

POLICY REPORT

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WSIB Workplace Safety & Insurance Board
ONTARIO
CSPAAT Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail

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Amendments to Acts Legally Recognize Same-Sex Partners/Couples

Parts of the *Workplace Safety and Insurance Act* (WSIA) and the pre-1998 *Workers' Compensation Act* (WCA) have been rewritten to give equal status to same-sex partners.

Under the amended Acts, same-sex partners are now entitled to receive the same benefits as common-law opposite-sex couples.

Here's a closer look at the changes.

For starters, two new definitions are included in section 2(l) of the WSIA:

- **"same-sex partner"** is a person of the same sex with whom a worker is living in a conjugal relationship outside marriage, if the worker and the person
 - a) have lived together for at least one year
 - b) are together the parents of a child, or
 - c) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*.
- **"spouse"** is a person of the opposite sex,
 - a) to whom the worker is married, or
 - b) with whom the worker is living in a conjugal relationship outside marriage, if the worker and the person
 - i have lived together for at least one year,
 - ii are together the parents of a child, or
 - iii have together entered into a cohabitation agreement under section 53 of the *Family Law Act*.

Further, all references to "spouse" in the WSIA have been changed to "spouse **or** same-sex partner" or "spouse **and** same-sex partner".

Most significantly, this means that, effective March 1, 2000, same-sex partners are entitled to survivors' benefits under section 48.

Other provisions of the WSIA which now speak to same-sex partners include:

- ss. 26, 27 (rights of action)
- s. 30 (elections)
- s. 45 (loss of retirement income benefits (LRI))
- s. 60 (redirected benefits)
- ss. 42, 48(9), 104, 108 (labour market re-entry)

The WCA has also been amended by adding the definition of "same-sex partner" and by changing all instances of "spouse" to "spouse **or** same-sex partner" or "spouse **and** same-sex partner".

Once again, the most significant impact of these changes is that when a worker dies on or after March 1, 2000, as a result of a work-related injury or occupational disease, the worker's same-sex partner is eligible for survivors' benefits. Similarly, same-sex partners will have the same entitlement under the WCA to LRI benefits, for example, as spouses.

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Security for Payment policy revised

To protect the interest of those employers who pay their premiums on time, the WSIB has revised its Security for Payment policy. WSIB administrators may now request security for payment from Ontario-resident employers in geographic regions or industry sectors where there is a history of late or non-payment of premiums.

The original policy limited the WSIB to request security for payment from employers that are located outside Ontario, but who work temporarily in Ontario. With this narrow approach directed at out-of-province employers only, WSIB administrators encountered difficulties collecting overdue premiums from Ontario-resident employers in certain geographic regions or industry sectors.

What is a Security for Payment?

Under section 137 of the new Act, the WSIB may require an employer, within 15 days of being directed, to provide a security for the payment of premiums that are due, or may become due.

The security can be an asset or fixed amount of money that the WSIB holds until it is satisfied that the employer's financial obligations have been met.

For more information contact the Revenue Policy Branch at (416)344-4141 or refer to Operational Policy document 14-04-02, Security for Payment. Also, see *Policy Report* Vol. 13 No. 1.

Same Sex Benefits (cont'd from p.1)

The amendments to the WSIA and the WCA are *prospective* only — they are not *retroactive*. That is, the changes are effective *only* on or after March 1, 2000. A same-sex partner would not be entitled to survivors' benefits, for example, under section 35 of the WCA if the worker died before March 1, 2000.

It is important to note that in the past, as a matter of policy, the WSIB extended survivors' benefits to same-sex partners as if they were spouses. As of March 1, 2000, workers' partners are legally recognized as "same-sex partners".

All relevant policy documents in the *Operational Policy* manual will be updated in the coming months.

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