

If I decide to sue the third party myself, am I required to reimburse the WCB for the benefits I received during the 180-day election period?

If the worker proceeds with the lawsuit, any settlement money recovered from the third party action will be paid first to the WCB to cover any compensation paid to the worker during the 180-day election period. The WCB is the first payee/creditor under the legislation. Any remaining settlement money will go directly to the worker.

How do I tell the WCB that I want to proceed with a third party action on my own?

You must notify the WCB if you want to sue a third party instead of claiming WCB benefits. WCB staff will send you a *Right of Action Against a Third Party Election Form* which must be completed and returned to the WCB within 180 days from the date of your workplace incident. By completing the form you are clearly indicating whether you, or the WCB, will take action against the third party.

Who should I call for more information about third party claims?

If you have questions about third party claims, please contact the WCB's Legal Department at (902) 491-8917, or toll-free at 1-800-870-3331.

Where can I get more information about WCB benefits and services?

More information about WCB benefits and services is available in the brochure, *Worker's Handbook: A Guide to Your Workers' Compensation Insurance*.

The *Workers' Compensation Act* and the *WCB Policy Manual* are available on the WCB's website, www.wcb.ns.ca, and at public libraries throughout Nova Scotia.

The *WCB Policy Manual* can also be purchased from the WCB. For more information, call (902) 491-8100, or toll free in Nova Scotia at 1-800-526-6575.

The information included in this brochure adheres to the WCB's Corporate Information Protection Policy. Details about the policy can be found at www.wcb.ns.ca.

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Third Party Claims

A Guide to Workplace Incidents Involving a Third Party



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What is a third party claim?

- A milk truck driver is rear-ended by a distracted motorist.
- A meter reader is bitten by a homeowner's dog.
- A bouncer removes a rowdy customer from a nightclub and winds up with a broken nose.
- A courier slips and falls on a broken step outside a private residence.

These workers have been injured while performing their jobs. However, the cause of these incidents may be the result of negligence on the part of a third party.

As employees of firms registered with the Workers' Compensation Board of Nova Scotia (WCB), these workers are entitled to workers' compensation benefits for work-related injuries.

In return for these benefits they cannot take action against their own employer, or any other WCB-registered employers and employees.

If I'm involved in a third party claim, can I pursue legal action against the third party myself instead of claiming WCB benefits?

Injured workers cannot sue their WCB-registered employer or other covered workers. However, instead of claiming WCB benefits, they may take action (at their own expense) against a third party who is not a WCB-covered employer or worker. The options depend on the date of the workplace incident.

Injured workers benefit by having the WCB take legal action against the third party. They receive benefits regardless of whether the WCB is successful in collecting funds from the third party, and they don't have to worry about the legal issues or procedures involved in a third party action.

Workers injured:

- on or after April 16, 1999 have 180 days from the date of their workplace incident to decide whether to sue or allow the WCB to sue on their behalf. The worker may receive benefits during the 180-day period.
- between February 1, 1996 and October 1, 1998 are not entitled to sue a third party on their own. The WCB, under the legislation, is responsible for doing this on behalf of workers injured during this period.
- before February 1, 1996 can elect to either sue on their own, or ask the WCB to pursue a third party action on their behalf.

Can I collect WCB benefits during the 180 days?

Yes. Regardless of who takes legal action against the third party, the WCB will provide the injured worker with the benefits and services they are entitled to during the 180 days, unless the worker decides to sue a third party on their own. In this case, WCB benefits stop.

What if I elect to have the WCB take legal action against the third party?

The WCB will act on behalf of any worker who is covered by the *Workers' Compensation Act* and who was injured by actions or negligence of a third party when there is an issue that could result in monies being recovered.

In exchange for the WCB representing the injured worker and compensating them from the onset of the claim, workers cannot take legal action against the third party.

If the WCB proceeds with the action, settlement money recovered will be used to cover the costs of services and benefits provided to the injured worker, and for administrative costs and legal expenses. Any settlement money remaining after these expenses have been paid will go directly to the injured worker.

Injured workers benefit by having the WCB take legal action against the third party. They receive benefits regardless of whether the WCB is successful in collecting funds from the

third party, and they don't have to worry about the legal issues or procedures involved in a third party action.

Neither the worker, nor the WCB, can take legal action against a negligent party who is the injured worker's employer, co-worker, an employer whose employees are covered by the WCB, or any other covered employee. In some cases, automobile accidents are an exception to this rule.

Under what circumstances are automobile accidents an exception?

If a worker is involved in an automobile accident on the job (for example, a delivery van is sideswiped by another driver) the WCB, or the injured worker, can pursue action against the other driver, even if the driver is an employer or employee covered under the *Act*. However, neither the WCB, nor the injured worker can sue the injured worker's own employer or any co-worker.

What if my legal action against a third party is not successful?

If the worker decides to pursue a third party action on their own, the WCB is not responsible for providing benefits or services to the worker, or paying for costs associated with the claim or action.

The worker has given up this right as indicated in the *Right of Action Against a Third Party Election Form*. The worker is also responsible for repaying the costs of any benefits and services provided to them out of any monies recovered in an action or settlement.

If the worker decides to pursue a third party action on their own and obtains less money from the settlement than what they would be entitled to under the *Workers' Compensation Act*, the WCB may provide benefits amounting to the difference between the two amounts. However, the WCB must have given written approval to the settlement prior to it being accepted by the worker.

If the WCB pursues the third party action on the worker's behalf and is unsuccessful, the worker will continue to receive WCB benefits and services.