

A GUIDE FOR NAVIGATING THE WSIB PROCESS

ONTARIO LEGAL CLINICS' WORKERS' COMPENSATION NETWORK

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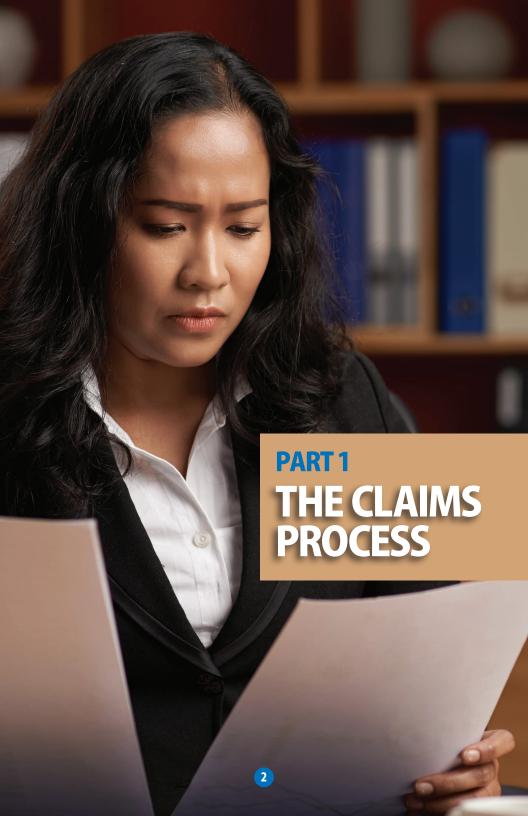
Introduction

Workers' compensation covers work-related injury or illness. The Workplace Safety and Insurance Board ("WSIB") pays benefits to injured workers from the money it collects from employers.

Most Ontario workers are covered by workers' compensation. If your workplace is required to have WSIB coverage, you are covered, even if your employer did not register or pay. Some workplaces are not required to have coverage, but those employers may choose to opt-in.

If you are injured at work, you should file a claim and let the WSIB decide whether you have coverage.

If your injury is covered by workers' compensation, you do not have the right to sue your employer.



A WSIB claim starts when a report is filed by the worker, the employer, or the doctor.

- You are required to report an accident as soon as possible, and within 6 months. If it is a work-related illness, the time starts when you learn of the illness. You can start a workers' compensation claim by calling the WSIB. The WSIB will send you a Worker's Report of Injury/Disease (Form 6), or you can get it on the WSIB website www.wsib.on.ca . You must give a copy of the Form 6 to your employer.
- Your employer is required to report an injury within 3 days of being notified, if you require medical care or lose time from work as a result of a workplace injury. Your employer must give you a copy of the form that it files which is called an Employer's Report of Injury/Disease (Form 7)
- Your doctor should complete a Health Professional's Report (Form 8). Your doctor will give you a copy of page 2 of the Form 8 to give to your employer and will submit the entire Form 8 to the WSIB.

Life of a claim

If you have a serious injury requiring lost time from work, a workers' compensation claim may continue for years. If you have a permanent impairment and receive compensation for loss of earnings, you will be dealing with the WSIB up to age 65.

In the early stages of your claim, the law requires that you keep in touch with your employer and the WSIB, even if you are recovering and not able to go back to work. The WSIB can cut your benefits for what it calls "non-co-operation".

The law also requires you to notify the WSIB if there is a "material change" in your circumstances. There is no definition of what that means, but it includes a change in your medical condition, or going back to work. If in doubt, call the WSIB and tell them about the change.

The WSIB may ask you to see a doctor of their choice to assess your injury or your ability to return to work. Sometimes, the WSIB recommends that you attend a treatment program like a pain clinic that is funded by the WSIB. You should discuss these requests with your own doctor because if you refuse without a good reason, the WSIB may cut your benefits for "non-co-operation".

You should keep a record of your calls with the WSIB and your employer as well as records of any medical treatment you receive for your workplace injury.

Ongoing decisions

A workers' compensation claim can involve dozens of decisions made over a period of years. Decisions are usually made by the case manager assigned to your claim, including decisions about whether:

- your injury or illness is work-related
- you need time off work to recover
- you will receive compensation for lost wages
- the WSIB will pay for your travel for a medical visit
- a medicine or therapy will be paid for
- you are fit for light duties
- a job is suitable for your injuries
- you are recovered
- you have a permanent impairment
- you need retraining

If you are appealing a decision, the WSIB process does not stop and the WSIB may make a series of further decisions. These decisions may affect your future benefits. You should not stay home and ignore the WSIB, even if it made a wrong decision about your injury. The best strategy is to keep in touch with the WSIB and make your best effort to recover and return to some kind of employment, even when the WSIB is not helping you.

Time limits

Each decision letter you receive has a time limit to start an appeal and that time limit is written at the end of the decision letter. It is usually 6 months although sometimes it is only 30 days. To meet the time limit, you need to complete and submit an Intent to Object Form. You can call the WSIB to get this form or get it from their website. You will receive a copy of your WSIB file at which point you have as much time as you need to get ready to go ahead with the appeal.



REFINE WEIB decisions have deadlines. Some of these deadlines are as short as 30 days. If you miss a deadline, you can still file your objection but you will have to explain why you are late in objecting, and ask permission for the objection to go ahead. If the WSIB denies your request to file the objection late, this decision can also be appealed.



If you were injured on or after January 1, 1998, the WSIB could give you the following benefits, depending on your situation:

Lost wages (Loss of Earnings benefits)

If you qualify for WSIB benefits, your employer must pay your full wages for the day you were injured, even if you had to leave work early.

If you lose wages because of your injury after that day, the WSIB should pay you. These are known as Loss of Earnings (LOE) benefits.

The amount WSIB pays is 85% of the difference between the net amount of what you earned before the injury and what you earned (or what the WSIB thinks you should have been able to earn) after the injury, up to a maximum. Even if, after the injury, you get a lower paying job or do not work at all, the WSIB will calculate your LOE benefits based on what it thinks you should have earned after your injury.

So if, because of your injury,

- you cannot work,
- cannot work as many hours,
- can only work in a job that pays less, or
- are in a Work Transition program (see below),

the WSIB must compensate you for this.

Health care benefits

If you need health care **because of your injury**, the WSIB must pay for it. You should get approval from the WSIB **before** accessing health care; otherwise the WSIB may not pay you back.

For example, the WSIB may pay for:

- prescription drugs
- psychotherapy, counselling, or other mental health treatment
- physiotherapy
- massage therapy
- chiropractic treatment
- acupuncture
- the costs for you to visit your doctor or other health care, which may include transportation costs, accommodations, and meals
- dental services needed because of your injury
- back supports, crutches, orthopaedic footwear and other health care equipment

WSIB does not cover healthcare for things not needed because of your injury.

You may have to pay these expenses first and then ask the WSIB for your money back. Be sure to get receipts for everything. Complete the Worker Travel Expense Form. It is available on the WSIB website. Take it with you to your appointment and get it stamped. Send your receipts and records to the WSIB, and be sure to keep copies in case anything you send is lost.

WSIB usually pays for health care treatment to help you get better after your injury, but in some cases the WSIB also covers health care over a longer period of time (this is called maintenance treatment).

Returning to work, with your employer or **somewhere else** (Work Transition)

If you worked for your employer for at least 1 year before your injury, your employer must generally offer you your regular job back after your injury. Under WSIB law, your employer does not have to create modified work for you. Your employer does not have to offer you a job if your employer has fewer than 20 workers. There are special rules for the construction industry.

You may also have protection under the Ontario Human Rights Code if your employer discriminates against you because of your disability.

If you and your employer do not agree about if and how you can return to work, contact the WSIB. A WSIB Return to Work (RTW) Specialist may be able to help.

If you cannot return to work because of your injury, tell the Board.

REMEMBER: If you do not cooperate with the WSIB, you will not get benefits. You may disagree, but you should still try to do what they tell you. You are not required to do anything that will make your injury worse, but it is important to get medical evidence to show how doing what WSIB asks would make your injury worse. Keep records of your attempts to cooperate.

If you cannot return to work with your employer because of your injury, the WSIB must help you find other work. These services are offered as part of a Work Transition (WT) plan. The plan is supposed to help you get the skills you need to overcome any permanent disability and start working again. These services may include:

- literacy and basic skills
- English as a Second Language training
- academic upgrading e.g. college preparation courses

- vocational skills training at a community college or private career college
- training on the job
- job search training
- employment placement services
- work trial.

The WSIB may also pay for things to help you get back to work, such as assistive devices or relocation expenses if you cannot find work near your home.

You usually have only 30 days to file an Intent to Object Form for these decisions. If WSIB makes a WT plan for you, you should object in case you have trouble with it later.

Compensation for a permanent impairment (Non-Economic Loss Award)

If you will never get completely better, the WSIB must pay you a Non-Economic Loss (NEL) award. A NEL award is meant to recognize the permanent effects of workplace injury on your life outside of work. It is not usually very much money.

The WSIB will not give you this until after you reach Maximum Medical Recovery (MMR), the point at which it determines that you are not likely to have any further significant improvement.

If your condition gets worse after you have been paid a NEL award, you may ask the WSIB to pay you again. This is called a redetermination. You will need medical evidence to show this. There are risks to doing this and you should get legal advice first.

Other benefits can include:

- an allowance for clothing damaged by wheelchairs, back braces, or other assistive devices
- lost retirement income
- for severely injured workers:
 - an allowance to help you live independently
 - an allowance to pay for personal care
 - modifications to a home or vehicle to help you live independently
 - · independent living devices e.g. motorized scooters



There are 4 really important things to do while you are waiting for a WSIB decision, or while you are appealing a WSIB decision:

- seek out replacement income
- cooperate with WSIB
- follow doctor's orders/pursue treatment
- make efforts to return to work/seek employment/consider retraining.

HOW CAN I REPLACE MY INCOME WHILE I WAIT FOR A WSIB DECISION?

There are a number of short term and long term options to consider. Whichever option for income you apply to, remember that these options are not limited to your work-related illness or injury. If you have other medical issues, be sure to list them.

If you apply for the benefits below, be sure to tell them you are applying for WSIB benefits. If you are approved, you may have to pay these back. Likewise, you need to tell the WSIB if you are receiving income from another source while you wait for WSIB. Some sources of income will affect your WSIB benefits.

You should get legal and financial advice if you wish to pursue these other sources of income.

Private Insurance

Consider whether you have private options accessible to you. Through either you or your partner, there may be short-term or long-term benefits with a private insurer. You may also have income replacement insurance through your financial institution. You may also have mortgage and loan insurance that helps you if you have a disability.

Employment Insurance

Employment insurance benefits are another option if you do not have private insurance. There are two types of benefits that can be accessed if you are not working.

- Employment Insurance Sickness benefits provides temporary assistance if you cannot work because of your injury. Eligibility depends on your location and the amount of hours worked in the last year or since you last received El benefits. Sickness benefits are available up to 15 weeks.
- After the 15 weeks have ended or if you have not applied for Employment Insurance Sickness benefits you can also apply for Employment Insurance regular benefits. Eligibility depends on hours worked in the past year or since you last received El benefits. The length of the benefit depends on where you live. You need to be ready, willing and able to work to be eligible for Employment Insurance Regular benefits.

You can apply online for either benefit at http://www.esdc.gc.ca/en/ei/apply.page. Alternatively, you can also go to your nearest Service Canada centre and apply there.

Ontario Disability Support Program (ODSP)

ODSP is a program that offers support if you are low income and have a disability and need help with living expenses. ODSP can provide financial assistance to you and your family, health care benefits, and employment assistance if you meet both the financial test and the disability test.

You must be at least 18 years old, living in Ontario, in financial need and meet the definition of a person with a disability. There are in-

come and asset criteria that must be met in order to be eligible. You will receive a monthly income to cover basic needs and shelter.

You can apply on-line, or through your local ODSP office, or through Ontario Works if you are in receipt of Ontario Works benefits. You have to meet the financial part of the test first, and then you will be given a Disability Determination Package that your doctor or psychologist or nurse practitioner must complete.

Ontario Works (OW)

OW is a program that helps people in financial need. Assistance can include income support to help with the costs of basic needs and health benefits. OW can also provide employment assistance to find and keep a job. Eligibility is based on residency and financial need and the willingness to look for employment. You can apply on-line or visit a local Ontario Works office.

Canada Pension Plan Disability (CPP-D)

The Canada Pension Plan ("CPP") pays benefits to people who have made enough CPP contributions and are disabled. You must be under 65, have a severe and prolonged disability, and meet the contribution requirements. If you are on CPP-D, you are restricted in the amount you may work. You and your doctor must complete the application.

You can get an application from Service Canada or download it at: http://www.servicecanada.gc.ca/fi-if/index.jsp?app=prfl&frm=isp1151&lang=eng.

If you obtain CPP-D based in full or part on your WSIB injury, you need to let the WSIB know within 10 days.

CPP Retirement Benefits

If you have paid into the Canada Pension Plan, you can get retirement benefits once you turn 65.

If you have paid into the Canada Pension Plan and are at least 60 years old, you are eligible for Canada Pension Plan early retirement benefits. As CPP normally starts at age 65, the amount of the benefit will be reduced.

To apply online you will first have to register for an account here: http://www.esdc.gc.ca/en/msca/index.page or go to your local Service Canada office.

You should get legal and financial advice before pursuing CPP Retirement Benefits.

Veterans Benefits

Veterans or members of the Canadian Armed Forces can apply for a Disability Award for an injury or illness resulting from military service. The amount of the award depends on the degree your disability is related to your service and the extent of your disability. If you have a severe and permanent impairment and you are receiving the Disability Award you can also apply for a Permanent Impairment Allowance. You can start the application process through any Veterans Affairs Canada office.

DO I NEED TO COOPERATE WITH THE WSIB WHILE I WAIT OR WHILE I AM APPEALING A WSIB DECISION?

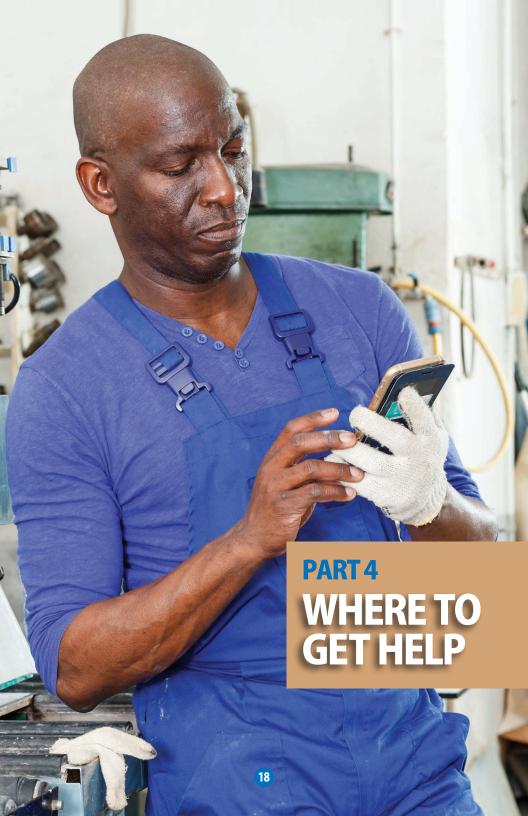
It is important to cooperate with the WSIB. Failing to do so can affect your benefits. Attend meetings and assessments as requested by the WSIB.

WHAT SHOULD I DO ABOUT MY MEDICAL TREATMENT WHILE I WAIT?

Make sure you see your doctor as needed and follow any instructions such as taking medication or seeing specialists. It is important to follow your doctor's orders. Ask your doctor about any restrictions or limitations you need to follow in order to safely return to work.

WHAT ABOUT RETURNING TO WORK?

If there is no suitable or available work with your employer, and if you are able to return to some kind of work, consider looking for alternative employment. Keep a list of places you have applied and track the results. (Did you get an interview? Were you successful? Were you able to do the job? Did your injury make the work difficult?) There are community agencies that can help you look for work, or you could sign up with a temporary help agency. You could also consider returning to school to get new skills. There are some funding sources that you might be eligible for to help in getting new skills (Second Career, etc.).



If you have a union

It's the union's job is to protect your rights. Call them for help and representation.

If you don't have a union

You can:

- call the Office of the Worker Adviser for free help and representation. Their number is 1-800-435-8980 for service in English and 1-800-661-6365 for service in French
- call a Community Legal Clinic in your area for free help and representation. Legal Clinics help low-income residents. A complete list of Community Legal Clinics across Ontario can be accessed by calling 1-800-668-8258 or go to Legal Aid Ontario's website at http://www.legalaid.on.ca/en/getting/type_civil-clinics.asp

You can also get information from the Ontario Network of Injured Worker's Groups (ONIWG) by going to their website at **www.injuredworkersonline.org**. There may be an injured workers' group in your area that can provide you with useful information and contacts.

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