

Top 10 things you need to know...WSIB

11th July, 2012



Representing Employers on
Workplace Safety and
Insurance Law

Industrial Mediation
Professional Corporation

Topic 1. About the W.S.I.B.

- ❑ Provincial Government
- ❑ No-Fault Insurance System
- ❑ 100% employer funded
- ❑ 3 million employers registered
- ❑ Schedule 1 and Schedule 2 allocation
- ❑ Sector specific "Rate Groups"(157 Rates)

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About the W.S.I.B.

- ❑ Premium based-Rate / \$100 of payroll
 - 12 construction Rate Groups
 - ❑ Construction premium averaging \$7.92
- ❑ Even playing field
- ❑ WSIB pays:
 - Wage loss (85% net average)
 - Health care costs
 - Retraining costs and related services

About the W.S.I.B.

- ❑ 2010
 - Registered 240,000 claims

❑ Allowed	187,890	65%
❑ Denied	20,817	9%
❑ Abandoned	28,844	12%

Source: WSIB statistical supplement 2010

About the W.S.I.B.

- ❑ 2001-2012 Lost Time by (SIC) Standard Industrial Classification
- ❑ Top five:
 1. Manufacturing.....15.5%
 2. Retail trade.....12%
 3. Health and Social Service.....13%
 4. Wholesale Trade.....8.9%
 5. **Construction..... 7.7%**

Topic 2. Experience Rating

Three (3) programs

CAD-7 (Construction Specific)

NEER-(New Experimental Experience Rating)

MAP-(Merit Adjusted Premiums)

What is Experience Rating?

- ❑ CAD-7 (Council Amended Draft-7).
- ❑ Prime purpose of any Experience Rating Plan is to reward and encourage accident prevention in the industry.
- ❑ It is a method of adjusting assessments based on record of injury frequency and cost.

CAD-7 Main Components

- ❑ Firm's Injury Cost
 - WSIB claim cost five (5) years.
- ❑ Firm's Injury Frequency
 - Lost Time two (2) years.

CAD-7 Main Components

□ Firm's Injury Cost

- Total Expected Injury Costs
- Total Actual Injury Costs

} Firm Cost Index

□ Firm's Injury Frequency

- Actual Injuries

} Firm Frequency Index

CAD-7 Main Components

□ Cost Index and Frequency Index

- Range from +1.000 (best) to -4.000 (worst).

□ Rating Factor

- Adjusts the size of the rebate or surcharge.
- (WSIB internally controls this value).

Topic 3:

WSIB Regulatory Services Compliance-WSIA

Non-compliance

❑ S.149

- ...knowingly making false statement / reporting material change...

❑ S.152

- ...failing to notify WSIB of an accident...

❑ S. 151

- ...failing to register a business within 10 days...
- ...misleading statement regarding registration or classification...

Fraud

❑ Acts under Criminal Code s.380

- Making /using false documents
- Falsifying employment record(s)
- Knowingly billing services not rendered
- Offering or receiving secret commission

WSIB Regulatory Services Compliance-WSIA

Non-compliance

❑ Limitation s. 150-156

- WSIB has 2 year (date it becomes aware) to lay charges
- No time limit
 - ❑ Lay charges for s.149 offences

Fraud

❑ Limitation (ccc)

- No time limit

WSIB Regulatory Services Compliance-WSIA

Non-compliance

❑ Penalties (WSIA)

- Individuals
 - ❑ \$25,000 or
 - ❑ Imprisonment up to 6 months or
 - ❑ Both
- Corporations
 - ❑ \$100,000

❑ Fraud (ccc)

- Indictable offence exceeding \$5,000
- Up to 10 years imprisonment
- Summary conviction not exceeding \$5,000
- Up to 2 years imprisonment

Topic 4: Claims Management Process [Eligibility Adjudicator]

- ❑ Makes initial entitlement decisions on more complex claims

■ Decisions made based on information available

- ❑ Form 7 considerations
 - Timely information from supervisors
 - Understanding what constitutes an injury
 - Who signs?
 - Time frame for completion-Reporting Obligations
- ❑ Contest questionable claims-Documentation KEY

- ❑ **Note: WSIB Medical Consultants do not provide a medical opinion for decision-making purposes**

Form 7-WSIB Employer's Reporting Obligations

❑ Must report when:

1. Absent from regular work
2. Worker seeks medical attention
3. Earns less pay for regular work
4. Requires modified work at less than regular pay
5. Worker doesn't receive medical attention but requires modified work at regular pay for more than seven calendar days



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WSIB Employer's Reporting Obligations

❑ WSIB requires employer's to complete Form 7 within 3 calendar days after learning of accident / condition

❑ WSIB must receive the Form 7 within seven business days

- Section 21(4) WSIA copy of Form 7 to worker
- Section 22(7) WSIA worker to provide copy of Form 6 to employer



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WSIB Employer's Reporting Obligations

- ❑ Employer's failure to comply
 - Late reporting
 - Incomplete reporting
 - Not reporting on pre-approved version of the form
 - Failing to respond to WSIB requested information
 - ❑ \$250.00 for each
- ❑ Serious and / or repeated failures *Regulatory Services*
 - Fines-WSIA
 - ❑ \$25,000 or up to 6 months in jail, or both, for individuals, and
 - ❑ \$100,000 for corporate entities

Topic 5 Claims Management Process [Short Term Case Manager]

- ❑ Handles claims from 30 days-180 days determines:
 - Ongoing benefits
 - Ongoing entitlement decisions
 - Decisions on **suitable work offers**
 - Referrals to RTW specialists
 - Can make decisions on a recurrence less than 3 months after benefits cease.
- ❑ **Note: SIEF, REO and re-employment issues dealt with by separate specialized team**

Duty to co-operate s. 40 (1)

The employer of an injured worker **shall** co-operate in the early and safe return to work of the worker by,

- (a) contacting the worker as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery and impairment;
- (b) attempting to provide suitable employment that is available and consistent with the worker's functional abilities and that, when possible, restores the worker's pre-injury earnings;
- (c) giving the Board such information as the Board may request concerning the worker's return to work; and

Offering Suitable Work

Key Concepts:

- ❑ Suitable work means
- ❑ "work" defined broadly. Combined tasks:
 1. Safe
 2. Productive
 3. Consistent with the worker's functional abilities
 4. Restores the worker's pre-injury earnings

WSIB New Form 8

- ❑ Revised March 2011
 - To facilitate early intervention and RTW outcomes
 - ❑ Completed when:
 - "Related to his or her work"
 - "You think that the cause of your patient's injury /illness is work related"
- ❑ Page 2 Clinical Information to WSIB
- ❑ Page 3 Return to work information
- ❑ **New Form 8 does not replace the FAF**

Offer of suitable work duties

- ❑ Tips:
 - **Identify overall goal and have a plan that;**
 - Clearly states what work is being offered
 - Includes description of regular work duties
 - Hours of work
 - Associated pay with the job
 - Location of worksite(s)
 - Expectation to maintain contact
 - Includes worker's obligation to co-operate s.40



RTW opportunities hierarchy

Key Concepts:

1. Pre-injury job
2. Pre-injury job with *accommodation
3. Work comparable in nature and earnings to pre-injury job (with accommodation if required)
4. Alternate work (with accommodation if required)

*Accommodate means any modification to the work or workplace e.g. hours, reduced productivity requirements

Roles and Responsibilities ESRTW process **Employer**

- ❑ Provide injured worker with initial transportation to a health care provider of their choice following a workplace injury or health care facility
- ❑ Provide injured worker with a **WSIB "Functional Abilities Form"** for health care providers to complete
- ❑ Provide and offer temporary and suitable work in accordance with the WSIB "Functional Abilities Form"

Next page...

Roles and Responsibilities ESRTW process **Employer**

- ❑ Immediately report if the worker experiences any difficulties with the assigned suitable work activities
- ❑ Maintain regular contact with absent employees

Duty to co-operate s. 40 (2)

The worker shall co-operate in his or her early and safe return to work by,

- (a) contacting his or her employer as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery and impairment;
- (b) assisting the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities and that, when possible, restores his or her pre-injury earnings;
- (c) giving the Board such information as the Board may request concerning the worker's return to work

Roles and Responsibilities ESRTW Worker

- ☐ Report all accidents or illnesses immediately to supervisor
- ☐ Obtain prompt medical attention
- ☐ Immediately advise their respective supervisor of any difficulties

What Happens if...

- ☐ Worker provides medical note with 3 days off work?

What would you do?

Topic 6. Satisfying duty to accommodate

- ❑ Accommodation requires more than identifying suitable work
- ❑ Employers must incorporate consideration to accommodate within RTW program
 - Define what accommodation means
 - Accommodation must be documented
 - Accommodation costs noted
 - Communicate with WSIB
 - Educate front-line staff
 - **ALL TO THE EXTENT OF UNDUE HARDSHIP**

Undue Hardship- Accommodation

- ❑ List is not exhaustive
 - Key test is how hard did the employer try to make accommodations?
1. Cost
 2. Outside funding
 3. Occupational Health and Safety

1. Cost

- ❑ Are the costs quantifiable?
 - Real and measurable
 - Cost(s) must be related to accommodation
- ❑ Undue, if shown that changes would significantly alter viability or;
- ❑ Alter the business operation

2. Outside Funding

- ❑ WSIB may assist in accommodation
 - Work reintegration policies
 - RTWS and WTS
- ❑ Ergonomic consultation
- ❑ FCE and PDA assessment

Outside Funding should be considered and documented to demonstrate accommodation

3. Occupational Health and Safety

- ❑ Can be used to demonstrate that accommodation poses risk to the safety of the worker and / or other person(s)
- ❑ Risk vs. Accommodation
 - Case by case
 - Risk hazard assessment
 - ❑ Severity, probability, consequences
 - ❑ Risk must significantly outweigh benefit to reintegrating worker

Topic 7. Re-employment Obligations

- ❑ Following notification, the employer **MUST** offer to re-employ
- ❑ Offer the first job that becomes available that is consistent with medical abilities

Failure can result in breach of re-employment obligations (one year net average earnings plus ongoing LOE).

Educating front line staff will be essential

Duration of Requirements (Construction CAD-7)

- ❑ Obligation to re-employ continues until the earliest of;
 1. Two years from the date of injury.
 2. One year after the worker is fit for essential duties (pre-injury).
 3. The date the worker declines an offer of work or
 4. The date the worker reaches age 65.

Topic 8. Expanding Compulsory Coverage in Construction-WSIB

- ❑ Workplace Safety and Insurance Act, 1997
 - Up to 31 December 2011
 - ❑ Allows for optional insurance coverage
 - ❑ Using construction questionnaire
 - Ruling as worker or IO

Expanding Compulsory Coverage in Construction-WSIB

■ Bill 119, the Workplace Safety and Insurance Act, 2008

■ Background

- "Under this legislation more individuals in construction will have access to the protection that Workplace Safety and Insurance Act coverage provides," Minister of Labour Peter Fonseca said...
- "The Act will also help make Ontario's workplaces safer, and help us fight the underground economy in construction."

Source: Canada Newswire

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Bill 119, the Workplace Safety and Insurance Act, 2008

- The legislation will extend the Workplace Safety and Insurance Act, 1997

- Coverage to approximately 90,000 independent operators in the construction industry currently not subject to mandatory coverage when it comes fully into force

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Bill 119, the Workplace Safety and Insurance Act, 2008

□ First Reading	28 October 2008
□ Seconding Reading	6 November 2008
□ Third Reading	26 November 2008
□ Royal Assent	27 November 2008

Expanding Compulsory Coverage in Construction-WSIB

- Bill 119, the Workplace Safety and Insurance Act, 2008

- three primary changes

1. Mandatory coverage (construction)
2. New WSIB certificate of clearance
3. Exemption

Effective 1st January, 2013

Expanding Compulsory Coverage in Construction-WSIB

1. Mandatory coverage (construction)

- Requirement for:
 - Independent operators
 - Sole proprietors
 - Partners in a partnership and
 - Executive officers
- } "deemed workers"

Mandatory coverage

□ Independent Operator Means:

- Does not employ any workers
- Reports as self-employed (CRA)
- Retained by more than one person during 18 month period

Mandatory coverage

- ❑ Voluntary “pre-registration” now available

- Register eService with WSIB
- Premiums will not become due until 1 January 2013

After 1 January 2013
Mandatory Registration



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Executive Officers

- ❑ One executive Officer to be exempt from WSIB coverage

- Must not perform any construction work “on the tools”
- Including on-site supervision
- Periodic site visits are permitted

- ❑ WSIB to establish specific premium

- ❑ WSIB to provide application form in the Fall of 2012 and MUST BE REQUESTED.



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2. WSIB Clearance Certificate

- ❑ January 2013 BOTH principal and contractors / subcontractors have new responsibilities
 - Required to obtain clearance certificate PRIOR to work
 - NOT permitted to perform construction work without clearance certificate
 - Clearances valid for 90 days
 - Must retain Clearance for at least 3 years

Principle can be liable for non-payment of premiums

3. Exemption

- ❑ Coverage not required if engaged in home renovation construction work
 - Means:
 - ❑ Directly retained by home owner on
 - Existing private residence that are occupied or to be occupied
 - Examples include a house, cottage, condo...

Offences and Penalties

❑ 1st January, 2013- 31st December 2013

- Education phase
- May waive penalties
- May still pursue employers and individuals knowingly make false or misleading statements or representation to WSIB

Offences and Penalties

❑ 1st January 2014 fully enforced

- Failure to comply
 - ❑ Individual fine not exceeding \$25,000 or imprisonment not exceeding six months or both
 - ❑ Corporation fine not exceeding \$100,000

Recommendations

- ❑ Strongly encourage IO to pre-register
- ❑ Update sub-contactor agreements
- ❑ Obtain clearance certificate:
 - During tendering process
 - At commencement of work
 - During work and at the conclusion of work
 - Establish "hold-back"

10 Top things that you need to know (summary)

1. Understand WSIB
2. Experience Rating
3. Compliance
4. Reporting Obligations
5. Question claims
6. Offering suitable work
7. Manage the process
8. Communication
9. Accommodation
10. Re-employment

E-newsletter
available and free
industrialmediation.com/training.html

▣ Questions and Thank you



▣ Contact Greg Sathmary 613-260-0600

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