



CONIFER IR/HR Network Meeting
October 20, 2016

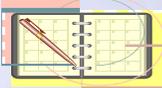
**What is New at WorkSafeBC and
What We Are Seeing?**

Ken Henry
Regional Manager Employers' Advisers Office



Our Agenda

- **What is new at WorkSafeBC and what are we seeing at the EAO?**
 - Employers' Advisers Office
 - 2016 Changes
 - Investigations
 - Penalty Amounts
 - Bullying & Harassment
 - Discriminatory Action
 - Claims – Key Forms and RTW
 - Common issues at Review and Appeal
 - Resources



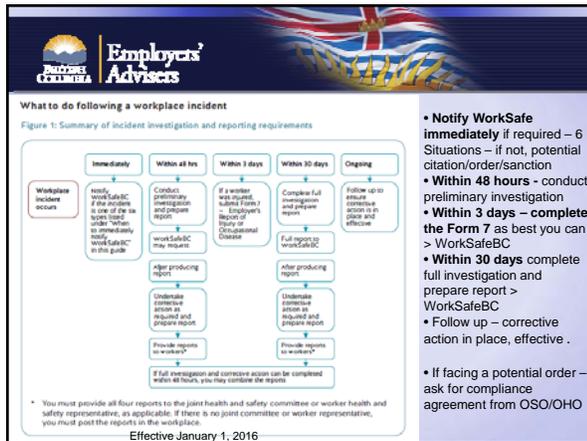


Employers' Advisers Office

- Authority under S.94 (3) of the Act
- We provide advice, assistance & representation
- Independent from WorkSafeBC
- No charge for service
- Single toll free # for service
- 8 Office locations
 - Richmond, Abbotsford, Victoria, Nanaimo, Prince George, Kamloops, Kelowna, Trail
- Toll Free: 1-800-925-2233-
- Web: www.gov.bc.ca/employersadvisers
- Email - eao@eao-bc.org



Policy, Regulation, & Research Division (PRRD)	2016 – 2018 Work Plan
The Partners in Injury and Disability Prevention Program ("Partners Program") – 2016 (COR)	– Under review/consultations
Discriminatory Action Policy Review – 2016/2017	- clarify policy and review the legal principles surrounding discriminatory action complaints.
Item D6-153-1 of the Prevention Manual – Discriminatory Actions – 2016	- purpose of this project is to amend policy to clarify the rules for proceeding with a complaint to WorkSafeBC after the union has declined to pursue a grievance.
Residential Demolition and Asbestos Industry – 2016	- At issue is a review of the residential demolition and the asbestos abatement industries, including the potential for introducing a certification program for the asbestos industry.
Occupational Exposure Limits ("OELs") – 2016	- reviewing the new or revised Threshold Limit Values adopted by the American Conf of Gov Ind Hygienists from the years 2013 -2015. Anticipated proposed changes to the BC OELs will be presented to the BOD in the third quarter of 2016.
Bullying & Harassment – Section 173 of the Workers Compensation Act ("Act") – 2017	The PRRD will be scheduling a pre-consultation session in 2017 to discuss bullying and harassment issues, to determine if policy development is required
- Biennial Review of Formaldehyde – 2016, - Biennial Review of Styrene – 2016, - Part 24 of the Occupational Health and Safety Regulation ("OHSR") Policies – Diving, Fishing and Other Marine Operations – 2016	



Notify WorkSafe immediately if required – 6 Situations

What employers must report
Section 172 provides that employers must immediately report

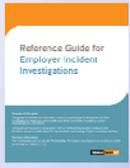
1. Any incident that kills or seriously injures a worker
2. A major leak or release of a dangerous substance
3. A major structural failure or collapse of a structure, equipment, construction support system, or excavation
4. A fire or explosion that had a potential for causing serious injury to a worker
5. Any blasting accident that results in injury, or unusual event involving explosives (required by regulation)
6. A diving incident that causes death, injury, or decompression sickness requiring treatment (required by regulation)

Such incidents must also be investigated by the employer under section 173.

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New Reference Guide for Employer Incident Investigations

This guide is intended for those who conduct or participate in workplace incident investigations: employers, joint health and safety committee members, worker representatives, and others. It will help you effectively prepare to investigate an incident at your workplace and supports further training in incident investigations.



Published May 4, 2016

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Examples of New Basic Penalty Amounts & Multipliers

Penalty Payroll	Basic Penalty Amount	2x	4x	6x
Up to \$250,000	\$1,250	\$2,500	\$5,000	\$7,500
\$500,000	\$2,500	\$5,000	\$10,000	\$15,000
\$1,000,000	\$5,000	\$10,000	\$20,000	\$30,000
\$2,500,000	\$12,500	\$25,000	\$50,000	\$75,000
\$5,000,000	\$25,000	\$50,000	\$100,000	\$150,000
\$10,000,000	\$50,000	\$100,000	\$200,000	\$300,000
\$20,000,000	\$100,000	\$200,000	\$400,000	\$600,000
\$30,000,000	\$150,000	\$300,000	\$600,000	Stat Max
\$40,000,000	\$200,000	\$400,000	Stat Max	
\$50,000,000	\$250,000	\$500,000	Stat Max	
\$62,803,457 or more	\$314,017.23 (half statutory max)	Stat Max (\$628,034.57)		

Former Cat A Penalties

Payroll	Cat A Pen	% of Payroll
\$500,000	\$12,500	2.5%
\$10 Million	\$75,000	0.75%
\$62 Million	\$75,000	0.12%

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Bullying and Harassment

- Policy in Place – Respectful Workplace
- **What to do when Bullying and Harassment found or suspected:**
- Employer follows its investigation and follow-up procedures to address the hazard in compliance with the prevention policy requirements.
- Actions taken by the employer “must be appropriate to the circumstances”...
 - providing direction and supervision to affected workers
 - providing specific training to workers on managing difficult situations
 - imposing workplace arrangements that minimize the risk of bullying and harassment”
- Make sure monitoring, investigations, and follow-up are documented.
- Board OSO could write orders on employer if B&H found – give direction and require compliance.





Bullying and Harassment

- For a WorkSafeBC Claim to be accepted a Psychologist or Psychiatrist must diagnose a DSM IV illness - Sec 5.1 WC Act
- RSCM II policy item #C3-13.00 provides that in all cases, one or more events, stressors, or a cumulative series of stressors must be identifiable = acute reaction to a sudden and unexpected traumatic event arising out of and in course of worker's employment.
- **Exclusions Section 5.1(1)(c)**
 - – Mental stress is not caused by a decision of the worker's employer relating to employment decisions of the employer relating to workload and deadlines, work evaluation, performance management, transfers, changes in job duties, lay-offs, demotions, and reorganizations.
- WorkSafeBC has training tools on its site, www.worksafebc.com/bullying





Discriminatory Action

Includes any act or omission by an employer or union, or a person acting on behalf of an employer or union, that adversely affects a worker with respect to any term or condition of employment, or of membership in a union as outlined in Section 151 WC Act.

- (a) suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of workplace, reduction in wages or change in working hours,
- (d) coercion or intimidation,
- (e) imposition of any discipline, reprimand or other penalty, and
- (f) the discontinuation or elimination of the job of the worker.





Discriminatory Action

- Must be anti-safety animus
- 1 Year to complain in writing, 60 days if wages involved
- WorkSafe OSO reviews, advises if in scope or not,
 - if so > Compliance Dept.
 - Compliance proceeds to adjudication or mediation can take place - \$
 - After Compliance – can appeal to WCAT
 - If Compliance decides DA took place and orders wages paid – seek a Stay in payment if going to WCAT.
 - Tip – Document and copy jobs available after worker leaves employment – try to avoid costly settlements if DA found.

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Discriminatory Action - Examples

- WR complains of bad brakes on truck. Mechanical inspection – all good – WR tells boss where to go – fired. Mediation – WR wanted \$300K – settled for \$1000 for every year of employment \$3000.
- WR refused unsafe work. Board OSO investigated – found no safety issue. The WR and rest of crew still refused. The ER laid them off for lack of work. WR took ER to a Discrim complaint. ER Won at Compliance, but lost at WCAT – Vice Chair felt any concern, even if not confirmed by a Board OSO, is protected and cannot have any negative consequence. Decision sent back to Board for remedy (\$) WR wanted \$100k – WorkSafe decided \$6k – WR > ? > WCAT for more \$?
- WR says he raised a safety concern against a fellow WR - allegedly screamed etc. so the other WR charged that WR with B&H. The ER let the WR go as another event in a series of events - performance and bad attitude. WR took ER to a Discrim Complaint - let go because he raised a safety concern. ER won at Compliance (had records) – WCAT Hearing set for December.

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The Form 7 – An Important Form

1. One of 3 key forms –
 1. Forms 6 – Worker's Report of Injury – also Teleclaim
 2. Form 7 – Employers Report of Injury
 3. Form 8 and Form 11 – Physician Reports
2. Be Specific
 1. Account #, Classification Unit,
 2. Incident and Injury Information
3. Important Boxes
 1. Box 14 – Trauma, ASTD, Occupational Disease?
 2. Box 24 - Recent pain/disability?
 3. Box 25 - Objections?
 4. Box 26 – Wages?

Be Specific, provide complete details + attach documents



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Worker Form 6 Application & Form 6 A – Report to Employer

<p><u>Report to WorkSafeBC</u></p> <p>Form 6</p> <p>Sec 53(1) Act – inform employer as soon as practicable</p> <p>Sec 55 Act</p> <ul style="list-style-type: none"> - 1 year to file - 3 years to file if Special Circumstances – that precluded a filing 	<p><u>Report to Employer</u></p> <p>Form 6A</p> <ul style="list-style-type: none"> • Sec 53(3) WC Act & RSCM #93.11 – the worker must, if he or she is fit to do so and on the request of the employer, provide to the employer particulars of the injury or occupational disease on a form prescribed by the Board and supplied to the worker by the employer. • Use for Claims, Discrim, B&H 
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Health Care Forms

Physician's Report of Injury

- Form 8 (Physician's First Report)
- Form 11 (Progress Report)



Employer Forms - Send with Worker to Doctor

- Communicate with the Doctor about the worker's job and what jobs you have available – light duties - ?restrictions/abilities
- Signed Worker agreement – Report Cost \$
- Be specific – abilities? restrictions? diagnosis?
- Clarify if Questions



Policy #34.11 RS&CM Selective/Light Employment

- Primary criteria of Policy Item #34.11:
Worker must be capable of some form of suitable/light employment, i.e., Cannot be "totally disabled"
- Offered work must not be harmful or delay worker's recovery
- Offered work must be productive and meaningful, i.e., Work must add value or make a contribution to the firm's industrial undertaking.
- Offered work must not be demeaning – provide an example
- Worker cannot refuse an appropriate offer & must agree to the arrangement within reasonable limits
- WorkSafeBC will only intervene if it is necessary to determine whether employer's offer is safe and suitable
- Board Officer has the final say as to whether the selective/light employment is appropriate

- HAVE EVERYTHING IN WRITING – OFFER/ACCEPT/REJECT - ASAP



Selective/Light Employment – Sample Steps

1. WR gets hurt – twisted ankle
2. Goes to First Aid Attendant (FAA) and /or informs immediate supervisor on shift
3. The FAA and/or Supervisor discuss injury with Worker
4. FAA and / or Supervisor offer Light Duties #1, #2 and #3 etc. Pre-filled out...doesn't need to be an expert – just someone to fill in the details after discussions with a person that completes this type of work (in your inventory).
5. Each offer is formal based upon an ankle injury – perhaps in this scenario it is just option #1 (computer data entry work)(see attached)
6. The Super/visor/FAA hands the offer to the worker to start work immediately.
7. The WR is not discouraged to go to his/her Doctor, but must bring the Light Duty offer and your forms/workbook to the Doctor
8. The WR then comes back if the Doctor approves of your offer – abilities, limitations and changes needed - Employer implements and all is good – no LTI and no Wage Loss
9. If WR not approved for RTW – develop a RTW plan with WR and Doctor and WorkSafeBC Entitlement Officer, Case Manager – Wage Loss Benefits.

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Common Issues at Review and Appeal

- Claim acceptance – WC Act 5(1), 6(1), 6(3)
- Wage rate – WC Act Sec 29
- Condition(s) accepted
- Benefits under the Act? – Wage loss and Health Care
- Is worker capable of modified duties? Sec #34.11 RSCM
- Is Relief of Cost applicable? - WC Act
 - Section 39(1)(e) – pre-existing disease, condition, disability that prolonged the worker's recovery
 - Section 10(8) – transfer of costs – CU to CU
 - Section 42 – decisional and administrative errors
- * Note: Occupational Disease claims that do not affect rates: non-traumatic hearing loss, Silicosis, Asbestosis, Pneumoniconioses, Heart Disease, Cancer, Hand Arm Vibration syndrome

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Common Worker Issues at Review Division and WCAT Appeal

Pensions

- Loss of function - PFI
- Loss of earnings - LOE
- Disfigurement/Cosmetic – not common
- Retirement at Age 65



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Levels of Review & Appeal

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    graph TD
      A[Compensation (Claims)] --> B[Review Division  
90 day time limit - *45 days Prevention]
      A --> C[Reconsideration  
Optional route  
75 day time limit]
      B --> D[WCAT  
30 day time limit  
90 day limit Discrim Action]
  
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Summary

- Establish reporting procedures and have plans in place
- Ensure appropriate investigation
- Maintain ongoing communication
- Be proactive, reactive and creative
- Document – document - document
- Communicate – communicate – communicate
- Call the Employers' Advisers Office 1-800-925-2233

Ken Henry
Regional Manager Employers' Advisers Office
