BOARD OF TRADE | EMPLOYER ADVISORS

WORKPLACENL DECISION REVIEWS



A worker or employer may sometimes question a WorkplaceNL decision on matters such as:

- Industry classifications
- Work injuries
- Return to work matters
- Co-operation decisions
- Re-employment obligations
- Any other decision of WorkplaceNL on the claim

Either side can request a review if they disagree with the decision. Employer Advisors can help employers with their own reviews, as well as with reviews submitted by workers.

Why Participate?

These decisions can have cost impacts and may require significant accommodations that can affect your operations. If you believe a decision is incorrect, it may be worth requesting a review. Employer Advisors can guide you through the process and provide expert advice at no cost.

INTERNAL REVIEW

When an employer receives a written decision from WorkplaceNL (i.e., Intake Adjudicator, Case Manager, Client Service Assistant, etc.) that they disagree with, the first step is to request an Internal Review. Key points about the Internal Review process include:

Requesting Internal Review

- **30 Day Timeline:** You must submit your request for an Internal Review within **30 calendar days** of the date you received the written decision from WorkplaceNL[1]. If a decision has been verbally communicated, ask that a written decision be provided so you can file an Internal Review.

- **How to Request a Review:** You can request a review online through your MyWorkplaceNL account or download and complete the **"Request for Internal Review"** form to submit via fax or mail. It must clearly state the *specific decision you disagree with and why you believe it is incorrect*. Employer Advisors can help you, free of charge, by preparing and focusing arguments based on the relevant sections of the legislation and policy

Internal Review Process and Decision

- **Review Format:** Internal Reviews are "paper-based", meaning you usually won't attend a formal hearing. *An Internal Review Specialist* examines the file for compliance with the legislation and policy. While it's a paper review, the specialist may call you to clarify details.
- **Possible Outcomes:** The Internal Review is required by Policy to **be completed within 45 days** of receipt of the written request[2]. There can be a number of possible outcomes, including confirming the decision, setting it aside, or sending it back for a new decision to be made.
- **Options After Internal Review:** When you receive your decision, you can review it with your Employer Advisor to clarify details and review your options moving forward. If you still feel the decision was made in error, you can proceed to the Workers' Compensation Independent Review Board (WCIRB).

WCIRB (EXTERNAL) REVIEW

The **Workers' Compensation Independent Review Board (WCIRB)** serves as the final level of review within the Newfoundland and Labrador workers' compensation system prior to court process. It is a decision-making body that operates independently of WorkplaceNL. The role of WCIRB is to ensure decisions correctly apply the legislation and policy. The process can be more involved, but **Employer Advisors can help you navigate the process and represent you before the WCIRB**.

Requesting WCIRB Review

- **30-Day Timeline:** You have **30 calendar days** from the date you receive a final Internal Review decision from WorkplaceNL to file a "Request for Review" with the WCIRB[3]. There can be circumstances which allow for delay, and this should be discussed with your Employer Advisor[4].
- **How to Request a Review:** Because the WCIRB is a separate agency from WorkplaceNL, you contact them separately from WorkplaceNL. Reviews can be requested online on the WCIRB website, or a form can be requested from their office. Your Employer Advisor can complete this on your behalf once an authorization form has been provided.
- **Content of Request:** WCIRB review requests can only be made if an error is identified in the WorkplaceNL decision[5]. Given that this proceeding is more formal, identifying specific legislative and policy requirements which have been breached is key. Your Employer Advisor can flag these items when they prepare the document after receiving your instructions.

WCIRB Process

WCIRB Hearings are more formal in nature and involve a more structured review process. The hearings require significant advanced notice and preparation. There is a file of relevant information put together by the WCIRB which needs to be reviewed so arguments can be submitted for your hearing date. When the hearing proceeds, there can be a number of options[6]:

- **Oral Hearing:** Conducted in person, by teleconference, or by videoconference with all the parties making submissions. Witnesses providing testimony are sworn-in/affirmed. Or;
- **Paper Review:** A Review Commissioner makes a decision based solely on the documents in the case file and written arguments submitted by the parties or their representatives.

When the hearing is complete, the WCIRB decision is **issued within 60 days** from the date of the hearing as per legislative requirements[7]. The decision will likely be longer and involve an extensive review of the evidence. Your Employer Advisor is available to assist you in this review and discussion.

The possible outcomes involve review denial, the review being allowed, or the matter going back to WorkplaceNL for a new decision. Employer Advisors are able to review the decision with you and explain the results.

Note: If you are not satisfied with a WCIRB decision, you may be able to request a reconsideration, but this is limited and not always available. You should speak with your Employer Advisor about your options.

Beyond this, the next step is a **Judicial Review** through the Supreme Court of Newfoundland and Labrador. You should consult with legal counsel regarding your options if you wish to proceed to a court process.

All Policies are available at https://workplacenl.ca/resources/policies-procedures-legislation/"
[1] Policy AP-01: Internal Review
[2] Policy AP-01: Internal Review
[3] S. 39(1) of the Workplace Health Safety and Compensation Act, 2022 (the Act)
[4] S. 39(2) of the Act
[5] S. 39(3) of the Act
[6] S. 40(3) of the Act
[7] S. 40(14) of the Act
[8] S. 41 of the Act

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