



## WORKERS' COMPENSATION: A Guide for New Brunswick Employers

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

This guide is for information purposes *only* and must not be interpreted as the legislation and/or policies administered by the WHSCC of New Brunswick.

# Our vision

*Healthy and safe workplaces  
in New Brunswick*

[www.whscc.nb.ca](http://www.whscc.nb.ca)

## Mission

*The Workplace Health, Safety and Compensation Commission is dedicated to the promotion of a safe and healthy work environment and the provision of services to workplaces, employers and the injured workers of New Brunswick.*

## Mandate

*Promote the creation of a workplace environment where all employers and workers view all occupational disease and accidents as being preventable.*

*Provide insurance and insurance related services to the employer community.*

*Provide compensation benefits, including rehabilitation, medical, vocational, counseling and safe return-to-work services to injured workers.*

## Our values

*We dedicate ourselves to the provision of prompt, effective, efficient and caring services to our clients.*

*We believe that a team approach ensures that all members of the Commission are working towards a shared vision, mission and goals.*

*We are committed to providing competent and energetic leadership that is focused on a clear direction for the Commission.*

*We ensure that our decisions are made with a sense of integrity, credibility, and accountability.*

*We ensure that our communications are based on trust, mutual respect, openness, and clear and reliable information.*

*We manage our human, material and financial resources effectively in responding to our mandate.*

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## HOW TO CONTACT THE WHSCC

# What is the WHSCC?

## WHAT IS THE WHSCC?

The Workplace Health, Safety and Compensation Commission (WHSCC) is dedicated to the promotion of a safe and healthy work environment and the provision of services to employers and workers in New Brunswick.

The WHSCC is an employer-funded Crown Corporation, and not a provincial government department. The WHSCC reports to the New Brunswick Legislature through the Minister of Training and Employment Development, and provides accident prevention services and occupational health and safety assistance, as well as cost-effective disability and liability insurance to approximately 13,500 employers and 285,000 workers in New Brunswick.

The WHSCC administers three pieces of legislation: (1) the *Occupational Health and Safety (OHS) Act* and regulations, (2) the *Workers' Compensation (WC) Act* and regulations and (3) the *Workplace Health, Safety and Compensation Commission (WHSCC) Act*.

## What is the *Workplace Health, Safety and Compensation Commission Act*?

The *WHSCC Act* is a piece of legislation that sets out the operational guidelines for the Commission, empowers it to administer the *OHS* and *WC Acts*, and provides for an arm's length Appeals Tribunal.

## What is the *Occupational Health and Safety Act*?

The *OHS Act* is a piece of legislation that 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 them three basic rights:

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

## What is the *Workers' Compensation Act*?

Like other pieces of workers' compensation legislation in Canada, the *Workers' Compensation Act* of New Brunswick is based on the Meredith Principles, which formed the basis of an 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 *Workers' Compensation Act*.

## 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.

**Universal immunity** Participating employers and their workers have universal immunity against lawsuits for work-related accidents.

**Exclusive judicial jurisdiction** The workers' compensation system has exclusive legal authority to make all decisions arising under the *Workers' Compensation Act*, subject to the rules of natural justice.

**Fair compensation and fair 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.

*Workers' compensation in New Brunswick is guided by principles either formulated by, or stemming from the work of the former Chief Justice of Ontario, Sir William Meredith, more than 80 years ago.*

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

**Comprehensive injury prevention and disability management** The WHSCC administers the *Occupational Health and Safety Act* and associated regulations. The WHSCC provides a comprehensive range of services to both prevent injuries and manage disabilities.

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



*The WHSCC's responsibility is to provide high quality accident prevention, occupational health and safety assistance, cost-effective workers' compensation and related services to employers, workers and injured workers.*

**Who pays for workers' compensation?**

New Brunswick's participating employers do. Registered employers are grouped according to industry and associated risk, and are assessed a premium based on their rate group and yearly payrolls. Employers are not permitted to 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 the entire assessed employer population are pooled, and then used to pay the present and future costs for workers who incur claims, as well as the administration costs of the compensation system. The intent of the system is not to balance each insured employer's premium payment exactly to the insured employer's costs, but rather to group and assess employers by similar industry and accident risk.

# [what is the WHSCC?]

## ROLES AND RESPONSIBILITIES

The WHSCC's responsibility is to provide high quality accident prevention, occupational health and safety assistance, cost-effective workers' compensation and related services to employers, workers and injured workers.

With regard to the workers' compensation system, the Commission and the province's employers, workers and health care providers are responsible for the following:

The **WHSCC** must:

- provide injured workers with clear information in a timely manner;
- provide injured workers with effective compensation and rehabilitation services to help them return to employment;
- work with workers, employers and labour organizations to promote injury prevention and develop effective disability management services; and
- maintain sound financial and administrative management practices.

**Employers** must:

- pay assessed premiums;
- report all injuries or work-related illnesses to the WHSCC; and
- help injured workers return to work by offering modified or alternative employment.

**Injured workers** must:

- fully participate in their rehabilitation plan; and
- maintain regular contact with their employer, the WHSCC and their health care providers.

**Health care providers** must:

- support the worker's recovery and return to work by working with the injured worker, the employer, other health care providers and the WHSCC.

# WHSCC coverage

## WHSCC COVERAGE

More than 13,500 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 the WHSCC?

Workers' compensation insurance offered through the WHSCC 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 the WHSCC, 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 require workers' compensation insurance?

The *WC Act* requires all employers with three or more workers at any time during the year to register for coverage with the WHSCC. These workers may be full-time, part-time, casual workers or non-registered contractors, subcontractors or brokers. This type of coverage is referred to as "Mandatory Coverage."

*Exception:* An employer in the fishing industry must register for mandatory coverage when twenty-five 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, coverage may be requested on a voluntary basis.

This is referred to as "Voluntary Coverage."

Employers making such an application must anticipate operating for at least six months and employ at least one full-time worker.

*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.

## DEFINITION OF A "WORKER"

The *Workers' Compensation 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, express or implied, whether by way of manual labour or otherwise, and includes:

- a) a learner;
- b) 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;
- c) a member of a municipal volunteer fire brigade; and
- d) 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.

worker

## 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.

## DEFINITION OF AN “EMPLOYER”

The *Workers’ Compensation Act of New Brunswick* describes an “employer” as:

- a) every person having in his service under contract of hire or apprenticeship, written or oral, express or implied, any worker engaged in any work in or about an industry;
- b) 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;
- c) a person who authorizes or permits a learner to be in or about an industry for the purposes mentioned in the definition “learner”;
- d) a deemed employer; and
- e) 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*.

## What if I am self-employed?

Individuals who are self-employed are generally not covered by the WHSCC. However, in cases where self-employed individuals are under contract, they become workers of the principal contractor and compensation coverage is provided through the principal contractor.

## How are contractors hired by my business covered?

Contractors and subcontractors who are not individually registered with the WHSCC are considered to be your workers for the purposes of workers’ compensation insurance, since the contractors are regarded as being regular workers.

### 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 the WHSCC, because they employ less 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 the WHSCC due to the number of workers they employ, you will not be assessed for their coverage.

### Contractors from outside New Brunswick

When a contractor from another jurisdiction is awarded a contract for work to be carried out in New Brunswick, this contractor is required to register with the WHSCC if:

- the contractor has three or more workers; and
- the duration of the job exceeds one week.

If neither of the above apply, you will be responsible for their coverage, as noted in the “Unregistered Contractor” section.

In order for the principal employer to avoid being assessed for unregistered out-of-province contractors, they should request from each contractor from another jurisdiction a letter from the resident jurisdiction’s workers’ compensation board or commission. 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’s Payroll Report* to avoid further assessment in New Brunswick.

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

If you are an employer that must have mandatory coverage for workers’ compensation insurance, all workers are covered, whether they are a full-time, part-time, temporary or casual worker.

### Who is not covered?

The *Workers’ Compensation Act* does not cover persons employed as domestic servants, Armed Forces personnel, professional athletes and members of the RCMP. For businesses that are either a proprietorship or partnership, it also does not cover family members of the employer who reside with the employer and who are under 16 years of age.

## [coverage inquiries]

If you are unsure of your coverage, call our assessments inquiry line at **1 800 222-9645**.

### 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 permitted, however, to deduct or recover from the contractor the portion of the assessment for labour and materials, hired equipment, courier or mail service and janitorial contractors. Labour-only contracts cannot be charged back.

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

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

- going out of business
- staff reductions to fewer than three employees
- business status change (*please see* “Factors Affecting Coverage”, p.13)

## [WHSCC coverage]

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

If your company is going out of business, you can cancel your account with the WHSCC at any time during the calendar year. To do so, you will need to advise the WHSCC in writing, and supply actual assessable earnings information up to the date of your business closure.

There are two reasons the WHSCC requires this information:

- To perform a final calculation of your premium for the calendar year that just ended. This will ensure that you have not been over- or under-charged for your coverage in that year.
- To close your account.

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

Once compensation coverage is obtained, 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, e.g. going from a proprietorship to an incorporated or limited company, you need to advise the WHSCC 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.

In the event that the account closure is due to a reduction in staff numbers, you will only be allowed to close the account on December 31. Upon receiving your *Form 100* in January of the following year, you will have to indicate the actual assessable earnings for the previous year, and then write a note 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, not to exceed the yearly maximum (includes trucks and/or brokers, tractors, backhoes, skidders, etc.)

Therefore, if your business has an agreement with a contractor to provide janitorial services totalling \$2,000, the assessment amount will be derived using 80% of the contract value, or \$1,600 multiplied by your assessment rate. You are entitled to recover 100% of that assessed premium from the contractor.

# Factors affecting coverage

## FACTORS AFFECTING COVERAGE

There are a wide variety of factors that can have an effect on your WHSCC coverage. These are outlined below.

### When are my workers covered?

Workers' compensation coverage 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 traveling?

Generally, if one of your workers is in an accident while traveling to and from work, they are not covered by workers' compensation. However, if they are traveling at your request, they may be covered. The WHSCC 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, outlined as follows.

### Temporary Coverage from the Receiving Jurisdiction

To obtain temporary coverage outside New Brunswick, the employer must communicate with the receiving jurisdiction (Commission or Board of destination) in order to determine whether coverage is mandatory in that jurisdiction. When coverage in the receiving jurisdiction is not mandatory, the WHSCC can recommend that coverage be extended.

### Extended WHSCC Coverage

To apply for extended WHSCC coverage, the employer must:

- be a registered WHSCC employer;
- carry on a business operation within the province of New Brunswick;
- provide the WHSCC with a written request for coverage with the names of the workers to be covered; and
- ensure that these workers are included and reported in his / her payroll.

In order to qualify for this coverage, the individual'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 – in advance of the worker's departure from New Brunswick – to the Commission (or Board) in question, containing the names of the workers requiring coverage, their destination and corresponding time period.

## *[factors affecting coverage]*

*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 a registration with the other jurisdiction provides such immunity.

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

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



# Registering

## REGISTERING WITH THE WHSCC

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

### When should I open an account with the WHSCC for workers' compensation coverage?

#### New employers

New employers who qualify for mandatory coverage are required to register with the WHSCC within 15 days of the commencement of the business 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 are required to register with the WHSCC within 15 days of the commencement of the third worker's employment, 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, you employ three or more workers, and the job you have been hired to complete will exceed one week, you are required to register with the WHSCC for coverage using the *Application for WHSCC 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 WHSCC coverage because it is a required component of a tender opportunity. The WHSCC can only extend coverage to businesses that meet the requirements (i.e. number of workers) outlined in the "WHSCC Coverage" section of this publication.

### What are the benefits of registration?

If you are required to register for workers' compensation coverage, and you fail to register with the WHSCC, 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 prior to my coverage being established?

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

# [registering]

*New employers who qualify for mandatory coverage are required to register with the WHSCC within 15 days of the commencement of the business.*

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

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

The application form will ask you to provide an estimate of your assessable earnings for the calendar year (from January 1, or the date operations began, or three workers were usually employed, or upon payment in the case of an application for voluntary coverage, to December 31.)

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

## **What information will I receive from the WHSCC?**

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

## **FACTORS AFFECTING YOUR ACCOUNT**

There are a variety of business circumstances that will have an effect on your WHSCC coverage. If your business experiences any one of the scenarios outlined below, contact the WHSCC immediately.

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

If your company changes its structure (e.g. incorporates), it may be considered a "new employer" for WHSCC purposes, and require a new account.

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

If your company has ceased operations, your annual WHSCC premium may be adjusted to reflect coverage for the period leading up to the date operations ceased.

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

Prior to purchasing any existing business, you should obtain a clearance certificate (*please see "Clearance Certificates", p.17*) from the WHSCC. This letter will ensure that there are no outstanding premiums owed by the previous owner.

### **What if my company expands?**

Employers who qualify for mandatory coverage as a result of hiring their third worker are required to register with the WHSCC within 15 days of the commencement of the third worker's employment, and must provide specific information about their operations and an estimate of the assessable earnings for the calendar year.

*Prior to doing business with another business or contractor from New Brunswick or any other jurisdiction, you should request to see their workers' compensation clearance certificate.*

## **CLEARANCE CERTIFICATES**

A clearance certificate is a WHSCC document that states in writing that the business in question does not have outstanding premiums owed to the Commission. All Boards and Commissions that provide workers' compensation insurance across Canada use clearance certificates or clearance letters to indicate that an employer's account is in good standing.

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

If a business does not have a clearance certificate (from the WHSCC 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?**

Prior to doing business with a third party (another business or contractor) from New Brunswick or any other jurisdiction, you should request to see their workers' compensation clearance certificate. If they do not have a copy available, you can contact the WHSCC's Assessments Inquiry line at 1 800 222-9645.

### **Will I receive a clearance certificate for my business?**

Upon request, you will receive a WHSCC clearance certificate indicating whether your account is in good standing. *Please note:* for businesses participating in the WHSCC's Monthly Assessments on Actual Payroll (MAAP) payment program, clearance certificates are automatically provided on a monthly basis.

You should keep your clearance certificate on file.

# Premium calculation

## CALCULATING PREMIUMS FOR WORKERS' COMPENSATION COVERAGE

The Commission uses a combination of components to determine an employer's premium for workers' compensation insurance coverage. The intent of the system is not to balance each insured employer's premium payment exactly to the insured employer's costs, but rather to group and assess employers by similar industry and accident risk.

### *[important dates]*

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

**February 28** Deadline for delivery of completed *Form 100* to WHSCC.

**March 31** Date by which payment of total annual premium amount plus any carry-forward balances must be paid, unless the date of the assessment notice plus 30 days is later. Then the latter date will take precedence. (*Payment option A*)

Date by which 100% of last year's adjustments and carry forward balance plus 50% of this year's assessment must be paid, unless the date of the assessment notice plus 30 days is later. Then the latter date will take precedence. (*Payment option B*)

**August 31** Date by which remaining 50% of total annual premium amount must be paid (plus accumulated interest). (*Payment option B*)

**November 30** Deadline by which you must report an increase in payroll estimates originally submitted for that year.

## **CALCULATING YOUR ASSESSMENT RATE**

WHSCC 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 the WHSCC. 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?**

Assessment rates are set by the WHSCC each year in the Fall. Several factors influence the setting of assessment rates such as the current financial obligations of the WHSCC, the prevailing economic environment, the cost of health care services, current adjudication policies, and accident / 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 prior year's assessments.

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

The provisional average assessment rate is a number that is obtained by taking the total forecasted assessment revenues and dividing it by the total forecasted assessable payrolls.

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

The actual average assessment rate is a number that is obtained by taking the total actual assessment revenues and dividing it 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, the WHSCC 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 in conjunction with the assessment rate to determine your premium for workers' compensation coverage.

*Employers are assigned to one of approximately 32 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. In addition, any issues raised during the past year regarding classification are reviewed. As a result of this review, it can be expected that employers will occasionally be classified into a different industry group because emerging experience suggests that the industry assigned to those employers belongs in a different group. It is also anticipated that industry groups will 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, with changes made only when warranted.

## [premium calculation]

*Instead of taking a 100% collective liability approach, where all employers are assigned a common assessment rate, the WHSCC uses a classification system to group employers according to their accident risk and injury costs.*

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

The first stage of the classification process is the assignment of Standard Industrial Classification (SIC) codes. New Brunswick's more than 13,500 registered employers are assigned to a classification code. They are classified based on their primary business activity, and not by the occupation of each worker employed.

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

Employers are then sorted into one of approximately 90 industry groups, according to their five-year accident costs, type of risk, and other factors.

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

The final stage of the classification system is the rate group. Employers are assigned to one of approximately 32 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.

### **Are there any 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 SIC codes.

#### **Capital construction**

If an employer undertakes capital construction using its own workers to expand, modify 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 to be 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 a 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 business activities partly in New Brunswick and partly outside this 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 activities**

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:

- whether 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;
- whether the product or service is used in the employer's principal business activity;
- whether the business activity is a retail store or wholesale outlet and whether that outlet is in a separate location or in a separate area within the manufacturing plant producing the goods;
- whether less than 50% of the goods being sold are provided by affiliated manufacturing divisions and whether retail activity is incidental to manufacturing;
- whether the business activity is performed by specific personnel as their sole function;
- whether 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 the Commission 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 and 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 which 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 activities**

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 criteria are present:

- More than 30% of the employer's total payroll is payable to operations located outside New Brunswick.
- The employer satisfies the Commission that 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. The Commission will apply a mathematical formula to apportion administrative payrolls.

## [premium calculation]

### 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?

The WHSCC introduced an Experience Rating System in 1990. The main purpose of the system is to improve equity in the sharing of workers' compensation costs among employers and to improve awareness of the importance of safety in the workplace by providing discounts and surcharges based on a comparison of employers' claim costs.

### How does the Experience Rating System work?

The Experience Rating System has been designed so as not to depart significantly from the collective liability principle. The system introduces individual assessment rates for participating employers, which allows their basic assessment rate (assigned at the classification stage) to be adjusted upward or

downward to reflect the employer's claims cost experience relative to their assigned rate group.

Only costs and assessable earnings from the previous three years are used in the calculation. Thus, for example, for 2004 rates, 2000, 2001, and 2002 assessable earnings and costs paid on 2000, 2001, and 2002 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 sufficient incentive for employers to improve their claims experience, while ensuring that all employers support the ongoing costs of workers' compensation.

### Who can participate?

Employers with a basic average annual premium of \$1,000 or more are automatic participants in the WHSCC's Experience Rating System. For these employers, the system acts as the final factor in calculating their premium.

More than 50% of the province's employers participate, representing in excess of 90% of all premiums collected and injury claims costs paid by the Commission.

## [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 with a basic average annual premium of \$1,000 or more are automatic participants in the WHSCC's Experience Rating System.*

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

An employer will be issued a Cost of Claims Statement on a monthly basis, when any payments have been made by the WHSCC which are applicable to an employer's account. The employer is encouraged to scrutinize the statement for accuracy of the information and report any discrepancies to the appropriate case manager at the Commission.

**Why are they important?**

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 did work for the company during the year.

**How are earnings reported for a proprietorship 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 sixteen residing with the employer as assessable earnings. However, the employer must report all subcontractors who did work for the business during the year.

# *[premium calculation]*

## **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.

A complete list of assessable earnings is as follows:

- Wages
- Salaries
- Commissions
- Bonuses
- Vacation pay
- Overtime pay
- Sick pay
- Honorariums
- Directors' fees
- Distribution of profits reported on a T4 or T4A
- Tips and gratuities included on a T4
- Call in or call back pay
- Shift premiums
- Labour value of contract workers
- Cash in lieu of a notice
- Amounts received for profit sharing
- Municipal counselor allowances reported on a T4 or T4A
- Employer's portion of RRSP contribution if available to the recipient prior to age 65
- Any other financial remuneration reported as income by the employer

## **What are non-assessable earnings?**

Non-assessable earnings include the following items:

- Taxable allowances for:
  - Travel
  - Tools
  - Clothing
  - Dry cleaning
  - Use of vehicle
- Dividends reported on a T5
- Retirement allowances
- 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 an amount 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's 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. This form must be received by the WHSCC on or before February 28 of each year, even if the employer's operation is seasonal or has ceased operations.

## [form 100]

You can send your *Form 100* to the WHSCC by mail or by fax. If you mail the form, please do not fax it, and vice versa.  
Fax: 506 632-2819

### What is a *Form 100* used for?

There are three reasons the WHSCC needs the information on *Form 100*:

- To perform a final calculation of the WHSCC premium for the calendar year just ended, to ensure that you have not been over- or under-charged for your workers' compensation insurance.
- To obtain an estimate of your payroll for the coming year, to prepare your WHSCC Assessment Notice (your estimated premium amount) for the current calendar year.
- To 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 handy to fill out *Form 100*?

You will find it helpful to have the following on hand to complete *Form 100*:

- previous year's financial records, T4 and T4 summaries;
- records of payments to contractors and subcontractors deemed to be your workers, along with a complete listing of all contracts awarded to individuals and companies;
- specific records that show the number of workers employed during the previous year;
- any information or records you require to estimate your current year's assessable earnings; and
- a copy of last year's *Form 100* (if applicable).

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

List on the back of *Form 100* all contracts awarded by you to individuals or companies over the course of the year. The WHSCC will use that information to calculate the 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?**

Please note that underestimation of the 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 the result is that I have underestimated my 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 the WHSCC without penalty.

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

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

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

Yes. The WHSCC has developed an alternative reporting method, called the Monthly Assessments on Actual Payroll (MAAP) Program. The MAAP Program allows employers to use either fax or an on-line tool, accessible by username and password on the WHSCC Web site ([www.whscc.nb.ca](http://www.whscc.nb.ca)), to report actual monthly payroll amounts, and then automatically pay a monthly premium amount using pre-authorized electronic funds transfer.

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

- The employer electronically files a statement of their actual payroll by the 15<sup>th</sup> of the following month.
- The WHSCC returns a statement of account to the employer.
- The employer has three business days to review and verify the statement.
- A minimum of three business days after the 15<sup>th</sup> of the current month, the assessed amount is deducted from the bank account of the employers' 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 cannot switch mid-year.

To be eligible to participate in the MAAP Program, you must have access to the Internet, or a fax machine capable of sending and receiving with a separate phone line.

To learn more about the MAAP program, or to request password access to the Web site, please contact us.

## PAYROLL AUDITS

### What is a payroll audit?

The purpose of payroll audits is to ensure the correct classification of an employer and the accuracy of the payroll and contractor information reported. Payroll and contractor records are to be made available to WHSCC employer services representatives upon request for audit purposes, as per the *Workers' Compensation Act*.

*Employers are required to retain five years of payroll and contractor information, not including the year in progress.*

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

Employers are required to retain five years of payroll and contractor information, not including the year in progress. The employer does not require permission from the Commission 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 your *Form 100* has been processed by the WHSCC. In the Fall of each year, employers will receive a notification of their assessment rate for the following year.

### What are the assessment notice payments for annually assessed (non-MAAP) employers?

Assessments may be paid by cash, cheque or money order via mail or at any WHSCC 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 may 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.  
*Please note:* Interest will be levied on a monthly basis on the unpaid outstanding amount, based on the applicable interest rate at that time.

## *[premium calculation]*

The full balance will become due and payable if the first payment required under option B is not made as scheduled. In such cases, the Commission will immediately take appropriate action to collect the full outstanding balance.

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

### **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 on a monthly basis, 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 business' health and safety record is an investment that will pay off both in the long and short term. The WHSCC offers many different resources to employers looking for assistance in this regard. Please do not hesitate to contact us.

### What are my responsibilities as an employer?

Under the *OHS Act*, employers must:

- 1) take every reasonable precaution to ensure the health and safety of their employees;
- 2) comply with the *OHS Act* and regulations, and any order made in accordance with them;
- 3) ensure that their employees comply with the *Act* and regulations, and any order made in accordance with them;
- 4) ensure that at the place of employment the necessary systems of work, tools, equipment, machines, devices and materials are maintained in good condition and are of minimum risk to health and safety when used as directed by the supplier or in accordance with the directions supplied by the supplier;
- 5) acquaint an employee with any hazard to be found at the place of employment in connection with the use, handling, storage, disposal and transport of any tool, equipment, machine, device or biological, chemical or physical agent;
- 6) provide such information, instruction, training and supervision as are necessary to ensure an employee's health and safety;

- 7) 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;
- 8) 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;
- 9) post a copy of the *OHS Act* and regulations in a prominent place where workers can see them; and
- 10) 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 the WHSCC 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; and
- the right to refuse dangerous work.

## [job site health and safety]

### **What is an arbitration?**

An arbitration is a process that is 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 an arbitration, you will be invited to attend, and will be asked to provide your side of the issue either orally or in written format. An arbitrator will listen to both sides and then deliver a decision that is binding on both parties.

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

If you employ more than 20 workers, the *OHS Act* states that a Joint Health and Safety Committee (JHSC) must be formed. The committee should be comprised 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 the WHSCC.

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

If you employ fewer than 20 workers, you are under no legislated obligation to have a JHSC at your job site. It may, however, be 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 on both parties.*

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

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

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

The WHSCC's health and safety officers have legislative 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 a productive working relationship with these officers can result in a reduction in accidents over the long run.

### **What happens 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. Non-compliance with an order written by a health and safety officer may result in charges being laid under the *Occupational Health and Safety Act*, which could result in significant fines or imprisonment.

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

More information on the WHSCC's inspection services is available in the Prevention section of the WHSCC's Web site ([www.whscc.nb.ca](http://www.whscc.nb.ca)). If you have any questions about a health and safety officer's visit, or an order that may have been written, please contact your regional WHSCC office.



## What does it mean if my company has been chosen as a WHSCC focus firm, or is part of a WHSCC focus industry?

Some industries and workplaces have significantly high accident records. Through statistical analysis, the Commission identifies these industries and companies, and focuses the attention of Commission staff to these areas. Strategies are devised for inspection, consultations, and business case models to improve the accident records of these companies and industries.

From the focus industry sectors, individual companies are selected for special attention. Prevention staff approach these companies for intensive intervention, and encourage them to implement full and improved health and safety programs. These companies will receive attention from health and safety officers, health and safety consultants, ergonomic consultants and education consultants, depending upon the individual needs of the company.

## What health and safety resources can I tap into at the WHSCC?

There are a wide variety of health and safety resources available through the WHSCC. These resources are outlined below.

### Health and safety models

The Commission has developed and is promoting a world-class health and safety model for New Brunswick workplaces, called **5\*22**. It is a health and safety model that is based upon five core fundamentals and 22 topic areas which, if fully implemented, will raise a company to a high level of health and safety practice. Included is an audit tool, which ensures that management's perception of the company's health and safety program is indeed understood by all levels of workers. The tool also provides a road map for improvement.

### WHSCC publications

The WHSCC publishes a wide variety of documents that can help employers improve health and safety. The Resources section of the Commission's Web site ([www.whscc.nb.ca](http://www.whscc.nb.ca)) contains materials on a wide variety of subjects, including:

- hazard alerts that pinpoint and inform about risks and hazards in a wide variety of New Brunswick industries;
- the WHSCC's newsletter;
- copies of the *Occupational Health and Safety Act*, the *Workers' Compensation Act*, and the *Workplace Health, Safety and Compensation Commission Act*;
- guidelines for specialized prevention initiatives such as ergonomics; and
- booklets covering subjects such as Joint Health and Safety Committee formation and management.

### Annual WHSCC Health and Safety Conference

The WHSCC holds the second largest health and safety conference in Canada on an annual basis. Expert speakers conduct workshops on all aspects of health and safety, and workshop sessions 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 accident

## IN CASE OF ACCIDENT

### What is an “accident”?

Under the *Workers’ Compensation Act*, an *accident must arise out of employment and in the course of employment*, and can be 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; and/or
- a disablement or disabling condition.

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

### What is an “occupational disease”?

An occupational disease is any disease that is peculiar to, or characteristic of, a particular industrial process, trade, or occupation, which is declared to be an occupational disease by regulation.

### What do I do if there has been an accident at my job site?

Normally, all accidents and injuries should immediately be reported to you. Early notice of the injury allows you to take steps to prevent additional injuries from occurring to other workers.

The accident must be reported to the WHSCC, regardless of whether the worker involved requires time off from work or medical attention as a result. You and the worker should complete the WHSCC’s Form 67 – *Report of Accident or Occupational Disease* and submit it to the Commission.

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

No. You and your worker are required by law to report the work-related injury to the WHSCC.

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

You can be fined if the accident is not reported. If you violate or fail to comply with any provision of the *OHS Act*, you are committing an offence and are liable on summary conviction to:

- a fine of not more than fifty thousand dollars and in default of payment, you are liable to the procedures laid down in the *Provincial Offences Procedure Act* in the event of default of payment of a fine;
- a term of imprisonment not exceeding six months; or
- both.

Your failure to report the injury in a timely manner may also result in the injured worker being denied compensation benefits.

### What is the reporting time frame required by the WHSCC?

There are separate accident reporting requirements under both the *WC Act* and the *OHS Act*. All accidents involving an employer or a worker who is subject to the *WC Act* must be reported to the Commission under the *WC Act*.

Notification to the Commission under the *WC Act* may still require notification under the *OHS Act*. Both workers (*WC Act*) and employers (*WC Act* and *OHS Act*) are responsible for reporting accidents.

Report the injury to the WHSCC:

**immediately** by calling 1 800 442-9776 if the accident causes or may cause a fatality, loss of limb, or occupational disease, or requires or may require hospitalization; or

**within 24 hours of occurrence** by calling 1 800 442-9776 in the case of an accidental explosion or an accidental exposure to a biological, chemical or physical agent at a

workplace. The employer is required to notify the Chief Compliance Officer within a period of 24 hours after its occurrence [Subsection 43(4) of the *Occupational Health and Safety Act*]; or

**within 3 days of notification** all accidents must be reported on a Form 67 – *Report of Accident or Industrial Disease* to the WHSCC within three days from the date of happening or from the date of receiving notice from the injured worker [Subsection 44(4) of the *Workers' Compensation Act*].

To facilitate reporting and to expedite the calculation of benefits, the Commission makes available the *Form 67* for employers to use to notify the Commission of workplace accidents. It is the employer's responsibility to ensure that the report is completed and promptly forwarded to the WHSCC.

You must report accidents to the Commission directly, even if a third party, e.g., RCMP, has already contacted the Commission.

## YOU SHOULD REPORT ALL 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 his / her 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 impact 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 to report

*When completing the accident report, it is important that you obtain information about the events leading up to the injury.*

**What sort of information should I collect related to the accident?**

When reporting the accident you are required to notify the Commission in writing of the following:

- the happening of the accident and the nature of it;
- the time of its occurrence;
- the name and address of the worker;
- the place where the accident occurred;
- the name and address of the physician or surgeon, if any, by whom the worker was or is attended for the injury; and
- any other particulars required by regulation.

When completing the accident report, it is important that you obtain information about the events leading up to the injury. You should ask the injured worker whether 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 other individual you have identified as a witness.

**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”?

There are two considerations the WHSCC uses when making a determination on a claim:

- 1) it must be shown that the injury occurred in the course of employment; and
- 2) whether the injury 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 the WHSCC.

## **What are the 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 the WHSCC within the appropriate notification period;
- keep accurate first aid records;
- work with the injured worker, their health care providers, and the WHSCC to develop an effective return-to-work plan;
- make every effort, short of undue hardship, to accommodate the injured worker if they suffer a work restriction (as per provincial Human Rights legislation); and
- maintain regular contact with the injured worker and the WHSCC.

### **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 the WHSCC;
- 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 WHSCC 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;

- tell 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 the WHSCC 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 the WHSCC;
- advise their adjudicator or case manager if they will be leaving the province or if they are moving out of the province; and
- participate fully in modified work accommodations made available by their employer and supported by their treating physician.

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

- send their reports to the WHSCC as soon as possible;
- help the injured worker understand what is wrong and what can be done to assist in their recovery; and
- work together with the injured worker, their other health care providers, and the WHSCC to develop an effective return-to-work plan.

## *[in case of accident]*

*The WHSCC has the right under the WC Act to gather evidence and investigate workplace accidents if deemed necessary to assist in the adjudication and management of a claim.*

### **The WHSCC must:**

- provide the injured worker with clear information about their case and the services available in a timely manner;
- provide the injured worker with effective compensation and rehabilitation services to help them return to employment;
- 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 in a safe and efficient manner;
- expedite medical management when necessary; and
- provide vocational assistance and conduct job modifications to assist in the return to work.

### **What happens if the WHSCC investigates the accident?**

The WHSCC has the right under the *WC Act* to gather evidence and investigate workplace accidents if deemed necessary to assist in the adjudication and management of a claim. The Commission may undertake an investigation regarding the facts of a claim if they are in dispute, if the accident is of a serious nature or results in a fatality, or if there is evidence of occupational disease. The WHSCC also investigates allegations of fraud and abuse that come to our attention.

# Compensation and rehabilitation

## COMPENSATION AND REHABILITATION

### What kinds of benefits are injured workers entitled to?

If an injured worker's claim has been accepted by the WHSCC, he / she 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 dependents of fatally injured workers; and
- assistance with funeral expenses.

### If one of my workers was injured at work, can I continue paying them while they're on WHSCC 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 the Commission all employment-related income received while on compensation. The amount of post-accident income earned by the injured worker only has an effect on their Loss of Earnings benefits. It 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 WHSCC entitlement exceeds 85% of pre-accident net earnings, income will be deducted from the worker's loss of earnings benefits.

### What happens if an injured worker is off work for longer 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, the Commission's goal is to return the injured worker to work in a safe and efficient manner. A case management approach is the Commission's way of coordinating everyone involved in the case to achieve that goal: the worker, the employer, and the health care providers.

### 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 rehabilitation.

### 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.

# [compensation and rehabilitation]

## 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 section 42.1 of the *Workers' Compensation Act*.

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

An employer with **between 10 and 20** workers must hold the position the worker held immediately before the accident for a period of one year, and permit the injured worker to resume work in that position.

An employer with **20 or more workers** must hold the position the worker held immediately before the accident for a period of two years, and permit the injured worker to resume work in that position.

### Modified Employment

If in the opinion of the WHSCC the worker is unfit to perform the pre-accident duties, the employer must permit the worker to resume work in a suitable position that may become available, 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 with you alternative work options that match their functional abilities.

*Please note:* the rules are different for workers doing construction work in the construction industry.

### Alternate Employment

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

## [section 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 the Commission, entitled to make application for compensation." *Workers' Compensation Act*, section 42.1(2)



## **What is disability management?**

If one of your workers has suffered a disability as a result of a workplace accident, you may be required to participate in the WHSCC's Disability Management program, as part of that worker's return-to-work plan.

Disability management is a program designed to minimize the impact of the disability, which often hinders the worker's ability to return to safe and productive work activities. It is not about managing the disability or the person with the disability. Instead, it is designed to involve employers in an effort to accommodate the needs of injured or ill workers.

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

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

The Training-on-the-Job 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**

The WHSCC has an "Access to Information" policy that provides the injured worker and/or the employer or their representatives access to a claim or employer file, or to relevant parts of the said file. There is a fee for this information. Forms for "Access to Information" are available at any WHSCC office.

# Appeals

## QUESTIONING A DECISION

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

Employers can appeal decisions of the WHSCC 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 by writing to the Assessment Services Department. Finally, you can request an appeal through the Appeals Tribunal.

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

Workers, dependents, and employers can appeal WHSCC decisions related to a claim. Before submitting an application of appeal to the Appeals Tribunal, you must provide all relevant information to the original decision-maker.

The original decision-maker is the person who signed the letter informing you of the decision. In providing all relevant information to the original decision-maker, you ensure that you obtain all of the services that you are eligible to receive without unnecessary delay.

### **Is there a time limit for appeals?**

Legislation effective June 1, 2001, imposed a time limit on appeals. As of that date, you have a one-year time limit from the date of the decision to file an appeal. WHSCC decisions made prior to June 1, 2001 are not affected by this change.

### **What is the Appeals Tribunal?**

The Appeals Tribunal operates at arm's length from the WHSCC. As an administrative tribunal, it operates on the premise of natural justice. Hearings require structure, must be fair, and are a tool to collect necessary information.

### **How do I submit an appeal?**

To submit an application of appeal to the Appeals Tribunal, you do not need to fill out any lengthy forms. However, you must submit the following information in writing to the Registrar:

- your name, address and claim or employer number;
- date of the decision being appealed;
- issue being appealed as well as your request;
- reasons supporting your appeal; and
- your preferred official language.

*The Appeals Tribunal holds its hearings in regions throughout the province in the official language chosen by the person submitting the appeal.*

**What is an Appeals Panel hearing?**

An Appeals Panel will consider your appeal at an Appeals Panel *hearing*. You may choose either an oral presentation or a paper review. The Appeals Panel consists of a Three-Person Panel or a Single-Person Panel.

A Three-Person Panel is made up of a Chairperson and two Panel members. The Chairperson is chosen from the Appeals Tribunal's list of individuals appointed for that purpose. The two remaining Panel members consist of a Worker Representative and an Employer Representative, also chosen from pre-established lists. Members of the Panel act on an impartial basis.

A Single-Person Panel is subject to the consent of all parties and consists of a Chairperson acting alone.

The Appeals Tribunal holds its hearings in regions throughout the province in the official language chosen by the person submitting the appeal. Appeals Panel decisions are *final* and delivered in writing.

**Can I bring a witness to my appeal?**

Any party to an appeal can bring witness(es) to the hearing. However, the Appeals Tribunal should be advised, in writing, of witnesses at least three weeks before the hearing date. The notice must include the name(s) of the witness(es) and must explain the purpose of having the witness(es) at the hearing.

**What about new documents or reports?**

Ordinarily, all relevant information should have been submitted to the original decision-maker. However, if this is not possible and it is necessary to submit documents to the Appeals Tribunal, then such information must be submitted at least three weeks prior to the hearing date. Any documents not provided three weeks prior to the hearing date, and presented at the hearing, are subject to the acceptance of the Appeals Panel.

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

Employers' Advocates are located throughout the province to help you on matters pertaining to the *Workers' Compensation Act* and, in particular, with the appeals process.

Employers' Advocate services are available to you at no charge.

## What happens after an Appeals Panel hearing?

After your hearing is finished, the Appeals Panel members will discuss the documentary and oral evidence, and render a decision. All parties will be informed in writing of the Panel's decision and reasons. Any decision, order, or ruling of the Appeals Tribunal is *final*. If your appeal is accepted, it will be sent to the Commission for implementation.

If your appeal is not accepted, there are two other options – outlined below – that you may want to consider.

### Court of Appeal

Any decision, order or ruling of the Appeals Tribunal is *final* and subject 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, within thirty days of notice of the Appeals Tribunal's decision, order, or ruling, apply to the Appeals Tribunal for a Statement of Facts.

### Reconsideration

Appeals Panel decisions are *final* and delivered in writing. However, decisions may only be reconsidered by the Appeals Panel when new, substantial information is submitted.

## Can my worker appeal a decision?

Yes. You and your worker both have an interest in your workers' compensation 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 Panel 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 Employers' 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 relating to your worker's claim. They can access the services of a Workers' Advocate, free of charge, or they can retain the services of a lawyer or other representative at their expense.

## How do I contact the Appeals Tribunal?

1 Portland Street  
PO Box 160  
Saint John NB E2L 3X9  
Telephone: 506 632-2200  
Toll free: 1 800 222-9775  
Fax: 506 633-3989  
E-mail: [appeals@whscc.nb.ca](mailto:appeals@whscc.nb.ca)

# Employers' advocates

## EMPLOYERS' ADVOCATES

### What do Employers' Advocates do?

Employers' Advocates are in place to help you with matters pertaining to the *Workers' Compensation Act*, as well as with the appeals process.

The Advocates are employees of the Department of Training and Employment Development and are independent of the WHSCC. Note that advocates have full access to all WHSCC files and records relating to your worker's claim, and to your appeal.

### Is there a fee for their service?

The services of an Employers' Advocate are available to you at no charge.

### How can an Employers' Advocate help me?

An Employer's Advocate can help you by:

- providing general information about the workers' compensation system, policies, procedures, etc.;
- advising you on what actions to take and by helping to gather the necessary information;
- determining if there is a problem with a worker's claim that can be resolved through an appeal;
- helping to prepare an appeal, written or oral; and
- appearing with you, or as your representative, at an appeal hearing.

### How do I access an Employers' Advocate?

Telephone or write the Office of the Employers' Advocate nearest you. You will need to provide them with some basic information concerning the claim and the nature of the problem. Always

refer to the WHSCC 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

Office of the Employers' Advocate  
Department of Training and  
Employment Development

470 York Street  
PO Box 6000

Fredericton NB E3B 5H1

Telephone: 506 457-3510

Fax: 506 453-3990

*Counties / Cities served: Carleton, York (Fredericton),  
Sunbury, Queens, Kings (Saint John), Charlotte.*

Assumption Place, 4th floor  
770 Main Street  
PO Box 5001

Moncton NB E1C 8R3

Telephone: 506 856-3176

Fax: 506 869-6608

*Counties / Cities served: Westmorland (Moncton),  
Albert, Kent, Northumberland (Miramichi),  
Gloucester-Acadian Peninsula.*

Harbourview Place  
275 Main Street, Suite 216

Bathurst NB E2A 1A7

Telephone: 506 547-2267

Fax: 506 549-5351

*Counties / Cities served: Gloucester (Bathurst), Restigouche  
(Campbellton), Madawaska (Edmundston), Victoria.*

# How to contact the WHSCC

*[emergencies]*

## **Health and Safety Emergencies**

Toll free: 1 800 442-9776

## **Claims Enquiry**

Toll free: 1 800 222-9775

## **Assessment Services**

Toll free: 1 800 222-9645

**Nova Scotia, PEI,  
Newfoundland,  
Quebec and Ontario**

Toll free: 1 800 222-9775

*[offices]*

## **Saint John**

1 Portland Street  
PO Box 160  
Saint John NB E2L 3X9

## **Head Office**

Telephone: 506 632-2200  
Toll free: 1 800 222-9775

## **Appeals Tribunal**

Telephone: 506 632-2200  
Toll free: 1 800 222-9775  
Fax: 506 633-3989

## **Grand Bay-Westfield Workers' Rehabilitation Centre**

### **Location**

3700 Westfield Road  
Saint John NB E2M 5Z4  
Telephone: 506 738-8411  
Toll free: 1 800 222-9781  
Fax: 506 738-3470

### **Postal Address**

PO Box 160  
Saint John NB E2L 3X9

## **Bathurst Office**

Place Bathurst Mall  
1300 St. Peter Avenue  
Suite 220  
Bathurst NB E2A 3A6  
Telephone: 506 547-7300  
Toll free: 1 800 561-2524  
Fax: 506 547-7311  
506 547-2982

## **Grand Falls Office**

166 Broadway Blvd., Suite 300  
PO Box 7244  
Grand Falls NB E3Z 2J9  
Telephone: 506 475-2550  
Toll free: 1 800 222-9775  
Fax: 506 475-2568

## **Moncton Office**

100 Arden Street, Suite 200  
Moncton NB E1C 4B7  
Telephone: 506 867-0525  
Toll free: 1 800 222-9775  
Fax: 506 859-6911

[www.whscc.nb.ca](http://www.whscc.nb.ca)