

What's Often Misunderstood about WSIB!

Editor's Note: Readers of SE-GA's WSIB newsletters will know that our team provides seminars on managing NEER and CAD-7 on a frequent basis in various cities across the province.

When we first meet a prospective client, these meetings are really mini- seminars as we discuss the financial and regulatory risk factors of WSIB. As a result employers begin to ask many questions which are often based upon their misconceptions about the WSIB. The commentary discussed in this newsletter all come from questions asked during those meetings.

We welcome these questions as these companies would not change how they manage their WSIB matters without this insight. Feel free to contact SE-GA to ask a question about how the WSIB operates and how this affects your business.

Lastly, this may be a newsletter you will want to share with some other members of your management team. It is often the people who do not work with WSIB matters on a day to day basis that have these misconceptions. Every company not only wants to receive a rebate every year but they also want to know how to maximize that rebate. The simple answer is Zero Accidents, immediate placement into modified work if an accident occurs and seeks 100% cost relief on every claim.

The reality is most companies are limited in the resources required to have a complete Health & Safety/Return to Work program. Here are some recommendations to starting your year off:

Managing a WSIB claim begins with a FORM-7

Fact: It starts with prevention, to quote the Boy Scout motto "Always be Prepared!". To properly manage your future WSIB claims we strongly recommend a Front-End Claims Management program (FECM). The FECM is the policy, procedures and protocols your company will use so that your office personnel and field staff understand their roles, responsibilities and obligations to participate in modified duties.

It has been our findings that while most companies have a Return to Work (RTW) policy most do not have a RTW program. As a result there is no consistency as to how the RTW process back to normal duties is managed.

Virtually every company that uses equipment to achieve optimum performance is under a preventative maintenance schedule. Think of the FECM as the preventative maintenance program for a WSIB management program.

Some of the critical components of a successful FECM are:

- A flow-chart for the life of a WSIB claim.
- An organizational chart detailing the roles of each person involved with WSIB.
- An inventory of modified work jobs that matches the injured worker to the capabilities while incorporating their restrictions.

WSIB is like car insurance and by paying premiums my company has coverage. My rates go up or down based upon the amount of accidents we have.

Fact: The WSIB is nothing like car insurance. Your company contributes to a specific rate group based upon your business activity and every company in that rate group pays the same premium (percentage of payroll. i.e. – All trucking companies are in Rate Group 570 and pay \$6.72 per \$100 of payroll).

NEER and CAD-7 are experience rating programs where your premium contribution is a deposit against a possible rebate or surcharge. Your rebate or surcharge is determined by both the number of accidents your company has in a given year and the cost of those accidents.

As they say in commercials for mutual funds: past performance does not necessarily indicate future results. In WSIB language that means your company could go six years accident free (and receiving rebates) but you could earn a surcharge in the seventh year if you have enough accidents or even just one very costly accident. Unlike car insurance, the WSIB does not have accident forgiveness!

The best recommendation is to “bank” any and all WSIB rebates in a separate account and pay any future surcharges from that reserve fund. SE-GA has a client that secured rebates for seven consecutive years and then incurred two surcharges that drained their reserve account. In the next year they earned another surcharge and had to pay that fee from their general revenues.

The WSIB has not increased my premiums in years; that’s great for my company!

Fact: Not necessarily. While we agree that companies always gain when prices do not increase, it has likely not benefitted your company as much as you think.

As discussed earlier, NEER and CAD-7 are experience rating models where companies can earn a rebate or surcharge based upon their specific performance. While the premium rates have remained constant for the last several years the WSIB has changed the other factors that determine the real dollar cost of claims.

In other words, holding premiums constant has reduced the maximum rebate a company can earn with similar accident performance from year to year. Further, it is much easier for a company to earn a surcharge when you compare your current experience rating statements to those from 2008-2010.

To quote the old adage: *“Careful what you wish for; you just might get your wish!”*

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“We used to regularly get cost relief on our costly claims but cost relief doesn’t exist anymore!”

Fact: Cost Relief still exists but the threshold to gain cost relief is much higher. By definition cost relief should be awarded to a company if:

a) The injured worker was more likely to suffer a debilitating injury due to a previous medical condition than someone without such a medical condition (such as tendonitis),

AND/OR

b) The injured has a medical condition that prolonged their recovery from a workplace accident

Since 2009 all requests for cost relief have been transferred to a special unit within the WSIB known as the SIEF (Second Injury Enhancement Fund) team. They are not only looking for the pre-existing conditions but the causal factors that link those conditions to the current accident.

It has been our experience that the most successful path to a cost relief award (and to maximum the quantum of cost relief awarded) is to plot a path that also allows you to appeal the WSIB’s decision to the Workplace Safety and Insurance Tribunal in the event you do not obtain the favourable results at the ARO (Appeals Resolution) level. In many cases our team has successfully appealed the WSIB decision to deny a request for cost relief entirely for the Tribunal to overturn that decision and award our client 75% to 90% cost relief. To research some of these decisions please visit

<http://www.canlii.org/en/index.html#search/all=senicar%202014>

To properly manage WSIB for any company it is necessary to understand not only your obligations as an employer (and your employees’ obligation to your company) but also your experience rating financial exposure and key timelines within the life of claim. Please e-mail any questions (or other WSIB fictions to info@segaconsulting.com)

INJURED WORKER, DENIED WSIB BENEFITS, ALLOWED TO SUE THEIR EMPLOYER AND SUPERVISOR

Editor’s Note: This case is relevant because the injured worker was denied WSIB benefits, and this decision was endorsed by WSIAT, because the worker’s actions – which were not prevented by their supervisor – took the worker outside of their normal course of employment. This article was found on www.occupationalhealthandsafetylaw.com. This is a summary of 2014 ONWSIAT 2526.

A retail employee who helped pursue a shoplifter, in violation of the employer’s workplace violence policy, was not entitled to WSIB benefits and therefore could sue the employer and their supervisor in the courts for her injury.

The employee was standing outside the grocery store, where she worked, on her break. The supervisor, who had just finished his shift, followed a suspected shoplifter to his van. The employee also followed. The supervisor confronted the shoplifter who then accelerated away and ran over the employee with both his front and rear driver-side wheels. The employee was hospitalized and had not yet returned to work.

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The employee sued the employer and the supervisor seeking damages. The employer applied to the Workplace Safety and Insurance Appeals Tribunal for a declaration that the employee's right to sue was taken away by the Workplace Safety and Insurance Act because she had Workplace Safety and Insurance Board coverage.

The Tribunal held that the employee's injury did not arise out of, and in the course of her employment. It was important that the employee, in participating in the confrontation of the shoplifter, had violated both the employer's "Non-Pursuit Policy" and Workplace Violence Policy which prohibited most employees from pursuing shoplifters. Further, she was on a break at the time of the incident. Pursuing shoplifters was not one of her duties and was not even incidental to her duties. Her pursuit of the shoplifter was of no benefit to the employer because it violated company policy and made her unavailable to return to her regular duties. For similar reasons – plus the fact that he had finished his shift - the supervisor was found not to be in the course of his employment at the time of the accident.

As such, the employee was entitled to sue both the employer and the supervisor in the courts. It is interesting to note that the employee's own misconduct (violating the company's non-pursuit policy) was one of the factors that took her "out of the course of" her employment and permitted her to sue the employer instead of claiming WSIB benefits.

IN OUR NEXT ISSUE:

We discuss the recently announced **WSIB Rate Framework Reform** consultation

Upcoming Understanding NEER & CAD-7 WSIB Seminars in 2015

- Cambridge, Holiday Inn, 200 Holiday In Drive - April 25th
- Thunder Bay, Construction Association of Thunder Bay - May 13th

As always, everyone's situation is different. The above is not intended to be legal advice for any particular situation and it is always prudent to seek professional legal advice before taking any decisions on one's own case.



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