cost will impact their experience rate, the timeframe for re-employment, and accident reporting obligation. Appendix-D lists relevant sections of the Act, regulations, and policy impacted by dates.

Over the years inconsistency has developed in the WSIS related to how these dates are determined. In October 2024, the WCB published a discussion paper on the topic and initiated consultation on determining effective dates with a small group of worker and employer representatives to obtain their feedback on the issues and questions. Feedback provided and response from the WCB is detailed in Appendix-B. In addition, we researched how other jurisdictions guide these decisions and held a small group consultation with employees within the WCB. We considered all this information to determine if a decision-making policy around effective dates was required.

After our initial research and consultations, we concluded a policy would improve clarity and consistency on how to determine accident dates in order to:

- 1) Appropriately accept claims.
- 2) Determine when legislated obligations have or have not been met.
- 3) Accurately reflect accident costs in employer rates.

This paper serves as the second stage of the consultation process where we welcome feedback on the attached draft policy (Appendix-A).

The WCB Board of Directors will consider the feedback received during Stage 2 consultation and make the final determination of the content and approval of the policy.

#### 2. Background:

The following is a summary of key requirements, benefits, and obligations set out in the Act and policy that require the determination of an accident date (happening of the accident).

#### **Accident Reporting and Notification**

Section 83 of the Act requires a worker to make a report to their employer and file a claim with the WCB. In particular:

For <u>non</u>-occupational diseases, like a fall from a roof or gradual onset stress, a worker must give
their employer notice of the accident as soon as practicable after the **happening of the accident**and file a WCB claim within twelve months of the happening of the accident.

For occupational disease claims, a worker must give their employer notice of the occupational
disease as soon as practicable after the worker learns they suffer from the occupational
disease; and file a WCB claim for compensation within twelve months after the worker learns
they suffer from the occupational disease.

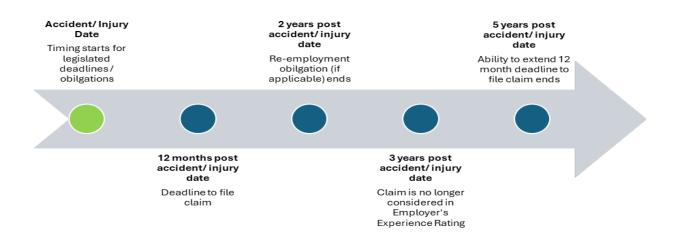
Section 83 of the Act allows for an extension of the 12 month claim deadline to up to 5 years after the happening of the accident (non-occupational disease) or from when the worker learns they suffer from an occupational disease (occupational disease) under the condition that any right of the worker's employer and the subrogated interest of the Board has not been prejudiced by the failure to file the claim by the 12-month deadline.

Choosing the appropriate accident date (happening of the accident) is important because the WCB uses this date to determine if a claim is "statute barred". A claim is barred if the worker has not filed the claim within 12 months of the accident date and the claim filing time period has not been extended. If a claim is statute barred, it will not be considered for benefits or services.

Employers also have a duty to report the accident to the WCB. Both Section 86 of the *Act* and Board Policy require an employer to notify the WCB within five business days of the employer becoming aware of the **occurrence of an accident.** Policy further clarifies that the notice of the accident must be received at the Board's offices within eight business days of the employer becoming aware of the **occurrence of the accident.** "Business days" are defined as Monday to Friday, with the exception of statutory holidays. Penalties can apply if reports are late.

It is not only important to determine the correct accident date for the purposes of Section 83. Once a claim is accepted, many other key legislated obligations, deadlines and requirements flow from the accident date /injury date including:

- Reemployment obligations (2 years post injury date)
- Experience ratings for employers (3 years post-accident date)
- Permanent Medical Impairment effective date (cannot precede accident date)



#### 3. Current Practice and Challenges:

In practice the term 'accident date' and 'injury date' are often interchangeable. However, these two dates are not always the same. To effectively administer the Act, an accurate date representing the "happening of the accident" needs to be identified.

For many claims, determining the accident date/injury date is straight forward. For acute injuries (e.g. a broken arm), the accident date and injury date are <u>usually the same date</u> because the injury happens at the same time as the 'accident'. For example, a worker experiences an acute event, like a fall from a height, and breaks their wrist.

Where there is a gap in time between when the 'accident' or series of 'accidents' occurred and when the 'injury' occurs, as in occupational disease, post-traumatic stress disorder, injuries that occur over a period of time, and gradual onset psychological injury, choosing an appropriate accident/injury, and PMI effective date can be challenging, leading to inconsistent application.

The absence of clear direction on identifying the accident/injury date for claims for some injury types can lead to inconsistency in decision making both internally at WCB and at WCAT. There may also be a lack of clarity for workers on how to determine their accident/injury date and what the corresponding deadline is for filing a claim.

#### Jurisdictional Information

In a review of other Workers Compensation Boards across the country we found that the majority (eight) jurisdictions had one or more policies for how to determine the date of accident/injury for specific injury types. These jurisdictions varied in what types of injuries were included in policy and how they determined the appropriate accident date. Particular attention was paid to Ontario's policy due to their legislative requirements being the most consistent with Nova Scotia's for how to determine the timeline for occupational disease claims versus other claim types. A detailed jurisdictional scan is available in Appendix-C.

#### 4. Providing Your Comments

We are interested to hear your comments on the proposed draft policy. Your comments will assist the WCB in ensuring all issues are considered as this policy is finalized.

If you have any questions or would like to provide comments please contact Dayle O'Neil, Policy Analyst <a href="mailto:dayle.oneil@wcb.ns.ca">dayle.oneil@wcb.ns.ca</a> or <a href="mailto:policy.email@wcb.ns.ca">policy.email@wcb.ns.ca</a>. The consultation period concludes February 21, 2025. This paper is also available at <a href="mailto:www.wcb.ns.ca">www.wcb.ns.ca</a>.

# Appendix – A Draft "Determining Accident Date Policy"

Policy Number: #. #. #

**Topic: Determining Accident Date** 

Section: #####
Subsection: #####

Effective: Month, 1, Year Issued: Month, 1, Year

Approved by Board of Directors: Month, 1, Year

#### **Definitions**

"Accident", as per S. 2(a) of the Act, includes:

- a willful and intentional act, not being the act of the worker claiming compensation,
- a chance event occasioned by a physical or natural cause, or
- disablement, including occupational disease, arising out of and in the course of employment.

"Accident date" means:

- For non-occupational diseases, the date of the happening of the accident.
- For occupational diseases, the date the worker learns the worker suffers from the occupational disease.

"Disablements" are injuries that happen over time and are often cumulative in nature, with no specific event/accident identified. These injuries "happen" due to repetitive or ongoing actions or motions etc. (for physical injuries) or significant work-related stressors (for psychological injuries).

#### **Policy Statement**

Section 83 of the Worker's Compensation Act uses the date of the 'happening of the accident' for non-occupational disease claims and the date a worker "learns they suffer from" an occupational disease for occupational disease claims to determine when the timeline starts for identifying:

- The date the worker is first entitled to receive WCB benefits / services.
- If the worker has given notice of the accident to their employer as soon as practicable after the happening of the accident
- If the worker has filed their claim for compensation within twelve months of the happening of the accident.

The purpose of this policy is to establish a framework for determining the *happening of the accident* for non-occupational disease claims and when the worker **learns they suffer** from an occupational disease claim.

#### Guidelines

The date of accident (happening of the accident) varies based on the type of claim and can refer to the date:

- Of the actual incident/ accident.
- On which medical attention was sought that led to an eventual diagnosis.
- On which an extended leave of absence starts.
- Of diagnosis.
- 1. In a chance event claim (acute injury), an identifiable event causes an injury. For example, a worker falls off a ladder and breaks their wrist or a worker experiences a traumatic event. The accident date is the actual date of the event.
- 2. In a disablement claim, the injury has occurred over a period of time. For example, a shoulder injury from repetitive movements as a cashier; or a gradual onset psychological injury due to bullying. The accident date is the earliest of:
  - 2.1. The date of the first medical attention that led to the diagnosis
  - 2.2. The date an extended leave of absence starts
- 3. In an occupational disease claim the accident date can be based on:
  - 3.1. The date initial medical attention is sought for symptoms consistent with the diagnosis, or
  - 3.2. The date of diagnosis.

#### **Application**

This Policy applies to all decisions made on or after Month, 1, Year.

#### References

Workers' Compensation Act (Chapter ###, Acts of 1994-95), Section##.

## Appendix - B Stakeholder Feedback

#### Stakeholder Feedback

#### **WCB Comment**

## Awareness that an injury / occupational disease is work related

Stakeholders shared it was important to consider whether or not the worker was aware their injury / occupational disease was work related in order to determine when the starting point is for determining if a claim is statute barred.

The starting point for when to determine if a claim is statute barred is defined differently for occupational disease and non-occupational disease claims in the legislation. For occupational disease the timing starts when the worker 'learns they suffer from an occupational disease". In this case it is usually appropriate to use the 'date of diagnosis' as the effective date. For non-occupational diseases legislation states the timing starts at the 'happening of the accident'. The WCB acknowledges it would not make sense for a worker to file a claim if they didn't know their injury was work related. However, we need to be clear that adjudication of defining 'happening of the accident' does not rely on a diagnosis for determining 'awareness'. We can also look at issues like a continuous earnings loss or continuous symptoms to define 'happening of the accident' as supported by WCAT decisions over the years<sup>1</sup>. The threshold for awareness that an injury is work-related does not require a diagnosis for a non-occupational disease claim.

#### Claims require individualized assessment

A concern was raised that having an effective date policy would not allow for individualized assessment of claims.

A policy does not hinder individualized assessment; this will still need to occur. The evidence in each claim will still need to be considered to reach a decision. A policy will help ensure the assessments are carried out in a consistent way.

## Section 83 states there is a 12-month time limit but really it is five years

Stakeholders stated the 'actual' deadline to file a claim is 5 years, not 12 months which is how the WCB has been operationalizing Section 83 in practice for a number of years.

WCB does not have the authority to change legislation. Requirements under Section 83 will not be changed by this policy. The deadline to file in Section 83 is 12 months from the 'happening of the accident' for non-occupational disease claims. S83(5) allows for extending the deadline for up to 5 years under specific conditions:

- by **application of the worker** and,
- if the Board determines "any right of the worker's employer and the subrogated interest of the Board has not been prejudiced".

We acknowledge that we've not always managed this appropriately, which may have resulted in the belief that the 'real' deadline is five years. However, the legislation is clear that an extension requires an application by the worker and the opportunity by the employer to show their rights would be prejudiced by granting an extension if that is the case.

<sup>&</sup>lt;sup>1</sup> 2013canlii69850, 2023canlii123341 for example.

Making policy in this area is an attempt by the WCB to statute bar more claims.

WCB is the neutral administrator of the Act. We need to ensure consistency in key areas and have determined there can be inconsistency in determining the happening of the accident for non-occupational disease claims. Our goal is to introduce a framework for determining the correct effective date so we can appropriately administer the Act.

Caseworkers are inconsistent and require better training to be consistent

One of the key objectives of a policy around decision making for effective dates is to improve consistency.

# Large Employers who have in-house medical provide treatment but do not submit claims

There was concern expressed that workers may not be able to meet their deadline for filing claims if larger employers are suppressing claims by providing in-house medical treatment and not reporting the accidents/injuries to WCB.

This is out of scope for this policy. As per s.86(1) of *the Act* employers have an obligation to report workplace injuries when an accident occurs in such circumstances that may entitle a worker to compensation.

#### **Establishing Loss of Earnings**

There is inconsistency in establishing a worker's loss of earnings with some decisions using the earnings as of the date of injury and others using earnings as of the date of time loss from the injury. Stakeholders supported this flexibility in decision making provided it was made in the best interest of the worker.

We have determined that establishing a loss of earnings date is out of scope of this policy. However, this flexibility is already allowed within policy 3.1.1 Calculation of Gross Earnings.

### Determining Effective Dates for Reassessment of PMI

We heard from stakeholders the effective date for reassessment of a PMI is not implemented consistently. Sometimes the date of the actual assessment is used and sometimes an earlier date is used due to the timing of the medical change or request for reassessment. An important consideration in determining a fair effective date for a PMI reassessment are delays in completing the assessment that are out of the worker's control.

This issue did not form part of this policy consultation although it may be considered as part of future policy development. However, determining an appropriate accident date will contribute to a more consistent process of determining PMI effective dates in general.

#### **Gradual Onset Psychological Injury**

Stakeholders noted it was important that determining the accident date for claim eligibility was done consistently to avoid adjudicators coming to different decisions on similar claims. Applying the prejudice test for employers needs to also be done consistently.

One of the main objectives of this policy is to achieve consistency in determining accident date for all injury types, including Gradual Onset Psychological Injury. How to determine accident date for injuries over a period of time is guided with this draft policy. Determining the correct accident date is the first step in the process of determining a timeline to file a claim / any need for an application to extend the deadline. A consistent approach to determining the 'happening of the accident' will contribute to consistency for all proceeding requirements.

## WCB NS Need an Overall Decision-Making Policy

Stakeholders indicated an overall decisionmaking policy would be valuable to ensure all decisions were made consistently within a guiding framework. An effective date policy for determining the happening of the accident will contribute to more consistent decision making. However, we acknowledge an overall decision-making policy is a relevant consideration. This issue did not form part of this policy consultation although it may be considered as part of future policy development.

# Appendix – C Jurisdictional Scan

Province	Legislation	Over Period of Time Injury (Disablements)	Gradual Onset Psychological Injury	Occupational Disease	PTSD
New Brunswick	Limitation of time for application  16(1)An application for compensation under this Part shall be made  (a) within one year after the date of the accident, or  (b) in the case of death, within six months after the date of the accident.  Note: does not differentiate between awareness for occupational disease and other injury types.	Accident Reporting and Application for Benefits Policy  WorkSafeNB considers the date of accident to be the date of diagnosis of a work-related cumulative trauma disorder.  Cumulative Trauma Disorder – an injury to musculoskeletal tissues resulting from repeated movement, overuse, incorrect posture, sustained force and/or vibration.	N/A- not compensable	Conditions for Entitlement-Occupational Disease Policy  Date of accident for hearing loss is determined using Policy 21-112 Occupational Hearing Loss.  For other occupation diseases, other than occupational hearing loss, the date of accident is the date when disablement as a result of the occupational disease first occurred. When there is no evidence of disablement, WorkSafeNB uses the date of diagnosis as the date of accident.	Conditions for Entitlement-Traumatic Mental Stress  Date of the accident is the date of the traumatic event.
Prince Edward Island	Limitation period (4) Compensation is not payable unless the claim for compensation is made within six months from the happening of the accident or, in case of death, within six months from the time of death.  Note: does not differentiate between awareness for occupational disease and other injury types.	Time Limit for Workers to File a Claim Policy  The WCB considers the date of accident for a disablement to be the earlier of:  The date a loss of earnings first occurs as a result of the disablement, or	N/A- not compensable	the WCB considers the date of ac cident for an occupational diseas e to be the earlier of:  •The date a loss of earnings first occurs as a result of an occupational disease, or  •The date the worker is diagnose d with the occupational disease.	In all situations, a worker has six months to file a claim for compensation from the date of exposure to a traumatic event. The date of exposure is the date of the accident.  If exposure to traumatic events occurs over a period of time (cumulative exposure), the date of the incident is the earlier of:

		The date the worker reports the disablement as work-related to the employer, health care provider or the WCB.			<ul> <li>The date a loss of earnings first occurs</li> <li>The date the worker reports the injury as work-related to their employer, health care provider or the WCB.</li> </ul>
Ontario	22 (1) A worker shall file a claim as soon as possible after the accident that gives rise to the claim, but in no case shall he or she file a claim more than six months after the accident or, in the case of an occupational disease, after the worker learns that he or she suffers from the disease.  Note: differentiates between occupational disease and other injury types.	In a gradual onset disablement claim, the date of injury is established using the date of first medical attention which led to the diagnosis, or the date of diagnosis, whichever is earlier. An example of a gradual onset disablement claim is where a worker gradually develops left wrist and hand symptoms from work-related duties and is diagnosed with carpal tunnel syndrome.	Determining the Date of Injury Policy  In a gradual onset disablement claim, the date of injury is established using the date of first medical attention which led to the diagnosis, or the date of diagnosis, whichever is earlier.	the WSIB determines the date of injury based on either:  • the date initial medical attention is sought for symptoms consistent with the diagnosis, or  • if medical continuity of compatible symptoms is unclear, the date a medical specialist conducts a full clinical assessment and determines the diagnosis.	WSIB operational policy document 11- 01-04 Determining the Date of Injury sets out that the DOI varies based on the type of claim and can refer to the date:  • of the actual incident  • on which an unexpected result of working duties occurs  • of first medical attention, or  • of diagnosis.  WSIB operational policy document 15- 03-13 Posttraumatic Stress Disorder in First Responders and Other Designated Workers is based on presumptive entitlement legislation for specific to certain occupations (claims for workers who are not first responders or a designated worker specified in the legislation can be considered under 15- 03-02 Traumatic Mental Stress or 15-03- 14 Chronic Mental Stress).  For presumptive PTSD claims, a WSIB decision-maker must first determine the type of claim. Where there is a clearly identifiable event cited by a worker as being the cause of their mental stress

Coalratalassus	44/1) (h) the element for	Data of Injury Dalian	DOI 00/2017 Parella de dis al	Data of Injury Dalisa	injury, the claim would be characterized as chance event claim and the date of the actual event would be the DOI.
Saskatchewan	44(1) (b) the claim for compensation is made within six months after: (i) the date the worker sustained the injury; or (ii) in the case of death, the date of death.  Note: does not differentiate between occupational disease and other injury types.	The date of injury for delayed onset injury claims is the date the worker initially: a. sought medical care for the injury; or b. reported the injury to the WCB; whichever occurs first.	POL 02/2017, Psychological Injuries is silent on determining accident. Date of Injury Policy would be used to determine the date of injury.	Date of Injury Policy The date of injury for communicable disease injury claims, although considered delayed onset, is the date the worker initially: a. sought medical care for the injury; b. reported the injury to the WCB; or c. informed the employer of the injury; whichever occurs first	POL 04/2013, Date of Injury Depending on the circumstance of the claim, the date of injury for a PTSD claim could fall under both the date of injury for an acute injury, or the date of injury for delayed onset injury claims.  If a specific work-related incident can be identified for the cause of the PTSD, the date of injury would be the date of the identifiable work-related incident.  If the cause of PTSD is the result of multiple work-related incidents, the date of injury would be the date the worker initially sought medical care for the injury; or reported the injury to the WCB, whichever occurs first.
Manitoba	Subject to section 109, unless application for the compensation is filed  (a) within one year after the day upon which the injury occurred; or  (b) in case the applicant is a dependant, within one year after the death of the worker:  no compensation in respect of any injury is payable under this Part.	No Policy	Adjudication of Psychological Injury Claims policy In psychological injuries there may be a latency period between the traumatic event(s) causing the injury and the onset of symptoms, making it more difficult to establish a clear, unambiguous date of accident. As a result, the WCB will deem the accident to have occurred on the day on which the worker's	Adjudication of Occupational Disease Claims policy  In cases where a worker's impairment or loss of earnings is caused by an occupational disease, the WCB will deem the accident to have occurred on the day on which the impairment or loss of earnings began.	Adjudication of Psychological Injury Claims policy  In psychological injuries there may be a latency period between the traumatic event(s) causing the injury and the onset of symptoms, making it more difficult to establish a clear, unambiguous date of accident. As a result, the WCB will deem the accident to have occurred on the day on which the worker's function became impaired or loss of earnings began, similarly to what is done with

British Columbia	Note: does not differentiate between occupational disease and other injury types.  S151 (3) Except as provided in this section and section 152, no compensation is payable unless an application for compensation is filed, or a determination under subsection (2) of this section is made, within one year after the date of the worker's injury, mental disorder, death or disablement from occupational disease.  Note: differentiates between occupational disease and other injury types.	Time Allowed for Submission of Application policy  For an injury, the date of injury is the date the worker experienced a physiological change subsequent to a work incident. A physiological change may result from a specific incident or a series of incidents occurring over a period of time.	function became impaired or loss of earnings began, similarly to what is done with occupational diseases under subsection 1(12) of the Act.  For a mental disorder, the date of the worker's mental disorder is the date the worker experienced a psychological change subsequent to exposure to a work-related event(s) and/or stressor(s). A diagnosis of a mental disorder is not required to establish the date of psychological change. Thus, the one year period for filing an application for compensation for an injury or mental disorder commences on the date of physiological change or psychological	Date of Injury for Occupational Disease Policy  The date of the worker's first seeking treatment by a physician or qualified practitioner for the occupational disease is used for administrative purposes. For example, this date will be used where there is no period of disability. Where the worker's condition was not at that time diagnosed as an occupational disease, the relevant date is the date the occupational disease is first diagnosed. These dates may also, in the absence of	occupational diseases under subsection 1(12) of the Act.  C3-24.00 Section 135 Mental Disorders Section 135 of the Act C3-24.10
			change or psychological change respectively, which is not necessarily the same as the date of subsequent disablement	dates may also, in the absence of evidence to the contrary, be used as the date of disablement for the purpose of determining compensation entitlement under Section 151 of the Act.	
Yukon	88 Application for compensation (1) An application for compensation must be made in a form that is acceptable to the board within 12 months after the date of the work-related injury.	Gradual Onset Musculoskeletal Injuries Policy  When adjudicating gradual onset musculoskeletal injuries, the date of the work-related	Adjudicating Psychological Injuries Policy Silent on accident date determination.	(In Act, not policy)  If a worker suffers from an occupational disease, for the purposes of this Part, the date of the work-related injury is deemed to be the earliest of the following	Adjudicating Psychological Injuries Policy Silent on accident date determination.

	(3) If a worker suffers from an occupational disease, for the purposes of this Part, the date of the work-related injury is deemed to be the earliest of the following dates, as determined by the board: (a) the date when the occupational disease results in a loss of earning capacity (b) the date when the occupational disease is diagnosed; (c) the date when the worker's death is caused by the occupational disease.	injury is deemed to be the earliest of the following dates: a. the date when the injury results in a loss of earning capacity; or b. the date when the injury is diagnosed.		dates, as determined by the board: (a) the date when the occupational disease results in a loss of earning capacity (b) the date when the occupational disease is diagnosed; (c) the date when the worker's death is caused by the occupational disease.	
Quebec		Politique 1.02 L'admissibilité de la lésion professionnelle  Accident date is the date of onset of pain.	Politique 1.02 L'admissibilité de la lésion professionnelle, page 28  Date of accident or date of manifestation of illness depending on the section of our Act used to accept the claim (accident or occupational disease)	Politique 1.01 Le dépôt d'une réclamation et sa recevabilité, page 3 Politique 1.02 L'admissibilité de la lésion professionnelle, page 11  The starting point begins when the following two conditions are met: 1. an illness is diagnosed by the healthcare professional. 2. the worker or his beneficiary acquires knowledge of a probable relationship between his illness and his work.  Knowledge can be acquired through various credible sources of information, including medical advice, union or employer	Date of accident or date of manifestation of illness depending on the section of our Act used to accept the claim (accident or occupational disease).

### Appendix - D

### **Relevant Sections of the Act and Policy**

#### **Workers' Compensation Act - Sections:**

- 2 (a), (o), (p), and (ad)
- 12 (3)
- Section 34 (1), (2) and (3)
- 37 (1)
- 40 (1)
- 83 (1), (2), (5), and (6)
- 86 (1)
- 90
- 92 (1), and (2)

#### Policy:

- Policy 3.1.1R5- Calculation of Gross Earnings
- Policy 3.3.6– Permanent Medical Impairment Process
- Policy 3.4.1R1– Calculation of Extended Earnings-Replacement Benefit
- Policy 5.6.1 Obligation, Duties, and Penalties
- Policy 9.3.3R2- Data Used in Rate Setting at Rate Group Level
- Policy 9.4.3R1- Data Used in Experience Rating
- Policy 10.1.1R- Accident Reporting Duties of Employers