INJURIES COVERED BY WORKERS' COMPENSATION

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- Generally, workers are entitled to benefits if their injuries are the result of work related factors;
- This can include much more than what is traditionally thought of as an “accidental injury”;
- According to the Act, accidents can be classified into the following three categories:
  1. **Chance event caused by a recognizable incident**;
  2. **Wilful and intentional act not being the act of the worker**;
  3. **Disablement: A condition that has emerged gradually**.

1. **Chance Event Caused by a Recognizable Incident**
   - This would include traditional accidents such as a worker who is struck by an object, falls or suffers a cut, etc. These traumatic events are clearly accidental injuries for which a worker may receive benefits.

2. **Wilful and Intentional Act not being the Act of the Worker**
   - The victim of an assault at work is entitled to compensation unless the reason for the assault is a very personal one.

3. **Disablement: A condition that has emerged gradually**
   - A disablement is any condition that gradually emerges over time. These types of injuries include repetitive strain injuries, injuries from unaccustomed workloads and disease resulting from workplace substance exposure.

WORK RELATEDNESS

- It is not enough to show that a worker has had an accident. It must also show that the accident is relative to the injured worker's job;
- The Workplace Safety & Insurance Act describe this by saying that the accident must arise:
  - **Out of employment**, and
  - **In the course of employment**.
- If one element exists, the other also is presumed to exist unless it can be proven otherwise. This places the onus of disproving the work-relatedness on the employer;
- Generally, this presumption does not apply to disablements. In those cases, the worker has the burden of proving the existence of both elements. At times, it can be difficult to determine whether the worker was injured while performing a task at work.

The WSIB examines the circumstances of the accident under three general headings:

1. **Place**;
2. **Activity**; and
3. **Time**.

1. PLACE

Whether the accident occurred:

- On the employer's premises: the building, plant or location owned or controlled by the employer where the work is entitled to be including entrances, exits, stairs, elevators, lobbies, parking lots, passageways and roads;
- Off the employer's premises while travelling, attending a course or convention, reporting to work after hours "on call", or performing an activity for the employer's benefit;
- While operating the employer's vehicle or travelling in a vehicle operated by the employer while on the employer's business;
- While performing a single or multi purpose errand.

2. ACTIVITY

Whether the activity:

- Involved duties assigned by the employer;
- Was compulsory or voluntary;
- Was social or personal;
- Was controlled or supervised by the employer;
- Was an illegal or prohibited action such as drug or alcohol abuse, fighting or horseplay or serious misconduct;
- Would result in a payment to the worker by the employer;
- Was incidental to the employment considering:
  - The nature or work;
  - The nature of the work environment;
  - Customs and practices of particular workplaces.

3. TIME

Whether the accident occurred:

- During normal working hours or within a reasonable time before or after;
- During lunch or break periods;
- While the worker was being paid by the employer;
- At the time of the accident, if the activity were for the benefit of the employer, the claim would normally be in the worker's favour.

4 IMMEDIATES

- Along with the three prior headings, the WSIB has traditionally used another set of criteria to determine whether there is a relationship between the work activities and the injury;
- These are commonly referred to as the "**4 Immediates**".
- **Immediate onset of pain**;
- **Immediate lay off**;
- **Immediate reporting**;
- **Immediate medical attention**.
- When the "immediates" are met, the claim is normally allowed.

OTHER ENTITLEMENT ISSUES

Serious and Wilful Misconduct

- Even if a worker is in the course of employment and the worker was deliberately disobeying an expressed order or rule which is enforced and is well known to the workers, the injury will not be compensable (unless the injury results in death or serious injury);
- A thoughtless act is not considered serious and wilful misconduct.

EMPLOYEE NEGLIGENCE

- WSIB is a “No Fault” system. Employee negligence or carelessness does not affect compensation rights;
- Examples of compensable injuries:
  - Injuries caused by failure to wear prescribe safety equipment;
  - Injury from “horseplay” as when one worker trips another;
  - Injury while doing an unauthorized job or while in an unauthorized area.
- The Act does bar compensation where the injury or death is caused by the employee’s violation of the law and the violation of the law is only a summary offence;
- The payment of compensation is not prohibited.

FIGHTS

- Given the stresses of many occupations, fights may on occasion erupt at work. Fights are considered incidents of employment and are covered by the WSIB whether or not the injured worker was the aggressor;
- The only requirement is that the fight concern an issue related to work and not be the result of an intentional attack for personal reasons;

Examples of compensable injuries:

- Fight over the use of a tool;
- Fight over a disputed work assignment.

AGGRAVATION OF PRE-EXISTING CONDITIONS

- One of the most valuable features of the Workplace Safety & Insurance Act (WSIA) is its full coverage of disability caused by aggravation of pre-existing medical conditions;
- This helps employees who have underlying weaknesses such as a bad back, knee, wrist, heart, lung or arthritic problems;
- Work does not have to be the sole or even the most important cause of an injury. The employer takes the employee “as is” and must pay compensation regardless of his/her previous physical condition;

AGGRAVATION OF PRE-EXISTING CONDITIONS – cont'd

- If something at work, even a relatively minor incident, precipitates, aggravates, hastens or significantly contributes to an injury or occupational disease, it is compensable;
- For example, if a worker has a weak back caused by an earlier automobile accident, lifts a small weight at work causes the back to "go out" making the worker disabled, compensation should be paid;
- Do not let your employer tell you that you are not entitled to compensation just because you had a prior back problem or prior heart problem or prior lung problem;
- Many cases have been successful when the injury's connection with work appeared at first to be thin.

CUMULATIVE/DISABLEMENT INJURIES

- Many people think that if an injury cannot be tied to a single event or time, it is not compensable. This is not true;
- Injuries caused by a series or work strains (repetitive trauma) are included under the Act even if no particular incident can be singled out;
- An injury may be caused by a long period of repetitive work that inflames the hands, wrist, shoulders or other joints;
- Compensation has been ordered for cases of arthritis, tendonitis, carpal tunnel syndrome and tenosynovitis, even when there was no single accident.

EXAMPLES OF COMPENSABLE INJURIES

- Arthritis of the back from heavy repetitive lifting over several years;
- Carpal tunnel syndrome because of repetitive use of wrist and hand;
- Sewing machine operator develops tendonitis in wrists;
- Assembly line worker develops arthritis in the shoulder after performing job requiring constant reaching;
- Injuries that result from daily “wear and tear” are compensable. The worker does not have to prove unusual or excessive exertion;
- If a job incident or series of incidents aggravates the pre-existing weakness to a point of disability, the Board must pay compensation even if you are totally and permanently disabled.

OCCUPATIONAL DISEASE

- Occupational disease is defined under the **Act** as:

  "*A disease resulting from exposure to a substance relating to a particular process, trade or occupation in an industry;*

  A disease peculiar to or characteristic of a particular industrial process, trade or occupation;

  A medical condition that in the opinion of the WSIB 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".

OCCUPATIONAL DISEASE – cont'd

- If you are suffering from and impaired by an occupational disease, you are entitled to benefits from the WSIB as if you were injured in a work-related accident;
- Diseases contained in Schedule 3 will be compensable unless the Board or the employer can show that the disease did not arise from the work;
- For diseases listed in Schedule 4, however, workers only have to prove that they have the disease and that they were employed in the corresponding work process to be granted entitlement;
- The WSIB has developed policy guidelines to assist with claims relating to a number of other occupational diseases that are not in the Schedules.

OCCUPATIONAL DISEASE – cont'd

Information required to establish entitlement for Occupational Disease:

- It is important to provide the WSIB with a detailed history of your occupational exposures when filing a claim for occupational disease;
- This should include all of your past employers, the jobs you performed for those employers, details of the work processes involved and if possible, a list of the specific substances to which you were exposed in these workplaces;

OCCUPATIONAL DISEASE – cont'd

- It is also important to have a clear diagnosis of your condition that relates the disease to your history of occupational exposures;
- Ideally, this should come from a specialist in the particular disease or in the field of occupational medicine;
- You should make sure that your doctor is aware of your occupational history at the time that he or she assesses you.

OCCUPATIONAL DISEASE – cont'd

Can you be granted entitlement but not be entitled to benefits?

- It is possible to be granted entitlement for an occupational disease and yet receive no benefits. This can occur if the disease has not progressed to a stage that the WSIB recognizes as compensable impairment and if it is not affecting your ability to work;
- Keep the WSIB informed of any developments in your condition. Any material change in your circumstances, you are required to inform the WSIB within ten days of the change occurring;
- Therefore, if your condition changes at all, or if it starts to affect your ability to work, notify the WSIB immediately and ask your doctor to send the Board a report setting out the new medical information.

INCREASED LIKELIHOOD OF FURTHER INJURY

- Partial disability compensation, and in some cases total disability compensation, is payable when an employee suffers a work injury, recovers, but cannot return to the original job because the injury has caused a lowered threshold of resistance to further injury.

Example of compensable injury:

- Worker at a lead-battery plant, because of repeated and long-term exposure to lead, becomes particularly susceptible to further lead absorption. The worker is not permitted to return to the high lead level area;
- He is entitled to partial or total disability compensation depending on his ability to do other work.

INJURIES THAT RECUR OUTSIDE OF WORK

- If a work injury is re-activated by normal activities outside of work, the insurance company covering the work injury must pay compensation for any resulting disability.

Examples of compensable injury:

- A nurse with a back condition from work is disabled when her back goes out again while bending to plug in a TV set at home;
- A worker gets a severe dermatitis from work. It clears up, but reappears when he washes with hot water at home.

COMPANY SOCIAL OR RECREATIONAL EVENTS

- Injuries at company events, i.e. company sponsored picnics, parties, or softball teams may be work related, depending on the company's involvement with the event.

Example of compensable injury:

- A worker burns himself while cooking at the company picnic.

SECONDARY CONSEQUENCE INJURIES

- An occupational injury may lead to complications far different from the original harm;
- Nevertheless, if there is a causal connection, compensation is due for all the consequences of the worker's injury.

Examples of compensable injury:

- Disability or death caused by infection during hospitalization for lung condition caused by asbestos exposure;
- Heart attack from the strain of undergoing surgery after a fall at a construction site.

HEART ATTACKS

- Coronary artery disease gradually develops (perhaps unknown to the employee) which restricts the flow of blood to the heart;
- This leaves a worker susceptible to an attack if demands are placed on the heart muscle, due to working conditions;
- If an incident at work precipitates or hastens a heart attack, the disability is compensable;
- Compensation has been ordered when the precipitating factor was heavy exertion such as lifting, minor exertion such as climbing stairs, strain and worry from an altercation with a supervisor, long hours of overtime or exposure to extremely hot or cold temperatures;

HEART ATTACKS – cont'd

- Heart attacks may be covered if there is a chain of causation stemming from a work incident that occur after work is completed or at home;
- In certain situations, angina pectoris, (a type of chest pain and a heart disease) may be worsened by work to the point of disability;
- Exposure to certain chemicals or working conditions can also play a role in the development of heart problems, e.g. carbon monoxide poisoning. These conditions are also work-related.