



SBCI UPDATE

March 2014

NEWSLETTER

MESSAGE FROM THE CHAIRPERSON

A belated Happy New Year to everyone. Spring is here.

January 1, 2014 was the 20th Anniversary of SBCI's establishment. Over the past 20 years, SBCI has grown from 5 staff members to over 30, and has expanded its services to school boards significantly. My congratulations to everyone involved with SBCI's success over the past two decades!

The Co-operative's Annual General Meeting will be held at 9:30 a.m. on Friday, April 11 at the Hilton Garden Inn, in Markham. All members are welcome and full details will be sent out nearer to the meeting.

In December, the SBCI Board of Directors approved the 2014 Budget for the Co-operative, which included a 1½% increase in our fee level, following a 0% increase for 2013. We strive to provide excellent service levels to our members, while breaking even, as a not-for-profit organization should. At the same time, Chubb Insurance increased the workers' compensation excess of loss insurance premiums by 3%.

I take the opportunity, also, to welcome Mary Anne Daniels to SBCI's staff. Mary Anne is a Registered Nurse and her role is to provide case management advice to boards for absences due to disabilities. I welcome Mary Anne to the Co-operative.

I should also report that Robbin Lavoie has left SBCI. Robbin had been with us since 2010. A search for a replacement to lead our Health & Safety team has been conducted and I welcome John Bryden as Director, Health & Safety Services.

If you have any questions, comments or ideas regarding the Co-operative, please give me a call or send me an email. Our aim is always to improve the services that we provide to you. I can be reached at lynda.coulter@ycdsb.ca or (905)713-1211 ext. 13850.

Lynda Coulter
Chairperson

NEL ENTITLEMENT WHEN THERE ARE PRE-EXISTING CONDITIONS

We recently received a favourable Appeals Resolution Officer (ARO) decision for a Non-Economic Loss (NEL) benefit that involved a pre-existing knee condition. The draft WSIB benefit policy on pre-existing conditions directs that a pre-existing condition shall be offset from a NEL award, but the current WSIB policy '18-05-05 Effect of a Pre-existing Impairment' mandates that when calculating a NEL award, the effect of a pre-existing impairment shall be subtracted from the rating. In practice, the WSIB has rarely reduced NEL awards because of pre-existing impairments or pre-existing conditions.

In the circumstances of this case, a 56 year old EA tripped and fell onto her knee sustaining a tibial fracture. She received a 12% NEL award. Five years earlier the worker underwent surgery and debridement of the patella. There was evidence of Gr. 3 chondromalacia. The ARO acknowledged the prior surgery and pre-existing condition directing that the NEL award be recalculated. The decision is in the implementation stage and the expectation is that there will be a 50% reduction in the NEL award to 6%.

The recent decision shows that in cases

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where a pre-existing condition is known, or suspected, it is worthwhile to register an objection to the calculation of the NEL award in order to be able to review the file evidence to see if the WSIB included an offset for the pre-existing condition.

The claim is at WSIAT and it is likely this issue will be added to the appeal agenda. Stay tuned for further updates. If you have

any questions concerning the specific case discussed in this article please contact Figen Dalton at extension 245 or email figen@sbc.org.

THE TOP-UP OF WSIB BENEFITS

There continues to be uncertainty at many school boards as to when they should top-up WSIB benefits. In some instances that uncertainty stems from the complexity of the regulations and for some school boards the uncertainty is based on the wording and interpretation of their collective agreements. Some school boards continue to pay top-up even after more than four and half years. In some instances this decision is made out of compassion/generosity to the employee and in others, it appears to be made out of an abundance of caution and wanting to avoid grievance with the associated costs and negative impact on employee relations.

The situation is not the same for every Ontario school board and varies depending on the wording of collective agreements from 2008-12. While recognizing that not every school board is in the same situation we think it might be helpful to share an email received from an official at the Ministry of Education dated September 10, 2013. Her email should not be construed as legal advice or as interpretation that would necessarily apply to every situation but as some good general background information. We would encourage school boards to seek their own independent legal advice with respect to complex questions that may arise in individual cases.

She wrote as follows: "For those who are currently receiving WSIB and are NOT at work (not on graduated return to work), they would only be eligible for top-up, without deduction from sick leave credits, if they were in a class of employees who could previously top-up WSIB benefits using their accumulated sick leave credits under the old plan. For those who are off work completely receiving WSIB benefits, top-up is limited to certain groups that had this provision in their 2008-12 collective agreement. The regulation also states that top-up is limited to 4½ years. If an employee received WSIB benefits prior to September 1, 2012

and continues to receive WSIB come September 1, 2012, they may only receive top-up if they still have sick days in the bank as of August 31, 2012 and their top-up is reduced by the number of months/years that they received WSIB benefits in the previous years.

For ALL employees who are on a graduated return to work program and have access to the new sick leave plan, they may top-up their salary (for the remaining part of the day they are not working) using their sick leave credits. Employees who receive WSIB benefits in a graduated return to work are eligible to use their sick leave credits to top-up their salary even if they did not qualify to receive top-up from the board while off work completely receiving WSIB benefits. The top-up under a graduated return to work is limited to the number of sick leave credits available to the employee that fiscal year.

The employee who receives WSIB while off work completely, and the employee who receives WSIB while on a graduated return to work are separate and distinct as only the latter may use sick leave credits to top-up their remaining salary for the portion of the day they are not working. The former group does not receive top-up from sick leave credits and not all of the employees in this group qualify (based on their collective agreement) to receive top-up from the board while off work.

ALL employees with a sick leave plan have the ability to top-up using their sick leave credits while on a graduated return to work (because they are back at work and have access to their sick leave plan)."

We hope that this information is of assistance but if you have more questions please contact chris@sbc.org.

NEW SAFETY TRAINING STANDARD FOR WORKING AT HEIGHTS

Most of you may have heard by now that Ontario is implementing a new *Workplace Training Standard for Working at Heights*. This new standard has been developed to improve the safety of workers and establish a consistent level of training across Ontario. Although currently voluntary, it will become

mandatory in the summer of 2014 and will apply to the construction sector as well as construction activity in workplaces.

The new standard has been designed to improve knowledge in the following:

- Proper equipment inspections
- Fall hazards
- Safety practices
- Procedures on the safe use of protective equipment
- Hands-on training on fall-arrest equipment and other devices
- Information on workplace procedures and workers' rights

Does this standard apply to school staff?

Yes, any employee exposed to hazards such as falling from heights, employees that utilize travel restraint systems, fall restricting systems, fall arrest systems or safety nets as a source of protection against fall hazards will be required to complete the two modules in the standard.

- *Working at Heights Basic Theory Module.*
- *Working at Heights Practical Equipment Module.*

Will this standard be mandatory?

Regulatory amendments would be required to make the Working at Heights Training Program Standard mandatory.

How long would the training be valid for?

The Working at Heights training will be valid for three years. Employers are reminded of their duty to re-evaluate the need for retraining in high risk areas like fall arrest.

When will I have to be in compliance with this standard?

Regulatory consultations are scheduled to take place in early 2014.

I just had working at heights training this year, does my training count?

The approach that the Ministry will take to validate recent training with respect to the new standards has not yet been determined. This will be considered as part of the regulatory consultations to take place in early 2014.

Will employers be given a transition period to be compliant with the standard?

Yes, there will be time for workplaces to become compliant with the new training requirements.

Do all employees that access the school roof, even just to change filters for example, be required to take this training as well?

Yes, they are exposed to a significant fall hazard.

For further information, please refer to: The Ministry of Labour Website: www.labour.gov.on.ca

UPDATE ON NATIONAL STANDARD FOR PSYCHOLOGICAL HEALTH & SAFETY IN THE WORKPLACE

On Thursday, January 16, 2014, SBCI attended a media conference held by the Mental Health Commission of Canada, in conjunction with the CSA (Canadian Standards Association) Group and the BNQ (Bureau de normalisation du Québec) commemorating the 1 year anniversary of the National Standard for Psychological Health and Safety in the Workplace.

Considering that poor mental health costs the Canadian economy approximately \$50 billion annually, 70% of disability costs are attributed to mental illness, and every week about 500,000 Canadians miss work due to mental health issues, implementing the Standard not only supports employees, but makes good business sense.

To solidify this point further, sharing the stage at the conference were labour, management and government representatives, all in agreement that it is in everyone's best interest to promote the Standard. As noted by Ken Georgetti, President of the Canadian Labour Congress: "Psychological health and

safety is the leading cause for short- and long-term disability today in our country. We've got a long road to travel in our journey to better mental health in the workplace."

The responsibility of all parties in this journey was well stated by Dr. Kellie Leitch, Minister of Labour: "Workers should be considered an employer's top priority. They're your most valuable asset and if they're producing at their best, your company is going to be successful. This is a collective responsibility for us to be able to deal with mental health issues in the workplace."

But perhaps Bell Canada CEO George Cope said it best: "There is no good reason that a company could give for not adopting this Standard." Bell Canada has adopted the Standard through the implementation of communication strategies, mandatory leadership training, enhanced return-to-work programs and by incorporating the Standard into its corporate governance structure.

The Standard itself has been downloaded over 16,000 times since its launch in 2013, and is currently free to download here:

<http://shop.csa.ca/en/canada/occupational-health-and-safety-management/canca-z1003-13bnq-9700-z10032013/invt/z10032013>.

While the adoption of the Standard is voluntary at this time, we do expect to see it referenced in both arbitration and case law decisions in the years ahead. For further information and/or assistance on implementing the Standard at your school board, feel free to contact any member of the Attendance Support team at SBCI.

THE IMPORTANCE OF MONITORING RTW PLANS

Even the best laid plans can run off course as the unexpected often happens. This holds true with return to work plans so we thought it worthwhile to send the following reminder.

A Return to Work (RTW) plan is a written document that provides the details pertaining to the employee's return to their own or alternate available position.

Each RTW plan should be developed in a collaborative manner with the employee and employer, taking into consideration the individual needs of the employee and the job's essential duties.

In most cases, the goal of the RTW plan is to return the employee to their full regular duties and the plan should typically be no more than 6 to 8 weeks in duration.

It is important to monitor the success of the RTW plan closely through telephone conversations or emails with the supervisor and employee, and with follow up meetings, as appropriate.

At the first sign that the RTW is not successful or if the employee is not making progress as expected, it is important to respond in a timely manner. A meeting with the employee and other relevant workplace parties will help identify what is preventing the employee's progress. If the employee indicates that they cannot perform the essential duties and/or that the accommodations are not helpful, consider if the accommodations can be adjusted or if additional accommodations can help to resume the plan.

If adjustments cannot be made, review the medically supported restrictions and limitations with the employee and determine if the employee is able to perform essential duties (with or without accommodations) in relation to the available information. The initial RTW plan was established based on medical documentation on file. If the plan is not working it is probably a good time to request further medical information.

Upon review of new medical information, if it is apparent that the job is beyond the employee's restrictions and limitations, stop the plan, continue to pay sick leave (as supported by medical) until the medical information indicates the Plan can be resumed; or consider providing LTD options at the appropriate time.

If the medical information does not support ongoing disability (inability to perform essential duties) then communicate with the employee and workplace parties to identify and resolve the RTW barriers. If the employee maintains their inability to perform essential duties, ensure you understand

why. Remember, while employers have a duty to accommodate, they also have the right and the need to understand what exactly they are accommodating and what barriers prevent an employee from continuing a proposed accommodation. Finally, when there is no progress and no identified solutions, consider contacting SBCI for consultation and guidance.

CASE LAW SUPPORT FOR ATTENDANCE MANAGEMENT PROGRAMS

An Ontario Arbitrator has provided a clear outline of the case law principles related to employers' rights to manage attendance through Attendance Management Programs (AMP). In *York University v. York University Staff Association [YUSA] (CanLII 41233, 2012)* YUSA grieved that York's AMP was "unreasonable and discriminatory, [and] contrary to the YUSA collective agreement."

In dismissing the grievance, the Arbitrator noted several established case law principles related to AMPs. The Arbitrator stated that "It is well established that employers have a management right to establish an [AMP] unilaterally" and, "an [AMP] must not be structured or applied in [a] manner that is arbitrary, discriminatory or in bad faith." The Arbitrator noted that AMPs should include sufficient flexibility and discretion so the program is administered consistently, fairly and accounts for individual circumstances.

The decision also confirmed that establishing an attendance threshold is both fundamental and essential in administering an AMP as it provides an "objective standard against which employee absenteeism can be measured."

Perhaps most interesting was that the Arbitrator noted that there is "nothing inherently threatening, intimidating or coercive about a properly structured and administered [AMP]." He stated clearly that, "There is nothing in the AMP which 'threatens' employees with termination. It gives appropriate warning that [it] is a possible consequence if reasonably regular attendance cannot be established and maintained...."

The Arbitrator also noted that the reasonableness of an AMP can be challenged, but that the challenge must be evidence-based. To read the whole decision, follow this link:

<https://www.canlii.org/en/on/#search/jId=on&all=41233>

School boards should have confidence to implement AMPs as the case law reaffirms an employer's right to manage absenteeism and is clear about the principles to be followed when implementing an AMP.

Please contact SBCI to help you move forward effectively. We can provide your school board with a legally reviewed Attendance Management Procedure template, a time oriented project plan and effective training and communication strategies to ensure a successful and sustainable program.

SBCI REGIONAL TRAINING – SPRING 2014

Planning is underway for regional training sessions in late April and mid-May on a number of topics related to Workers' Compensation and Attendance Support. The topics for discussion at the sessions will be as follows:

1. New WSIB Draft Benefits Policies – SBCI commentary on the contents and the implications for school boards;
2. General update on Schedule 2 issues including WSIB Administration rates and excess of loss insurance;
3. Traumatic Mental stress claims – the cases, treatment and RTW challenges;
4. CSA Z1003 Psychological Health and Safety in the Workplace;
5. Head Injuries – the cases, treatment and RTW challenges;
6. Significant WSIB/WSIAT decisions
7. Roundtable discussions

Regional training sessions will be held at school board offices located in the GTA, Eastern Ontario, South Western Ontario, Thunder Bay, Sudbury and a session in French. Additional sessions may be added where there are sufficient numbers. We are in the process of firming up dates and locations and "Save the Date" notices are

being sent out. If you have any questions in the interim please contact Christopher James at SBCI ext. 227 or Figen Dalton at ext. 245.

AUDITING YOUR DATA IN PARKLANE

What is a Data Quality Audit?

Data quality is defined as the correctness, accuracy and completeness of data. Data quality audits check the data quality and how it has been entered or maintained in your system.

Impact of Data Quality

Are you unable to find certain records in a timely manner?

Do you have duplicate records?

Do you have invalid SIN numbers?

Do you have costs missing?

Audits also allow for monitoring of data quality as data-entry technicians are trained, new software is installed and databases are upgraded.

Data Quality Audit Tools in Parklane

On a Weekly basis:

- Run the D95 report to review all accidents entered and look for any missing or incorrectly entered data.
- Run the U6U report to verify your costs in Parklane and match these costs to your WSIB invoices.
- Run the D6F report to keep track of employees who require follow up and any missing RTW dates.

On a Monthly basis:

- D61 WCB Registry - For the last month to determine which claims require days lost entered.
- C2M Potential Duplicates - Personal Data (to clean up duplicate employees).
- C33 Missing SIN Report - Personal Data (to clean up missing SIN#'s).
- Data Anomalies: Shift F1-Utilities in Incident Reporting menu
 - Run #2 LT/REO with only HC Costs
 - Run #3 HC with Comp/Pen Costs

- Run #8 FA/NI (First aid & Hazard) with claim number
- Run #9 Incident with same incident date
- Run #10 Invalid claim number
- Check on the Parklane Forum Website for Software Updates.

On a Semi-Annual basis:

- Run the **Verify File Integrity** to prevent the system from being slow and sluggish or to prevent some incidents from “disappearing”.
- Run the **Sort Incident Directories** to prevent the incident dates from being out of order.
- Run the **Balance WCB Costs** to prevent costs from going “missing” or “doubling” in the cost screen.

In order for SBCI to keep all your information up to date in our Parklane System, we recommend all Forms 7 and WSIB letters to be sent to our email at data-entry@sbc.org as soon as possible.

If you have any questions about the above information, please contact Sylvie David, Acting Data Management Supervisor at 1-800-361-3516, ex. 224 or Sylvie@sbc.org.

CRITICAL INJURY REPORTING

Critical injuries have the potential to be severe and extremely costly.

In order to support our member boards effectively, SBCI would like all member boards to notify us as soon as possible in the event of any injuries that meet the Critical Injury Definition under Regulation 834 of the OH&S Act. A critical injury is defined as “... an injury of a serious nature, that,

- a. places life in jeopardy,
- b. produces unconsciousness
- c. results in substantial blood loss,
- d. involves the fracture of a leg, arm, hand, or foot but not a finger or toe,
- e. involves the amputation of a leg, arm, hand or foot but not a finger or toe,
- f. consists of burns to a major portion of the body, or
- g. causes the loss of sight in an eye.”

In our Parklane system, we are marking critical injuries on the description screen

so we can provide you with proper statistics.

Please assist us in helping you.

S2EG CONFERENCE – SAVE THE DATE!

The Schedule 2 Employers’ Group Annual Conference has been scheduled for October 7 – 8, 2014. It will be held at the Sheraton Parkway Hotel at the corner of Leslie and Highway 7 (the same location as last year).

This is a special year as the S2EG is celebrating its 25th anniversary. The Committee has already started planning the conference and workshops in the areas of WSIB, Health & Safety, Disability Management and Wellness are being scheduled. In addition, there will some special events scheduled to honour this milestone.

If you would like to assist the Committee or have suggestions for workshops and keynote speakers, please contact darlene@sbc.org

Look forward to seeing you there!

SBCI BOARD OF DIRECTORS

- Lynda Coulter (Chair)
- Carolyn Bastien (Vice Chair)
- Ronald Bender
- Judi Goldsworthy
- Jamie Gunn
- Janice McCoy
- Maura Quish
- Roger Richard
- Mary Lynn Schauer
- Anna Sequeira

DATES OF MEETINGS

Board of Directors Meetings

- Friday, April 11, 2014
- Friday, May 9, 2014

SBCI STAFF

- Brian Brown*, Chief Executive Officer
- Lynn Porplycia*, Chief Operating Officer
- Wendy Achoy*, Chief Actuary
- Raazia Haji*, Actuarial Analyst

- Joe Huang*, Actuarial Analyst
- Shawn Tang*, Actuarial Analyst
- Christopher James*, Senior Claims Manager & Lawyer
- Figen Dalton*, Claims Manager
- Darlene Iwaszko*, Claims Manager
- Dave Kersey*, Claims Manager
- Mary Luck*, Claims Manager
- Kelly Melanson*, Claims Manager
- Robert Orrico*, Claims Manager
- Erin McLennan*, Paralegal Analyst
- John Bryden*, Director, Health & Safety Services
- Christina Bick*, Health & Safety Specialist
- France Germain*, Health & Safety Consultant
- Jennyfer Payeur*, Health & Safety Specialist
- Louise Bellamy*, Financial/Office Coordinator
- Karen Bertrand*, Accounting Clerk
- Stephanie Kwong*, Executive Assistant
- Lily Li*, Executive Assistant
- Melissa Hewit*, Supervisor, Data Management
- Sylvie David*, Acting Data Management Supervisor
- Rose Erbay*, Bilingual Data Entry Clerk
- Audrey O’Connor*, Data Entry Clerk
- Julia Barrasso*, Attendance Support Practice Leader
- Byron Franson*, Attendance Support Consultant
- Kathleen Gratton*, Attendance Support Consultant
- Shoba Thomas*, Attendance Support Consultant
- Mary Ann Daniels*, Case Manager
- Rana Khalaf*, Manager, IT Applications
- Patrick Gani*, Senior Analyst Programmer
- Gavin King*, Programmer/Analyst