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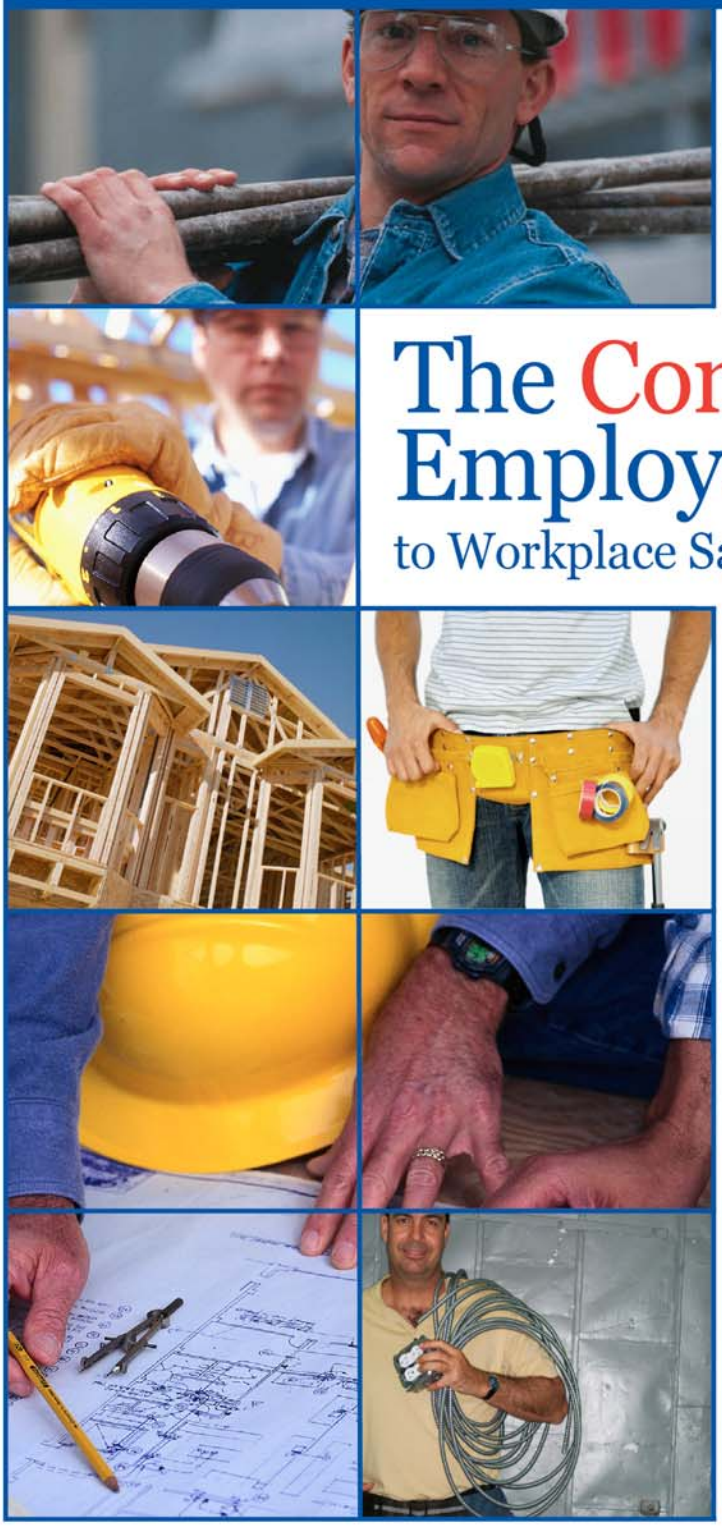

The Construction Employer's Guide

to Workplace Safety and Insurance

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March 2013

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

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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).

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. It is governed by the *Workplace Safety and Insurance Act, 1997* (WSIA), and is managed by the WSIB.

Registration

Who needs to register with the WSIB

If your business is providing construction services and 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. Likewise, if you acquire any or all of an existing construction business with employees, you must register with the WSIB within 10 days.

As of January 1, 2013, independent operators (IOs), sole proprietors, some partners in a partnership, and some executive officers who work in construction are also required to register and have coverage with the WSIB, and are deemed "workers" under the WSIA for this purpose. Private insurance is not an acceptable substitute. Where there are no other workers, the sole proprietors, partners, or corporations those individuals work for, or carry on business under, are deemed "employers" under the WSIA. In some cases, an individual will therefore be considered to be both an employer *and* a worker for the purposes of the WSIA.

Exempt from mandatory coverage are,

1. home renovators who work *exclusively* in home renovation and are contracted *directly* by either the person occupying the residence or by a family member of that individual, and

2. one executive officer or partner in a business, as long as that individual does not perform *any* construction work on *any* building site.

The latter exemption does not apply to executive officers of corporations that have only one executive officer and no employees. Individuals who operate their business on their own – either as sole proprietors who have no workers or as single officer corporations – must submit a status declaration confirming their status as an IO.

Your obligations regarding compulsory coverage and clearance certificates are set out in OPM Doc. Nos. 12-01-06, 14-02-04, 14-02-08, 14-02-19, and 22-01-10. All of these policies are available on the WSIB's website. The WSIB has also posted two Administrative Practice Documents related to expanded compulsory coverage in construction on its website. These documents, which are supplementary to the actual WSIB policies, offer additional information and practical examples to further explain the application of the new law and policies. For more information, please refer to the WSIB's www.beregisteredbeready.ca website.

How to register

Registration forms are available on the WSIB's website at www.wsib.on.ca, and through its eRegistration service. You can also call the WSIB at 1-800-387-0750 to have one sent to you.

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.

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.

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 construction business.

As of January 1, 2013, IOs, sole proprietors, partners, and executive officers in the construction industry are required to register with the WSIB, and to pay WSIB premiums, unless one of the few exemptions from coverage applies. Under the WSIA, these individuals

are deemed workers for benefit purposes, they are deemed employers for payment purposes, and they are entitled to WSIB benefits regardless of whether they are registered with the WSIB or not – although any unpaid WSIB premiums would be deducted from any WSIB benefits payable.

Compulsory coverage for IOs working in industrial, commercial or institutional construction, or in non-exempt home renovation work

An IO is an individual who does not employ any workers, who reports him/herself as self-employed under an Act/regulation of Ontario/Canada/another Canadian province/territory, i.e., for income tax purposes, *and* who is retained *by more than one person during an 18-month period*. Alternatively, an IO is an individual who is an executive officer of a corporation that does not employ any workers other than him/herself, and is retained *by more than one person during an 18-month period*. Non-exempt IOs must submit a signed declaration ("Independent Operator Self-Declaration") confirming their IO status when they register with the WSIB.

Exemption for executive officers

The earnings for all executive officers and partners are assessable for WSIB premium payments. However, *one* executive officer or partner in each company, so long as they do not perform *any* construction work, may be exempt. Construction work is defined, for this purpose, as any skilled/unskilled manual work, the operation of equipment/machinery, or the direct on-site supervision of workers. Periodic site visits are allowed. The exemption form for executive officers ("Partner or Executive Officer in Construction – Exemption from Coverage," Form No. 1208WA) is in the Employer Forms section of the WSIB's website. Individuals seeking an exemption from coverage must print the form, complete the declaration on the second page, and send it to the WSIB.

In order to obtain this exemption, the executive officer's name must be recorded in the employer's corporate minute book, and his/her status needs to be confirmed by other documents that the WSIB can review, i.e., corporate by-laws, public records filed with other government authorities, resolutions by the board of directors, etc. The WSIB will look at the substance of the individual's relationship with the corporation in order to determine whether, for WSIB purposes, the individual is an executive officer. The WSIB will provide written confirmation if the application is approved.

If there is a material change in the executive officer's/partner's non-construction work status, he/she must inform the WSIB within 10 days of the material change to avoid penalties.

Exemption for home renovation

IOs, partners, and executive officers who perform *exclusively* home renovation work, and who are *directly retained* by the property owner or his/her family member, are not required to register with the WSIB. Home renovators must provide estimates/contracts/invoices to the occupant or family member, in the contractor's name, and must receive payment directly from the occupant or family member. The work must be done on an existing *private residence* that

is, or will be, occupied by the person, or a member of the person's family, who retains the contractor.

When home renovation work is *not* exempt

Construction work performed for individuals who are in the business of buying, renovating, and selling a dwelling that will *not* be occupied as a residence by the individual, or the individual's family member, is *not* considered to be exempt home renovation work. Likewise, construction work that is performed on a structure located at the site of the residence used for commercial purposes is *not* considered to be home renovation work under the WSIA. If the scope of a home renovation project extends into any form of commercial work, the home renovator must be diligent in contacting the WSIB within 10 days to inform it of this material change.

Since coverage is mandatory for individuals performing non-exempt construction work, individuals who alternate between exempt and non-exempt work must ensure they have WSIB coverage. A minimum three-month period of coverage is required. Should an individual regain his/her exempt status at a later date, he/she must *request* an exemption from coverage.

The home renovation exemption also does *not* extend to a subcontractor who is, in turn, retained by the contractor who was directly retained by the property owner, or the property owner's family member. The subcontractor *must* provide a clearance certificate to the contractor.

Who can claim benefits under the WSIA

Workers or their dependents can claim 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.

Employer Costs and Penalties

WSIB premiums

The WSIB maintains an insurance fund that is made up of annual premiums paid by employers. 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 maximum insurable amount.

The WSIB has provided an "Insurable earnings and premium estimator" for the construction industry on its website to enable individuals to get a general idea about how much they may owe in premiums.

Premiums for Non-Exempt Partners and Executive Officers in Construction

Insurable earnings of executive officers include employment income reported to the CRA on Forms T4, T4A, T5, and director fees. Non-exempt partners and executive officers who do not perform construction work may qualify for a reduced premium rate. Applicants for this rate need to complete and submit the "Request for Rate Group 755, Non-Exempt Partners and Executive Officers in Construction" Form 1209WA in order to be considered.

Premiums for IOs

IOs in the construction industry who are engaged in both commercial work *and* home renovations must report *all* construction earnings to the WSIB as insurable earnings.

For IOs, insurable earnings will be calculated in one of three ways:

1. If the business records, invoices, or written contracts accurately identify the labour portion of the contract, the WSIB considers the labour portion to be the IO's gross insurable earnings.

2. If the business records do not accurately identify the labour portion of the contract *and* there is no evidence that the contractor provided major materials and/or heavy construction equipment, the WSIB considers 100% of the value of the contract to be the IO's gross insurable earnings for reporting purposes.

3. If the business records do not accurately identify the labour portion of the contract and it can be shown that the IO supplied major materials and/or heavy construction equipment, the WSIB will allow the principal to identify the labour portion of the contract as follows.

    a. If the IO provides labour and major materials, the IO reports 60% of the contract value as gross insurable earnings.

    b. If the IO provides labour and heavy construction equipment, either with or without major materials, the IO reports 33 1/3% of the contract value as gross insurable earnings.

Additional costs and penalties you could incur

The WSIB may levy penalties for various offences, including

- failing to comply with the requirement to register for mandatory coverage in construction
- failing to register your business within 10 days of hiring your first worker
- failing to get a clearance certificate, and keeping all clearance certificates for three years
- failing to report an accident
- not reporting, or incorrectly reporting, your premium information
- 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.

If found guilty under the *Provincial Offences Act*, 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.

From January 1, 2013 through December 31, 2013 the WSIB will waive penalties for construction employers, and will not lay charges under the *Provincial Offences Act*, for failing to register with the WSIB, or for failing to meet the clearance certificate requirements. Penalties for these offences will come into effect on January 1, 2014. In the meantime, retroactive premium assessments and interest to an employer's account will continue to be applied throughout 2013 as individuals are still expected to meet their obligations under the WSIA. The WSIB will also continue to prosecute individuals who make false or misleading statements to the WSIB.

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 construction 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.

There are two experience rating programs for the construction industry:

- Council Amendment to Draft #7 (CAD-7), and
- Merit Adjusted Premium Program (MAP).

All of the experience rating programs are currently under review.

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 and costs are higher than expected, the employer will receive a surcharge.

All experience rating programs automatically exclude the costs of claims arising from the following long-latency diseases 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.

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.

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, WR, 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 construction 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 an 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 to apply to have the claim costs transferred to another employer due to negligence on the part of the other employer or worker. A request for a cost transfer should be made in writing to the Case Manager.

Third party cost relief allows an 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 not an employer or worker. Any money recovered from the third party will be used to offset the injury employer's costs.

Other possible adjustments to an employer's account

The WSIB may also make an adjustment to an employer's account if, following an audit of a principal, the WSIB discovers that the principal failed to get a clearance certificate for a contractor or a subcontractor. In such a case, the principal may be liable for some or all of the subcontractor's payment obligations to the WSIB.

The WSIB also charges interest for non-compliance regarding any/all WSIA obligations.

Contracting Out

Get a clearance certificate

A WSIB clearance certificate removes from the principal any liability for the payment of WSIB premiums for a contractor or subcontractor for the duration of the construction contract. Starting January 1, 2013, IO questionnaires in the construction industry no longer apply. Construction IOs are required to have WSIB coverage, and to report and pay their WSIB premiums on time, in order to be eligible to receive a clearance certificate. A principal who directly retains a contractor, sub-contractor, or IO *must* get a clearance certificate from each IO, and ensure the individual is in good standing with the WSIB, *before allowing a contractor / subcontractor to do any work*.

This also applies to those who award construction contracts. Failure to do so is an offence, and could expose the principal to financial risk for the IO's non-payment/non-compliance. If a clearance certificate expires, or is revoked, the work must stop, and you must receive a new clearance certificate before allowing the work to resume. It is an offence for the subcontractor to continue construction work, and it is an offence for the principal to allow construction work to continue, without a valid clearance certificate.

Employers who contract with other companies to provide services such as janitorial or security will continue to 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 employers responsible for any unpaid premiums owed by the contractor on wages paid to the contractor's workers for the duration of the contract. The only way to ensure this will not occur is to require a clearance from contractors. You may deduct from money payable to the contractor the amount for which the contractor is liable.

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.

If you have questions about the eClearance system, call 416-344-4122 or 1-888-243-1569 to speak with a WSIB representative. 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.

An employer must keep all clearances for at least three years, and will be asked to provide them to the WSIB if an audit takes place.

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.

a) How the WSIB defines "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 wilful and intentional act, but not an act of the worker, i.e., being assaulted by a co-worker, and
- a disablement, which may be a condition that
    - has emerged gradually over time, and cannot be attributed to a clearly defined time or place, i.e., carpal tunnel syndrome, or
    - is an "unexpected result" of the worker's duties, wherein an accident that was originally believed to be minor resulted in disablement at a later date, i.e., a back injury from bending over to pick up equipment.

While the first two types of accidents are often clearly understood and, in many cases, are accepted without dispute, disablement claims tend to generate significant discussion and investigation, and are much more difficult to adjudicate. For that reason, the WSIB has an Adjudicative Advice document on "Initial Entitlement (Disablement)" which discusses the "causation test" that must be met in such cases. That document, which is available on the WSIB's website, also states, in part, that

> It is important to note that the presumption clause does not apply when assessing disablement claims. The worker has the burden of showing that the disablement arose out of and in the course of employment. It remains the responsibility of the decision-maker to conduct the investigations and obtain necessary evidence. This means that when determining entitlement, confirmation that the work activity 'contributed to the onset of the injury/disability' is required.

The information that you, as the employer, can provide to the WSIB with respect to the work activities performed is important in the decision-making process. Please contact the OEA for assistance if you have such a claim.

b) How the WSIB defines "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 Schedules 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 is entitled to receive benefits under the WSIA as if the 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

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 to 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.

What to do if an accident happens

Administer first aid immediately, and 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.

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. 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.

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, and can be completed and filed electronically.

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 – workers and employers), union representatives and other authorized representatives, where applicable, develop an appropriate WR 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.

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.

When to contact the MOL about a serious workplace injury or disease

If a worker has been critically injured or killed at the workplace, 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 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.

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 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 neurological 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.

Occupational disease claims are complex and have special rules. Contact the OEA for assistance if you have such a claim.

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 work-related 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.

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 paycheques
- 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.

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.

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 work-related injury/disease results in a permanent impairment. The WSIB defines a "permanent impairment" as any permanent physical or functional abnormality or loss resulting from a work-related injury/disease, as well as any psychological damage arising from that abnormality or loss. You 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) benefits 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 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 for Construction Employers

The focus of WR

The WSIB's WR program integrates return to work, re-employment, and labour market re-entry (LMR). The "WR goal" is for the WPPs to return the worker to work that he/she has the skills to perform, that is consistent within his/her functional abilities and that, to the extent possible, restores his/her pre-injury earnings, ideally returning to the pre-injury job. WR activities begin when the worker is able to return to suitable or pre-injury work with the injury employer. Your WR 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.

The WPPs' cooperation obligations

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.

Duration of the WPPs' cooperation obligations when the employer has no re-employment obligation

The cooperation obligations apply to the WPPs from the date of injury/disease until the earliest of

- the date the worker's LOE benefits are locked in (usually 72 months after the date of injury), or

- the date an employment relationship no longer exists between the WPPs because either

    - the worker voluntarily quits, or
    - the employer terminates the worker's employment for reasons that are *not* related to the worker's work-related injury/disease and related absences from work, or treatment for the work-related injury/disease, or the claim for WSIB benefits, in *any* way.

The WPPs' cooperation obligations also end when the WSIB is satisfied that the injury employer currently has no suitable work, and is not expected to have any suitable work in the reasonably foreseeable future.

You should call the OEA or your legal adviser for advice if any of the following situations arise:

- you are thinking about terminating or laying off an injured worker, or
- you don't want to provide accommodation for the injured worker, or
- an injured worker has resigned, or
- an injured worker has left the workplace without an explanation, or
- an injured worker has entered the WT phase of the WR process.

Modified suitable work

Modified work may include the combining or "bundling" of tasks or duties which together may 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.

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

- is safe
- is productive
- is consistent with a worker's (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 his/her co-workers, and/or to anyone else
- the work takes place at a worksite that is 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.

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 your human rights obligations.

It is important to 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 are unable to offer the worker suitable work, you must notify the WSIB decision-maker immediately.

Suitable Occupation (SO)

If an employer is unable or unwilling to offer suitable work to a worker who is unable to perform his/her pre-injury job because of the work-related injury/disease, the WSIB will consider training the worker to do a SO.

The SO that is identified for the worker represents a category of jobs suited to the worker's transferable skills that is safe, productive, within his/her functional abilities and, where possible, restores his/her pre-injury earnings. The SO must also be available either with the injury employer or in the labour market.

"Available" work with the injury employer

Work with the injury employer is "**available**" if it *exists* at the pre-injury worksite, or at a comparable worksite of the injury employer. In determining whether suitable work is "available" as it relates to the injury employer, the WSIB will look at whether a job vacancy has been posted, advertised or otherwise communicated, or at evidence of hirings or transfers taking place on or after the date the injured worker is able to do suitable work.

In a unionized workplace, the WSIB will respect the terms of the collective agreement whenever possible, but may require the WPPs to consider modifying the operation of specific provisions of the collective agreement in order to meet their WR obligations.

If the worker has a permanent impairment, or is likely to have a permanent impairment, and his/her condition is stable but the worker is unable to return to his/her pre-injury job, the WPPs and the WSIB will look at whether it is reasonable to believe the job will be available on a long-term basis. Suitable work must, therefore, also be **sustainable**.

"Available" work in the labour market

Post-injury work in the labour market is considered "available" if employment exists and is in demand in the labour market, to the extent that the injured worker has a realistic chance of getting a job.

WR services for occupational diseases, disablements and recurrences

If lost time is incurred long after the injury/disease, WR activities will begin as soon as the worker is functionally fit to return to work and all WR services will continue to be provided, where possible. If the worker has a new employer at that point, the WSIB will encourage the new employer to provide accommodated work since it is unlikely a cooperation or re-employment obligation would continue to apply to the injury employer.

What to expect if you are unable to arrange suitable and available work

If the WPPs are unsuccessful in arranging suitable and available work for the injured worker, the WSIB 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.

There is a heavy emphasis on human rights obligations. Employers have an obligation to offer suitable and available work to the injured worker. If there is no available work, employers must show they considered accommodating the worker up to the point of undue hardship. You should document *all* discussions with the injured worker and/or the WSIB, immediately after they take place, so you have an accurate and complete record of your WR activities.

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)
- inform all employees 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 WR, 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/WR 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 that 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 uncooperative in the WR process. Workers who raise a health and safety concern under the OHSA or the Canada Labour Code are also not considered to be in breach of their obligation to cooperate in WR.

What to do when the injured worker is back at work

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.

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. Good communication and cooperation between the WPPs is essential. Adjust your return to work plan as needed. Return the worker to the pre-injury job if he/she is ready to return to regular duties sooner than expected. 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.

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.

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 WSIA and/or 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.

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 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 behaviours of the WPP, and consider all relevant facts and circumstances including the degree to which the WPP has 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.

Before it considers applying a penalty against the injury employer for failing to offer suitable work, the WSIB needs to determine that suitable work is available.

When workers will *not* be found in breach of their obligation to cooperate

"Compelling circumstances" that are beyond a worker's control, i.e., a strike or lockout, a death in the family, or an unexpected illness or injury may be considered a valid reason for a worker being unable to cooperate in WR. At the same time, however, his/her LOE benefits may be reduced if the employer has offered suitable and available work, and the worker's loss of earnings is no longer fully attributable to the work-related injury/disease.

When employers will *not* be found in breach of their obligation to cooperate

"Compelling circumstances" that are beyond an employer's control, i.e., a summer holiday or shutdown, a general layoff, a strike or lockout, and/or a corporate reorganization may be considered a valid reason for an employer being unable to cooperate in WR. For small employers, compelling circumstances may also include a death in the family or an unexpected illness or injury.

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. For both workers and employers, the written notice for non-cooperation penalties comes into effect seven WSIB business days after the date of the written notice. The one exception to this rule is that for small employers with fewer than 20 workers, non-cooperation penalties come into effect 14 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 the WR process, 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.

WR 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.

WR 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 no further LOE benefits are payable and no WT services are provided, 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 for Construction Employers

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 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

In order for a non-construction worker, i.e., office staff that are not working at a construction site, to have a re-employment right, the employer must have a total of at least 20 workers, *and* the non-construction worker must have been employed by the employer for at least 12 months prior to the date of his/her work-related injury/disease.

As your re-employment obligations for construction workers 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, which is explained in the "Work Reintegration" section of this guidebook.

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, your obligation is to offer the worker the first opportunity to accept suitable work when it becomes available.

A new job does not need 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 date the worker turns 65, or
- the date the worker declines your offer of re-employment made 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 date 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 him/her, the WSIB will presume you breached your re-employment obligation and impose a penalty.

Construction workers who are terminated within six months of 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, and also may take the initiative to investigate at any time.

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 the injured worker after six months of re-employment, but within the obligation period, a re-employment breach is not presumed. However, you may still be found in breach of your obligation if the facts support it. The WSIB will look at the circumstances surrounding the termination and decide whether the termination was related to the workplace injury/disease in *any* way. Before terminating or laying off an injured worker, call the OEA or your legal adviser 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 re-employment 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.

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, and is apportioned based on the length of the remaining obligation period at the time the breach takes place. The penalty may be reduced by 50% if the employer subsequently offers suitable work at no wage loss, or by 25% if the employer offers suitable work at a wage loss, as long as employment continues for the remainder of the obligation period.

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. You should call the OEA or your legal adviser for advice if you have an injured worker who subsequently resigns, leaves the workplace without providing an explanation, or enters the WT phase of the WR process.

Re-employment payments or LOE benefits paid to the worker

If the employer does not re-employ a worker who is able to do the essential duties of the pre-injury job without accommodation, the worker will receive **re-employment payments** from the WSIB, retroactive to the date the re-employment obligation was breached, plus interest. These payments continue until the earlier of one year, or until the end of the re-employment obligation, as long as the worker has not found employment elsewhere and is available for and cooperating in appropriate WR services.

If the employer does not re-employ a worker who is only able to perform the essential duties of the pre-injury job with accommodation, or is only able to perform suitable work, the worker will receive **LOE benefits** from the WSIB, retroactive to the date the re-employment obligation was breached, plus interest. If the employer does not offer the worker any work, the worker will receive full LOE benefits if he/she has not found employment elsewhere and is available for and cooperating in health care and appropriate WR services, even if the services extend beyond the date the re-employment obligation ends.

Breaching cooperation and re-employment obligations

If an employer breaches both a cooperation *and* a re-employment obligation during *overlapping periods* in the same claim, the WSIB will apply a single penalty – whichever one is higher. But if an employer breaches more than one cooperation or re-employment obligation at *different periods* in the same claim, the WSIB may apply more than one penalty.

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

WT services, including assessments and plans, are provided to help the WPPs find suitable and available work with the injury employer, or to help a worker re-enter the labour market in a SO.

WT assessments

An injured worker will be provided with a WT assessment if

- the worker has, or likely has, a permanent impairment
- the worker is not capable of performing the pre-injury job
- the employer is unable to provide suitable and available work, or
- the employer has identified a job but it is unclear if the work is suitable.

A WT assessment includes testing 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 a SO. It is usually provided between six and nine months following the date of injury but, if that is not possible, it will be done as soon as the worker is able to return to suitable work. Although workers usually receive only one assessment, the WSIB may decide a WT re-assessment is appropriate if, for example, the work-related impairment significantly changes.

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 the worker with input and choice, and re-integrating the worker into suitable and available 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 addition to any other human rights-related accommodation requirements.

The worker and his/her representative have the opportunity to discuss the results of the assessment findings with the assessor. The WSIB, the worker and the employer (if participating in the process) will receive copies of WT assessment documentation. Employers will receive summary reports only, in order to respect the privacy of worker information under the *Freedom of Information and Protection of Privacy Act* (FIPPA).

"Availability" of the SO

In the process of identifying available work, the WSIB will look

- first, to a SO with the injury employer in the local labour market, or in the surrounding area with a reasonable commute for the worker
- then, to a SO with a new employer in the local labour market, and
- finally, to a SO with a new employer in the broader labour market.

Relocation Services

Relocation services are offered to the worker when

- the worker must change jobs because of permanent work-related restrictions, and
- the injury employer has no SO in the local labour market, and
- the injury employer has no SO in the surrounding area within a reasonable commuting distance for the worker, and
- there are no SOs in the local labour market with a new employer, and
- the broader labour market offers greater employment prospects in the SO.

The WSIB pays for "appropriate expenses" that are directly related to the worker *looking for work* in the broader labour market. After receiving a *bona fide job offer* in the broader labour market, the WSIB pays for additional "appropriate expenses" associated with that relocation. If the worker decides *not* to relocate, and there is no SO in the local labour market, WT services end and the worker's LOE benefits are adjusted to reflect the earnings of the established SO in the broader labour market.

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. The WSIB develops the WT plan in collaboration with the worker, the injury employer (where appropriate), union representatives, other authorized representatives, and the treating health care professional where necessary. WT plans may be revised to accommodate a significant change in circumstances related to the worker, the work-related impairment, or the labour market. The WSIB may also revise the original SO, if necessary.

Enhanced WT plans for young workers

Injured workers who, on the date of injury,

- are 15 to 24 years of age
- are not students, learners or apprentices
- are unable to return to their pre-injury job and/or have permanent work restrictions because of their permanent work-related impairment, and
- had low pre-injury earnings

may receive an enhanced SO and WT plan. This is done to try to mitigate the young worker's potential loss of future earning capability as a result of the work injury, as much as possible, since the young worker did not have a reasonable opportunity to establish his/her earnings profile. The enhanced SO applies to the WT plan only, and is not used to calculate LOE benefits.

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. The intent of this program is for the training period to lead directly to suitable and long-term work. 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

If a worker is 55 years of age or older at the time the WSIB determines he/she is entitled to LOE benefits, and the worker requires a WT plan involving vocational skills training to obtain employment in a SO, he/she can choose to either participate in a WT plan to return to work in the SO, or to participate in a 12-month Transition Plan (TP) that is focused on self-directed WR in order to return to work in the SO.

If the worker chooses the self-directed TP option, an irrevocable no-review option for LOE benefits payable to age 65 also applies. Full LOE benefits would continue for the 12 months the worker is participating in the self-directed TP. After that, LOE benefits would be

recalculated to reflect the estimated earnings of the SO according to current labour market information.

Stay actively involved in the WT process

You should take an active role 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.

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 terminates the WT assessment and/or plan and reduces the worker's LOE benefits to reflect the earnings he/she would have been able to earn if he/she had completed the WT plan.

Appeals

Appealing a WSIB decision

Most WSIB decisions can be appealed if you believe they are incorrect, or contrary to the WSIA or WSIB policy.

Different levels of appeal

There are three levels of appeal.

1. WSIB Operations Level

Operating level decisions are made by 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 Services Division (ASD).

2. WSIB ASD

The objection is referred from the operating level to the ASD, and is assigned to an 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.

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/return to work, re-employment, and WT/labour market re-entry decisions, and six months from the decision date to appeal any other decisions, to an ARO.

If the appeal period is missed, you may have lost your right to appeal as an extension to appeal is granted only on very limited grounds. You should still file an appeal as quickly as possible, and contact the OEA for advice.

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

How to appeal a WSIB decision

To appeal a WSIB decision regarding *a worker's benefits, WR, SIEF or WT*, complete an "Intent to Object Form" 2397A (ITO Form) which is available in the Employer Forms section of the WSIB's website. You can also call the WSIB at 416-344-1000 or 1-800-387-0750 and ask to have one mailed to you. This form is to be used for claims-related matters only. The ITO Form has extensive directions on it which must be followed.

Once you submit the ITO Form, the time limit to appeal stops running. You may then take as much time as you need to submit an Appeal Readiness Form (ARF) to the WSIB.

To appeal a WSIB decision regarding *classification or other revenue-related issues*, write a letter to the decision-maker indicating your disagreement with his/her decision. Note that the WSIB will not automatically send you a copy of your firm file for employer account appeals. You will need to contact the Firm File Access area and ask for your firm file to be sent to you. For more information about accessing employer-specific information, refer to OPM Doc. No. 21-01-01 "Access to Employer Information," which is available on the WSIB's website.

If you have any questions, you may call the OEA for advice and/or representation.

Appeals at the WSIB's ASD

Only certain types of appeals involving more complex issues, or credibility issues, will be decided by oral hearings. Most matters will be decided based on materials in the claim file, written submissions, and any additional documents submitted. When you are ready to proceed with your appeal, you must complete the ARF that will be sent to you. This form requires you to provide comprehensive information about your grounds for appeal, why you think you should win, and the outcome you are seeking from the WSIB once your appeal has been reviewed/heard by the ARO. Your arguments must be clear and detailed, and references should be made to specific WSIB policies, where appropriate. You likely will not be contacted by the ARO for additional information after the ARF has been submitted. If you are looking for an experienced person to represent you in the appeal, you should let your representative complete the ARF for you.

If the WSIB decides to hold an oral hearing, the ARF asks that you also provide a statement about what your witness(es), if any, will be saying. You must also provide any documentation

that you will be relying on at the hearing. A detailed explanation about how hearings will be conducted, and other related matters, is in the "Appeals Services Division Practice & Procedures" document, which is available on the WSIB's website. It is critical that you read this document if you intend to do the appeal yourself.

What happens if a worker appeals a WSIB decision

Employers will receive a Participant Form (PF) after the worker submits his/her ITO Form. The PF must be completed and returned to the WSIB as soon as possible, or you will not get any further information about the appeal until after a final decision has been made. The WSIB will send you the worker's filed ARF, and the full claims file record. You (or your representative, if you have one) must then review these materials, provide your comprehensive submissions on the Respondent Form (RF), and submit it within 30 days. A determination will then be made on whether the appeal will be conducted in an oral or a written hearing format.

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. Our staff are experienced workers' compensation experts, and all information shared is considered strictly confidential.

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 work-related injury/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 are 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 are also referred from Primary Adjudicators to Eligibility Adjudicators in cases where the Form 7 is received before the Form 8.

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 necessary, 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, the claim 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. Employers who have concerns with respect to specific cases should contact the appropriate Eligibility Manager.

Case Managers

1. Short Term Case Manager

All cases are 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.

The Short Term Case Manager makes decisions on entitlement for recurrences that occur *less than three months* after the worker's WSIB benefits have ceased. He/she is responsible for determining ongoing benefits and for making decisions on entitlement based on new information.

In all cases, the Case Manager will discuss WR 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 or suitability 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.

2. Long Term Case Manager

All cases are 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. 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

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

Medical Consultants

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.

The WSIB has a "Physician Services Program" to ensure the timeliness of, and access to, "quality medical opinions" in order to improve recovery and RTW outcomes for workers. This involves internal WSIB staff physicians, as well as external physicians from a variety of specialties who are contracted to conduct case file reviews on a fee-for-service basis.

Return to Work Specialists

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 WR 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.

Case Management Re-employment Team

This Specialty Team facilitates 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. Employer cooperation issues are also referred to the re-employment team.

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

The WTS helps the WPPs and the Case Manager to facilitate the WT process 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.

Employer Liaison Specialists

The Employer Liaison Specialist focuses on improving WR outcomes by sharing best practice approaches in WR, and actively supporting employers to become self-sufficient in the development and implementation of disability management and WR programs. They refer employers to the HSAs for all prevention/health and safety issues. Working with an Employer Liaison Specialist is voluntary.

SIEF Team

Employers seeking SIEF relief should send their written request and claim number 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.

Mental Health Team

All secondary psychiatric and chronic pain entitlement issues (those resulting from workplace injuries/diseases) are made by this specialty team, which is located in Toronto and Hamilton. The Case Manager will refer the psychiatric portion of the claim to this team, but will retain ownership of the claim file and continue to be the primary contact for all other issues including medical referrals to various specialists, where applicable. If you disagree with an

entitlement decision regarding entitlement for secondary mental health issues, you should contact the decision-maker, rather than the Case Manager, as is the process for all objections.

Appeals/FEL Team

This Specialty Team implements all WSIB ASD 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 Service Centre

The Employer Service Centre deals with all revenue issues, registration, and clearance certificates. **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 1-800-387-0750, provide their account number and be referred to an Account Specialist who will address their account issues.

Glossary of Terms

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 (Appeals Branch, WSIB)
AA	Appeals Administrator (Appeals Services Division (ASD), WSIB)
AB	Appeals Branch (now Appeals Services Division (ASD), WSIB)
AD	accident date
ADJ	adjustment
ADL	activities of daily living
AE	accident employer (now injury employer)

AM	Appeals Manager
AO	Area Office, i.e., Ottawa Area Office
ARF	Appeal Readiness Form
ARO	Appeals Resolution Officer (Appeals Branch / Appeals Services Division, WSIB)
ASD	Appeals Services Division (formerly the Appeals Branch, WSIB)
CAD-7	Council Amendment to Draft #7 (experience rating program for the construction industry)
CANLii	Canadian Legal Information Institute
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)*
DSM-IV	*Diagnostic and Statistical Manual of Mental Disorders (4th ed., revised)*
DSR	downside risk
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

FIPPA	*Freedom of Information and Protection of Privacy Act*
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
HIW	Hearing in Writing
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
ITO Form	Intent to Object Form
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
LSUC	Law Society of Upper Canada
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)
ODRT	Occupational Disability Response Team of the Ontario Federation of Labour
OEA	Office of the Employer Adviser
OH	Oral Hearing
OHCOW	Occupational Health Clinic for Ontario Workers
OHSA	*Occupational Health and Safety Act*
OIT	Objection Intake Team
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
PF	Participant Form
PI	permanent impairment
PMT	payment
PPD	permanent partial disability
Prem	premium
PSP	Process Service Provider
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
RF	Respondent Form
RSD	Regulatory Services Division (WSIB)
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 Service 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

Fair Practices Commission

http://www.fairpractices.on.ca/

Infrastructure Health and Safety Association

http://www.ihsa.ca/

Ontario Ministry of Labour

http://www.labour.gov.on.ca/

Occupational Health and Safety Branch, MOL

1-877-202-0008

Employment Standards Branch, MOL

1-800-531-5551

Ontario Human Rights Commission

http://www.ohrc.on.ca/