

Winter Construction Layoffs: Can they affect my 2013 CAD-7 surcharge?

The most common error throughout the construction industry is laying-off workers who are involved in Modified Work (light duties).

In many of the WSIB decisions, the Board takes the position that if the employer cannot demonstrate that the worker is back to near full duties, the Board will reinstate the worker's WSIB claim and will pay that worker their Loss of Earnings benefits and charge that employer with a Lost Time Claim (a frequency). Clearly any employer does not want to be placed into this position.

To ensure that the injured worker is not reinstated by the WSIB, the Board has specific policies regarding the entitlement to workers which require due diligence on behalf of the employer. Simply demonstrating that the worker is completing the bulk of their pre-accident duties and

that they are not at a disadvantage when seeking alternative employment during the layoff period may not be the only "test" regarding the allowance of further benefits. According to Board policy there are

The anticipated cost to a typical construction company (\$150,000 in premiums) could be as high as:

\$ 25,000.00 per year for two years*

Please note that there are many variables to obtain the appropriate valuations however SE-GA proprietary software can provide clarity to these complicated valuations.

other factors that may allow the injured worker's claim to be reinstated by the WSIB such as:

- Is the accommodation to the injured worker minor in nature compared to their pre-accident duties?

- Is the worker receiving all of their wages from the employer and not receiving a any loss of earnings "wage top-ups" from the WSIB?
- Has the employer moved the injured worker into a lower paying position and is the WSIB paying the difference between the pre and post-accident wage rates?
- Is the date of accident very close to the date of the layoff notice?
- Is the worker employable, albeit somewhere else, at similar wages?
- Is there a recall date at the end of the layoff period?
- Is the worker aware that the job was seasonal in nature?

For answers to any questions related to seasonal layoffs or any other WSIB questions please contact SE-GA at 1-866-973-7342 ext. 2, or visit us at www.segaconsulting.com.

The single biggest mistake we see at SE-GA Workplace Consulting is companies, across all business activities, which have a return to work policy but do not have a return to work program.

The WSIB's reemployment obligations are very clear. It is the responsibility of all parties to participate in return to work activities however it is up to the employer to provide suitable accommodation to the injured. Failure to do so will result in WSIB claim costs which will likely lead to significant WSIB surcharges.

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.