

What to watch out for in order to avoid costly WSIB claims in 2014

The best way to have a great 2014 is to go accident-free for the entire year. Unfortunately, many workplaces will have an accident this year but the WSIB costs of that accident can be greatly reduced through an effective Return to Work (RTW) program.

SE-GA recommends RTW = 2 – 2 – 2 as a guideline to monitor all injured workers as they return to their duties following their workplace accident. All lost time claims should be monitored as follows:

- Workers should begin their RTW assignment within **2 days** of their workplace accident
- Workers should transition to some of their regular duties within **2 weeks**
- Short of a critical injury all workers should be back to full duties by the **2 months**

The most important of these benchmarks is when workers remain away from their workplace for more than 2 days following their workplace accident as claim costs increase rapidly when the WSIB is paying your injured worker's wages. (This is true for both NEER and CAD-7 employers)

Claims often get away from companies because they are unaware of all of the tools they have at their disposal to manage their injured workers through the return to work process. These are the six things to look out for to avoid costly claims in 2014:

Every company needs a WSIB Quarterback

In many companies, the different parts of WSIB management may fall to different people based upon the role they play within a company:

- Health & Safety – accident investigation
- Payroll – completion of the FORM-7
- Human Resources – manage modified work
- Supervisor – monitor modified work
- Controller – WSIB cost statements

When these roles work independently of each other, they may be done efficiently but it's difficult to measure the overall effectiveness of your RTW program.

Recently we encountered a construction company that didn't realize they had a very costly claim in 2013. The worker was fired in April 2013 due to absence and performance issues. The worker reported a WSIB claim two days after his dismissal. The company filed a FORM-7, without conducting an accident investigation or disputing the worker's allegations; when contacted by the WSIB they considered the case closed. **(The FORM-7 was submitted by payroll)**

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The monthly Accident Cost Statement showed that this worker was receiving Loss of Earning Benefits once the WSIB accepted this claim as the employer in no way disputed the circumstances of the claim. **(The ACS was filed with the company but not reviewed).**

The costs of this claim between the date of accident in April and the end of 2013, in real dollar cost, was approximately \$61,600.00. The lack of understanding of the potential costs of this claim combined with the lack of internal coordination was directly responsible for the unfavourable outcome of this claim.

Lack of Cooperation by the Injured Worker

One of the mistakes many companies make is to allow their worker to be in charge of their own return to work program. The smartest thing every company can do is to develop a return to work management system and share the responsibilities to participate with their workforce.

Many workers still have an expectation that they will recover at home from their workplace injuries and will only return to work once they are given full clearance by their Doctor. As a result many workers will refuse to participate in “light duties”.

A recent success story occurred when a company asked SE-GA to review their FORM-7 and formal offer of modified work, because the worker announced that he would not return to work until the following week and missed three days of work.

The worker received a letter from the WSIB, which was also sent to his employer, stating the WSB accepted his claim for Health Care benefits only and he would not receive Loss of Earnings benefits as their employer had provided him with suitable duties during his recovery.

Always be on the lookout for the following:

- Doctor does not complete the Functional Abilities Form
- Doctor states the worker will be absent from work due to their workplace injuries
- Workers who do not report injuries and receive healthcare after work
- Workers who do not report for work as expected

Unusual Claims

More and more companies are dealing with WSIB issues, such as Mental Health and Bullying (Post Traumatic Stress) claims that have never before occurred at their workplace.

These types of claims are increasingly complex but carry the same financial ramifications as any other WSIB claim.

An example of untoward financial consequences can be seen when a worker receives a Non-Economic Loss award (**NEL award**) as a result of their injuries. Under the NEER program all NEL claims are reactivated in the year the NEL is received by the worker.

A long term care facility found out about NEL's the hard way. In 2011 their performance netted them a rebate of roughly \$6,000.00. In 2013 a minor claim, where the injuries resulted in an absence of work of less than 1 week, was reactivated by a NEL award of \$1,900.00

The net impact of this award was a cost to this company of \$18,000.00! (The company had to pay back the previous rebate of \$6,000.00 plus an additional new surcharge of \$12,000.00)

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“Bookmark” your Appeals!

Cost Relief can still be an effective part of your NEER/CAD-7 strategy. In many cases companies will attempt to gain cost relief internally and only assign that responsibility to SE-GA after they have been unsuccessful in their own attempt.

Obviously companies have a financial incentive with this plan but they may actually be limiting our ability to continue that effort. **The 6 month rule** is the time period companies have to appeal any WSIB decision. However if the WSIB receives the intent to appeal (or bookmark) form, the opportunity to appeal the WSIB decision is available for an indefinite time period.

We recommend every company **BOOKMARK** every decision denying their appeal for cost relief so that SE-GA can maximize the opportunity to reduce your claims costs through the Second Injury and Enhancement Fund.

Is your company looking to acquire another company (or are you being acquired)?

A critical component of NEER/CAD-7 deals with account acquisitions and account closures.

If your company is looking to acquire another company in 2014 SE-GA can provide an analysis of the “new company’s” experience rating performance and any potential liabilities that may come with that purchase. This information could change the profitability of the acquired assets.

Based upon a change in business activities, it is not unusual to consider closing your current WSIB account. There are ways to maximize (or minimize) the financial impact of the account closure.

In either case there are ways to protect your business. If these situations are going to happen in your business in 2014 contact SE-GA so that we can provide the analysis you need to make the best decision.

Changes to NEER and CAD-7

The WSIB makes minor changes to their experience rating programs on an annual basis. If companies review their statements, they will see that their allowable accident cost in order to receive a rebate has been steadily decreasing for several years.

This means:

- Your maximum rebate is lower
- It is easier than ever to achieve a surcharge
- Your maximum surcharge is lower as well

Interesting Employer Decisions at the WSIAT in 2013

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2014

1. *"It is the WSIB's responsibility to initiate the SIEF relief entitlement reviews, not the employer's"*
– September 11, 2013
2. *90% SIEF & Miscommunication at the WSIB, Why submitting Independent Medical Information is so important in the Appeals Process!* – August 28, 2013
3. *Registered Nurse with a back injury – 0% SIEF before the hearing* – August 27, 2013
4. *Exceptional Circumstances allow for NEER Recalculation outside of the 4 year NEER window*
– July 30, 2013
5. *CAD-7: Injury caused workplace violence – Disability enhanced by smoking* – July 16, 2013
6. *Asymptomatic – Why this matters when appealing for cost relief – the evidence is only available post accident* – July 15, 2013
7. *Older Worker injured from a minor fall* – July 3, 2013
8. *Nurse injured properly lifting a patient* – June 13, 2013
9. *SIEF increased from 25% to 50% to 75% at WSIAT (and retroactive NEER adjustment)* – May 30, 2013
10. *CAD-7: Appealing both the severity of the pre-existing condition and the severity of the accident*
– May 7, 2013
11. *Personal Support Worker injured by her client – MRI shows Herniated Disk* – April 17, 2013
12. *Birth Defect is not a pre-existing condition* – April 15, 2013
13. *Slip and Fall – Back injury becomes evident long after the date of accident* – March 22, 2013
14. *Company "buys" a bad claim/SIEF outside the NEER window* – March 15, 2013
15. *The age/employment history of the worker is not the determining factor in the decision to allow cost relief* – March 13, 2013
16. *Minor accident leads to Permanent Impairment – Independent Medical evidence leads to 75% SIEF*
– January 11, 2013

FRAUDULENT WSIB CLAIMS - **Protect your company with The IRM Solution**

Corporate Canada and small business are beginning to realize that employee related fraud is detrimental to performance, customer service, outputs and the economic health of a company. Employee, or workplace fraud, come in many forms including: flagrant absenteeism; economic fraud ; workplace harassment and/or violence; and lost productivity due to substance abuse. Moreover, the most difficult workplace fraud for an employer to address is fraudulent WSIB claims.

These issues can be extremely delicate for an employer to deal with; however, expertise is available from **Investigative Risk Management (IRM)** and **The IRM Solution** is the pragmatic way to problem solve and reduce corporate exposure.

The mitigation of risk through effective management of WSIB claims is important because mishandling a claim can be costly. Fraudulent absenteeism claiming an inability to return to work can adversely impact production, operational effectiveness and employee morale. Additionally, the mismanagement of WSIB claims can seriously affect your rebate or surcharges, in addition to issues of non-compliance with regulations, such as return-to-work policies.

It is fundamental that employers become familiar with the red flags which can indicate misuse of the WSIB system. The most prevalent red flag is a more extended period of absence than would be expected for the injury or situation. At times, reluctance on behalf of the employee to return to work is also an indicator. Another source of suspicion can result from third party information, intelligence or even rumors which indicate the employee has been working outside the company or seen participating in physical activities inconsistent with the type of injury sustained.

When situations such as these occur, it becomes very sensitive, especially in a unionized environment, and employers should seek professional advice to mitigate exposure and strategically plan next steps. **The IRM Solution** provides such expertise and can assist in the reduction of fraud. As part of due diligence required during the decision making process, the following guidelines should be considered before engaging **The IRM Solution**:

- What other proactive steps were taken before surveillance was authorized?
- Were the suspicions of fraud reasonable?
- Was the employee's work history taken into consideration?
- Would surveillance contravene any contractual obligations?
- Were other alternatives considered before conducting surveillance?

Once a determination is made to conduct surveillance, a professional private investigation firm will ensure it is achieved with little intrusion and no infringement on the employee's right to privacy.

The determination of whether the absence is legitimate or fraudulent is the ultimate goal of **The IRM Solution**. The facts are gathered and maintained for tribunal presentation in the form of video, audio recordings, photographs and investigators personal observations. If the absenteeism is fraudulent, such direct evidence usually results in a successful conclusion and often avoiding a WSIB Hearing.

The IRM Solution provides consultation to guide the employer regarding timing, as delays can protract a claim and engagement of surveillance at inappropriate intervals can be ineffective. Therefore, the investigator must work in partnership with the employer to strategically plan the surveillance taking into account all pertinent circumstances. It is prudent to conduct a minimum of three to five consecutive days of surveillance as one day of observation can be disputed by the claimant stating their physical activity caused them to be bedridden for the two days following. A continuum of continuity is fundamental to a successful surveillance. The **IRM** investigator, in consultation with the employer, will plan surveillance anytime, day or night, and at a variety of locations designed to obtain a multitude of activities in different environments.

IRM utilizes only the most modern and technologically advanced equipment. High definition video equipment with time and date stamping is not only preferred, it is the standard. Clear, concise and positive subject identification, factual establishment of the activity duration, and detailed video of the exact physical activity is fundamental to an investigation. Moreover, detailed written reports describing the observations will attest the claimant's credibility, capabilities and daily activities. The investigational report will be authenticated through a certificate of authenticity. When/if required, the **IRM** investigator will provide credible, factual, professional and trustworthy evidence if a WSIB hearing ensues.

The IRM Solution can also be proactively engaged to investigate the circumstances surrounding an alleged accident. This can be particularly beneficial when the injury is serious or if there is doubt whether the injury occurred in the workplace. **IRM** investigators are experts in obtaining statements, photographs, measurements and other information relevant to the occurrence. An investigation of the actual incident should take place as soon as possible to secure facts and obtain statements before recollections deteriorate and/or evidence is destroyed. It is essentially prudent to engage a professional investigation firm to obtain an independent account of the incident; rather than a review from the employer which could be misconstrued as bias.

In conclusion, the protection of the Ontario workforce is a fundamental benefit to society and a much needed bureaucracy. However, it is equally important that the system be protected from fraud and abuse. If not, sufficient funding will not be available for those who legitimately require assistance. Fraudulent claims are not only detrimental to companies through lost productivity and increased fees, it also impacts the taxpayer and innocent families of Ontario. A proactive human resource strategy utilizes a two pronged approach; protection and full support of the worker who is legitimately injured in the workplace, and zero tolerance for fraudulent claims and abuse. The **Investigative Risk Management** and **The IRM Solution** can proactively or reactively assist corporate Canada with professional and trustworthy advice, guidance and investigations all designed to mitigate risk. At **IRM**, personal client service and customer satisfaction is not just a notion, it is the cornerstone of our partnership with the client.

For more information on IRM contact:

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WSIB is complicated and remains unmanaged risk for most companies. If you have questions about a specific claim or any WSIB issue reach to SE-GA at 1-866-973-7342 ext 4 for a no-charge initial consultation.

Have a Safe and Productive 2014!

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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