



TILLSONBURG DISTRICT  
Chamber of Commerce

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September 5, 2022

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Subject: Submission on WSIB Changes to Covid Counts and Costs effective July 1, 2022

In the recent WSIB announcement, effective July 1, 2022, all costs and counts associated with Covid-19 related claims will now be applied in the calculation of premiums rates to individual Schedule 1 businesses. Covid-19 claims with accident dates before June 30, 2022, are allocated on a Schedule wide basis and do not affect the calculation of individual premium rates.

This recent WSIB policy change may now have an impact to Schedule 1 employers relating to:

- Lost time claims
- Annual Premium Rates
- Higher Cost Burden for the Industrial Classes
- Proof of Claim with Covid-19 cases
- Potential fatality claims arising from Covid-19

**The Board's recently posted policy about Covid-19 seems to acknowledge and occur in the following context:**

- 1) Community transmission is dominant and prevalent – most Covid-19 cases will be considered not work-related, except for in some high transmission healthcare or residential care environments such as ICU, first responders, emergency room doctors and personal support workers.
- 2) Public Health restrictions are now not provincially or federally mandated, such that in Ontario, employees can now move about with active, positive Covid-19 cases without the mandatory 5-day isolation period.
- 3) If an employee is not sure where they contracted Covid-19, and the employer has no known cases of Covid-19 in the workplace, the employer **is not required** to report the illness (posted online June 13, 2022, under FAQ about claims and Covid-19).

**Some Preliminary Employer concerns arising from the July 1, 2022, Covid-19 policy:**

1. For employers who are outside of the known high-risk environments, there are no clear WSIB guidelines or criteria for determining how the WSIB will adjudicate a

new Covid-19 claim with an accident date after July 1, 2022. In the June 13, 2022, WSIB newsletter FAQs about claims and Covid-19 statement; *“For a COVID-19 claim to be allowed, the evidence must show that the person’s risk of contracting the disease through their employment is greater than the risk to which the public at large is exposed and that work significantly contributed to the person’s illness.”* The 3 examples provided in the newsletter were in the high-risk healthcare sector, where higher transmission rates are expected. The examples provided do not assist with most Schedule 1 employers.

Despite the above posting about employers not being required to report, if the employee is not sure where they contracted Covid-19, and there are no known Covid-19 cases, what happens if the employee says that they did contract it at work? How will the WSIB determine if the worker contracted Covid-19 at the local grocery store or at home from their children or family rather than in the workplace?

2. The Ontario Occupational and Safety Act and Workplace Safety and Insurance Act provide the guiding laws, regulations, and principles for preventing accidents, injuries and occupational diseases in the workplace. As outlined in the Ontario Health Protection and Promotion Act - O. Reg 135/18 communicable diseases are listed, for which immunizing agents are used. Item #25 indicates diseases caused by a novel coronavirus, including Covid-19. Immunization is critical to protect all workers, including the public at large.

In the context of predominately spreading community transmission and no more provincial and federal public health measures, employers may have to consider continuing with mandated vaccine policies to reduce the number of non-vaccinated or non-immunized individuals from bringing Covid-19 into the workplace. People who choose to ignore public health guidelines are still eligible to file WSIB claims. This places employers in an untenable position for a risk that they cannot reasonably manage against a global hazard that is spread in the community.

3. As indicated in #2, Covid-19 is an international, societal, and communicable disease. The virus has no boundaries, and as with most communicable diseases, the individual or worker should receive EI sick or private insurance benefits. Employers would like to be assured that only when there is a high-risk environment (as noted above) and some measure of objective contact tracing to validate workplace transmission should the WSIB system be required to bear the costs of a globally transmitted condition.
4. Despite the context of widespread community transmission, and no more enforced public health measures, there is still a small percentage of workers who will be inclined to file a claim through the WSIB for secondary gain motivations.

5. The Ontario government's Covid-19 Worker Income Protection Benefit paid up to 3 infectious emergency / sick days (up to \$200 per day WSIB). There was no verification of worker Covid-19 positive infections, place of origin, contact, traceability, standard of proof, or doctor's note verification provided to the employer. While these measures may have been temporary and remedial in a global crisis, employers in Ontario expect official validation and documentation to support all benefit decisions that they are required by law to provide.

6. For claims unrelated to a global pandemic, the WSIB no longer has any internal investigators. The lack of investigators, combined with adjudicative and/or organizational resistance to exercising the broad authority and powers in the Act to gather objective evidence makes employers reasonably quite concerned when it comes to the possible allowance of Covid-19 claims affecting their premiums. Will there be additional resources required to obtain comprehensive histories and complete contact tracing before claims in the non-high-risk sector are allowed? For these reasons, employers do have legitimate concerns about the Board's ability in the current framework, to establish proof of accident for Covid-19 claims.

7. The WSIB has stated there must be clear evidence to prove that Covid-19 was transmitted in the workplace. Investigating these potential claims on the horizon will place an extensive burden on healthcare practitioners, employers and adjudicators to ensure that every allowed claim meets an adequate standard of proof and objective medical evidence.

**Recommendations:**

1. The Ontario government needs to revisit the WSIB adjudication and screening process, high-risk occupations, communicable biological diseases, and develop a model for proof of accident and causation to meet a reasonable standard of proof specific for Schedule 1 and Schedule 2 employers. A reverse onus provision should be implemented to protect employers from paying for claims that did not arise out of and in the course of employment but out of a global pandemic. These claims should presumptively be denied, unless the worker was employed in one of the above-named high-risk settings.

2. In addition to establishing better protocols for establishing causation with these claims, it may be advisable to adjudicate them as occupational diseases outside the employer's direct annual premium calculations. The employer and the provincial compensation scheme that they fund, should not be responsible for an unvaccinated employee or one with multiple non-compensable comorbidities that makes them high-risk for fatal Covid-19 outcomes.

3. While the WSIB may have provided the infrastructure to simplify the process for the IDEL (infectious disease emergency leave) benefits program, all employers should automatically receive reimbursements for the payment of these funds, which was not compatible with the purposes of the Workplace Safety and Insurance Act (WSIA). Employment Standards entitlements, and non-compensable pandemic claims are not the lawful jurisdiction of the WSIA.

4. Since this pandemic is a Canada-wide federal health issue, it is recommended that CSA formalize a standard regarding an Occupational Health and Safety – Hazard Identification, Elimination, Risk Assessment and Control - for communicable diseases in the workplace, including investigation, standard of proof and evidence gathering. (e.g., Z1002 updates or a new Canada-wide standard).

5. For all claims where causation is impossible to establish (Covid-19) or where causation is based entirely upon the persistence of subjective complaints (e.g., psychological injury claims such as PTSD, mTBI and chronic pain), a default presumption in favour of return-to-work should be implemented so that if the employer makes a reasonable, accommodating, and safe offer of modified duties, no LOE benefits should be paid. This would eliminate millions of healthcare dollars and resource costs for these claims. Psychological injury claims cost employers millions of dollars annually, including costly third-party contracts with providers such as CAMH, Sunnybrook and Altum. And these claims are growing by 2.5% per year. Psychological injury claims raise similar concerns for employers as Covid-19 claims, with continued and increasing costs for many years to come. There are similar issues with the claims being driven by subjective reporting only, difficulties with proof of accident, causation and validity.

The new WSIB Rate Framework system implemented in 2020 has changed the duration of the claim cost life cycle for employers quite drastically. A new allowed claim now directly affects employers for six years of active claim costs and then five more years until the employer account has reduced all risk bands to the pre-injury levels. This means an incorrectly or hastily adjudicated decision can affect an employer for 11 years. For this reason, front-end claims decisions should be slower for certain types of claims and always based upon adequate confirmation, verification and sufficient objective medical information and collateral information. Employers who are required by law to fund this system should be able to rely upon adjudication that is not hasty but based upon fair, objective and comprehensive evidence.

We request that the issue of Covid-19 claims be re-visited, to be compatible with the Workplace Safety and Insurance Act. Ideally, most of these claims should not be allowed, except for those arising out of the high risk healthcare and residential care settings.

Thank you.

A handwritten signature in black ink that reads "Suzanne Renken". The signature is written in a cursive style and is set against a light pink rectangular background.

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