Purpose
To establish guidelines for communicable disease injury claims.

DEFINITION

Communicable disease means a disease that can be transmitted, or transferred by contact from one person to another.

Compulsory immunization means that a worker is required, either directly or indirectly, by the employer to be immunized. An example of an indirect requirement is where an unimmunized worker is directed by the employer that they are not allowed to work (with no pay) in the event of a communicable disease of pandemic proportions.

Voluntary immunization means an immunization that is provided by the employer as part of a broad program, and is received on a voluntary basis by the worker. Voluntary immunization is not a condition of employment.

BACKGROUND

1. Section 2(1)(r) of The Workers’ Compensation Act, 2013 (the “Act”) specifies that an injury means all or any of the following arising out of and in the course of employment:
   i. The results of a wilful and intentional act, not being the act of the worker;
   ii. The results of a chance event occasioned by a physical or natural cause;
   iii. A disabling or potentially disabling condition caused by an occupational disease;
   iv. Any disablement.

2. Section 20(1)(b) of the Act directs that the Workers’ Compensation Board (WCB) has exclusive jurisdiction to examine, hear and determine all matters and questions arising pursuant to this Act and any other matter with respect to which a power, authority or discretion is conferred on the WCB. Section 20(2)(b) of the Act adds that without limiting the generality of Section 20(1), the WCB has exclusive jurisdiction to determine whether any injury has arisen out of and in the course of an employment.

POLICY

Each communicable disease injury claim will be judged on its own merits with consideration to relevant medical information, the nature of the occupation and the extent of exposure.

General Adjudication Guidelines

1. As a requirement of the definitions of injury (Section 2(1)(r) of the Act) and communicable disease, the development of a claim must include gathering the necessary information to determine whether the communicable disease has arisen out of and in the course of employment (POL 03/2017, Arising Out Of and In The Course Of Employment).
2. The WCB may consider a communicable disease to have arisen out of and in the course of employment where all of the following conditions are met:
   a. There is confirmed exposure to the disease in the workplace.
   b. The time period when the worker contracts the disease is in close proximity to the confirmed workplace exposure, and
   c. The nature of employment increases the exposure risk of contracting the disease as compared to the general population.

3. Where a communicable disease is considered by the WCB to have arisen out of and in the course of employment, in general the determination of compensability will be made on the basis of a known medical diagnosis provided in a medical report.

Preventative Measures Against Communicable Disease

4. The WCB will not accept claims from workers who elect to stay away from the workplace to avoid exposure to the communicable disease, or are symptom free when quarantined or sent home as a precautionary measure by the employer. In such a case, no injury has occurred and time loss is not compensable.

5. Where immunization is required by the employer for the prevention of a communicable disease, and as a result of an adverse reaction (e.g., allergic) to this compulsory immunization the worker is medically required to be absent from employment, the WCB will consider the reaction and its consequences to be compensable.

6. Where the employer provides voluntary immunizations as part of a broad program, but does not require workers to be immunized as a condition of employment, the WCB will consider any adverse reaction to voluntary immunizations as non-work-related. Therefore, any injury resulting from voluntary immunization is not compensable.

Reporting Communicable Disease Injury Claims

7. Where there is confirmed exposure to a communicable disease in a workplace, the employer must submit an Employer’s Report of Injury (E1) form for each staff member that has fallen ill due to the disease. Each E1 form should include a description of the diagnosed illness and a statement outlining the nature and extent of exposure occurring in the workplace.

8. The date of injury for communicable disease claims is deemed to be the date the worker initially:
   a. sought medical care for the injury
   b. informed the employer of the injury, or
   c. reported the injury to the WCB
   whichever occurs first (POL 04/2013, Date of Injury).
Act Sec # 2(1)(r), 20, 23, 49
Effective Date 01 April 2010
Amendment 01 January 2014. References updated in accordance with The Workers’ Compensation Act, 2013
Application All communicable disease injury claims on and after the effective date
Supersedes n/a
Complements PRO 02/2010 Injuries – Communicable Disease
POL 04/2017 Injuries – Occupational Disease
POL 04/2017 Injuries – Occupational Disease
POL 03/2017 Arising Out of and In the Course of Employment
POL 02/2019 Decision Making
PRO 02/2019 Decision Making
POL 04/2013 Date of Injury
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BACKGROUND
1. The Workers' Compensation Board (WCB) has approved POL 02/2010, Injuries – Communicable Disease, which provides staff and customers direction around the process required to adjudicate communicable disease injury claims.

2. The following procedure provides guidance for the implementation of the policy.

PROCEDURE

General Adjudication Guidelines

1. To determine entitlement for communicable disease injury claims, Claims Entitlement staff will review each claim on its own merits, assessing whether an injury occurred and if it arose out of and in the course of employment. Claims Entitlement staff will first determine if the communicable disease arose out of employment (if exposure to the communicable disease occurred), and then whether the worker was in the course of employment when exposure occurred (reviewing the circumstances of exposure).

2. When determining if the communicable disease arose out of and in the course of employment, Claims Entitlement staff may use the following as a general guideline when gathering evidence to confirm exposure:
   a. Confirm with the employer the existence of a communicable disease in the workplace.
   b. Confirm that the worker had the opportunity to be exposed to the communicable disease in the workplace.
   c. Confirm that the incubation period of the communicable disease is clinically compatible with the worker's symptoms and the timing of the workplace exposure.
   d. Determine if any other workers in the same workplace have contracted the disease.
   e. Establish whether or not the exposure could have occurred outside of the workplace (i.e. was there a documented community outbreak of the disease, of pandemic proportions, and did the outbreak affect the workers immediate family), and
   f. Determine if the nature of employment increases the exposure risk of contracting the disease as compared to the general population. The WCB considers occupations that have increased exposure risk to include, but are not limited to:
      i. Health care workers, and
      ii. Long-term care facility workers.
3. Where it is determined that a communicable disease arose out of and in the course of employment, in general the determination of compensability will be made on the basis of a known medical diagnosis provided in a medical report.

Preventative Measures Against Communicable Disease

4. Where the worker suffers an adverse reaction (e.g., allergic) to a compulsory immunization that medically requires the worker to be absent from employment, Claims Entitlement will consider the reaction and its consequences to be compensable.

5. Where the worker suffers an injury that results from an adverse reaction to voluntary immunization, Claims Entitlement will consider the reaction and its consequences as non-compensable because voluntary immunization is not a condition of employment.

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