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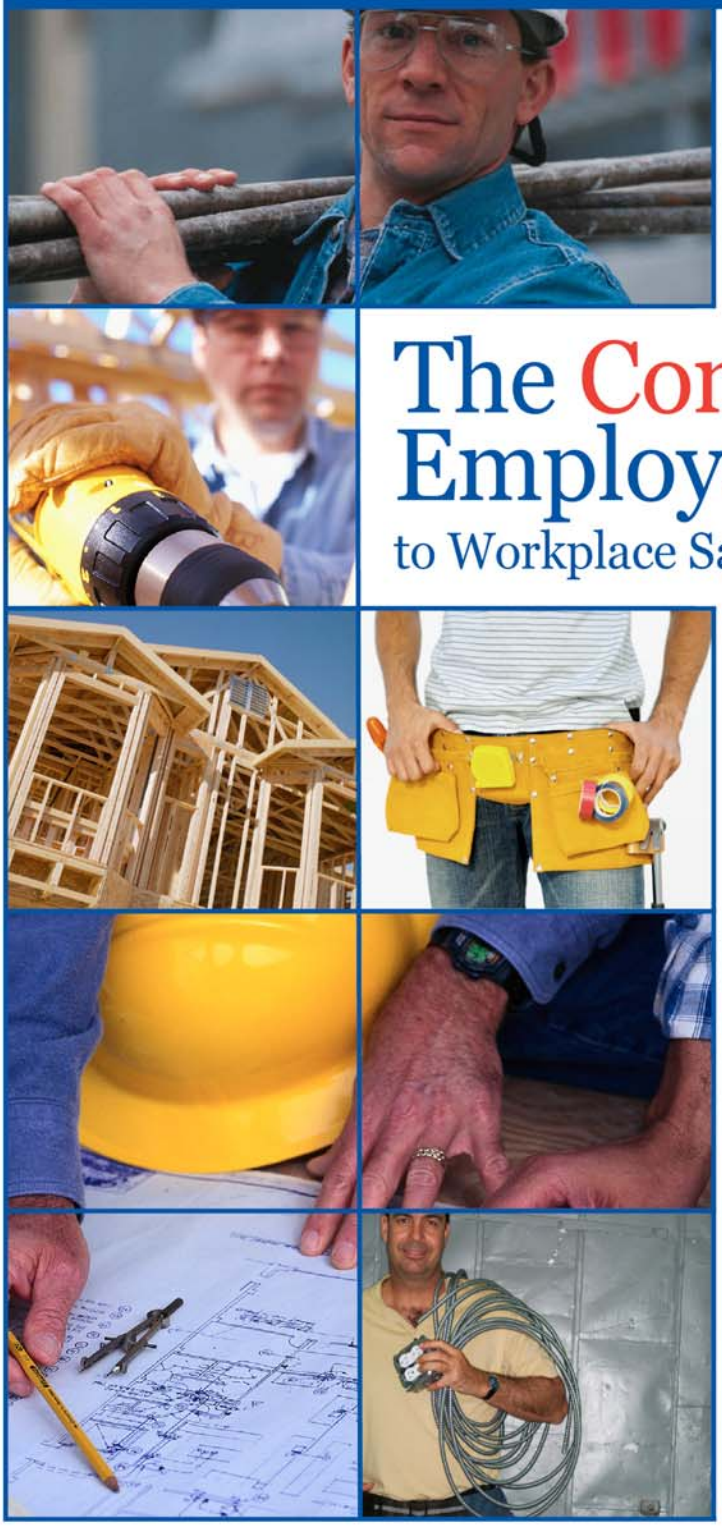
Ontario



The Construction Employer's Guide

to Workplace Safety and Insurance

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The Construction Employer's Guide to Workplace Safety and Insurance

This guide is designed to help construction employers manage workplace safety and insurance issues for their injured construction workers. It provides basic information and answers to frequently asked questions.

Construction employers, and non-construction employers, who are managing WSIB claims for non-construction employees, i.e., office staff who do not work at a construction worksite, should download ***The Employer's Guide to Workplace Safety and Insurance*** from our website at www.employeradviser.ca, as the obligations regarding re-employment for non-construction workers are different.

Since the workplace safety and insurance system is complex, you may have more questions than we could include in this guide. If you need help to apply this information to your particular situation please contact us.

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Send us your e-mail questions: askoea@ontario.ca

The information in this guide is based on the *Workplace Safety and Insurance Act, 1997,* and subsequent amendments.

The Construction Employer's Guide to Workplace Safety and Insurance

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OFFICE OF THE EMPLOYER ADVISER

The OEA, and how it can help you

The Office of the Employer Adviser (OEA) is an independent agency of the Ontario Ministry of Labour (MOL) and has been helping Ontario employers since 1985. Our experts can help you manage workplace safety and insurance costs (formerly referred to as "workers' compensation") to give your business a competitive advantage. We provide expert advice to any size employer, and represent primarily employers who employ fewer than 100 employees. We also offer information on our website. We don't charge any fees for our services because we are funded through the premiums or administration fees you pay to the Workplace Safety and Insurance Board (WSIB).

OEA services for employers

1. Advice

We have professional advisers experienced in all aspects of workplace safety and insurance answering your telephone queries in our advice centre. We help to resolve disputes early in the process and ensure you are treated fairly at all levels in the workplace safety and insurance system. We give you the information you need to get injured workers back to work safely. We provide you with practical advice on claims and revenue matters.

2. Representation

Primarily for employers who employ fewer than 100 workers, we provide representation at appeals at the WSIB and the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

3. Education

We have publications designed to meet the day-to-day needs of employers regarding the workplace safety and insurance system. Visit our website at www.employeradviser.ca.

Contacting the OEA

Telephone the OEA at 1-800-387-0774 or in Toronto at 416-327-0020, or send us your questions by e-mail at askoea@ontario.ca.

INTRODUCTION

Overview of the workplace safety and insurance system

Workplace safety and insurance is a no-fault insurance system for work-related injuries and diseases that is governed by the *Workplace Safety and Insurance Act, 1997* (WSIA). This means that no matter how careful the employer, or how careless the worker, if the injury is work-related the worker may be entitled to benefits.

The WSIB is responsible for administering the WSIA.

REGISTRATION

Who needs to register with the WSIB

If you hire workers, including family members, or apprentices for your business you must register with the WSIB within 10 days of hiring your first worker if you are in a compulsorily covered industry.

Likewise, if you acquire any or all of an existing compulsorily covered business with employees, whether through purchase, lease, transfer or other means, you must register with the WSIB within 10 days of acquiring the business.

You should always check with the WSIB, preferably in writing, to determine whether or not you need to register.

Precautions when acquiring an existing business

If you acquire an existing business you will inherit the seller's accident history and financial obligations, including any money owed to the WSIB. To protect yourself, you should get a purchase certificate from the WSIB. A purchase certificate is a document the WSIB will issue if the original employer's account is in good standing, on the date the business is sold.

If a purchase certificate is issued, the WSIB will not hold the purchaser liable for any amounts charged to the original owner's account, up to the date the business changed hands.

Either the original employer or the purchaser can request a purchase certificate, in writing or by telephone, by providing the vendor employer's name and WSIB account number(s), the purchaser's name and address, and the fax number and/or address to which the certificate should be sent. The vendor employer needs to provide authorization to release its account status information before the certificate can be given to the purchaser.

For audit purposes, purchasers must keep a copy of any purchase certificate received. Both the purchaser and the vendor are required to keep a copy of any purchase certificate issued *directly* to them by the WSIB.

Registration for independent operators/contractors

If you have no employees, and meet the WSIB's criteria for independent operator (IO) status, you are not required to register with the WSIB. You should check with the WSIB, preferably in writing, to determine whether or not you need to register.

Bill 119 will change this in 2012 by requiring IOs, sole proprietors, partners and executive officers in the construction industry to register as employers with the WSIB.

How to register

Registration forms are available on the WSIB's website at www.wsib.on.ca. You can also call the WSIB at 1-800-387-0080 to have one sent to you. The WSIB will assign account and firm numbers to your company once you have been registered.

There currently are two types of registration processes depending on whether you are an employer, or an individual applying as an IO, a sole proprietor, a partner or an executive officer of a corporation.

1. Employer registration

This process is for a business that hires one or more workers. Employers must notify the WSIB within 10 days of hiring their first worker.

2. Optional insurance request/change

This is the current voluntary registration process for IOs, sole proprietors, partners and executive officers of a corporation. WSIB coverage is not automatically granted. The WSIB will decide whether an individual qualifies for optional insurance.

Potential penalties for failing to register

You will be charged prior unpaid premiums, plus interest and penalties. Individuals may also be charged with an offence and, if found guilty may be fined up to $25,000 or sentenced to six months imprisonment or both for each offence. A corporation may be fined up to $100,000 for each offence.

COVERAGE

Who is covered by the WSIA

Workers are covered by the WSIA. A "worker" includes anyone employed under a contract *of* service or apprenticeship with an employer carrying on a business listed in Schedule 1 or Schedule 2 of the WSIA. A worker performs work for an employer in return for wages or a salary. The employer has control over the work, as well as where, when and how it is done. A worker can be employed full-time, part-time or seasonally, and can be a learner, a student, a person the WSIB deems to be a worker, and a pupil deemed to be a worker under the *Education Act*.

Who can claim benefits under the WSIA

Workers or their dependents can submit a claim for WSIB benefits if the worker suffers an injury, disease or death that arose out of and in the course of employment, and the following three conditions are met:

1. the worker's employer is subject to compulsory coverage under the WSIA
2. the individual is considered to be a worker under the WSIA (see above), and
3. the injury happened in Ontario, or the criteria specified in ss. 18-20 of the WSIA are met if the injury happened outside of Ontario.

Mandatory WSIB coverage for Schedule 1 and 2 employers

The WSIA establishes two categories of industries to which mandatory WSIB coverage applies – Schedule 1 and Schedule 2. Workers of employers listed in either one of these categories are entitled to claim WSIB benefits if they are injured on the job, develop a work-related disease or die, even if their employer has not registered with the WSIB.

a) Schedule 1 employers

Schedule 1 employers pay WSIB premiums and are subject to the collective liability provisions of the WSIA. The compulsorily covered activities in Schedule 1 are divided into nine industry classes under Ontario Regulation (O. Reg.) 175/98:

- forest products
- mining and related industries
- other primary industries
- manufacturing
- transportation and storage
- retail and wholesale trades
- construction
- government and related services, and
- other services (including supplying labour, restaurants and hospitality).

b) Schedule 2 employers

Schedule 2 employers are self-insured. They pay the full amount of their WSIB claim costs plus an administration fee that is set annually by the WSIB. Schedule 2 industries

are also listed in O. Reg. 175/98 and include provincial and municipal governments, Crown corporations, telephone companies licensed by the federal government, airlines, and railways.

Industries or business activities not covered by the WSIA

There are over 100 industries that are omitted from mandatory coverage because they are not listed in either Schedule 1 or Schedule 2. These include banks, insurance companies, trust companies and other financial institutions, law firms, real estate agencies, business associations, recreational and social clubs, trade unions, private schools and universities, children's camps, travel agencies, and health clubs.

These employers can apply for "by application" coverage under Schedule 1. If the WSIB accepts their application, these by application employers are treated the same as Schedule 1 employers. Any application employers who subsequently want to cancel their application coverage must pay a departure fee.

Excluded individuals who can apply for optional insurance

The following individuals are excluded from the definition of a "worker" but can apply for voluntary WSIB coverage, also known as "optional insurance," if they are carrying on business in an industry included in Schedule 1 or Schedule 2:

- executive officers of a corporation
- IOs who operate a business, who do not employ any workers, and who have completed a WSIB independent operator questionnaire
- sole proprietors and
- partners in a business.

How Bill 119 will change this

Bill 119 which extends mandatory coverage to IOs and sole proprietors will also make it mandatory that executive officers and partners employed or working in construction pay premiums on their earnings to the WSIB. The WSIA and O. Reg. 47/09 allow one partner or one executive officer to be exempt, if they do not do any construction work and a declaration is filed with the WSIB. The WSIB is now developing the policies and administrative processes that are required to implement this legislation to come into effect in 2012.

EMPLOYER COSTS

WSIB premiums

The WSIB maintains an insurance fund that is made up of annual premiums paid by Schedule 1 employers. By contributing to the insurance fund, construction employers have a collective liability system for their accident claim costs – they do not have the

individual responsibility for paying for actual claim costs. An employer's premium payments are based on the WSIB's classification of the employer's business activity (which determines the premium rate) and the employer's total insurable payroll. The annual premium paid by an employer is equal to its annual insurable earnings (payroll costs), multiplied by the premium rate and divided by 100.

$$\text{Premium} = \frac{\text{Annual Insurable Earnings} \times \text{Premium Rate}}{100}$$

Each fall, the WSIB sets the premium rate for each rate group, and announces the maximum insurable amount of workers' earnings, for the following calendar year. Employers pay premiums only up to the insurable amount. The maximum insurable earnings ceiling for an individual worker in 2011 is $79,600.

Additional costs you could incur

The WSIB may levy penalties for various offences, including

- failing to register your business within 10 days of hiring your first worker
- failing to report an accident
- not reporting, or incorrectly reporting, your premium information
- not submitting your payroll reconciliation statement by March 31st each year if your annual payroll is $300,000 or more
- underestimating your earnings
- knowingly making a false or misleading statement to the WSIB
- wilfully failing to inform the WSIB of a material change in circumstances, and
- contravening rules regarding the disclosure of confidential information.

Individuals may be fined up to $25,000 and/or imprisoned for up to six months for each offence. Corporations are liable to a fine of up to $100,000 for each offence.

As of December 1, 2010, employers who are found in breach of their work reintegration (WR) and/or re-employment obligations are also subject to additional financial penalties that are outlined in the WR and re-employment sections of this guidebook.

Experience rating programs

Experience rating programs are primarily intended to achieve greater insurance equity in premium pricing for Schedule 1 employers based on their accident and claim cost experience in comparison to the industry rate group average. Experience rating also plays a role in reducing accidents and occupational diseases, and promoting early and safe return to work (RTW). Schedule 1 employers may receive a refund on their premiums by achieving these objectives. If these objectives are not met, Schedule 1 employers pay a surcharge on their premiums.

The WSIB may also apply a "Fatal Claim Premium Adjustment" to the accounts of Schedule 1 employers if a traumatic fatality occurs at their workplace. This policy

applies to all decisions made on or after March 10, 2008. The Fatal Claim Premium Adjustment may be appealed.

There are three experience rating programs:

- Council Amendment to Draft #7 (CAD-7)
- Merit Adjusted Premium Program (MAP), and
- New Experimental Experience Rating (NEER).

Employers in Schedule 1 are grouped into one or more of these programs based on the size of their payroll and their business activity.

All of the experience rating programs are currently under review as part of the WSIB's year-long Funding Review. The consultation period is expected to end in November 2011.

1. CAD-7

CAD-7 is the experience rating program for construction employers that have annual premiums over $25,000. CAD-7 compares the employer's actual number (frequency) of claims over two years, and claim costs over five years, to the expected frequency of the rate group and costs associated with the size of the workforce. The factors included in the calculation are as follows:

- a "rating factor," ranging from 0.3 to 2.0
- the "average expected accident costs," which are expressed as a percentage of the average amount of premiums the employer paid over the rating period
- the "employer cost index," using the employer's actual accident costs for the two-year period being considered, compared to what the WSIB expects those costs to be, based on the employer's premiums and taking into consideration any cost relief the employer has requested that has been approved; the cost index ranges from 1.00 (the best) to -4.00 (the worst)
- the "employer frequency index," comparing the actual number of lost-time injuries the employer has to the expected number of injuries over a two-year period, with an index ranging from 1.0 (the best) to -4.0 (the worst); be aware that a new claim under CAD-7 does not count as a frequency until there is full or partial loss of earnings (LOE) for eight days (the WSIB is responsible for the costs of a claim from the date of accident), or if non-economic loss (NEL) benefits are paid and LOE benefits are not paid, and
- the "employer performance index," which is a weighted average of the employer's cost index and frequency index, at two thirds and one third respectively.

If the actual frequency (lost-time claims) and costs are lower than expected, the employer may receive a refund. If the actual frequency (lost-time claims) and costs are higher than expected, the employer will receive a surcharge.

CAD-7 automatically excludes the costs of claims arising from the following long-latency illnesses from its calculations: Acquired Immune Deficiency Syndrome (AIDS), carcinoma, chest diseases due to aluminum and cadmium exposure, chronic noise exposure, chronic obstructive lung disease, pneumoconiosis due to asbestos, silica, talc, hard metal (cobalt) and other mineral dust, and Scleroderma. The rate group shares the costs of these claims.

In the year a traumatic fatality occurs, a premium increase equivalent to the CAD-7 refund an employer is entitled to receive is applied to the employer of the deceased worker – in effect eliminating the CAD-7 rebate for that year.

2. MAP

MAP is the merit incentive program for all employers, including construction employers, with annual premiums between $1,000 and $25,000 excluding any adjustment by any of the WSIB's experience rating programs. Once you qualify for MAP you will remain in MAP for at least 3 years, despite premium fluctuations below $1,000 and over $25,000.

MAP reviews the number of claims with more than $500 in costs over a three-year period. Claims over $500 are included in your accident record, while claims under $500 are not included. Employers who have no claims with costs over $500 during the period in review will receive a 5-10% discount off their premiums. Employers who have one or more claims with costs over $500 during the period in review will receive a premium increase of up to 50%. Any claim costing over $5,000 will result in an automatic 10% surcharge on the employer's premium rate, plus any other MAP adjustment.

MAP automatically excludes the costs of claims arising from the following long-latency diseases from its calculations: AIDS, carcinoma, chest diseases due to aluminum and cadmium exposure, chronic noise exposure, chronic obstructive lung disease, pneumoconiosis due to asbestos, silica, talc, hard metal (cobalt) and other mineral dust, and Scleroderma. The rate group shares the costs of these claims.

A fatality claim will automatically result in a 25% surcharge on the employer's premium rate, plus any other MAP adjustment.

A MAP adjustment for a claim involving a third party is determined by pro-rating the claim costs and any special adjustments according to the percentage of liability of the parties involved.

3. NEER

NEER is the experience rating program for non-construction employers that pay annual premiums over $25,000.

How to control the size of your rebate or surcharge

The best way to control the size of your rebate or surcharge is to reduce claim frequency and claim costs through prevention, early and safe return to work, and cost

relief measures. The most effective way to reduce claim frequency is through prevention, which can be as simple as complying with employer obligations under the *Occupational Health and Safety Act* (OHSA). Once an injury has occurred it is important to return the injured worker to work as quickly and safely as possible. More prevention assistance can be obtained from the Infrastructure Health & Safety Association at www.healthandsafetyontario.ca.

Second Injury and Enhancement Fund (SIEF), cost transfer and third party cost relief are three cost relief methods that Schedule 1 employers may use to reduce the cost of a claim. The WSIB either grants or denies cost relief based on the merits of each request.

SIEF transfers LOE benefits and health care costs from a Schedule 1 employer to the employer's rate group. Employers may receive SIEF when a worker's pre-existing condition or prior disability contributed to the work-related injury, or prolongs or enhances the period of the work-related disability. You can apply for SIEF relief by writing to the WSIB Case Manager and outlining the pre-existing condition(s). The WSIB may grant relief based on the supporting information in the claim file. The amount of relief granted depends upon the severity of the injured worker's pre-existing condition and the severity of the injury. The amount granted could be between 25% and 100%.

Cost transfers allow employers in Schedule 1 to apply to have the claim costs transferred to another Schedule 1 employer due to negligence on the part of the other Schedule 1 employer or worker. A request for a cost transfer should be made in writing to the Case Manager.

Third party cost relief allows a Schedule 1 employer to ask the WSIB to recover the accident costs for the employer's injured worker if the injury is caused by a third party who is neither another Schedule 1 employer nor a Schedule 1 worker. Any money recovered from the third party will be used to offset the injury employer's costs.

INDEPENDENT OPERATORS

Identifying IOs

People who work under contracts *for* service and do not employ any workers are considered IOs. An IO agrees to do specific work in return for payment. The payer does not necessarily control the way in which the work is done, or the times and places it is done.

How to ensure an IO you hire is not treated as a worker by the WSIB

You must follow WSIB procedure. If you don't, the WSIB may deem the IO to be your worker, and require that premiums be paid on the labour portion of the contract with the IO.

The WSIB has an industry-specific questionnaire for the construction industry which you can download from the Employer Forms section of the WSIB's website at: www.wsib.on.ca. The questionnaire incorporates the principles of an organizational test to help determine whether someone is a worker in an employer's organization, or an IO running his/her own business.

Both the principal and the IO must complete and sign the questionnaire, and submit it to the WSIB. WSIB decision-makers review the questionnaire and any other information that is relevant to the terms and conditions for service, i.e., invoices, contracts, purchase orders, business cards, etc. When all of the criteria considered together indicate the person has a separate business that is not integrated into the employer's business, the WSIB considers that person to be an IO. If, however, the WSIB decides the person does not have a lot of independence in doing the work and that his/her decisions have an insignificant effect on his/her opportunity to earn a profit or suffer a loss, it considers that person to be a worker. The questionnaire is necessary even if the IO is incorporated.

How to protect your business from WSIB IO charges

You should fill out and submit a questionnaire if you are planning to hire an IO, *before* the IO does any contract work for you. If the WSIB concludes the person is a worker, you will need to pay premiums to the WSIB for that worker's wages and comply with all other WSIB policies. If the person is an IO, you need to take action to protect yourself and your business from financial risk.

Ask the IO if he/she has purchased optional insurance from the WSIB. If the answer is "yes," get a clearance from the WSIB that confirms the IO is registered with the WSIB and has met all payment and reporting obligations. It waives the WSIB's right to hold the principal responsible for any premiums charged to the IO's WSIB account during the time the clearance is valid. An IO (or his/her dependants) who has WSIB coverage also cannot sue you as a result of a workplace injury, disease or death.

The WSIB's eClearance program is an online service available through the WSIB's website that allows contractors to obtain specific principal-contractor clearances, and allows employers to easily check the validity of a potential contractor's clearance and manage its list of contractors. A clearance is valid for *up to* 90 days, with four "predictable renewal dates" – February 20th, May 20th, August 20th, and November 20th. All clearances expire on those four dates each year.

Individuals who do not wish to use the electronic system have the option of calling the WSIB's Clearance Department at 416-344-1012 / 1-800-387-8638 to request clearances over the phone, or faxing their request to 416-344-3410 / 1-877-849-4882.

Keep proof of all clearances during the WSIB audit period, which is the current year plus two years.

CONTRACTING OUT

Get a clearance

Employers who contract with other companies to provide services such as janitorial, electrical or security will be held responsible for the injury costs of the other company's injured workers for the duration of the contract if the other company is unregistered or in default with the WSIB.

The WSIB may also hold you responsible for any unpaid premiums owed by the contractor on wages paid to his/her workers during the duration of the contract. You may deduct from money payable to the contractor the amount for which the contractor is liable.

The only way to ensure this will not occur is to require a clearance from contractors.

ACCIDENTS AND OCCUPATIONAL DISEASES

Preventing accidents and occupational diseases at your workplace

As an employer, it is not only in your best interest to maintain a healthy and safe workplace and to prevent workplace injuries and occupational diseases, it is also your legal obligation under the OHSA.

Definition of "accident"

According to the WSIA, accidents include

- a chance event caused by a physical or natural incident, i.e., falling off a ladder or frostbite
- a disablement (a condition that has emerged gradually), i.e., carpal tunnel syndrome, and
- a wilful and intentional act, but not an act of the worker, i.e., being assaulted by a co-worker.

Definition of "occupational disease"

An occupational disease includes

- a disease resulting from exposure to a substance that is related to a particular industrial process, trade or occupation, i.e., developing asthma from working in a bakery
- a disease peculiar to, or characteristic of, a particular industrial process, trade or occupation, i.e., the development of lead toxicity is not a disease, but is a precursor that can lead to severe damage of the central nervous system and is compensable prior to developing the disease

- a medical condition that, in the WSIB's opinion, requires a worker to be removed either temporarily or permanently from exposure to a substance because the condition may be a precursor to an occupational disease
- a disease mentioned in Schedule 3 or 4 of O. Reg. 175/98, or
- a disease listed in the WSIA applicable to firefighters and fire investigators.

A worker who suffers from, and is impaired by, an occupational disease resulting from workplace exposures at one or more jobs he/she has had is entitled to receive benefits under the WSIA as if the illness/disease were a personal injury by accident.

When you need to report an accident or an occupational disease

Employers must report accidents or occupational diseases to the WSIB by completing the "Employer's Report of Injury/Disease" Form 0007A (Form 7) when an injury or disease causes a worker to

- obtain health care
- be absent from his/her regular work beyond the date of accident
- require modified duties at less than regular pay
- earn less than regular pay at regular work, or
- require modified work at regular pay for more than seven calendar days.

How to determine the date of accident for a disablement claim

WSIB Operational Policy Manual (OPM) Doc. No. 11-01-04, "Determining the Date of Injury," clarifies the difference between "date of injury" and "date of accident" and resolves the conflict in cases where a worker alleges the date of injury is the date the worker became disabled from doing work. The policy says that in a gradual onset disablement claim, the date of injury is the earlier of the date medical attention is first sought which led to the diagnosis, or the date of diagnosis. This impacts the employer's obligation to re-employ the injured worker and to contribute towards the worker's employment benefits. It applies to all decisions made on or after January 1, 2009 for all injuries on or after January 1, 2009.

What to do if an accident happens

Administer first aid immediately. Immediately arrange and pay for transportation to a medical clinic, a health care practitioner, a hospital or the worker's home, if required. Have someone accompany the injured worker on your behalf, if necessary.

Provide the worker with a copy of the "Functional Abilities Form for Planning Early and Safe Return to Work" Form 2647A (FA form) for the treating health care practitioner to complete and return.

Investigate the accident immediately after first aid/health care treatment has been provided to the worker. Depending on the severity of the accident, obtain a signed statement from the injured worker as soon as possible. If a signed statement is not

possible, obtain a statement by phone. Interview everyone who may have seen the accident and get witness statements. Ensure the witness reads and clearly understands the statement, and have the witness sign and date the statement. If statements are provided in another language, identify the interpreter and the language in which the statement was provided. Have a third person witness the interview (a union representative, where applicable). Get written statements from any worker who was in view of the accident, but did not see anything. Visit the site of the accident to prepare drawings of the layout of the area and to take photographs of any equipment and materials involved. Do not clean up or re-arrange the site until after the investigation has been completed.

The employer must report the accident to the WSIB by completing a Form 7 within three calendar days of learning of the accident, and the WSIB must receive it within seven business days from when the employer learns about the accident. Section 12 in Block C of the Form 7 says, “If you have concerns about this claim, attach a written submission to this form.” If you do have concerns about a particular claim, check the box in section 12 that says “submission attached” and either include your concerns on page 4 of the Form 7 or attach a separate page that explains your concerns about the worker’s claim for benefits. You can also provide additional information such as copies of statements, drawings, photographs, etc. This will require the Eligibility Adjudicator to contact you to discuss the issues, before a decision is made. If that does not happen, you should contact the Eligibility Manager. Give the injured worker a copy of the Form 7 and any attachments provided to the WSIB. If the Form 7 is incomplete, late, or if a copy is not given to the injured worker, the WSIB may levy a penalty of $250 for each infraction. The Form 7 is available on the WSIB’s website at www.wsib.on.ca, and can be completed and filed on line.

The worker must complete, sign and submit the "Worker’s Report of Injury/Disease” Form 0006A (Form 6) to the WSIB in order to claim WSIB benefits and consent to the release of functional abilities information to the WSIB and the employer. If the worker does not file a claim for benefits or consent to the disclosure of functional abilities information within the six-month deadline, the WSIB will not provide benefits. The functional abilities information will help the workplace parties (WPPs) develop an appropriate early and safe return to work plan for the injured worker. Workers are required by law to give employers access to this information.

The worker must provide the employer with a copy of the completed Form 6 and any attachments at the same time this information is provided to the WSIB. If the worker is making a claim for an occupational disease, the worker must provide a copy of the Form 6 to the employer who most recently employed him/her in the job to which the disease is associated. The employer must pay the injured worker’s wages for the day of the accident.

You must also maintain your contributions to the injured worker’s employment benefits (i.e., health insurance, life insurance and pension plan contributions) for one year from the date of accident while the injured worker is off work. These contributions must be maintained provided the injured worker continues to pay his/her share of the

contributions. This obligation does not apply to employers participating in multi-employer benefit plans.

Return the worker to work. Refer to the "Work Reintegration" section of this guide for general advice or call the OEA for any specific questions or concerns you may have about a particular claim.

Who to contact about a serious workplace injury or disease

The OHSA requires the employer to notify certain people when serious workplace injuries or diseases happen.

If anyone has been critically injured or killed at the workplace, even if they are not a worker, you must directly contact an inspector at the closest MOL office immediately, as well as the joint health and safety committee or health and safety representative and the union if there is one. You must also send written notification to an MOL director, within 48 hours, explaining what happened and providing any information that might be required.

If an accident, explosion or fire causes a worker to be disabled or to require medical attention, you must provide written notification to the joint health and safety committee or health and safety representative and the union, if there is one, within four days. If required by an inspector, you must also give this notice to an MOL director.

If you are told that a current or former worker has an occupational disease or that a claim for an occupational disease has been filed with the WSIB, you must provide written notification to an MOL director, the joint health and safety committee or health and safety representative and the union, if there is one, within four days.

Even in cases where no one is hurt, the constructor at a construction project must provide written notice of an accident or an unexpected event that *could have* caused an injury at the workplace to an MOL director, the joint health and safety committee or health and safety representatives and the union, if there is one, within two days.

How the WSIB makes decisions on occupational disease claims

O. Reg. 175/98 includes Schedules 3 and 4 which list the specific diseases for which there is a presumption of entitlement. The employer *cannot* rebut the presumption of the four diseases listed in Schedule 4 if the conditions in columns one and two of the chart are met. However, the employer *can* rebut the presumption for the 30 diseases listed in Schedule 3 if it is established that non-work-related factors are so influential that it is "more likely than not" that the worker's employment was *not* a significant contributing factor in the development of his/her disease.

The WSIB also has policy guidelines for several specific diseases including asbestosis, noise-induced hearing loss, tinnitus, occupational aluminum exposure, dementia, Alzheimer's disease and other neurologic effects, tuberculosis, Scleroderma, and post-exposure prophylaxis for occupational exposure to HIV.

Occupational disease claims that are not covered by the schedules or the policies are adjudicated on the merits and justice of the case. To try to establish consistency in this process, the WSIB is currently using a protocol guide called "A protocol for occupational disease policy development and claims adjudication." This document is available in the Health Care Practitioners section of the WSIB's web site under "Occupational disease," and then under "Chair's final report." This protocol explains how WSIB Case Managers apply the legal principles and review and weigh all the evidence when adjudicating occupational disease claims.

The draft protocol outlines the following legal principles related to occupational diseases:

- the causation test — the "significant contribution" test is applied, i.e., the work or work process must have contributed *significantly* to the worker's disease, or was influential or important to the development of the disease
- the burden of proof — in the investigative versus adversarial approach to decision-making it is the responsibility of the Case Manager, rather than the WPPs, to investigate and obtain the best available evidence to make a decision
- the standard of proof — the balance of probabilities, i.e., it must be *more likely than not* that the worker's employment was a significant contribution to his/her occupational disease
- the benefit of the doubt — if the evidence for or against a *specific issue* is approximately equal in weight, the issue is resolved in favour of the worker, and
- the merits and justice of the individual claim — similar claims are adjudicated in a similar manner to make the decision-making process consistent.

The significant contribution test does *not* require the worker's employment to be the sole, primary or predominant cause of the disease. A claim may be approved where *non*-work-related factors contribute *more* to the disease than work-related factors, as long as the contribution of workplace factors in the development of the disease is significant or more than "trifling."

Each claim file and decision letter should identify the case specific and general evidence that was used to make an entitlement decision. This may include occupational hygiene assessments, clinical review assessments, information provided by the Occupational Disease Policy and Research Branch and prior medical and other non-occupational factors. You should contact the Case Manager to request this information if it is not included in the decision letter.

What an injured worker could get paid, if the claim is allowed

Workers with injury/disease dates after January 1, 1998 who are absent from work because of their workplace injury/disease will receive LOE benefits equivalent to 85% of their pre-injury net average earnings (NAE). Workers with injury/disease dates prior to January 1, 1998 receive 90% of their NAE. LOE benefits may include both a short-term and a long-term benefit rate depending on how long the worker is off work.

The worker's LOE benefits can be adjusted any time prior to the final 72-month benefit review as a result of any material change in circumstances, or for a failure to report any material change that takes place after January 1, 1998. In addition to material change reviews, the WSIB also conducts general reviews for cases with continuing LOE at six, nine, and 12 months post-injury, and then annually until the final review. LOE is also under review arising from the worker's employment status at the end of WR, or in cases where there was a 0% NEL determination. The WSIB also adjusts LOE benefits if the worker cannot participate in WR because of a *post*-injury, *non*-work-related material change in circumstances.

a) Short-term benefit rate

Short-term average earnings include the worker's earnings from the injury employer and all other employment ("concurrent employment") at the time the worker was injured. Short-term average earnings are used to pay LOE benefits for the first 12 weeks after the injury. Some of the types of earnings included in the calculation of regular short-term earnings are

- the base rate of pay with the injury employer (hourly, daily or weekly)
- shift differentials
- vacation pay that is calculated as a percentage of the base rate and paid regularly on pay checks
- mandatory overtime
- regular voluntary overtime
- regular production bonuses and commissions, and
- room and board if they are part of the worker's pay.

b) Long-term benefit rate

The long-term rate is paid from the start of the 13th week following the injury and is based on the worker's earnings pattern generally 12 months prior to the accident date or less if there was a break in the worker's employment pattern. Again, the rate may vary, based on different factors. Different WSIB policies apply depending on whether the long-term average earnings are based on permanent or non-permanent employment.

OPM Doc. No. 18-02-02, "Determining Short-term Average Earnings," includes a table outlining the types of earnings that are included in the short-term and long-term earnings basis calculation. For example, earnings from mandatory overtime and earnings from regular voluntary overtime will be included in both the short- and long-term earnings basis calculations, but irregular voluntary overtime will be included in the long-term calculation only – not the short-term one. Employment insurance benefits for layoffs or shortages of work, as well as production bonuses and unused sick pay credits that are paid annually in a lump sum, are not included in the short-term calculation but they are included in the long-term calculation.

How occupational disease and fatality claims are handled differently

No distinction is made between short-term and long-term average earnings in long-latency occupational disease claims. In all such cases, the average earnings are based on the greater of the annual earnings of a fully qualified worker in the same trade, occupation, profession or calling at the time of accident or diagnosis, or the worker's annual earnings during the 12 months prior to the accident date. In the case of a fatality, survivor benefits are always based on the worker's long-term average earnings.

Other groups of workers to which different rules apply

There is a separate WSIB policy that outlines the procedure for calculating short- and long-term average earnings for dependent contractors, workers who have optional insurance, apprentices, learners, students, pupils enrolled in a Ministry of Education program, and individuals participating in the Ontario Works program.

Ensure the worker is receiving the appropriate amount of LOE benefits

Since the WSIB assumes the worker's short-term and long-term average earnings are the same, it usually does not automatically recalculate average earnings. You may need to ask the Case Manager for a recalculation if the short-term average earnings do not reflect the long-term average earnings.

Either the employer or the worker can request a recalculation of LOE benefits. If a recalculation results in a lower rate, a benefit-related debt is created and the worker may have to pay that amount back to the WSIB.

All benefits are subject to the worker's cooperation. You should contact the decision-maker if you have reason to believe the worker is not fulfilling his/her obligation to cooperate in the WR process.

When LOE benefits are discontinued

LOE payments continue until the earliest of one of the following situations occurs:

- the worker no longer suffers a wage loss as a result of the injury, or
- the worker is no longer impaired as a result of the injury, or
- the worker turns age 65, provided the worker was less than 63 years of age at the time of the injury, or
- two years after the date of the injury, if the worker was 63 years old or older on the date of the injury.

NEL benefits

The worker may also be entitled to a NEL benefit if the workplace injury results in a permanent impairment. The WSIB defines a "permanent impairment" as any permanent physical or functional abnormality or loss resulting from a workplace injury, as well as any psychological damage arising from that abnormality or loss. A worker's degree of

permanent impairment is calculated as a percentage of total permanent impairment of the whole person. Employers can apply for SIEF relief if the worker had a prior injury or pre-existing condition that contributed to the worker's permanent impairment.

Injury costs covered by the WSIB

Once a claim is accepted the WSIB provides the following benefits:

- LOE
- health care
- health care equipment and supplies
- NEL benefits
- work transition (WT) services for workers or surviving spouses (to assist in WR)
- loss of retirement income (LRI)
- future economic loss (FEL) for injuries occurring between 1990 and 1997
- costs covered under the occupational disease and survivor benefit program
- benefits for seriously injured workers, and
- compensation for the worker's survivors.

How the WSIB decides whether a worker is entitled to LOE payments and other services

The WSIB decides if the claim is work-related. In order for a claim to be considered work-related, all of the following conditions must exist:

- the employer's business activity is covered under the WSIA
- the worker is covered under the WSIA
- there is a personal work-related injury
- there is proof of accident, and
- the medical diagnosis is compatible with the accident or disablement history.

Following an injury, the WSIB is generally provided with information related to the injury by the employer, the worker and the treating health care practitioner(s). The WSIB then weighs the evidence and makes a decision based on the merits of the particular claim, ensuring that its decision is consistent with the provisions of the WSIA and WSIB policies. In cases where evidence is approximately equal on both sides of an issue, the WSIB will decide in favour of the worker (or spouse or dependant) who is making the claim. This provision is known as the "benefit of doubt."

WORK REINTEGRATION

The focus of WR

The WSIB's WR program integrates return to work, re-employment, and labour market re-entry (LMR). The focus is on an early return to work with the injury employer (formerly the "accident employer") that maintains the dignity and productivity of the

worker, and contributes to the worker's rehabilitation and recovery. Although a "return to work opportunities hierarchy" outlines six different scenarios for reintegrating the worker back into the workforce, the overall goal is for the worker to return to his/her pre-injury job with the injury employer. Your return to work obligation continues as long as the worker remains disabled and remains in your employ.

The WR policies, except those dealing with re-employment, apply to all construction workers and employers in the construction industry. Please refer to the "Re-employment" section of this guide for more information about re-employment obligations that construction employers have for their construction workers.

What you need to know

Under O. Reg. 35/08, employers and workers primarily engaged in construction have an obligation to cooperate in early and safe return to work. The employer and worker are required to

- contact each other as soon as possible after the injury occurs and maintain communication throughout the period of the worker's recovery and impairment
- attempt to identify and provide suitable work that is available
- give the WSIB any information it may request concerning the worker's return to work, and
- notify the WSIB of any difficulty or dispute concerning their cooperation with each other in the worker's early and safe return to work.

To try to ensure good communication from the outset, employers should provide injured workers with an information package that includes the name(s) and telephone number(s) of the individual(s) to be contacted during business hours, on the employer's behalf. All voicemail messages left by the injured worker on the employer's telephone should be recorded (including the date, time, and the content of the message) as part of the documentation process.

a) "Suitable" work with the injury employer

Post-injury work, including the worker's pre-injury job, is considered "**suitable**" if it is work that

- is safe
- is productive
- the worker is medically able to perform according to his/her (physical/cognitive) functional abilities, and
- restores the worker's pre-injury earnings, if possible.

OPM. Doc. No. 19-05-02, "Re-employment Obligation in the Construction Industry – Threshold, Duration and Specific Employer Requirements," says work is "**safe**" if

- the work does not pose a health or safety risk to the worker, to co-workers, or to anyone else
- the work takes place at a worksite covered by either the OHSA or the *Canada Labour Code*, and
- the worker is able to safely commute between his/her home and the proposed worksite, taking into consideration whether his/her injury/disease restricts the capability for safe travel, and whether the mode of transportation he/she must use poses a health or safety risk to him/her and/or to the general public.

"**Productive**" work is work that the worker has, or is able to acquire, the necessary skills to perform, and that provides an objective benefit to the employer's business. This includes tasks that are part of the employer's regular business operation, or that allow the worker to acquire new skills and/or generate corporate revenue, or that contribute to business efficiency/improvements. Another relevant issue is whether the worker is doing productive work for the entire shift, or for only part of the shift.

Work that is "**consistent with the worker's functional abilities**" is made up of tasks and/or duties the worker can do within the reported physical and/or cognitive capabilities, i.e., as stated on the worker's FA form. "Cognitive capabilities" refer to the worker's mental alertness, reasoning, judgment, or short-term memory, all of which may be affected by the work-related injury/disease and/or the medication being used to treat the work-related injury/disease.

Depending on the circumstances of the case, the worker's "**pre-injury earnings**" refers to either his/her average earnings at the time of the injury, or a recalculation of those earning where appropriate.

Some of the things you need to think about when trying to identify suitable employment include functional abilities information, modified duties, possible modifications to the workplace, alternative duties, where the worker lives, and applicable human rights legislation.

"**Work**" includes the combining or "bundling" of tasks or duties which together constitute a temporary or permanent job, or a short-term training program that results in a job with the injury employer. But there is no requirement for the injury employer to create a new job.

Speak with the injured worker when preparing an offer of suitable work to match the worker's functional abilities to duties that are available in your workplace. You should document all of the options you have considered. If, after having considered all of the options, you do not think you can offer the worker suitable work, you should contact the WSIB decision-maker immediately to discuss what steps you need to take and what kind of support the WSIB can provide.

b) "Available" work with the injury employer

Work is "**available**" if it *exists* at the pre-injury worksite, or at a comparable worksite arranged by the employer. In determining availability, the WSIB will look at the terms of

any applicable collective agreement, whether a job vacancy has been posted, advertised or otherwise communicated, or evidence of hires or transfers taking place on or after the date the injured worker is able to do suitable work.

c) "Sustainable" work with the injury employer

If the injured worker has or is likely to have a permanent impairment, and

- his/her condition is stable, and
- he/she is unable to return to the pre-injury job or a comparable job, or
- he/she is only able to return to the pre-injury job if it is significantly accommodated,

the WPPs and the WSIB will consider whether it is reasonable to believe that the modified job will be available on a long-term basis, and is therefore "**sustainable**." One factor that will be considered is whether the accommodated job is generally available in the labour market. If the post-injury work is not sustainable, the WSIB will not consider it to be suitable and, therefore, does not represent the best return to work alternative for the injured worker over the long term.

How to bring an injured worker back to work

Be proactive and establish a return to work program *before* injuries occur. You should

- determine your needs according to the size of your company, the nature of your business and the number of claims you handle
- set clear expectations and procedures
- ensure commitment by all parties (senior management, workers, supervisors, claims personnel and union representatives)
- educate all employees by making them aware of your return to work program
- ensure all workers understand their duty to cooperate in return to work as outlined in the legislation, and their role in the WR process
- get feedback on your return to work program by surveying workers, supervisors and union representatives, and
- evaluate the success of your program.

Maintain contact with the injured worker in order to

- ensure the injured worker knows about your return to work program and his/her legislated duty to cooperate
- reassure the worker and find out how he/she is recovering
- determine whether the worker is capable of returning to regular or modified work
- receive the worker's help in identifying opportunities for return to work, and
- ensure the worker continues to remain part of the workplace by inviting the worker to staff meetings and social functions, and keeping the worker up-to-date on changes and activities in the workplace.

If the worker is capable of returning to modified work, develop and offer a return to work plan using information from the worker's FA form. The offer should be in writing and should include a description of the job, the physical demands of the job, the start date and completion date of the plan, the hours of work required for the job, and the wages payable for the job. Send a copy of the offer to the WSIB. Contact the WSIB regularly (every one to two weeks) to update the WSIB on your return to work efforts and to ensure you are kept up-to-date on the worker's claim.

What to do if the worker says the post-injury job you offered is not suitable

If the worker rejects the post-injury job you have offered, he/she must let you know that the offered job is not suitable, and provide *reasons* for this position, i.e., because the objects to be lifted are too heavy, the tasks are painful, etc. You must consider the reasons given and, through dialogue with the worker, consider further accommodations where appropriate. If the WPPs cannot reach an agreement, *both* WPPs need to notify the WSIB as soon as possible, and provide the WSIB with all of the information that is relevant to the dispute, i.e., job descriptions, physical demands analyses, and/or functional abilities information.

The WSIB Return to Work Specialist (RTWS) will meet with the WPPs at the worksite within 12 weeks after the date of injury. The WSIB will also ensure the injured worker is receiving appropriate medical care through Regional Evaluation Centres and Specialty Clinics, and provide dispute resolution services when it is notified of a dispute.

If the WSIB determines that the job you have offered the worker is *not* suitable, the worker will receive full LOE benefits while he/she continues to cooperate with the employer and the WSIB in the WR process.

If, however, the WSIB believes the job you have offered the worker *is* suitable, the WSIB will determine that the worker is able to earn the wages associated with the offered job. The WSIB will verbally inform both parties of this decision, adjust the worker's LOE benefits, and confirm its decision in writing to both parties. The worker's LOE is adjusted, usually as of the date of his/her next available shift, by deducting the earnings associated with the suitable work from the pre-injury earnings, regardless of whether the worker has accepted the job offer or not.

It is important to note that a dispute over job suitability does not mean the WPPs are not being cooperative in the WR process.

What to do when the injured worker is back at work

Complete an "Employer's Subsequent Statement" Form 0009C to let the WSIB know the worker has returned to work. Update the WSIB about the worker's progress on a regular basis, including a change in hours, a change in pay, and a return to his/her regular job.

Good communication and cooperation between the WPPs is essential. Remember that you want to encourage and help the injured worker to recover from the injury and to

return to the pre-injury job as quickly as possible upon returning to work. You should consider meeting with the worker on the job. Ask the worker how he/she is handling the current job duties, and document all of the worker's comments and concerns. Adjust your return to work plan as needed.

When necessary, modify the work and/or the workplace to provide work that is consistent with the worker's functional abilities, and that respects applicable human rights legislation, i.e., reduced hours, reduced productivity requirements, assistive devices, etc. If the worker finds the work too challenging, you may need to remove certain duties or prolong the duration of the modified job. Establish new target dates if the change in job duties is extended. Return the worker to the pre-injury job if he/she is ready to return to regular duties sooner than expected.

Accommodate the worker up to the point of "undue hardship"

You have a duty to accommodate workers up to the point of undue hardship in the WR process under the Ontario *Human Rights Code*, and also under s. 7(1) of O. Reg. 35/08 if you have a re-employment obligation. That section states that the "employer shall accommodate the work or the workplace to the needs of the worker, to the extent that the accommodation does not cause the employer undue hardship." However, the employer is *not* required to accommodate the *workplace* to the needs of the worker if the employer does not control the workplace. When determining compliance, the WSIB refers to the Ontario Human Rights Commission's (OHRC) "Policy and guidelines on disability and the duty to accommodate," which are available on the OHRC's website at www.ohrc.on.ca.

Costs will meet the threshold of undue hardship if they are quantifiable, if you can prove they are related to the accommodation, if they are so substantial that they would alter the essential nature of the business, or if they are so high that they would substantially affect the financial viability of the business. The WSIB may consider providing assistance with the costs of accommodation if the accommodation provides a long-term solution to the worker's impairment, and if the accommodation would otherwise result in undue hardship.

How the WSIB determines non-cooperation

The WSIB will review the pattern of actions and behaviour of the WPP, and consider all relevant facts and circumstances including the degree to which the WPP initiated and/or participated in the WR process. The WSIB will need to be convinced, on a balance of probabilities, that the WPP knew of his/her/its obligation, had the ability to carry that obligation out, and failed to do so, in order for a non-cooperation penalty to be applied.

Advanced notice in a potential non-compliance situation

Prior to making a finding of non-cooperation or re-employment breach, the WSIB will provide the WPP with a warning about a possible penalty – orally, where possible, and in writing. Prior to imposing a penalty, the WSIB issues a notice informing the WPP of the finding of non-cooperation or re-employment breach, and the WSIB's expectations

for compliance. In all cases, the written notice for non-cooperation penalties comes into effect seven WSIB business days after the date of the written notice.

What to do if the worker is not cooperating

If you do not believe the worker is fulfilling his/her obligation to cooperate in early and safe return to work, you must contact the WSIB Case Manager as soon as possible. The Case Manager may send a RTWS to the workplace to help the employer and worker come to a resolution.

Return to work non-cooperation penalties for workers

If the worker has breached his/her obligation to cooperate in the WR process, the WSIB applies an initial partial penalty that reduces the worker's LOE by 50% from the date the written notice comes into effect. This penalty stays in effect until the 14th calendar day following that date, or until the worker starts cooperating again, whichever is earlier.

If non-cooperation continues beyond the 14th calendar day after the date the written notice comes into effect, the WSIB applies a full penalty and stops the worker's LOE benefits.

Return to work non-cooperation penalties for employers

a) Initial penalty

For employers, the WSIB will levy an "initial penalty" of 50% of the cost of the worker's LOE benefits from the date the written notice comes into effect (seven WSIB business days after the date of the WSIB's written notice) until the 14th calendar day following that date, or until the employer starts cooperating again, whichever is earlier.

b) Full penalty

If the employer's non-cooperation continues beyond the 14th calendar day after the written notice comes into effect, the WSIB will levy a "full penalty" which is equal to 100% of the cost of the worker's LOE, *plus* 100% of any costs associated with providing WT services to the worker.

The full penalty will continue to apply until the earliest of

- the day after the day the WSIB is satisfied the employer has started cooperating again
- the date the worker no longer requires LOE benefits or WR/WT services, or
- 12 months after the date the written notice came into effect.

Re-employment obligations and potential penalties continue to apply to employers, as well.

RE-EMPLOYMENT

Employer re-employment obligations

In addition to your cooperation obligations in the WR process, all employers engaged primarily in construction also have a duty to re-employ their *construction* workers, regardless of how many construction workers they employ or the worker's length of employment, when the worker is unable to work as a result of the work-related injury or disease. Your re-employment obligations are set out in O. Reg. 35/08, and also OPM Doc. Nos. 19-05-01, 19-05-02, 19-05-03, and 19-05-04.

How the WSIB defines "unable to work"

The worker is considered "unable to work" if, because of the work-related injury/disease, he/she

- is absent from work, *or*
- works less than regular hours, *and/or*
- requires accommodated/modified work that pays, or normally pays, less than his/her regular pay, regardless of whether you reimburse the worker for an actual loss of earnings or not.

Lost time and/or earnings due to health care appointments are excluded from this definition.

When your re-employment obligation to your construction worker begins

The re-employment obligation starts when the employer receives notice that the construction worker is medically able to perform either the essential duties of his/her pre-injury job, suitable construction work, or suitable non-construction work. Notice respecting a worker's level of fitness to return to work may be provided to the employer by the worker, the worker's treating health care professional, and/or the WSIB. Notice of fitness to return to work includes use of the WSIB's FA form, or personal notice by telephone or by fax, and is effective on the date it is received by the employer. Notice provided by regular mail is effective seven calendar days from the date the notice was sent.

When your re-employment obligation to your non-construction worker begins

The two thresholds that apply to non-construction employers when determining whether a non-construction worker has a re-employment right also apply to a construction employer's *non-construction* workers, i.e., office staff. The construction employer must have at least twenty workers, and the worker must have been employed for at least 12 months with the employer. The WSIB counts both construction and non-construction workers to determine whether the employer meets the twenty and over threshold.

As your re-employment obligations for construction and non-construction workers are different, you should download a copy of the OEA's guide for *non*-construction employers from our website at www.employeradviser.ca if you are managing a WSIB claim involving a non-construction worker.

What to do if you have a re-employment obligation

If you have a re-employment obligation, you need to contact the worker as soon as possible and maintain appropriate communication throughout the recovery/impairment period. You also need to attempt to provide suitable, available work. "**Suitable work**" is post-injury work that is safe, productive, consistent with the worker's functional abilities, and that restores the worker's pre-injury earnings, where possible.

Three factors to consider when determining whether post-injury work is "**safe**" are as follows:

- the work does not pose a health or safety risk to the worker, his/her co-workers, or to third parties
- the work is performed at a worksite covered by either the OHSA or the *Canada Labour Code*, and
- the worker has the functional ability to safely commute between home and the proposed worksite.

Work is "**productive**" if the worker has, or is able to acquire, the skills needed to perform the job, and if the tasks provide an objective benefit to the employer's business, i.e., they form part of the employer's regular business operation, they allow the worker to acquire new job skills, they generate revenue, and they increase business efficiency or lead to business improvements.

Situations you may experience in re-employing a worker

If the employer and the worker disagree about the worker's ability to return to work, the WSIB will determine whether the worker is medically able to perform the essential duties of his/her pre-injury job or to perform suitable work.

When the worker is able to perform the essential duties of the pre-injury job, your obligation is to offer the worker either the pre-injury job or a comparable job. The "**essential duties**" of the pre-injury job are all of the duties necessary to produce, at the normal level of productivity, the final service required. A "**comparable**" job would be construction project work in the worker's trade that is performed at a project similar in nature to the accident project, and which has the same earnings as the worker's pre-injury job. The WSIB will consider the duties performed, the skills, qualifications and experience needed, the degree of physical and mental effort required, the rights and privileges associated with the position, the geographic location with respect to the commute involved, and whether the job is covered by the same collective agreement, where applicable.

When the worker is medically able to perform suitable work, as defined above, your obligation is to offer the worker the first opportunity to accept suitable work when it becomes available.

A new job does not have to be created for suitable work but as soon as one is available, the worker must be given the first opportunity to accept it. If you offer the worker suitable employment and another suitable job that is more comparable in nature and earnings to the worker's pre-injury job becomes available, you must offer the more comparable job to the worker because the requirement to offer suitable employment is ongoing during the period of the re-employment obligation.

Duration of your re-employment obligation

Your obligation to your *construction* workers lasts until the earliest of

- two years after the date of the injury
- one year after you receive notice from the WSIB that the worker is medically able to return to the essential duties of the pre-injury job
- the worker turns 65, or
- the date the worker declines your offer of re-employment in accordance with O. Reg. 35/08.

Your obligation to your *non-construction* workers lasts until the earliest of

- two years after the date of the injury
- one year after you receive notice from the WSIB that the worker is medically able to return to the essential duties of the pre-injury job, or
- the worker turns 65.

Consequences of terminating the injured worker during the obligation period

If you terminate or lay off an injured worker within six months of re-employing the worker, the WSIB will presume you breached your re-employment obligation and impose a re-employment penalty.

Construction workers who are terminated within six months after being re-employed have three months to ask the WSIB to investigate the potential breach. The WSIB is not required to investigate such complaints after the three-month period, but they may choose to do so.

The WSIB presumes the employer has breached its re-employment obligation if a worker is terminated

1. within six months of re-employment, other than at a construction project

2. within six months of re-employment at a construction project, before his/her work on the construction project has been completed, or

3. when his/her work on a construction project has been completed, and the employer does not re-employ the worker at a construction project within six months of re-employment, even though

   (a) the worker is able to perform the essential duties of his/her pre-injury job, and either the pre-injury job or a comparable job is or becomes available at the construction project or at another construction project, or

   (b) suitable work is or becomes available either at the construction project or at another construction project.

The employer can rebut the presumption by proving, on a balance of probabilities, that the termination was not related to the injury. The employer (or worker) has 30 days to object to a re-employment decision.

If you terminate after six months of re-employment, but within the obligation period, a breach is not presumed. However, you may still be found in breach of your obligation if the facts support it. Before terminating or laying off an injured worker, check with the OEA for advice.

Re-employment penalty

If a construction employer is found in breach of its re-employment obligation to its construction workers, the WSIB will:

- levy a penalty against the employer that is equal to up to one year of the worker's NAE for the year before the injury, even if it exceeds the WSIB's maximum insurable earnings ceiling of $79,600 in 2011, and
- provide the worker with re-employment payments, which are equal to LOE benefits (85% of the worker's NAE), for up to one year or until the end of the re-employment obligation, whichever comes first.

An inappropriate offer of re-employment may also result in a penalty.

The penalty will be applied seven WSIB business days after the date that appears on the notice letter from the WSIB. The penalty will be reduced if the employer subsequently complies with its re-employment obligation.

If you are not successful in re-employing an injured worker but the WSIB is satisfied with your attempt to do so, the WSIB may not penalize you.

The WSIB may also waive the penalty if the employer offers to re-employ the construction worker but the parties agree to voluntary termination. If, however, the employer fails to offer to re-employ the construction worker and the parties then agree to sever their working relationship, the WSIB may still levy the penalty.

Breaching cooperation and re-employment obligations in the same claim

The WSIB applies a single penalty in such circumstances, choosing the penalty that would most likely lead to a positive return to work outcome for the worker.

Different rules apply to unionized and non-unionized workers

In unionized environments, the collective agreement prevails over an employer's re-employment obligations under the WSIA if the collective agreement affords the worker greater re-employment protection. The WSIA also acknowledges the seniority provision of collective agreements.

O. Reg. 35/08 sets out the employer's re-employment obligations at unionized and non-unionized construction workplaces.

a) Unionized construction workplaces

When the employer is bound by a collective agreement with the construction worker's union at the time of injury, that workplace is referred to as a "collective agreement workplace."

If the worker is *medically able to perform the essential duties of the pre-injury job*, offer to re-employ the worker in a job in his/her trade and classification at a collective agreement workplace. That is a construction project or shop that is within the trade, sector and geographic jurisdiction covered by your collective agreement. Such a job must be either available or is being done by another worker who started that job after the date the worker was injured.

If the worker cannot perform the essential duties of the pre-injury job but is *medically able to perform suitable work in construction*, offer to re-employ him/her in a suitable job in his/her trade and classification at a collective agreement workplace. If that is not available, offer a suitable job in the worker's trade, but in a different classification, at a collective agreement workplace. If neither option is available, offer a suitable construction job at one of your other workplaces, if available.

If more than one job described in any of the above scenarios is available, offer the worker the job that is most similar in nature and earnings to his/her pre-injury job. You must take into consideration the length of time each job will last, the duration of the construction project, if applicable, and the travel distance between each worksite/job and the worker's home.

If the WSIB does not think the worker will be medically able to perform construction work again, but is *medically able to perform suitable work outside of construction*, you must offer to re-employ the worker in a suitable non-construction job, if such a job is available. Either the worker or the employer can ask the WSIB to provide the worker with a WT assessment and, if necessary, a WT plan to help the worker return to work with the employer. Before making such a decision, please call the OEA to discuss whether this would be in your best interests.

b) Non-unionized construction workplaces

If the construction worker was not covered by a collective agreement at the time of injury, and the employer continues to employ workers either at the accident workplace or at a comparable workplace during the re-employment period, offer to re-employ the worker in a job in his/her trade at the accident workplace if such a position is either available or is being done by another worker who started the job on or after the date the worker was injured, if the injured worker is *medically able to perform the essential duties of the pre-injury job*. Alternatively, such a job should be offered at one of your comparable workplaces, if available.

If the worker cannot perform the essential duties of the pre-injury job but is *medically able to perform suitable work in construction*, offer to re-employ the worker in a suitable job in his/her trade, at the workplace where the worker was injured. If that is not available, offer the worker a suitable job in his/her trade at a comparable workplace. If that is not available, offer a suitable job in construction at the accident workplace or, failing that, at a comparable workplace, if available.

If more than one job described in any of the above scenarios is available, offer the worker the job that is most similar in nature and earnings to his/her pre-injury job. You must take into consideration how long each job will last, the duration of the construction project, if applicable, and the travel distance between each job and the worker's home.

If the WSIB does not think the worker will be medically able to perform construction work again, but is *medically able to perform suitable work outside of construction*, you must offer to re-employ the worker in a suitable non-construction job, if such a job is available. Either the worker or the employer can ask the WSIB to provide the worker with a WT assessment and, if necessary, a WT plan to help the worker return to work with the employer.

WORK TRANSITION

When you can't bring the injured worker back to work

An injured worker will be provided with a WT assessment if any of the following conditions are met:

- the worker has, or likely has, a permanent impairment
- the worker is not capable of performing the pre-injury job, and
- the employer is unable to provide suitable and sustainable work, or
- the employer has identified a job but it is unclear if the work is suitable, or
- the worker's employer is not cooperating in the WR process.

WT assessments

A WT assessment includes tests to determine if the worker has the skills, abilities and knowledge to either return to work with the injury employer, or to re-enter the labour market in the suitable occupation (SO). It is generally provided between six and nine months following the date of injury and, in exceptional circumstances, no later than 12 months after the date of injury.

How the WSIB determines a SO

In the process of determining a SO for a worker, the WSIB will try to maintain the employment relationship between the worker and the injury employer by identifying appropriate occupations with the injury employer, providing input and choice by the worker, and re-integrating the worker into suitable, available and sustainable work at a reasonable cost.

The WSIB works with the WPPs and takes the following information into consideration:

- the worker's functional abilities
- the worker's employment-related aptitudes, abilities, and interests
- the kinds of jobs that are available with the injury employer through direct placement, accommodation or retraining
- labour market trends, and the likelihood of the worker being able to secure and maintain work within the SO with a new employer, and
- any pre-existing, non-work-related condition(s) the worker may have, in accordance with applicable human rights legislation.

WT plans

A WT plan outlines the kind of specialized assistance or formal training the worker needs to enable him/her to either return to work with the injury employer or, if necessary, in a SO that is available in the labour market.

On-the-job training versus formal education programs

A Training on the Job (TOJ) program provides the worker with hands-on training at an employer's worksite, where he/she will learn and acquire new skills that are specific to the SO, over a four- to 26-week period. The WSIB arranges the TOJ, and a training plan for the worker that includes measurable goals, with the intent of the training period leading to long-term employment. This program is well suited to workers who are experiential learners who do not require a formal education program to facilitate a return to work in the identified SO.

Options for workers who are 55 years of age or older

Where possible, the WSIB tries to identify a SO that will result in an alternate job with the *injury employer* for an older, long-term worker – even if the job is at less than full earnings and at part-time hours.

A worker aged 55 and older who requires a WT plan to obtain employment in a SO with a *new* employer can choose to participate in either a WT plan aimed at achieving the SO, or in a 12-month Transition Plan (TP) that is focused on self-directed WR. If he/she chooses the latter option, full LOE benefits will continue for a 12-month period. Upon completion of the self-directed TP, LOE benefits will be adjusted to reflect the identified SO. The self-directed TP option is in conjunction with an irrevocable no review option payable to age 65.

This process for older workers applies to all decisions made on or after December 1, 2010 for all injuries/diseases that occurred on or after *January 1, 1998*.

Stay actively involved in the WT process

You should take an active part in ensuring the WSIB's WT plan is realistic and appropriate, and monitor the WT plan costs to ensure they are reasonable. Remind the Case Manager that you want to be consulted throughout the WT process.

What to do if you disagree with the WT plan

You have 30 days from the date of the plan to notify the Case Manager, in writing, of your disagreement. Where either or both of the WPPs object to the WT plan, an "expedited" appeals process is offered. The WSIB attempts to reconsider the issue at the first level of decision-making. If an objection to the WT plan is first received by the Appeals Branch, however, the file will be assigned to an ARO who will review the case on a priority basis, and contact the WPPs within 10 business days to determine how best to proceed with the appeal.

When the worker does not cooperate in the WT process

If the worker's non-cooperation in WT activities continues past the 14th calendar day after the date the written notice comes into effect, the WSIB will reduce the worker's LOE benefits to reflect the earnings of an experienced worker in the SO. The worker's WT assessment and/or WT plan may also be terminated.

APPEALS

Appealing a WSIB decision

Anyone affected by a WSIB decision can object to the decision, if they believe it is unfair or unreasonable based on the facts of the case, including

- an employer who disagrees with a decision regarding entitlement, health care, premiums, penalties, experience rating adjustments, SIEF relief, re-employment, WR decisions, WT decisions, or any other aspect of a WSIB claim, and
- a worker, or spouse or dependant of a deceased worker, whose claim has been denied or who disagrees with a decision regarding benefits.

Different levels of appeal

There are three levels of appeal.

1. WSIB Operating Level

Decisions from the operating level are generated by WSIB decision-makers and include Primary Adjudicators, Eligibility Adjudicators, Short Term Case Managers, Long Term Case Managers, SIEF Case Managers, Nurse Consultants, Account Specialists, Account Analysts, Work Transition Specialists (WTSs), and others. You may file an objection if you disagree with a decision. If the decision is not changed, you may file a formal appeal with the WSIB's Appeals Branch.

2. WSIB Appeals Branch

The objection is referred from the operating level to the Appeals Branch and is assigned to an Appeals Resolution Officer (ARO) who makes a decision on the appeal. If you disagree with the ARO's decision, you may file an appeal with the WSIAT.

3. WSIAT

The final level of appeal is conducted by the WSIAT, which is independent of the WSIB.

The OEA may be able to represent you at any or all levels of appeal.

Time limits for appealing a WSIB decision

There are strict time limits for appealing all WSIB decisions. You have 30 days from the decision date to appeal WR, re-employment or WT decisions, and six months from the decision date to appeal any other decision to an ARO.

Although the WSIB's appeal guidelines generally allow an appeal to be filed within one year of the decision, employers should continue their best efforts to file an appeal within the stated time limits. If the appeal period is missed, file your appeal as soon as possible. Employers who encounter problems with appeal periods should contact the OEA for assistance. The WSIB's "Appeals System Practice & Procedures" document is on the WSIB's website at www.wsib.on.ca.

ARO decisions must be appealed within six months of the decision date to the WSIAT.

How to appeal a WSIB decision

Write to the WSIB to indicate your disagreement with the decision and include any new information that may warrant changing the decision. The decision-maker will review the concerns raised and may reconsider his/her decision.

If the decision is unchanged, a copy of the claim file will be sent to you, along with an Objection Form that must be completed and returned to the WSIB to proceed with the objection. The worker's claim file will be provided in two sections – health care and non-health care.

Appeals at the WSIB's Appeals Branch

All cases that arrive at the Appeals Branch are dealt with by AROs. There are two different methods used to resolve appeals, depending on the complexity of the issue(s) in dispute.

1. 60-day decision option

This method is used when the issue is relatively straightforward. The objecting party or his/her representative may choose to have a decision made within 60 days based on the information on file and any additional information that is provided in writing by the parties. The onus is on the objecting party to gather any relevant new information.

2. Review/enquiry/hearing option

Most appeals at the Appeals Branch are resolved through written submissions or in-person hearings. If the 60-day decision option is declined, the ARO will contact both parties to confirm the issues and determine the most appropriate way in which to resolve the appeal.

If the parties agree the issue(s) can be resolved through written submissions, the parties are given 21 days to make their submissions. After the ARO has received the parties' submissions, the case proceeds to the Resolution Stage for a final decision.

However, if one or both parties decide they would like to provide further evidence, the case proceeds from the Review Stage to the Enquiry Stage. The case moves to the Resolution Stage for a final decision after the ARO receives the additional evidence and submissions.

Cases that involve complex factual questions and issues of credibility will generally be decided by an in-person hearing, and therefore will move from the Review Stage to the Scheduling and Hearing Stages before a decision is made.

What happens if a worker appeals a WSIB decision

If a worker appeals a WSIB decision, the WSIB will send you a Participant Form that must be completed and returned to the WSIB if you wish to participate in the appeal process. If you have any concerns regarding the appeal you should either note them on the Participant Form or attach a letter. If you do not return the form to the WSIB, you will not be contacted again until after the final decision has been made.

Getting help to appeal a decision

The OEA provides representation at both the WSIB and the WSIAT, primarily to employers who have fewer than 100 employees.

Employers of all sizes can call the OEA's Advice Centre any time to discuss concerns they have with one or more workplace safety and insurance issues. Many employers appreciate having an experienced person to talk to about concerns they have regarding a particular revenue issue or claim file. This includes thoughts about the possibility of appealing one or more decisions, and approaches the employer may wish to take when presenting its position in the appeal process.

WSIB SERVICE DELIVERY MODEL

The overall goal

The WSIB's Service Delivery Model aims to reduce the "duration" of claims, which is the length of time a worker is off work due to a workplace injury or disease. The WSIB uses a case management approach based on discussions with the WPPs. WSIB decision-makers are expected to provide decision letters in all cases to the WPPs that explain their reasoning. The decision-maker's Manager is the employer's point of contact if issues cannot be resolved with frontline staff.

Registration Clerks

Forms 6, 7 and 8 continue to be received by the Central Claims Processing department. Registration Clerks set up the claims. If a Form 8 is received prior to a Form 7, the Registration Clerk will call the employer with the claim number and ask if he/she is aware of the accident. Always include the claim number on all documents you send to the WSIB, if you know what it is.

Primary Adjudicators

Primary Adjudicators determine eligibility on claims that meet the WSIB's five-point check system (there is a worker, an employer, proof of accident, personal injury and compatibility) and are likely to be allowed. This covers approximately 70-80% of all claims registered with the WSIB, most of which are no-lost-time claims.

Eligibility Adjudicators

Eligibility Adjudicators make initial entitlement decisions on more complex claims. Claims will also be referred from Primary Adjudicators to Eligibility Adjudicators in cases where the Form 7 is received before the Form 8.

When a case is pending and there are obstacles in the WR process, the Eligibility Adjudicator can consult the Short Term Case Manager who can make a referral to a RTWS, etc. This could happen as early as Day 1 of the claim.

Initial entitlement decisions that are made based on the information available at the time remain the responsibility of the Eligibility Adjudicator. This includes all decisions rendered by a Primary Adjudicator. Eligibility Adjudicators have access to a Nurse Consultant who can obtain outstanding information in a claim file to help with the decision-making process. Investigators are not staffed in the WSIB's regional offices, but there are some investigators at the WSIB's Head Office in Toronto. If need be, an investigator can be sent out to do an investigation elsewhere in the province.

If the Form 7 says modified work is available and the claim is allowed, it is transferred to a Short Term Case Manager to address the WR issues. No-lost-time claims where the worker is doing modified work are also referred to the Short Term Case Manager so the recovery process and return to pre-injury work can be monitored.

If one of the WPPs raises a concern about the Eligibility Adjudicator's initial entitlement decision, the Case Manager sends the claim back to the Eligibility Adjudicator for reconsideration. The Eligibility Adjudicator will then need to either get more information or provide a more comprehensive explanation of his/her original decision. If an Eligibility Adjudicator reconsiders and reverses the initial entitlement decision, all services to the injured worker will stop. If the Eligibility Adjudicator reconsiders a decision and a party wants to appeal it, the claim is referred to the WSIB's Appeals Branch.

The Eligibility Area is expected to provide the WPPs with good, informed decisions in a timely manner. Employers who have concerns with respect to specific cases should contact the appropriate Eligibility Manager.

Case Managers

1. Short Term Case Manager (STCM)

All cases will be transferred from the Eligibility Adjudicator to the Short Term Case Manager *no later than 30 days* after the claim has been registered at the WSIB. Cases may be referred to a Short Term Case Manager as early as the first day of the claim if it is recognized that help is needed to manage the WR issues, although ownership of the case will remain with the Eligibility Adjudicator.

In all cases, the Case Manager will discuss RTW opportunities with the employer and worker to see if suitable work options can be identified, including accommodation of the pre-injury job.

If the worker is capable of returning to work in some capacity, and

- the Case Manager has been unable to remove any obstacles, or
- there is uncertainty about work availability, suitability or sustainability with the accident employer, or
- the employer is unable/unwilling to provide suitable work,

the Case Manager will refer the claim to a RTWS who will meet with the worker and employer on the employer's premises to facilitate the WR process. This will take place no later than 12 weeks from the date of injury.

The Short Term Case Manager refers requests for reconsideration on eligibility issues back to the Eligibility Adjudicator, but makes decisions on entitlement for recurrences. He/she is responsible for determining ongoing benefits and for making decisions on entitlement based on new information.

2. Long Term Case Manager (LTCM)

All cases will be transferred from the Short Term Case Manager to the Long Term Case Manager *no later than* 180 days after the claim has been registered with the WSIB. If, for example, the Short Term Case Manager decides, following intervention by the RTWS, that the worker cannot return to work with the injury employer, the worker will be transferred to the Long Term Case Manager.

Only the Long Term Case Manager can make decisions regarding WT. Long Term Case Managers also determine whether the worker has experienced a permanent impairment and needs to be referred for a NEL assessment.

Nurse Consultants (NCs)

They make decisions on health care entitlement, resolve objections to health care entitlement decisions, and intervene in WR obstacles.

Medical Consultants (MCs)

WSIB physicians are engaged in the WR process by contacting the injured worker's doctor and clarifying perceived WR obstacles as the WPPs work towards a resolution. They do not provide a medical opinion to WSIB decision-makers for decision-making purposes.

Return to Work Specialists (RTWSs)

The RTWS meets with the WPPs at the worksite *no later than* 12 weeks after the date of injury if the WPPs have been unsuccessful in arranging the worker's return to suitable and available work.

The RTWS acts as a facilitator. He/she does not conduct formal mediations. Discussions with the WPPs are not confidential and can be recorded in the claim file. Employers are entitled to have a representative attend these meetings with them. Employers may wish to contact the OEA for advice and possible assistance in such cases.

During collaborative RTW discussions with the WPPs, the RTWS may determine that additional services are needed in order to better understand the worker's vocational potential, and/or that retraining may be required before the worker can return to suitable

work with the accident employer. At that point, the RTWS will close off his/her services, and advise the Case Manager that a referral to a WTS is required.

The RTWS (and the WTS) will also provide the Case Manager with the necessary information to decide whether the re-employment issues should be referred to the Case Management Re-employment Team (CMRT).

Case Management Re-employment Team (CMRT)

The Case Manager refers all construction re-employment cases, and all other cases where the legislative threshold for s. 41 re-employment are met, to the CMRT where the Case Manager, the RTWS and/or the WTS have reason to believe that a potential re-employment breach has occurred. All cases where the worker has been terminated within the re-employment obligation period may also be referred.

Employer cooperation issues are also referred to the re-employment team.

The CMRT continues to facilitate employer cooperation and re-employment, and makes all re-employment decisions while the Short Term Case Manager or Long Term Case Manager continues to manage the claim.

Recurrence & Work Disruption Team

This Specialty Team makes all decisions involving short-term, long-term and permanent work disruptions including strikes, seasonal layoffs and permanent shut-downs.

It also makes all decisions involving recurrences or secondary conditions that occur *at least three months after* the worker's WSIB benefits ceased, or *at least three months after* a no-lost-time claim was approved. If the recurrence claim is approved, the Recurrence Case Manager makes the initial payment to the worker, and then sends the claim back to the Short Term Case Manager or Long Term Case Manager to manage the claim.

Work Transition Specialists (WTSs)

The WTS is the WSIB's in-house case management specialist for the WT process. He/she helps the WPPs and the Case Manager to facilitate the WT process at the workplace when the worker has not returned to suitable and available work.

In each case, a claim will transition from a RTWS to a WTS between six and nine months after the date of injury, in conjunction with the claim being transferred from a Short Term Case Manager to a Long Term Case Manager. A referral to a WTS may also be made if the injury employer has identified a potential job opportunity that requires some form of retraining, i.e., short-term training, training-on-the-job, computer skills, etc.

The WTS can choose from a variety of assessments and services conducted by external service providers to help determine what is necessary to facilitate the worker's

return to work. **Vocational assessments** of the worker's skills and abilities identify the worker's vocational potential and work capacity to help identify options for alternate work with the employer. The WTS reviews the results with the WPPs to identify work opportunities and plan development. **Functional work capacity assessments** conducted by occupational therapists may be arranged at the worksite to help determine the suitability of available work offered by the employer, and/or to recommend accommodations or other options. **Ergonomic assessments** may also be arranged at the worksite if a potentially suitable job has been identified, but further adjustment or modification may be required. Any costs related to these services are charged to the employer's statement.

Where necessary, the WTS will create a WT plan for the worker, arrange for retraining, and monitor the worker's progress in the WT plan.

Employer Liaison Specialists

The Employer Liaison Specialist focuses on improving WR outcomes by sharing best practice approaches in return to work, influencing and actively supporting employers to become self-sufficient and compliant in the development and implementation of disability management and WR programs, and referring employers to HSAs for all prevention/health and safety issues.

Employers are selected for a visit by an Employer Liaison Specialist based on a target list generated by the WSIB's Intelligence and Innovation Branch, a referral made by a RTWS where the RTWS has identified a WR gap, a referral made by another service delivery team member, i.e., Case Manager, Nurse Consultant, etc., a HSA working with an employer that identifies a WR gap, or an employer scoring 50% or less on s. 12 of the Workwell audit.

This process is entirely voluntary.

SIEF Team

Employers seeking SIEF relief should send their written request to the Short Term Case Manager or Long Term Case Manager who will refer that one issue in the claim file to the SIEF adjudication team. The SIEF Case Manager, who is also the person to whom a request for SIEF reconsideration should be directed, signs SIEF decision letters. Employers can contact the Short Term Case Manager or Long Term Case Manager to obtain the contact information for the SIEF Case Manager assigned to a particular file.

SIEF AROs

The WSIB's Appeals Branch has designated SIEF AROs. They are the only individuals on the ARO teams who are authorized to address SIEF appeals, and any appeal that includes a SIEF issue is to be assigned to one of them.

Appeals/FEL Team

This Specialty Team implements all WSIB Appeals Branch decisions and WSIAT decisions that are allowed either in whole or in part. It also makes all decisions involving FEL awards. It does not address issues involving SIEF, pre-1990 claims, claims that are addressed by the Serious Injury Program, or occupational diseases that are adjudicated by the Occupational Diseases and Survivor Benefits Program.

Employer Services Centre

The Employer Services Centre deals with all revenue issues. **Account Analysts** focus on the transaction work such as balance enquiries and address changes. **Account Specialists** are the key decision-makers on all revenue issues including premiums, reconciliations, etc. Employers can call the WSIB's General Enquiry Number at 416-344-1000 or 1-800-387-0080, provide their account number and be referred to an Account Specialist who will address their account issues.

GLOSSARY OF TERMS USED IN THE WORKPLACE SAFETY AND INSURANCE SYSTEM

This list includes some of the abbreviations you might hear mentioned in the workers' compensation system, and may see written in WSIB case files. As the substantive provisions of legislation pertaining to a particular case depend on the date of injury or disease, this list includes terminology associated with any of the four Acts that may continue to apply to a workers' compensation claim:

- *The Workplace Safety and Insurance Act, 1997* (covering accidents and diseases that occurred on or after January 1, 1998)
- the pre-1997 *Workers' Compensation Act* (covering accidents and diseases that occurred between January 2, 1990 and December 31, 1997)
- the pre-1989 *Workers' Compensation Act* (covering accidents and diseases that occurred between April 1, 1985 and January 1, 1990, as well as deaths during this same period regardless of the date of the accident), and
- the pre-1985 *Workers' Compensation Act* (covering accidents and diseases that occurred prior to April 1, 1985).

AA	Appeals Adjudicator
AB	Appeals Branch (WSIB)
AD	accident date
ADJ	adjustment
ADL	activities of daily living
AE	accident employer (now injury employer)
AO	Area Office, i.e., Ottawa Area Office
ARO	Appeals Resolution Officer (Appeals Branch, WSIB)
CAD-7	Council Amendment to Draft #7 (experience rating program for the construction industry)
CAT scan	computerized axial tomography scan
CC	clearance certificate
CCU	Complex Claims Unit; Diseases / Injuries
CCU-D	Complex Claims Unit; Diseases / Injuries
CCU-I	Complex Claims Unit; Diseases / Injuries
CD	case description
CL	closed file or claim status
CLT	claimant
CM	Case Manager, Short Term OR Long Term (formerly Claims Adjudicator)
CNS	central nervous system
C/O	complain(s) / (ed) / (ing) of
COLD	Chronic Obstructive Lung Disease
COMP	compensation
COPD	Chronic Obstructive Pulmonary Disease
CPD	Chronic Pain Disability
CPI	Consumer Price Index
CR	case record

CT scan	computerized axial tomography scan
CU	classification unit
DOA	date of accident
DSM	*Diagnostic and Statistical Manual of Mental Disorders*
DSM-III-R	*Diagnostic and Statistical Manual of Mental Disorders (3rd ed., revised)*
Dx	diagnosis
ECM	Employer Classification Manual (WSIB)
EEG	electroencephalogram
EFD	evidence of financial dependency
EMG	electromyogram
ENT	entitlement
ERF	employer registration form
ESL	English as a Second Language
ESRTW	early and safe return to work
EXT	extend
FA	functional abilities
FAE	functional abilities evaluation
FA form	Functional Abilities Form
FIRM	Field Investigation Referral Memo (Form 630)
Form 6	Worker's Report of Injury/Disease Form 6
Form 7	Employer's Report of Injury/Disease Form 7
Form 8	Health Professional's Report
Form 26	Health Professional's Progress Report
Form 41A	Worker's Progress Report
FPC	Fair Practices Commission
FU	follow up
HAVS	Hand Arm Vibration Syndrome
HIV	Human Immunodeficiency Virus
HO	Hearings Officer
HSA	Health and Safety Association
Hx	history
ICD-9	International Classification of Diseases (9th rev.)
IE	injured employee
INT	interest
IO	independent operator
IW	injured worker
IWH	Institute for Work & Health
JST	Job Search Training Program
L	left
LDW	last day worked
LFW	looking for work
LMI	labour market information
LMR	labour market re-entry (now work transition)
LMRA	labour market re-entry assessment
LMRP	labour market re-entry plan
LO	layoff/laid off
LOE	loss of earnings benefit

LRI	loss of retirement income benefit
LT	lost time
LW	light work
MA	medical aid
MAP	Merit Adjusted Premium Program (experience rating program)
MC	Medical Consultant
MMR	maximum medical recovery / rehabilitation
MR	medical rehabilitation
MSD	musculoskeletal disorder
MTC	medical treatment control
MTCU	Ministry of Training, Colleges and Universities
MVA	motor vehicle accident
NAE	net average earnings
NC	Nurse Consultant (formerly Nurse Case Manager)
NEC	net exemption code
NEER	New Experimental Experience Rating Plan
NEL	non-economic loss benefit
NFA	no further action on claim
NIHL	Noise-Induced Hearing Loss
NLT	no lost time claim
NOC	National Occupational Classification
Non-comp	non-compensable injury / disability not covered by the WSIA
NSDM	New Service Delivery Model (WSIB)
OAS	Old Age Security
OD	occupational diseases
OD & SBP	Occupational Diseases and Survivor Benefits Program
ODD	Occupational Disease Division (WSIB)
OEA	Office of the Employer Adviser
OHCOW	Occupational Health Clinic for Ontario Workers
OHSA	*Occupational Health and Safety Act*
OP	overpayment of benefits
OPM	Operational Policy Manual (WSIB)
O/S	outstanding
OT	occupational therapy
OWA	Office of the Worker Adviser
OWS	older worker supplement
PD	permanent disability
PI	permanent impairment
PMT	payment
PPD	permanent partial disability
Prem	premium
PT	physiotherapy
PTSD	Post Traumatic Stress Disorder
Px	prognosis
PYMT	payment
q.i.d.	4 times daily (Latin abbreviation)
QPP	Quebec Pension Plan
quotid	daily (Latin abbreviation)

R	right
RBC	red blood cell count
REC	Regional Evaluation Centre
REO	re-open (a claim)
REO6 (Form)	Worker's Continuity Report
REP	representative
RG	rate group
RHPA	*Regulated Health Professions Act*
RMA	Regional Medical Adviser
RMI	repetitive movement injury
RO	Regional Office
ROM	range of motion
RSI	repetitive strain injury
RTLW	return to light work
RTW	return to work (now work reintegration)
RTWS	Return to Work Specialist
Rx	prescription
SCIP	Safe Communities Incentive Program
SIEF	Second Injury & Enhancement Fund
SLR	straight leg raising
SMA	Section Medical Advisor
SO	suitable occupation (formerly a suitable employment or business)
SOB	shortness of breath
SPAD	Strategic Policy and Analysis Division
SRAP	Special Rehabilitation Assistance Program (WSIB)
STEL	short term exposure limit
TOJ	training on the job program
TP	temporary partial (disability)
TP	transition plan (in the work reintegration model)
TS	temporary supplement
TT	temporary total disability
Tx	treatment
UMA	Unit Medical Advisor
WBC	white blood cell count
WCA	*Workers' Compensation Act* (now the WSIA)
WCAT	Workers' Compensation Appeals Tribunal (now the WSIAT)
WCB	Workers' Compensation Board (now the WSIB)
WFL	within functional limits
WHMIS	Workplace Hazardous Materials Information System
WLM	working level months and radiation exposure
WLS	wage loss supplement
WPPs	workplace parties
WR	work reintegration (formerly RTW)
WSIA	*Workplace Safety and Insurance Act, 1997* (formerly the *Workers' Compensation Act*)
WSIAT	Workplace Safety and Insurance Appeals Tribunal (formerly the WCAT)
WSIB	Workplace Safety and Insurance Board (formerly the WCB)

WT	work transition (formerly labour market re-entry)
WTS	Work Transition Specialist

RESOURCES

Office of the Employer Adviser (OEA)

Head Office, 151 Bloor Street West, Suite 704
Toronto, ON M5S 1S4

Advice Centre	Toronto: 416-327-0020 Toll Free: 1-800-387-0774
Fax	Toronto: 416-327-0726
Website	www.employeradviser.ca
E-mail Your Questions	askoea@ontario.ca

Workplace Safety and Insurance Board (WSIB)

200 Front Street West
Toronto, ON M5V 3J1

Main Switchboard and point of entry to the Employer Services Centre	Toronto: 416-344-1000 Toll Free: 1-800-387-0750
Central Claims Fax	Toronto: 416-344-4684 Toll Free: 1-888-313-7373
Website	www.wsib.on.ca

Workplace Safety and Insurance Appeals Tribunal (WSIAT)

505 University Avenue, 7th Floor
Toronto, ON M5G 2P2

General Enquiry	Toronto: 416-314-8800 Toll Free: 1-888-618-8846
Fax	Toronto: 416-326-5164
Website	www.wsiat.on.ca

Other Related Telephone Numbers

Infrastructure Health and Safety Association 1-800-263-5024

Occupational Health and Safety Branch, MOL 1-877-202-0008

Employment Standards Branch, MOL 1-800-531-5551

OEA | Office of the Employer Adviser

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For more information, visit

www.employeradviser.ca

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