A WORKERS GUIDE TO THE WORKPLACE SAFETY AND INSURANCE BOARD

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INTRODUCTION

Injured at Work is published by the Provincial Building & Construction Trades Council of Ontario (Ontario Building Trades), to help workers who are injured on the job.

The Ontario Building Trades consists of 13 International craft unions in the construction industry with a total membership of about 100,000, with locals being situated in both urban and remote regions of the province.

Workplace accidents and occupational disease affect construction workers at an alarmingly high rate. This means that workers and their unions have to deal with the Workplace Safety and Insurance Board (the "Board") more often than in other sectors.

Injured at Work provides practical advice on how to get all your benefits. It tells you what to do if you are injured. It will also answer your questions regarding; "how do you file a claim", "what benefits are owing, "what are the steps to receiving ongoing medical treatment and additional training", "how and when do you go back to work", and how to appeal a WSIB decision"?

Don't use ***Injured at Work*** as a substitute for expert advice. There are many individual facts, which can make a tremendous difference as to how to handle a specific situation. If you learn this material and make use of your union local services, you will be able to better navigate the system. Moreover, you will seek the assistance of a representative only when truly necessary and will be able to work with the representative in an informed way.

"Meeting Today's Challenges and Plotting Tomorrow's Opportunities"

CHAPTER 1

WORKPLACE SAFETY AND INSURANCE BOARD

The first Workmen's Compensation Act was enacted in 1915 after Chief Justice Sir William Meredith was commissioned to study injuries and/or illnesses resulted from the risks of the workplace. This legislation set the framework for the current workplace safety and insurance program that we have today.

The *Workplace Safety and Insurance Act (WSIA),* administered through the Workplace Safety and Insurance Board, provides compensation for personal injuries arising *out of* and *in the course of employment*, regardless how the accident happened or who is at fault. Injuries can include an intentional act that is not done by the worker; a chance event caused by something physical or natural, or a disablement caused on the job, such as a disease or chronic condition.

WSIB will pay a percentage of lost wages to injured workers and all medical expenses. Services and programs are provided to assist injured workers to make an early, safe and successful return to work (ESRTW). This program ensures workers and employers are protected from potential financial loss caused by workplace accidents. The Act has been amended many times over and your actual benefits depend on when you were injured.

Section 1 of the Workplace Safety and Insurance Act states that:

"The purpose of this Act is to accomplish the following in a financially responsible and accountable manner:

1. To promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and occupational diseases.
2. To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
3. To facilitate the re-entry into the labour market of workers and spouses of deceased workers.
4. To provide compensation and other benefits to workers and to the survivors of deceased workers."

Employers fund the WSIB and the worker does not pay into the system.

The Role of the WSIB

- Promote public awareness and educate employers and workers about occupational health and safety;
- Provide *Occupational Health and Safety Act* certification and training programs;
- Accredit employers who have successfully completed occupational health and safety programs;
- Assign and fund safe workplace associations, medical clinics and training centres;
- Fund occupational health and safety research;
- Build on standards for first aid training and fund organizations that provide the training.

CHAPTER 2

INJURIES COVERED BY WORKPLACE INSURANCE

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:

I. 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.

II. 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.

III. 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 be shown that the accident is relative to the injured worker's job. The Workplace Safety and 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 circumstance of the accident under three general headings:

I. 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, roads;
- off the employer's premises while traveling, attending a course or convention, reporting to work after normal hours "on call," or performing an activity for the employer's benefit;
- while operating the employer's vehicle or traveling in a vehicle operated by the employer while on the employer's business;
- while performing a single or multi purpose errand.

II. 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 of work
  - nature of work environment
  - customs and practices of particular workplace.

III. 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".

1. Immediate onset of pain
2. Immediate lay off
3. Immediate reporting
4. Immediate medical attention

When the "Immediates" are met, the claim is normally allowed.

Serious and Wilful Misconduct

Even if a worker is in the course of employment, if 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 compensated (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 prescribed 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 injuries 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 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 problem.

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. 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, but lifting 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 of work strains (repetitive trauma) are included under the Act even if no particular incident can be singled out.

Example 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 WSIB must accept entitlement and process applicable benefits/services.

Occupational Disease

Occupational disease is defined under the Workplace Safety and Insurance Act (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 Workplace Safety and Insurance Board (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.

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 it in deciding claims relating to a number of other occupational diseases that are not in the Schedules.

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.

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.

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 a 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 LOE benefits, and in some cases full LOE benefits , are payable when an employee suffers an exposure, recovers, but cannot return to the original job because the injury has caused a lowered threshold of resistance to further injury.

Example of compensable injuries:

- 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 full LOE benefits 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 WSIB may pay compensation for any resulting disability.

Examples of compensable injuries:

- 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.

Examples of compensable injuries:

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

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, worry from an altercation with a supervisor/co-worker, exposure to extremely hot or cold temperatures.

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.

Secondary Consequence

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 injuries:

- 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.

The WSIB is also liable when an employee, in doing normal and reasonable activities, sustains harm because of an earlier work injury.

Examples of compensable injuries:

- employee with a broken leg sustains a fresh fracture while attempting to walk downstairs at home;
- employee injures knee while undergoing physical therapy for a work-related low back condition.

Mental Stress

The *Act* bars entitlement to all claims for mental stress with one exception: ***only workers who suffer an acute reaction and unexpected traumatic event are covered.***

GUIDELINES TO "MENTAL STRESS"

- **ACUTE REACTION**

Board policy defines acute reaction as one that does not appear gradually over time due to general workplace conditions. The policy recognizes that an acute reaction may be delayed in onset by weeks or months.

The policy document provides three examples illustrating the Board's interpretation of the meaning of "acute reaction".

The Board's first example describes a worker who takes time off, more or less immediately, as a result of stress seeing a co-worker seriously injured. The policy says that this is an acute reaction because "**it did not develop gradually."**

The Board also provides the example of a worker who is disabled by stress because he is subject to ever changing deadlines in a highly competitive environment while the company is downsizing. The policy says that this is not an acute reaction because "the mental stress developed gradually over time".

In this example the worker may not be entitled to compensation for other reasons (there is no sudden and unexpected traumatic event, and the events are related to the employer's actions). It is not clear however, that the reason she is not entitled to benefits is the lack of an acute reaction.

From the examples it is clear that the Board expects that in addition to showing a sudden and an acute reaction, the claimant must also show that the reaction was sudden.

TRAUMATIC EVENT

The Board has adopted a narrow definition of “traumatic”. The Board policy defines “traumatic event” as limited to extremely traumatic events that would usually be horrific or have elements of violence. Board policy has the effect of making virtually only those events that is sufficiently serious to compensate under the legislation.

In the case of witnessing an event, the examples in the policy indicate that there must be actual serious injury from the event for the witnessing of the event to be considered traumatic. Witnessing an event, which seemed as though it would lead to serious injury or death, may not fall within Board policy, even if witnessing the event had disabling effects.

For example, seeing a co-worker slip on scaffolding and almost fall a great distance might be traumatic and disabling but because the co-worker was not actually harmed, the incident may not fall within the description of a “traumatic event”

- **EMPLOYER ACTIONS**

The *Act* provides that stress caused by employer actions is not compensable. The following are examples of employer actions:

- Terminations
- Demotions
- Transfers
- Discipline
- Changes in working hours, and
- Changes in productivity expectations

CHAPTER 3

WSIB BENEFITS

The WSIB provides a variety of benefits that workers may be entitled to if they are injured. Even if workers do not miss any time off work, they still may be entitled to health care benefits for expenses such as medical treatments and medications.

The following lists the different types of benefits:

A. Loss of Earnings (LOE) benefits
B. Non-Economic Loss (NEL) benefits
C. Health Care benefits
D. Recurrences
E. Employer Contribution to Benefit Plans
F. Survivors' benefits
G. Labour Market Re-entry

A. Loss of Earnings (LOE) Benefits

Injured workers are paid a loss of earnings (LOE) benefit from the day after the injury or when the loss of earnings begins. The employer must pay full wages for the day of the accident.

How are LOE Benefits Calculated?

LOE benefits are paid at 85% of workers net average earnings (NAE) before the injury, less any earnings after the injury up to an annual maximum. It is important to note that workers' compensation benefits are not taxable.

The Board sets the LOE benefits on earnings reported by the employer. Workers' should review the section of the Form 7, entitled earnings to see if the employer has reported the correct information. It is important to note that LOE benefits have to incorporate workers earnings from all of the jobs a worker had at the time of accident. This includes part-time employment etc. It is imperative that workers report these earnings to the Board, as quickly as possible.

In addition to the regular rate of pay or salary, earnings can also include overtime pay, bonuses, and certain benefits. The board may contact workers and ask for more earnings information, such as income tax returns. If workers fail to provide the information requested, the Board might reduce or suspend LOE benefits until the worker provides the information.

Short LOE Term Rate (12 weeks)

For accidents, the Board calculates a short-term rate (12 weeks) based on a workers rate of pay. This rate includes earnings from all employers at the time of accident. For the first 12 weeks, workers receive 85% of their net (take-home) wages.

Long Term LOE Benefit Rate

Starting with the 13th week of continuous LOE benefits, the benefit is based on the worker's long-term average earnings, which are determined according to the nature of the worker's employment. Please note workers who have a permanent work pattern are not subject to the 13th week calculation.

The Board classifies all construction workers as *"non-permanent or irregular workers"* therefore automatically in the 13th week these workers are recalculated.

The Board defines "non-permanent or irregular workers" to include:

- contract workers;
- workers hired through a union hall;
- seasonal or cyclical workers (whether on permanent contract or not).

Recalculation Period

The long term earnings basis of non-permanent or irregular workers is generally based on the worker's earnings from all employers the worker worked with in the 24 months before the injury.

Recalculation Method

To determine the long term earnings basis for a non-permanently or irregularly employed worker, the Board

- establishes the recalculation time from (104 weeks or less if break);
- adds up the total earnings from all employers in the time frame (including Employment Insurance benefits);
- identifies which periods should be excluded from the recalculation period (receiving Board benefits, etc.);
- divides the earnings by the weeks (or days) in the time-frame to produce the weekly long term earnings basis.

How Long Does the WSIB Pay LOE Benefits?

LOE benefits are paid until one of the following conditions applies:

- worker no longer has a loss of earnings;
- worker turns 65;
- worker no longer impaired;
- worker fails to co-operate in return to work or in health care.

Are Workers Automatically Entitled to Full Benefits?

No. Just because a worker has an accident at work does not necessarily mean that they will receive LOE benefits. Generally injured workers will get full LOE benefits if they are unable to return to modified work or if the employer is unable to offer suitable work.

Workers are also entitled to full LOE benefits if the injury makes it impossible to return to any work. In these instances, the worker may be totally disabled, for a period of time and medically unable to perform any work.

Under the present compensation system if a worker is physically able of returning to their regular job, and the employer is able to provide the regular job, the Board expects the worker to return to work. If workers, refuse LOE benefits will be terminated.

If workers are medically able to return to work, but not at their regular job, and the employer is able to provide suitable work, that is within their restrictions, the Board expects workers to accept the job. For example, some construction employers have what is known as "a modified work program" whereby, shortly after accident, the employer provides the worker with a different job at no wage loss. Some employers have been known to offer injured construction workers "light jobs" such as working in the office, clean up, sweeping, and flagman duties etc. If workers refuse and do not accept the employer's job offer, LOE benefits will be reduced by the amount of pay that the worker would have received from the job.

What are Partial Benefits?

If workers return to work at a wage loss or if they are ready to return to work after a Labour Market Re-entry Assessment or Plan, they may be entitled to partial loss of earnings benefits.

Partial LOE benefits are 85% of the difference between a workers pre-injury net average earnings and post-injury NAE average earnings. Post-injury net average earnings may be what the Board says (deems) an injured worker capable of earning after completing a labour market re-entry assessment or plan and are ready to re-enter the workforce.

Partial Loss of Earnings Benefits =
Pre-injury Net Average Earnings –
Post Injury Earnings x 85%

How often are LOE Benefits Reviewed?

Benefits can be reviewed up to once a year for six years and at any time during that period if there is a change in a workers material circumstance, such as change in income, return to work or medical condition.

After six years, LOE benefits can be reviewed only if there was a deterioration in the compensable condition.

Retirement Pension

If workers receive LOE benefits for more than 1 year, the Board puts an amount equal to 5% of each cheque into a retirement pension. When a worker turns 65 years old, they are entitled to receive a retirement pension which equals 5% of all LOE benefits that a worker received from the first year after accident, and the investment income on that money.

Further, the Board offers workers the choice to contributing an extra 5% of their own money into this retirement pension. If workers choose to contribute the extra 5%, the Board deducts this money from LOE benefits they may be receiving. Once workers decide to contribute, they cannot change their decision.

Once workers turn 65 years old, the Board will give workers different choices about how to receive the retirement pension. The choices depend on how much retirement money workers are entitled to. For workers, who die before they turn 65, the surviving family is entitled to the money in the retirement fund.

B. Non Economic Loss (NEL) Benefits

The Non Economic Loss (NEL) benefit is intended to compensate workers for the pain, suffering, and "loss of enjoyment of life" caused by permanent disability. The NEL benefit is normally paid out in a lump sum, and only once. However, if the amount of the NEL benefit is more than $11,456.30 (the 1998 lump sum cut-off amount), it will be paid as a monthly benefit unless workers agree to have a lump sum instead.

The NEL benefit is based on a doctor's examination and on a standard rating schedule set out in the law. When the Board thinks that a workers condition will not improve any more, they arrange for a medical examination. It is important to note that workers choose the doctor from a list of doctors sent to them by the Board. The Board can request that a second doctor examine the worker if the first doctor's report is incomplete or inaccurate.

Calculating NEL - Determining the Degree of Permanent Impairment

The Board's medical adjudicator uses the medical assessment report to rate the degree of permanent impairment. This determination is made after the 45-day period for requesting a second medical assessment has expired or after the second report has been received. If a second medical assessment is requested, the Board uses only the second report to determine the degree of permanent impairment.

The Board in accordance with a Board rating schedule, after a medical assessment determines the impairment percentage. For most injuries, the Board uses the American Medical Association's Guide's to the Evaluation of Permanent Impairment.

NEL Calculation Formula

NEL benefit = NEL adjusted base amount x percent of permanent impairment

The benefit amount must be adjusted to consider the age of the worker. A specified dollar figure is subtracted/added from the base amount, for each year the worker was over/under age 45. The formula allows a larger NEL benefit for a younger worker, who will suffer the effects of the permanent impairment for a longer time.

C. Health Care Benefits

Injured workers are entitled to health care benefits even if they do not miss any time from work. The Board should pay for any medical aid or medical treatment that workers require due to their work related injury.

Health care benefits can include:

- drugs;
- physiotherapy;
- chiropractic treatment;
- dental work;
- artificial limbs;
- braces;
- wheelchairs;
- eye glasses;
- hearing aids;
- clothing allowances (to replace clothes damaged by braces or wheel chairs).

For expenses such as chiropractic treatments and clothing allowances, the Board will only pay up to a maximum amount. The Board may also pay for reasonable transportation costs related to the injury.

D. Recurrences

If a work injury improves, but then sometime later it gets worse, this is called a recurrence. It is important to mention that a recurrence does not have to occur while at work. Workers may be entitled to additional benefits if the Board has medical evidence that verifies that the recurrence is connected to the original injury.

In order to re-open the claim as a recurrence, workers must establish continuity of complaint, ongoing difficulties, since the original accident.

How Do Workers Prove Continuity of Complaint?

Workers must give the Board

- a list of co-workers (names, addresses and phone numbers) with whom they have complained about the injury;
- a list of doctor's visits about the injury;
- a list of complaints to the employer about the injury.

It is important that once workers return to work, they must report each recurrence of pain to their doctor.

Benefits and Recurrences

The type of benefits workers may receive depends on when the recurrence happens. If the recurrence happens less than 6 years after the injury, then workers may be entitled to LOE benefits or an increase in LOE benefits if they are still receiving benefits. Workers may also be entitled to health care and a Non Economic Loss (NEL) re-assessment.

If the recurrence happens more than 6 years after original injury, workers *cannot* get any additional LOE benefits unless there is a deterioration in compensable condition. However, are still eligible for health care benefits and NEL increase.

E. Employer Contribution to Benefit Plans

Employers must continue to contribute to any benefit plan the worker had at work for 1 year after the accident. Benefit plans can include a dental plan, health care insurance, life insurance and pension plan. If the benefit plan is a co-pay system, (workers and employers both contribute equally) the employer can stop contributing once the worker stops contributing.

F. Survivor Benefits

The family of a worker killed on the job may be eligible for survivor benefits. The amount of benefits for survivors depends on who the surviving family members are, the age of a spouse when the worker dies, and the number of dependent children. The Board pays for the worker's burial expenses up to a maximum amount. The Board may pay for bereavement Legislative Regime "LMR"

counselling for the surviving spouse or children if it is requested within of the worker's death.

A surviving spouse is also entitled to his or her own labour market re-entry assessment and, depending on the results of the assessment, a labour market re-entry plan. However, the spouse must request a labour market re-entry assessment within 1 year of the worker's death.

G. Labour Market Re-entry

The passage of Bill 99 introduced substantial legislative changes, which affect how the Board will attempt to re-integrate injured workers into the workforce. This process used to be called "vocational rehabilitation" (VR). The *Act* has replaced VR with the concept "early and safe return to work" (ESRTW) or a "labour market re-entry plan" (LMRP).

As mentioned, the concept of Labour Market Re-entry replaces vocational rehabilitation as the means of trying to return injured workers back into the labour force. Generally, workers are provided Labour Market Re-entry (LMR) when early and safe return to work activities has been unsuccessful (ESRTW).

Essentially, in situations where a worker's disability prevents a return to pre-accident job, and the employer cannot provide physically suitable work the Board as a last resort may provide workers with labour market re-entry.

Labour Market Re-entry consists of two phases:

1. LMR Assessments (LMRA)
2. LMR Plan (LMRP)

A Labour Market Assessment (LMRA) is the process that the Board uses to determine whether injured workers require assistance/programs to re-enter the work force.

It is important to mention that the Board is concerned on minimizing the loss of earnings payable to a worker. For example, if a formal retraining program will decrease a workers loss of earnings the Board will authorize such a program.

Legislative Overview LMR

In most cases, a labour market re-entry plan (LMR plan) is preceded by an early and safe return to work process, to see if the worker can return to work with the accident employer. The labour market re-entry process is described in section 42 of the Workplace Safety and Insurance Act, 1997:

42(1) The Board shall provide a worker with a labour market re-entry assessment if any of the following circumstances exist:

1. If it is unlikely that the worker will be re-employed by his or her employer because of the nature of the injury.

2. If the worker's employer has been unable to arrange work for the worker that is consistent with the worker's functional abilities and that restores the worker's pre-injury earnings.

3. If the worker's employer is not co-operating in the early and safe return to work of the worker.

(2) Based on the results of the assessment, the Board shall decide if a worker requires a labour market re-entry plan in order to enable the worker to re-enter the labour market and reduce or eliminate the loss of earnings that may result from the injury.

(3) In deciding whether a plan is required for a worker, the Board shall determine the employment or business that is suitable for the worker.

(4) The Board shall arrange for a plan to be prepared for a worker if the Board determines that the worker requires a labour market re-entry plan.

(5) The labour market re-entry plan shall be prepared in consultation with,

(a) the worker and, unless the Board considers it inappropriate to do so, the worker's employer; and

The first step in the process is a labour market re-entry assessment, to determine if a plan is necessary. Pursuant to subsection (2), the purpose of the assessment is to "decide if a worker requires a labour market re-entry plan in order to enable the worker to re-enter the labour market and to reduce or eliminate the loss of earnings that may result from the injury."

The Board's Operational Policy Manual Document #19-03-02 ("LMR Assessments") describes the assessment process. In determining whether the worker requires a LMR plan, the policy provides that the decision maker may consider the worker's
:

- degree of impairment, and prognosis
- functional abilities
- transferable skills
- aptitudes
- job search skills and abilities, and
- degree or amount of loss of earnings (LOE).

Subsection 42(3) stipulates that the labour market re-entry assessment process requires the Board to determine "the employment or business that is suitable for the worker."

Operational Policy Manual Document #19-03-03 indicates that the Board utilizes the federal government's National Occupational Classification (NOC) to help identify a suitable employment or business (SEB), and to determine the entry-level earnings for the SEB as well as the earnings for fully experienced workers who are working in the SEB.

If it is determined that the worker requires a LMR plan, pursuant to subsection 42(5), a plan is developed in consultation with the worker. The employer and the worker's health practitioners may also be consulted.

Pursuant to subsection 42(6), the labour market re-entry plan must "contain the steps necessary to enable the worker to re-enter the labour market in the employment or business that is suitable for the worker."

Operational Policy Manual Document #9-03-05 sets out the Board's policy regarding LMR plans. It provides:

LMR plans are designed to provide workers with the skills, knowledge, and abilities to enable them to re-enter the labour market in a suitable employment or business (SEB), in jobs consistent with their functional abilities, and to reduce or eliminate any loss of earnings resulting from the injury (see 19-03-03, Determining Suitable Employment or Business, and Earnings). Generally workers are provided with one LMR plan.

The policy states the following with respect to duration:

It is clear from this policy that the Board's view is that a LMR plan is intended to provide the worker with the skills necessary to re-enter the labour market. The plan does not, according to the Board's policy, have to include an actual return to work, or even a job search. The policy specifically states that job search assistance is only available to workers with accident dates before January 1, 1998 (when the Workplace Safety and Insurance Act, 1997 took effect).

Subsection 42(7) stipulates that workers must co-operate in all aspects of the labour market re-entry assessment and plan process. Operational Policy Manual Document #9-03-10 elaborates on this requirement. It sets out a worker's co-operation requirements in the following terms:

Workers are required to co-operate in all aspects of labour market re-entry (LMR) assessments and plans. If a worker does not co-operate, benefits are reduced or suspended, and the LMR assessment or plan may be terminated.

Workers co-operate in LMR assessments and plans by

- participating in the activities of the LMR assessment to identify suitable and available employment with the accident employer, or another suitable employment or business (SEB)
- participating in the preparation of an LMR plan, and
- fulfilling the mutually agreed upon commitments outlined in the LMR plan.

The policy goes on to set out what happens if the Board determines that a worker is not co-operating:

If the WSIB determines that a worker is not co-operating in the LMR assessment or plan, the decision-maker notifies the worker of the

- obligation to co-operate in the LMR assessment and plan,
- finding of non-co-operation, and
- consequences of this finding (i.e., termination of the LMR assessment or plan, and reduction and/or suspension of benefits).

Notice is given verbally (if possible), and confirmed in writing in every case.

CHAPTER 4

REPORTING OF ACCIDENTS

There are a number of steps that workers can take to ensure that claims are processed as quickly as possible.

Steps to Follow in Case of Injury

1. Report any incident immediately
2. Report the injury properly
3. Collect Witness Information
4. Be consistent in your reports
5. Let people know your in pain
6. Keep all Correspondence/Records of doctors visits
7. Keep Cool

1. Report Any Incident Immediately

Workers should report every incident and/or accidents to first aid, foreman, employers/supervisors, and union representative as soon as possible. Some injuries do not take effect on the body until that evening, the next day, or possibly the next week. Therefore it is critical to report and document all incidents.

It is important to note that if a doctor or any other health care professional recommends time off workers should request it in writing at the time the recommendation is made.

2. Report the Injury Properly

When workers are reporting an incident or accident, always include:

- time;
- place;
- type and cause of injury;
- full names of witnesses;
- full explanation of how the injury occurred and what they were doing at the time.

3. Collect Witness Information

Ask any witnesses to the incident to write down what they saw, the time and the date, and sign it. This is acceptable proof of an injury. This is especially important if the injury is not visible or if there is a delayed reaction. In most situations, the onus is on injured workers to prove that the injury "*arose out of and in the course of employment".* If possible, when reporting the incident to a foreman or an employer, it is in your best interest to have a witness or union representative present.

4. Be Consistent in Your Reports

Consistency in reporting incidents is extremely important. Workers may have to make the same report to:

- first aid;
- employer/supervisor;
- hospital admittance;
- emergency room doctor and;
- worker's own doctor.

Be aware that the Board will receive a copy of every one of these reports. Therefore, it is important that each report contain the same information.

5. Let People Know About the Pain You Feel

It is important to tell people about your pain. This helps establish and document injuries that seem, at the time, inconsequential. Continuity of complaint may help you substantiate your claim later.

6. Keep All Correspondence

It is crucial that workers keep all correspondence, including copies of prescriptions, concerning the injury. If workers have verbal contact with WSIB, it is a good idea to make a short note of what both parties said, and the time and the date - *WSIB does.*

7. Keep Cool

It may be extremely difficult at times, but when talking to the Board, workers should stay calm. Getting angry and threatening the Board will not do workers any favours. It is important to note that the Board documents all incidents.

This list of steps may seem extensive, but each one of these items is addressed at one time or another during the WSIB claims process.

CHAPTER 5

APPLYING FOR BENEFITS - FORMS

Six Month Time Limit to Apply

As of January 1 1998, injured workers are required to *apply* for benefits. Workers must file a claim for benefits as soon as possible after the injury or disease and no later than *6 months* from the day of the accident. The Board may extent the limits under certain limited circumstances

During the life of a claim, workers can expect to deal with the following forms.

- **FORM 7 - Employer's Report of Injury/Disease**
- **FORM 6 - Worker's Report of Injury/Disease**
- **FORM 8 – Physician's First Report**
- **Functional Abilities Form [FAE]**

FORM 7 [Employer's Report of Injury/Disease]

Employers must complete Form 7 each time they learn that a work-related injury or occupational disease causes a worker to:

- be absent from regular work;
- require modified duties at regular pay or less than regular pay;
- earn less than regular pay at regular work;
- obtain health care.

First Aid

Employers are not required to report a work related accident if the worker:

- receives only first aid;
- receives first aid and requires modified work at regular pay for seven calendar days or less following the date of accident;
- does not receive first aid, but requires modified work at regular pay for seven calendar days or less, following the date of accident.

Please note operational policy 15-01-02 provides guidelines regarding the definition of health care and first aid as well as some examples to support the policy application

The following additional examples may also be of assistance to you to illustrate an employer's accident reporting obligations further:

1) A worker cuts his finger at work and leaves work later that day to see his doctor.

   - ***This is reportable as the worker received healthcare treatment.***

2) A worker injuries his back the morning of June 1 but only misses work for the balance of that day. No medical attention was obtained and the worker returns to his regular work the next day.

   - ***This is not reportable as no medical attention was obtained and there was no time lost beyond the day of accident.***

3) A worker injuries his elbow but does not lose any time from work. However, the worker does require modified work and is earning less than regular wages.

   -This is reportable as the worker is losing wages.

4) A worker injures his back and continues on regular work but his rate of production is lower than usual which results in partial wage loss.

- ***This is reportable as the worker is losing wages.***

5) A worker falls and sprains her wrist on February 1. She remains as work and continues to receive her regular pay while performing modified work for a period of nine day.

- ***This is reportable as the worker was on modified duty for more than seven calendar days.***

6) A worker injuries his finger at work and is given a bandage at the first aid location. He returns to his regular work at no wage loss.

- ***This is not reportable as the worker received first aid only.***

7) A worker injuries his back lifting at work. He does not receive first aid or any other medical treatment. He is placed on modified duties for three days only and continues to receive his regular wages.

- ***This is not reportable as no health care or first aid attention was obtained, there is no wage loss and modified duties were only required for three days.***

How long does an employer have to submit a form 7?

Employers must submit Form 7 within three (3) calendar days from when they first learned of the injury/disease and seven (7) business days from the date the employer first learns of the injury/disease, to the date a properly completed form arrives at the Board. Business days are Monday to Friday and do not include statutory holidays.

Form 7 gives the Board information that could affect the claim, specifically; the amount of money workers get in benefits. It also gives workers an idea whether or not the employer will fight the claim.

By signing this, the worker is applying for benefits and agrees to have their doctor release the Functional Abilities Form to the employer and the Board, after they fill it out.

The law says workers must agree to this if they want to claim for benefits.

The worker's signature on the Form 7 does not necessarily mean that the worker agrees with what the employer has reported on the Form 7. A worker may always submit additional information to the Board respecting the claim.

Employers by law must provide a copy of Form 7 to the employee when they file it with the Board. If the employer refuses to provide a copy, workers should immediately contact the Board. The Board will then forward a copy of the form to the worker.

FORM 7 – What to Look For

Workers should ensure that all information contained on the form is correct. All of the information on Form 7 is important, but the most critical is the earnings and hours of work information.
Wages include:

- hourly rate or salary from all jobs;
- shift premiums;
- overtime pay;
- lead hand pay;
- travel allowances;
- living allowances, and;
- anything else that can be estimated in money (for example, the cost of room and board or any merchandise given as payment for work).

In addition, it is important that workers check that the Form 7 reports the proper income tax "net claim code". For example, a single person without dependents has a net claim code of 1. A married person with a dependent wife and children would have a net claim code of 4. If in doubt, contact the Board for clarification. The proper tax code gives workers more in benefits. Workers should check that the employer has correctly described the accident and injuries. If anything is missing from Form 7, or if there are any mistakes, write a letter to the Board or file a Form 6.

FORM 6 [Workers' Report of Injury/Disease]

If workers cannot or choose not to sign the Form 7, they can apply for benefits by filling out a Form 6 -The Worker's Report of Injury/Disease.

In most cases a Form 6 is sent to the worker when the Board receives:

- a Form 7 without the worker's signature;
- a report from the health care professional, or;
- a request from the worker to initiate a claim, the board sends a Form 6 to the worker to be completed.

FORM 6 – What to Include

Once workers receive the Form 6, it should be sent to the Board because it is the injured worker's version of what happened and what injuries they sustained.

Accuracy is critical. Workers should list:

- equipment or tools being used;
- sizes of objects/equipment being used;
- weights involved;
- height of scaffolding or machinery;
- materials being used or handled;
- or anything else they can remember about the accident;
- all witnesses' should be listed.

All parts of the body that were injured and any place that the worker feels pain should be reported. If it's reported on the Form 6, it will be easier to prove later if something is questioned. If there is not enough space on the Form 6, attach another page. The more information provided the better.
When workers submit a Form 6 to the Board, a copy must be sent to the employer.

FORM 8 [Physician's First Report]

In addition to the Forms 7 and 6, workers can apply for benefits by having the attending physician send a Form 8 – Physician's First Report to the Board. Most doctors and hospital emergency departments maintain a supply of Form 8 and are aware of their responsibilities.

It is important that the worker provide the doctor full details on how the accident happened. Workers should make sure that the doctor makes a note of each part of the body that was hurt. The information provided to the doctor should be consistent with the information provided to the employer.

Workers should also inform the treating physician about the workplace and the job duties. The doctor should be made aware of everything the worker was doing when injured. Specifically, the doctor should be aware of things such as:

- distances;
- size and weight of objects;
- types of chemicals;
- temperature;
- noise.

As mentioned, it is extremely important that the treating doctor documents all the facts about the accident. It is not enough for the doctor to say that the injury is "work-related." The doctor must explain how the injury happened and why it is work related.

Functional Abilities Form [FAE]

Doctors are required to fill out a Functional Abilities Form. This form is to assist in worker's early and safe return to work. Doctors are only to provide information regarding workers functional abilities. Once the doctor completes this form, copies are sent directly to the employer, the Board and the worker.

Functional Abilities Form is available to the worker's place of employment. Workers who apply for benefits through the employer, by this we mean signing the Form 7, may be requested to bring this form to the doctor personally.

Workers, who apply by submitting a Form 6 - Workers Report of Injury Disease or a Form 8 – Physician's First Report, will find that the Board will mail a Functional Ability Form to the treating physician.

The law clearly states that when workers make a claim for benefits, they must agree to allow their doctor to fill out this form and give copies to the employer and the Board. This form is supposed to help workers get back to work after an injury. It tells the employer what parts of the job injured workers can and cannot do. However, this form does not ask if workers are able to return to any work. If workers cannot return to work, the doctor should write it somewhere on the form. Workers should provide as much information as possible to the doctor, about how the injury will affect the job.

CHAPTER 6

APPEAL RIGHTS AND TIME LIMITS

The workers' compensation system has an internal appeals mechanism whereby injured workers' can appeal negative decisions. In the compensation system, there are three levels of decision making.

Level I - Board Adjudication Level;
Level II - Appeals Level (Appeals Branch);
Level III - The Appeals Tribunal (Workplace Safety and Insurance Appeals Tribunal - WSIAT).

LEVEL I [The Board's Adjudication Level]

The first level, Board Adjudication, is where initial Board decisions are made in claims. Generally, Adjudicators and Caseworkers make these decisions. There are different types of Adjudicators:

- Claims Adjudicators;
- Future Economic Loss (FEL) Adjudicators;
- Health Care Benefits Adjudicators.

LEVEL II [The Board's Appeal Branch]

If a worker appeals a first-level decision, the Board's internal appeal branch, decides the appeal. *Appeals Resolution Officers* make these second-level decisions. In the past, Appeals Officers, Hearing Officers, Re-instatement Officers, and Mediation Officers made these decisions.

LEVEL III [Workplace Safety and Insurance Appeals Tribunal - (WSIAT)]

If a workers claim is denied at the second level, Appeals Branch, the Workplace Safety and Insurance Appeals Tribunal (WSIAT) will make the final decision. It is important to note that the Tribunal is the final level of appeal within the workers' compensation system. Tribunal decision-makers are not board employees. When the tribunal was originally created, in 1985, it was premised on the belief that it was to be independent of the WCB. However, changes as the result of the passage of Bill 99, have taken away some of the tribunals autonomy, and decision making powers.

For instance, as of January 1, 1998, the tribunal *must strictly apply existing Board policy*. The tribunal no longer can make decisions that go beyond Board policy. Under the new system, the Board, not the Tribunal determines in each case whether a relevant policy exists for each issue in dispute in the appeal.

In addition as of January 1, 1998 the tribunal can conduct hearings orally, electronically or in writing. Workers are no longer guaranteed a full panel hearing. In the tribunals past life, hearings were conducted before three member panels. Panels consisted of a vice chair, and two side members representing worker and employer interests. However, under the Workplace Safety and Insurance Act, there will be a preference for adjudication by single Vice-Chairs. (s. 174(1)). However, the chair can decide to have a full panel when the chair considers it appropriate. (s. 174(3))

Tribunal Time Limits - 6 Months to File an Appeal

The new system introduces a six-month time limit for appealing final Board decisions to the Tribunal. However, the Tribunal has the discretion to extend the time limit.

Which Decisions can be Appealed?

Workers can appeal most first level decisions made by the Board. These appeals are referred to as *Objections*. Objections are decided at the Board's Appeals Branch.

The Appeals Branch can conduct hearings orally, electronically or in writing. Decisions made by the Appeals Branch can be appealed to the Appeals Tribunal. However, certain types of decisions cannot be appealed to the Tribunal. There is no right to appeal decisions concerning:

- overpayments;
- lump sum commutations for injuries that occur after January 1, 1990;
- employer requested health examinations under s. 36.

Time Limits to Appeal

Bill 99 introduced time limits for appeals. Injured workers have either a *30 day* or *6 month* time limit. The time limit to appeal decisions depends on:

- When the written decision was made;
- What the decision is about, and;
- Who made the decision?

The time limit to appeal Board decisions made *before January 1, 1998* is *July 1, 1998*. This is for any type of decisions by a first-level or second-level decision-maker. The time limit to appeal Board decisions made *on or after January 1, 1998* is either:

30 days from the Board decision if,

- The decision was made by a first-level decision-maker, for example, a Claims Adjudicator or a Caseworker;
- The decision is about return-to-work or a labour market re-entry assessment or plan.

6 months from the Board decision if,

- It is a decision by a first-level decision-maker, but it is not a decision about return-to-work or a labour market re-entry assessment or plan;
- Any decision by a second-level decision-maker, such as an Appeals Officer or an Appeals Resolution Officer.

Any Board decisions made *on or after January 1, 1998* will inform workers of the time limit they have to appeal the decision.

How to File an Appeal

As mentioned under the new system, workers have specific time limits to file an appeal. Therefore, it is important that workers notify the Board of their intention to appeal. Either the worker/representative writing a letter to the Board can commence the appeal process.

When writing an appeal letter the following information should be included:

- workers name and address;
- claim number/s;
- date of Board letter/decision being appealed;
- name and title of person, who made decision;
- brief reason for appeal.

NOTE: When appealing a board decision to the tribunal, workers/representatives can write a letter or call the tribunal and request an application form. Prior, to filing an appeal to the tribunal, it is wise to consult with an experienced representative.

Where to Send the Appeal Letter

The appeal letter can be sent to the Board's main office or to the Appeals Tribunal. Where an appeal is registered depends on who made the decision. First-Level decisions must be appealed to the Board. This would include decisions of:

- Adjudicators;
- Caseworkers;
- Health Care Adjudicators;

- Nurse Case Managers.

Second-Level decisions must be appealed to the Tribunal. Essentially all decisions made by the:

- Appeals Resolution Officer;
- Hearings Officer;
- Re-instatement Officer;
- Mediation Officer;
- Appeals Officer.

WHAT HAPPENS ONCE YOU FILE AN APPEAL?

Appeals to the Board

Once the Board receives the appeal letter, they will send a letter confirming that the appeal time limit has been met. A copy of the confirmation letter will also be sent to the employer. The letter will ask whether the worker wants to proceed with the hearing. Appeals are on hold until workers/representatives notify the Board that they are ready to proceed.

Once the Board is informed of the workers intention to proceed, an Objection Form along with a copy of the Board file will be sent. In addition the Board will contact the employer and ask whether they wish to participate in the appeal hearing.

Workers are required to fill out the Objection Form and send it back to the Board to get a hearing date. It is important that workers include all issues that they want the Board to consider in the Objection Form. Workers should also keep a copy of the completed Form.

60 Day Option

Once the Board receives a completed Objection Form, they may send a letter giving workers an option of a *60 day decision*. A 60 day decision means that the appeal will be decided without an in person hearing. Instead, the appeal will be decided based on the documents in the claim file. Before committing to a 60 day decision, it is recommended that an experienced advocate review the file. It is important to note that 60 day decisions can only be appealed to the tribunal.
If workers do not want a 60 day decision they can either inform the Board or ignore the letter completely. By ignoring the 60 day decision, it will not affect the appeal; the Board will proceed in scheduling an oral hearing.

Appeals to the Tribunal

Once workers file an appeal letter, the tribunal will send an Appeal Application Form.

Once the application form is completed and sent to the Appeals Tribunal, it will be put on a waiting list for a hearing. The tribunal usually has a waiting list of one year or longer. The Tribunal will also contact the employer and ask if they wish to participate.

Similar to appeals at the Appeal Branch, the tribunal may offer workers with a *written hearing option*. This means that the appeal will be decided without an in person hearing. The tribunal will decide the case based on the documents in the file, without hearing from the worker or any witnesses.

As mentioned, before proceeding to a written tribunal decision workers should contact an experienced representative. The tribunal is the final step in the appeal process. Therefore, it is imperative that workers understand the consequences of proceeding with a written decision.

NOTE: *If workers do not send back the Tribunal Application Form, the appeal will be put on an "Inactive List" for 6 months. The Appeals Tribunal will send a notice if workers have not returned the Form within 6 months. The notice will ask if you want to proceed with the appeal. If workers do not respond to the notice, the appeal will be dismissed without further contact from the Appeals Tribunal.*

CHAPTER 7

YOUR LEGAL RESPONSIBILITY WHILE RECEIVING WSIB BENEFITS AND SERVICES

1. REPORTING MATERIAL CHANGES IN CIRCUMSTANCES

What are Material Changes?

The Board says material changes in circumstances are any changes that may affect workers' entitlement to compensation benefits or services. Material changes must be reported to the Board within ten days.

There are three main types of material changes that could happen to a worker:

- changes in a workers medical condition;
- changes in a workers earnings or income, and;
- changes in workers availability for work, medical treatment, or Board assistance.

Workers should report any significant changes in their work-related medical condition. For example, if a workers condition gets worse, or if it improves and they are able to go back to work, they must inform the Board. Workers must also tell the Board about any new health care recommendations. For example, a doctor may tell the worker that they require additional treatment, medication, or surgery for the work related injury.

Injured workers must also report changes in income. For example, if they start to receive Canada Pension Plan disability pension benefits, this is a change that must be reported. If workers are working and their earnings increase or decrease, it must be reported to the Board.

In addition worker have a duty to report any changes that make them unavailable to work, to get medical treatment, or to get Board assistance. If a worker is receiving benefits because they are in a medical treatment program or a return to work program, and for some reason are forced to interrupt the program, they must report this to the Board. For example if the worker is forced to stop a retraining program because of a "non compensable" motor vehicle accident, they must report this.

Who has the Duty to Report Material Change?

Any person, who is claiming or receiving workers' compensation benefits, has a duty to report any material changes in their circumstance. Even if a worker has a representative, it still is the worker's responsibility to report any material change in circumstance.

If a deceased worker's spouse or dependent children are receiving survivor's benefits, they also have a duty to report any material change that affect their entitlement to benefits. For example, surviving children's benefits stop when they turn 19 years of age unless they are attending school. If a surviving child continues to attend school after turning 19 years old, he or she must report this to the Board.

10 Day Time Limit to Report Material Changes

Workers must report any material change within *ten* (1*0) calendar days* of the change happening. The Board has established that the clock begins to count from the day the change occurs. For example, if a worker receives their first Canada Pension Plan disability benefit cheque on June 1, 1998, they must report this to the Board by June 9, 1998.

How Can Worker's Report a Material Change to the Board?

Worker's can report a material change to the Board in the following ways:

- by regular letter;
- by fax;
- by courier;
- in person;
- by phone.

Workers should keep a record of how and when they reported the material change. If workers fax a letter to the Board keep the "fax conformation" report from the fax machines, verifying that it was sent. If workers telephone in the change, they should make a note of the telephone number called, and whom they spoke to or the message they left. Material change should be reported to the Board Adjudicator who is assigned to the claim. If workers are not sure who their Board Adjudicator is contact the Boards main number (416-344-1000) and find out who is handling the claim.

How Does Reporting a Material Change Affect a Claim?

Reporting a material change may affect a worker's claim to benefits/services in the following manner:

- benefits may be reduced or stopped. For example, if a worker goes back to work at their old job, loss of earnings benefits will stop.
- board service may be stopped. For example, if a worker becomes seriously ill from a condition that is not work-related while they are participating in a labour market re-entry plan, the Board may end the plan. This will also affect a worker's benefits.

What happens if a Material Change is not reported?

A benefit-related debt (overpayment) may be created for payments the worker received after the date that a material change should have been reported. Essentially, workers would owe the Board money, and if workers would be entitled to benefits, the Board would automatically deduct the debt from future payments. The Board may also go to court in an attempt to recover the money.

If the Board believes that a worker intentionally did not report a material change, they may be prosecuted under the Provincial Offences Act or the Criminal Code. If worker's are prosecuted and found guilty, they can be fined or imprisoned or both.

2. WORKER CO-OPERATION

Historically, the workers compensation system has always included sections that required injured workers to co-operate with the Board in all aspects of the claim. However, in the past there was some discussion about what co-operation meant. When there is a disagreement between workers, the Board usually reduced benefits, but did not cut them off.

Bill 99 introduced many more sections in which a worker is required to co-operate. It also gives the Board the statutory authority to end benefits if a worker does not co-operate.

Definition

Bill 99 requires that a worker cooperate with all the Boards decisions. For example, the worker must cooperate with:

- following prescribed treatment or health care;
- undergo health examinations at the discretion of the Board;
- provide information to the Board about their injury;
- participate in "every aspect of their return to work";
- participate in all aspects of any Labour Market Re-entry Assessment or Plan.

The Board's new policies set out situations in which a worker could legitimately not cooperate with a decision of the Board. These include:

- an unexpected illness, accident, or sever weather conditions;
- compelling personal reasons, such as a death in the family;
- the action or inaction of a third party, such as Revenue Canada.

However, if the Board reduces or suspended benefits due to non-Cooperation Board policy only requires them to restore benefits retroactively if:

- the Board did not communicate the obligation or the consequences of the breach to the worker;
- the Board made an error in finding the worker to be not cooperating.

Situations where a Worker is Uncooperative can include:

- Health Care
  - changing doctors without Board approval
  - not following prescribed treatment
  - intentionally abusing prescription medication, or
  - not attending appointments with health care practitioners

- Health Examinations
  - refusing to undergo a health exam requested by the physician or the Board, or obstructing an examination
  - refusing to undergo an employer-requested medical examination directed by the Board

- Providing Information
  - not providing information to the Board as requested

- Early and Safe Return to Work/Labour Market Re-entry
  - refusing appropriate employment with the accident employer
  - refusing to participate in a Labour Market Re-entry assessment or plan

- Other
  - workers who are on vacation or whose absence from Ontario interferes with their ability to fulfill their obligations as they pertain to their claim

Who Should Worker's Contact?

If an injury happens and the worker is going to be off for a period of time they should, as a rule, contact their union representative and ask for assistance. The union representative can inform the worker who to contact at the employer.

When contacting the employer workers should always keep a record of whom they spoke too and generally, what was said. Workers should also make note of date and time of contact etc. It is critical that injured construction workers understand their obligation to co-operate; we suggest that worker's contact their union representative if they have any questions or require further information on the return to work process.

Does the Board Notify Workers if they are not Co-operating?

Before the Board takes any action that may affect a worker's entitlement to benefits/services, they are supposed to warn workers that they are not co-operating. The Adjudicator should inform workers about their obligation to co-operate, and what will happen to benefits/service if they do not co-operate.

This warning is intended to give workers a chance to co-operate without having anything happen to benefits.

What happens if the Board decides that Workers are not Co-operating?

The Board can reduce or stop benefits until workers co-operate. If workers start to co-operate at a later date, they are not able to get the benefits back that were lost while not co-operating, unless the Board's decision about co-operation was wrong or the Board did not first warn the worker before benefits were suspended or reduced.
Further if the Board decides that you are not co-operating in a labour market re-entry plan or assessment, the Board can end the assessment or plan immediately.

CHAPTER 8

EARLY AND SAFE RETURN TO WORK & RE-EMPLOYMENT

This chapter explains “Early and Safe Return to Work” and “Re-employment” following a workplace injury .

What is Early & Safe Return to Work?

As mentioned in Chapter 7, under the current Act, the workplace parties must co-operate and be self-reliant in returning the worker to suitable and available work. In view of this, the WSIB encourages employers and workers to resolve Early & Safe Return to Work (ESRTW) issues without active intervention of the WSIB (unless it is requested or required)

The Workplace parties are expected to co-operate with each other in good faith in returning the worker to suitable and available employment. In an effort to facilitate this process and provide some direction on what is meant by the labour market re-entry system.

Why Early and Safe Return to Work?

Most people who have a workplace injury or illness are able to return to some type of work even while they are still recovering, provided the work is medically suited to the injury or illness.

Returning to daily work and life activities can actually help an injured worker's recovery and reduce the chance of long- term disability. In fact, worldwide research shows that the longer you are off work due to injury or illness, the less likely it is that you will return to work.

Both you and your employer benefit in cooperating in your early and safe return to work. You benefit by restoring your source of income and staying active and productive, which are important to the healing/recovery process. Your employer benefits by minimizing the financial and human costs of your injury or illness.

Shared Responsibility for RTW

You, your employer and the WSIB all have certain roles, responsibilities, and obligations that support early and safe return to work.

In Ontario, returning an injured worker to work is a shared responsibility primarily between the worker and the employer. The WSIB is responsible for managing the claim and monitoring, providing education and assistance to the worker and employer, and to the workplace. Health care providers are responsible for providing timely health or medical and functional abilities information in order to make timely decisions both on benefits and on return to work. Where there are shared responsibilities, communication and cooperation toward a common goal is essential.

Together, all parties working toward a shared goal of early and safe return to work and full productivity has the potential to reduce the human and economic impact of workplace injuries and illness

RE-EMPLOYMENT

Does your employer have an obligation to re-employ you after a work related injury?

Your employer has a legal obligation to offer to re-employ you after a work related injury if:

- It regularly employs 20 workers or more, and
- It employed you for at least 12 continuous months prior to the accident.

Re- Employment Regulation Construction

When WSIA came into effect in 1998, it removed some of the rules relating to a construction employer's obligation to re-employ. Government's intent was to prescribe new return to work rules and apply them **to ALL construction employers** who employ construction workers.

Prior to 1998, the obligation existed only for those employers employing 20 or more workers.

Current Legislative/Regulatory Scheme for Re-employing Construction Workers

A construction employer is required to re-employ its injured worker the day that is earliest worker of 2 years after date of injury;

a) One year after employer is made aware that injured worker is able to perform essential duties of pre-injury employment;

b) Date when worker reaches 65;

Key Highlights New RTW regulation

Duration of the re-employment obligation where the worker is fit for suitable employment:

Less than 20 employees 2 years
20 or more employees 2 years

Duration of the re-employment obligation where the worker is fit for essential duties of pre-accident employment;;

Accommodation: Employers to provide accommodation where possible and to extent possible;

Suitable work outside worker's trade is to be provided only if there is no suitable work available within the workers trade and classification.