



Issues Identification Paper:

Setting Effective Dates

1. Purpose:

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 as they determine, if a claim cost will impact their experience rate, the timeframe for re-employment, and accident reporting obligation.

Over the years inconsistency has developed in the WSIS related to how these dates are determined. Therefore, the WCB is considering developing policy on this topic to improve clarity and consistency to: 1) appropriately accept claims; 2) determine when legislated obligations have or have not been met; and 3) accurately reflect accident costs in employer rates.

The purpose of this paper is to identify and discuss issues related to how these key dates should be determined. Appendix-A lists relevant sections of the Act, regulations, and policy impacted by dates.

2. Background:

The following is a discussion of key requirements, benefits, and obligations set out in the Act and policy that require the determination of accident date, injury date, and PMI effective date.

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 non-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**.

Choosing the appropriate accident date is very important because the WCB uses this date to determine if a claim is "statute barred". A claim is statute 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. This means the claim 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.

Re-employment

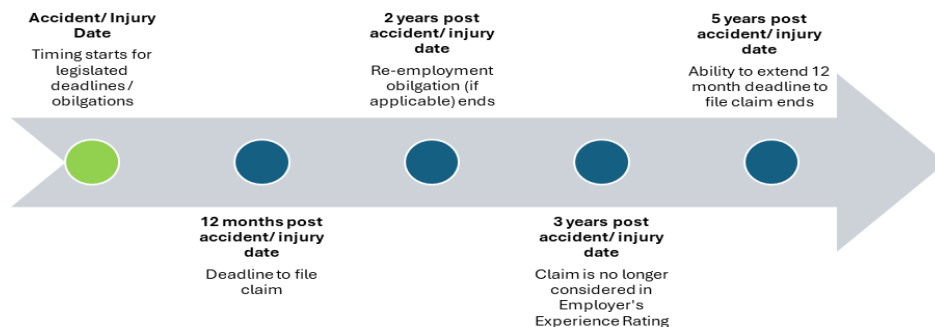
The term “date of injury” is used specifically in the re-employment sections of the Act (89-101). As stated in the Act, most employers are required to re-employ an injured worker from the date they receive notice of the injured worker’s ability to return to work until the earlier of the second anniversary of the **date of injury** or the 65th birthday of the worker. *Policy 5.6.1 – Re-employment: Obligation, Duties, and Penalties*, defines “date of injury” for the purposes of S. 89-101 of the Act as “the date that time loss commences.”

Establishing Loss of Earnings

As per S. 40 of the Act, the WCB uses a worker’s earnings as of the **date of injury** when setting the amount of earnings loss benefits.

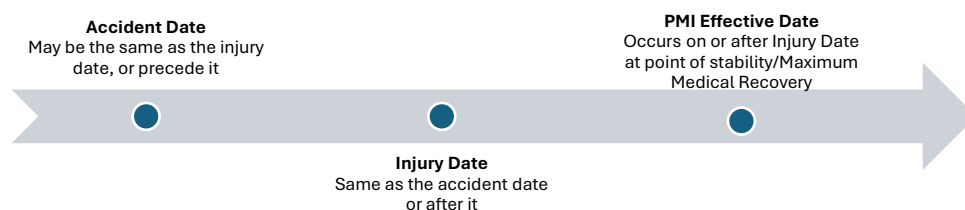
Rate Setting

When setting assessment rates, the WCB uses costs for claims with accident dates in a specified date range. When setting the baseline rate for a Rate Group for a particular year, the WCB uses claims costs and assessable payroll for the Rate Group over a period of five consecutive years for **all claims with accident dates during that period**. When it comes to experience rating, claims costs used will be the cash costs (actual cash payments on benefits) for the three-year period for **all claims with accident dates during that period**.



PMI Effective Dates

S. 34 of the Act states the WCB determines the existence and degree of a PMI. Part of this determination is identifying an effective date for the PMI. Depending on the severity of the injury, it is possible the PMI effective date may be the same date as the injury date, however, most times there is a gap in time from the injury date and when the individual’s injury has reached stability/maximum medical recovery. In this case, the PMI effective date is a date occurring some time after the injury date. This is because a PMI results from an injury and therefore, cannot precede the accident or injury.



3. Current Practice and Challenges:

In practice the term ‘accident date’ / ‘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, or PMI effective date is straight forward. For acute injuries (e.g. a broken arm), the accident date and injury date are **usually the same date** 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, and PMI effective 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. Currently four jurisdictions have effective date policies to guide decision making (NB, PEI, ON, SK).

4. Providing Your Comments

Stakeholders can contact the WCB Policy Team with comments or questions. We appreciate all feedback provided, however please note that requirements contained in the Act cannot be changed through policy. If you have any questions or concerns please contact Dayle O’Neil, Policy Analyst dayle.oneil@wcb.ns.ca or policy.email@wcb.ns.ca

Appendix – A

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