SBCI UPDATE

April 2017 *NEWSLETTER*

MESSAGE FROM THE CHAIRPERSON

SBCI's Annual General Meeting will be held on Friday, April 7. All member boards are invited to send a representative, though we appreciate this would be a long journey of many of you. Your co-operative had a successful year, financially, and the strategic plan approved by the SBCI Board aims to build on the present strength.

One of our key initiatives from the past few years has been the introduction of the Absence Study. For 2015-16, the number of participating boards has increased to 58, and each of these boards has recently received its report. As you will all have anticipated, utilization of sick leave increased in 2015-16. The Absence Study quantifies the size of the increase. Based on days lost per employee, sick leave absence increased by 9% over the previous year and now averages 11.5 days per employee per year. This is an expensive luxury.

The co-operative's Attendance Support team can assist school boards in arresting this ever-increasing trend and bringing the costs back under control.

The Attendance Support team is presently working actively with 24 Ontario boards and is in the process of producing annual reports for these boards based on the quantitative results of the Absence Study, together with a qualitative assessment of their present procedures. Recommendations for future improvements form a key part of these reports.

I would like to take the opportunity to welcome Mika Dowson to SBCI. Mika has joined the Administration team on a part-time basis. One of her main responsibilities is to act as Lynn Porplycia's Executive Assistant.

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 jamie.gunn@granderie.ca or (519)756-6301 X281142.

ONTARIO REGULATION 470/16 TO THE WORKPLACE SAFETY AND INSURANCE ACT

On December 14, 2016 the Ontario Government approved Ontario Regulation 470/16 that includes the following:

1. It introduces rules regarding the classification to employers who supply temporary workers for other employers for a fee. (Effective January 1, 2019)
2. It revokes and replaces Schedule 1 and provides a new list of industries/business actives required to pay premiums into the WSIB accident fund and a list of industries/business activities that are exempt and do not have to pay into the accident fund. (Effective January 1, 2019)
3. It revokes and replaces Schedule 3 with a revised description of allowed Occupational Diseases (effective December 16, 2016)
4. It revokes and replaces the penalty provisions for employers who fail to comply with section 21(1) of the Act (failure to file an accident report, incomplete reporting or late filing). The fines for these offences are increased (Effective January 1, 2018)
5. It introduces administrative penalties for employers who contravene section 22.1 of the Act by discouraging workers from reporting a work-related injury or occupational disease (claim suppression) or who threatens, intimidates or dismisses or threatens to dismiss a worker who

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wants to report a claim or improperly induces them to withdraw or abandon a WSIB claim. (Effective January 1, 2018)

The most significant changes contained in Ontario Regulation 470/16 deals with how Schedule 1 employers are classified. The regulation provides the legal authority for the WSIB to move ahead with the Rate Framework Reform that has been the subject of consultation with employers for several years.

The list of employers presently covered in Schedule 1 is set out in considerable detail in existing Ontario regulation 175/98. Many of the operations described in Schedule 1 now are no longer common business activities. For example, activities like "Rafting" and "River–driving" were common in the early 20th century but are less common today in modern logging operations.

Ontario Regulation 470/16 revokes the lengthy list of Schedule 1 of business activities set out in Schedule 1 and substitutes a far less detailed list of classes of industries where there is required to be compulsory WSIB coverage in Part 1. The classes are as follows:

Class A – Agriculture
Class B - Mining, Quarrying and Oil and Gas Extraction
Class C – Utilities
Class D - Governmental and Related Services (Sub-Class 1 includes Educational Services)
Class E – Manufacturing
Class F – Transportation and Warehousing
Class G – Construction
Class H – Wholesale
Class I – Retail
Class J – Information and Culture
Class K – Finance, Management and Leasing
Class L – Professional, Scientific and Technical
Class M – Administration, Services to Buildings, Dwellings and Open Spaces
Class N – Non-Hospital Health Care and Social Assistance
Class O – Leisure and Hospitality
Class P – Other Services

Regulation 470/16 includes Part II – excluded industries. There is for the first time a detailed and lengthy list set out in the regulations of specialized business activities where employers do not need to register with the WSIB and pay premiums into the accident fund. These excluded specialized business activities are listed with reference to the classes referenced in part 1. For example, in Class A – Agriculture – Finfish hatcheries are excluded from compulsory WSIB coverage under Schedule 1. The list of excluded business activities is lengthy and detailed.

It is fair to ask, why did the Ontario Government provide more detail in Regulation 470/16 with respect to excluded industries than included industries? This appears to have been a deliberate step so that employers could easily check the regulations and see if they were required to register with the WSIB for coverage for their employees. If their business activity does not clearly fall within the described excluded industries, then they should be contacting the WSIB to register or at least inquire if they need to be registered within Schedule 1 or Schedule 2. Employers will have no excuses for not knowing that they need to register and for failing to register with the WSIB. It is expected that the Ontario Government will advertise these changes to the regulations as time gets closer to January 1, 2019 when this part of the regulation comes into effect.

Regulation 470/16 introduces some changes to Schedule 3 that deals with specific Occupational Diseases. The list of allowed types of occupational diseases is clarified and expanded. For example, in the existing regulation workers have entitlement for disease related to "arsenic". The wording is modified in the new regulation to describe the disease as "Poisoning and its Sequelae – by arsenic." In other parts of Schedule 3 the wording related to Anthrax and Tuberculosis no longer just mentions the diseases: instead the wording specifies entitlement for "Diseases from Biological Agents – Anthrax, for example". Throughout Schedule 3 the description of allowed diseases is modified and expanded to clarify and broaden the types of conditions where entitlement may be allowed following exposure to various substances. These changes became effective December 16, 2016.

As noted earlier, Regulation 470/16 provides for increased administrative penalties for employers who are late in reporting accidents or occupational diseases and introduces administrative penalties for employers who try to suppress WSIB claims by inducing or discouraging workers from reporting claims or encouraging them to withdraw or abandon claims. These regulatory changes come into effect January 1, 2018 and are in direct response to complaints from unions and injured worker groups that have argued that there are unscrupulous employers working to prevent workers from legitimately reporting work-related injuries and occupational diseases and accessing the workers' compensation benefit system. All employers should expect that there will be more fines and higher fines for late reporting or incomplete reporting of work-related accident and occupational diseases. All employers will need to be more careful to make sure that they do not do anything to deliberately or even inadvertently discourage a worker to report a work-related accident or occupational disease or encourage them to withdraw or abandon a claim. To avoid the potential stigma and the potential fines employers will need to be more diligent in reporting work-related accidents and occupational diseases in a timely way and training their Supervisors/Managers on the obligations to report work-related injuries and occupational diseases and not to suppress or discourage the reporting of work-related injuries and occupational diseases in any way.

If you have any questions concerning Regulation 470/16 please speak to your WSIB Claims Manager.

WSIAT MOVING TOWARDS MORE MEDIATION

On January 31, 2017 one of SBCI's Claims Managers attended a WSIAT Hearing on multiple issues. As the Hearing started, and before going on

the record, the Vice-Chair (VC) invited the parties to consider mediating an agreement rather than pursuing the more adversarial approach of the Hearing.
In this particular case, there was room to negotiate on many of the issues before the Tribunal. The parties were amenable to discussing the issues informally. The VC left the room to allow the parties 45 minutes to discuss their positions and identify if there was room to make a deal that both parties would be willing to accept.

The parties discussed their positions and discussed the evidence for and against their positions on the issues on the Hearing agenda. After the 45-minute discussion, the VC returned and held extensive discussions with the two representatives without the worker and employer. This discussion included a review of the file evidence as it related to the various issues in dispute and the VC provided an opinion on the merits of each issue, based on the evidence and the positions the reps would argue if the hearing proceeded.

Following this discussion, the representatives spoke with their clients highlighting the potential outcomes and the areas where the representatives could come to an agreement that was fair for both parties. After seeking guidance from the clients, the representatives again met with the VC and crafted an agreement suitable to both parties. In this particular case, the agreement included the withdrawal of three of the four issues before the Tribunal. The parties also agreed that the Tribunal would provide a formal decision on the remaining issue as the parties could not agree on a mutually satisfactory agreement. Once the agreement was completed, the VC went on the record to detail the outcome achieved as a result of the mediation.

During a conversation with the VC following the completion of the Hearing/Mediation, the VC confirmed that the Tribunal, under the direction of the new Chair, will be undertaking more mediations moving forward, and that workers, employers and their representatives can expect to be asked to consider mediation as a means of resolving appeals when they arrive to attend a Hearing. The use of mediation will be at the discretion of the VC, but will also be considered if one of the two parties involved in the appeal requests it.

As a result of this direction, it is prudent for SBCI's member school boards to be prepared for a scheduled Hearing to transition into a mediation and be willing to consider, along with their SBCI Claims Manager, all alternatives to resolve the issues in dispute.

WSIB CLAIMS AND OPIOID MEDICATION

In January 2017, the WSIB placed a bulletin on its website entitled: "WSIB Welcomes Initiatives to Support Appropriate Opioid Prescribing." The bulletin noted recent changes to the Ontario Drug Benefit Plan that delisted certain "higher strength, long-acting opioids to raise awareness and encourage appropriate prescribing in accordance with clinical practice guidelines."

There has been plenty of news coverage in recent months about the terrible fate of drug addicts who have died from overdoses of powerful painkillers like Fentanyl and Carfentanil in British Columbia and other Canadian provinces. What is less well-known is that there has been a serious problem for years with the over prescription of strong pain killers and inadequate monitoring of patients by physicians.

At SBCI we have seen a small number of serious WSIB claims over the years where injured workers were prescribed opioid medication and became addicted to that medication. The consequences were very serious for the injured worker and expensive for the employer. In some instances, injured workers ended up on a daily dose of Methadone as treatment for their addiction to pain medication. In several other cases the injured workers could not deal with their addiction and ended up committing suicide. Where these injured workers had spouses, they were granted survivor benefits by the WSIB and the costs of the survivor benefits were charged to the WSIB claim. Workers and their families have paid a high personal cost from addiction to opioid medication and there has been a high financial cost to whole WSIB system.

The WSIB launched a Narcotics Strategy in 2010 to monitor the use of opioid medication in WSIB claims and encourage a dialogue with treating physicians to make sure that injured workers on opioid medication were being properly monitored and prescribed the minimum amount of opioid medication possible. Periodically SBCI has intervened with the WSIB and pushed them to review medication doses in individual cases where the amount of medication prescribed appeared excessive. When we provided the WSIB with independent medical opinions that indicated that a worker was on too much opioid medication the WSIB responded and had a serious dialogue with the treating physicians. This remains a significant issue. If you are concerned that one of your injured workers is taking too much pain medication, please alert your SBCI Claims Manager so that the matter may be raised with a WSIB Nurse Consultant right away.

WSIB CASES WHICH RAISE HUMAN RIGHTS ISSUES

From time to time, WSIB appeals issues become intertwined with Human Rights appeals issues. In such cases, the appropriate result may be that (1) the worker will need to choose at which forum he/she continues to appeal , or (2) the worker will be able to continue in both forums, or (3) following an appeals decision in one forum, a decision maker in the other forum may declare that the matter is res judicata (already decided) and the worker will be barred from continuing his/her appeal in the second forum. Suffice it to say that when managing a WSIB claim, employers need to keep their eyes on the requirements of both WSIB law and Human Rights law as the case may be headed to appeals and decisions in either or both forums.

On January 3, 2017, the Human Rights Tribunal issued a decision indexed as *Ben Saad v. 1544982 Ontario Inc.* which involved both WSIB issues and Human Rights issues. It is instructive to examine the details of this case. In this case, the applicant/ worker sustained an injury on the job on November 4, 2014. He returned to work on light duties. While on light duties, the worker was terminated on February 6, 2015. The worker made a complaint to the Human Rights Tribunal stating that he was terminated due to his ethnic origin and disability.

The Human Rights Tribunal concluded that the worker had established on a balance of probabilities that the employer discriminated against him on the basis of disability. The Human Rights Tribunal relied on the following evidence to support their decision:

- Contemporaneously-created records made in the normal course of business "and reliable for that reason",
- Medical notes,
- A letter that the worker had written to his employer's Human Resources Manager with the help of a legal clinic which he had consulted, which set out a chronology of events. The Human Rights Tribunal decision maker wrote: "I relied on this document for the truth of its contents because it was drafted closes in time to the events in question." The Human Rights Tribunal relied on the worker's testimony,
- Documentation that the worker brought in regarding his seniority – it was unclear where this documentation came from.
- In addition, the Human Rights Appeals Tribunal decision maker referred to documentation in the WSIB file, and
- Emails between the employer and an employment counsellor in Tunisia, which is where the worker had been recruited from.

It should be noted that the employer did not participate in the Human Rights Tribunal hearing, although they did provide the response that this worker was fired due to a slow down in work and due to a need to reduce their number of foreign workers due to their understanding of the terms of the Temporary Foreign Workers Program.

The Human Rights Tribunal decision maker ruled that there was insufficient evidence to find that the worker was fired due to his ethnic origin, but there was sufficient evidence to find that the worker was fired due to his disability. The remedies granted were:

- Monetary compensation with interest to the worker,
- $20,000 to the worker for injury to his dignity, feelings and self-respect,
- A letter of employment setting out the worker's position with the company, his responsibilities and the dates during which he was employed,
- An order that the employer retain an expert consultant to draft or revise its policies to place them in accord with its human rights obligations, and
- An order that the employer require its management personnel to take Human Rights 101 training through the Ontario Human Rights Commission.

A review of this decision provides several lessons learned or reinforced:

- Employers should ensure that all management personnel know their Human Rights Code obligations,
- Employers may wish to take advantage of the Ontario Human Rights Commissions e-learning course, Human Rights 101, to use for training or refresher training,
- As well, employers should keep in mind their duty to accommodate injured workers,
- Employers should note that if they have not been taken to task by the WSIB system re an accommodation issue, that doesn't mean that the employer is in the free and clear as the employer may be taken to task by the Human Rights system re the issue.
- Employers should participate fully in Human Rights Tribunal appeals in order to have the best chance of having their point of view adopted by the decision maker,
- Employers should not be surprised if workers introduce WSIB file documents into evidence at a Human Rights Tribunal hearing,
- But employers should keep in mind that they cannot introduce WSIB documents into evidence at Human Rights Tribunal hearings unless they obtain consent of the worker or an order of the Human Rights Tribunal due to the strict privacy provisions in the Workplace Safety and Insurance Act.
- Finally, employers should consider obtaining legal advice to assist them if they are wanting to terminate a worker who is on WSIB benefits.

Should you have any questions or concerns regarding cases which involve both WSIB and Human Rights please do not hesitate to contact SBCI to assist with planning for your next steps.

BILL 70, BUILDING ONTARIO UP FOR EVERYONE ACT (BUDGET MEASURES), 2016

Bill 70, the Building Ontario Up for Everyone Act (Budget Measures), 2016 amends the OHS Act to give the Chief Prevention Officer (CPO) the power to accredit "health and safety management systems" and give recognition to employers that use such accredited systems.

The Bill received Royal Assent on December 8, 2016. The amendments to the OHS Act related to health and safety management systems took effect on that date.

The Bill defines "health and safety management system" as a coordinated system of procedures, processes and other measures that is designed to be implemented by employers to promote continuous improvement in occupational health and safety.

The Bill gives numerous powers to the Chief Prevention Officer (CPO) as to

health and safety management systems including:

- The power to establish (and amend) standards that a health and safety management system must meet to become accredited.
- Accredit a health and safety management system if it meets these standards.
- Require any person seeking an accreditation, or who is the subject of an accreditation, to provide all information, records or accounts that the CPO requires.
- Authorize the CPO to make such inquiries and examinations as necessary
- An accreditation is valid for the period that the CPO specifies in the accreditation.
- The CPO may revoke or amend an accreditation.

In addition to accreditation, the Bill also gives the CPO the power to recognize an employer if:

- the employer is a certified user of an accredited health and safety management system in its workplace or workplaces; and
- The employer's system meets applicable criteria as established or amended by the CPO.

Such recognition is valid for the period that the CPO specifies in the recognition. And the CPO may revoke or amend recognition.

The CPO must publish the standards for accreditation of health and safety management systems and the criteria for recognition of employers after establishing or amending them. The CPO may also publish or otherwise make available to the public information relating to accredited health and safety management systems and employers given recognition, including the names of the systems and employers.

For more information, please see the link below:
https://ohsinsider.com/do-diligence/ontario-now-permit-accreditation-health-safety-management-systems

ONTARIO CHANGES WHMIS REQUIREMENTS

As we have reported previously, Ontario has amended the WHMIS requirements to adopt new global standards for classifying hazardous workplace chemicals, chemical labeling and safety data sheets (STS). The new international standards are part of the Globally Harmonized System of Classification and Labelling of Chemicals, or GHS.

The new requirements in Ontario Occupational Health and Safety Act and WHMIS Regulations came into effect July 2016.

To give workplaces time to adjust to the new requirements, there will be a transition period to phase out the old requirements:

- Employers have until May 31, 2018, to continue to receive and use hazardous products with either the old WHMIS labels and safety data sheets or the new ones.
- Employers have from June 1, 2018 to November 30, 2018, to bring any hazardous products still in the workplace with the old WHMIS labels and safety data sheet into compliance with the new requirements.
- By December 1, 2018, the transition to the new WHMIS labels and safety data sheets must be complete.
- During the transition, employers must ensure workers are trained on both the old and new labels and safety data sheets for as long as both are present in the workplace.
- For information on WHMIS change and transition time lines for each jurisdiction go to www.WHMIS.org

DATES OF BOARD OF DIRECTORS MEETINGS

April 7, 2017 (AGM)
May 12, 2017

SBCI BOARD OF DIRECTORS

Ronald Bender
Judi Goldsworthy
Jamie Gunn (Chair)
Janice McCoy (Vice-Chair)
Deirdre Pyke
Maura Quish
Roger Richard
James Rowe
Mary Lynn Schauer

STAFF

Brian Brown, Chief Executive Officer
Lynn Porplycia, Chief Operating Officer
Raazia Haji, Manager, Actuarial Department
Joe Huang, Actuarial Analyst
Justin Lee, Actuarial Analyst
Gary Stoller, Actuarial Consultant
Christopher James, Senior Claims Manager & Lawyer
Figen Dalton, Claims Manager
Dave Kersey, Claims Manager
Mary Luck, Claims Manager
Kelly Melanson, Claims Manager
Robert Orrico, Claims Manager
Susan Postill, Claims Manager
France Germain, Health & Safety Consultant
Michelle Montgomery, Senior Health & Safety Specialist
Louise Ellis, Director Attendance Support Services
Kathleen Gratton, Attendance Support Consultant
Anna Sequeira, Attendance Support Consultant
Zahra Haji, Manager of Finance
Karen Bertrand, Accounting Clerk
Erin McLennan, Manager, HR and Administration
Lily Li, Executive Assistant
Mika Dowson, Executive Assistant
Melissa Hewit, Manager, Data Management
Sylvie David, Bilingual Data Management Assistant
Micheline Desjardins, Bilingual Data Entry Clerk
Audrey O'Connor, Data Entry Clerk
Lindsay Tonelli, Bilingual Data Management Assistant
Rana Khalaf, IT Manager
Anwar Khalil, Programmer/Analyst
Gavin King, Programmer/Analyst

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