GENERAL INFORMATION

Q What should I do if I'm injured at work?

A Ensure you report the accident immediately to your supervisor. Describe the event in detail, provide the names of any witnesses to the incident, and be sure to identify each part of your body that was affected by the accident. If possible, obtain a copy of this report from your supervisor. Obviously, if you require emergency medical treatment, it is appropriate to seek treatment first and then report the accident to your Employer at the first available opportunity.

In a non-emergency situation, it is a good idea to write out a detailed account (ie. in a journal) of what happened, the names of any witnesses and each area of injury. Workers should be aware that any claim that is approved by the Workplace Safety and Insurance Board ('W.S.I.B.') will likely affect the premiums that the employer pays into the W.S.I.B. Accident Fund. As a result, many employers do not cooperate fully in reporting injuries to the W.S.I.B. Employers do not have to report minor injuries to the W.S.I.B. (ie. attending at a First Aid station to disinfect and dress a minor cut); employers do have to report an injury to the W.S.I.B. if the incident causes the worker to miss time from work or seek health care outside of the employer's first aid station.

Ensure you seek medical treatment at the first appropriate opportunity. If it is an emergency situation, obviously an ambulance may be called and you will be taken to hospital. In a non-emergency situation, you should attend with your family physician or, if you do not have one, at the nearest Walk-In clinic. Ensure you make clear to the health care provider that the attendance is as a result of a workplace injury to ensure a proper record of the complaint is made.

For General Information you can visit homepage for the Workplace Safety & Insurance Board (W.S.I.B.) at http://www.wsib.on.ca/wsib/wsibsite.nsf/public/homepage

MAKING A CLAIM

Q How do I file a claim for Worker's Compensation?

A Typically, a claim to the W.S.I.B. is initiated either by your employer sending its report of accident (Form 7) or by a health care provider sending in his or her report (Form 8). Be advised, your employer is only obliged to report an accident to the W.S.I.B. where the injured worker has missed time from work or had to seek medical treatment (ie. something other than attending for minor first aid with the employer). Once the W.S.I.B. is notified of the incident you will be sent a Worker's Report of Injury (form 6) to complete and return.

To obtain copies of the various forms an Injured Worker may have to fill go to http://www.wsib.on.ca/wsib/wsibsite.nsf/public/FormsWorkers At this link you can also scroll to the various forms that Employers and Health Care practitioners have to fill out from time to time.

In order for the W.S.I.B. to properly consider a claim they usually require the initial reported forms completed by the worker, employer and initial health care provider.

Q What types of injuries are covered?

A The W.S.I.B. will grant entitlement in a worker's claim where the worker suffers an injury due to 'accident'. 'Accident' is defined to include:

- A 'wilful and intentional act' so long as it is not the act of the injured worker. For example: 'Worker A' who is assaulted at the workplace by Co-Worker B and suffers injury as a result, can claim for Worker's Compensation benefits. There are specific rules which can disentitle Worker A from making a claim, (ie. if he was the aggressor and provoked the fight OR if he willingly engaged in horseplay).

- A 'chance event', occasioned by a physical or natural cause. This would include the most common, clear-cut types of 'accident'. Typical examples of 'chance event' type injuries include: a Motor Vehicle crash while in the course of employment, a back injury while lifting at work, a fall at work, getting one's hand caught in a piece of machinery.

- A 'disablement' arising out of and in the course of employment. A typical disablement scenario would include a factory line worker who performs a repetitive motion at work and goes on to develop a Repetitive Strain Injury ('R.S.I.') such as carpal tunnel syndrome, tendonitis ('tennis elbow'), etc. These types of claims often are problematic for the W.S.I.B. Claims Adjudicators as there is no clear-cut 'incident' that has led to the injury complained of.

  Workers who believe their repetitive duties at work are causing them injury should maintain detailed journals noting the nature of their job duties, how frequently a certain action is performed, the size and weights of items being handled and any changes to their job (ie. pace of production line speeding up OR increased hours due to overtime work OR an increase in the size or weight of items being handled on the production line).

Such workers should also be sure to follow closely with their family doctors as the condition develops and ensure the doctor notes when the symptoms arose and the worker's comments about the connection between the workplace duties and the onset of the symptoms. As 'disablement' claims develop over time, there is rarely a clear 'Date of Accident' and so the W.S.I.B. Claims Adjudicator will often request the family doctor's records to see how long the condition has been present and whether the worker has identified a connection between the work duties and onset of symptoms.

Of the claims the W.S.I.B. often turns down, a great many are 'disablement' type injuries. Once again, where the worker cannot point to a clear-cut 'incident' on a specific date, the Claims Adjudicator will have more difficulty in granting entitlement than with a 'chance event' type of injury. Should such a claim be denied by the Claims Adjudicator, there is an Appeals Process available to the injured worker (see below).

Q What if I am diagnosed with a disease that my doctor thinks was caused by my workplace?

The W.S.I.B. will also grant coverage to workers who are injured by 'Industrial Disease'. A detailed discussion of the process for approving a worker's claim on account of 'industrial disease' is beyond the scope of this paper. Needless to say, such claims are often even harder to prove than 'disablement' type injuries. Usually such claims are approved as a result of exposure to or the regular handling of some type of chemical or material in the workplace. If a worker believes her workplace is making her sick, once again, she should report it to the employer and her family doctor immediately. Check the labels of any materials you regularly handle and provide that information to your doctor.

If your co-workers are also getting sick and exhibiting the same symptoms as you, there is a good chance there is some sort of chemical exposure at the workplace which is causing the illness.

For more information on employer obligations regarding the handling of hazardous materials and for workplace hazards in general, both workers and employers are encouraged to contact the following agencies:

Industrial Accident Prevention Association (IAPA). Their website is:

http://www.iapa.on.ca/

The Ontario Ministry of Labour. Their website is:

http://www.labour.gov.on.ca/english/index.html

The Occupational Health & Safety branch of the Ministry of Labour will respond to complaints of unsafe workplaces and can investigate worksites for, among other things, exposure to hazardous materials. Ministry investigators can also charge employers for offences involving improper handling of hazardous materials or the failure to proper train workers in the handling of such materials.

Q How long do I have to make a claim for Worker's Compensation.

A The *Workplace Safety & Insurance Act*, the law that governs Worker's Compensation in Ontario, states that a claim must be filed within 6 months of the Date of Accident. Obviously, it is in the worker's interest to file his claim as soon as possible. Sometimes, as with 'disablement' or 'industrial disease' type claims the Date of Accident is unclear. It then becomes important to claim as soon as the worker or his doctor makes a connection between the illness complained of and the workplace duties thought to be responsible for the medical condition. In such situations, detailed reporting to the family doctor and the worker's own notes can help in the claims process.

Q What if my claim is denied? What if after initially accepting my claim, the W.S.I.B. terminates my benefits but I'm not able to return to work?

A In either scenario the worker has the right to 'Object' to the decision. The W.S.I.B. will typically communicate its decision in a letter to the worker. The worker must then send written notice of the intention to object to the W.S.I.B. The worker can then pursue the appeal through three levels of appeal. To properly lodge an objection to a decision of the W.S.I.B., injured workers should be aware the objection to the W.S.I.B. must:

- be in writing;
- state why the W.S.I.B.'s decision is incorrect or why it should be changed.
- be filed within the prescribed time limit. Most decisions must be appealed within 6 months, however, decisions by the W.S.I.B. concerning Work Transition ('WT') plans must be filed within 30 days of the W.S.I.B.'s decision.

When sending notice of an Objection to a Claims Adjudicator's decision, the worker should address his letter to the Claims Adjudicator, ensure his claim number is at the top of the letter, refer to the date of the decision letter that is being object to, and briefly state why the decision should be changed.

More information on the appeals system is set out below.

BENEFITS

Q What types of benefits are available to me under the W.S.I.B. system?

A If you miss time from work, you are entitled to Loss of Earnings (LOE) benefits. Your employer is obliged to pay you full wages and benefits on the Date of Accident as if the injury had not occurred. Thereafter, for continuing lost time from work, the W.S.I.B. pays LOE benefits which are approximately equal to 85% of your 'take-home', or after-tax pay. As well, the W.S.I.B. will fund medical/rehabilitation treatment necessary as a result of your compensable injury (ie. physiotherapy, chiropractic, surgical intervention, etc.). A request for approval of such treatment should be forwarded to the W.S.I.B. from your family doctor. If you are unable to return to your pre-accident job, Work Reintegration ('WR')/Work Transition services are available to help you re-enter the labour force.

Q What if I suffer permanent injury as a result of a workplace accident?

A Workers who suffer a permanent impairment are entitled to a Non-Economic Loss (NEL) benefit. Sometimes referred to as the 'pain and suffering award', this is not entirely accurate. For instance, a worker may suffer a significant injury, and experience pain and suffering but then make a full recovery within, say, 12 months; in this circumstance no NEL benefit would flow. The NEL award is only granted where an injured worker suffers permanent functional loss. For instance, if a knee injury permanently affects the worker's range of motion and ability to stand, walk, run, etc., then an NEL is in order. If the NEL award is due to a smaller impairment (ie. less than a 10% whole body impairment) it will usually be paid as a single lump sum. If the NEL is awarded on account of an impairment that is greater than a 10% whole body impairment the injured worker has the option of receiving a lump sum payment or a much smaller ongoing monthly payment. If the monthly payment is selected, the benefit is payable for the rest of the worker's life.

WORKER'S COMPENSATION AND CIVIL LAWSUITS

Q Can I also sue my employer if I'm injured at work?

A Typically, the answer to this question is 'no'. If you suffer an injury at work and your employment is in a field that is covered by the Worker's Compensation system, you cannot also pursue a civil claim (ie. a lawsuit) seeking damages through the Court system. All of the industries which are the highest risk for workplace injuries (ie. mining, farming, manufacturing, construction, for instance) are mandatorily covered under the Worker's Compensation system.

There are many situations where an injured worker may have a 'concurrent' entitlement. That is, the worker may have the right to make a claim for Worker's Compensation benefits OR may have the right to sue for pain and suffering and economical loss through the Court system in a civil lawsuit. Such scenarios arise quite regularly and include a situation such as the following: A worker who is employed as a truck driver whose vehicle is struck by another, at-fault driver where the other driver is not also working at the time (ie. a homemaker returning from grocery shopping at the supermarket). If the truck driver is working at the time (ie. on delivery, for example), is not at-fault for the accident, is struck by a party who is not working (ie. someone returning home from the grocery store) and suffers injuries, the injured truck driver can make an 'Election' to either claim Worker's Compensation benefits OR sue the at-fault driver in the civil Court system.

Which option to choose will most definitely require the advice of an experienced personal injury lawyer. Workers injured in circumstances where they have such an Election must choose either to pursue a civil lawsuit or to claim for Worker's Compensation within 3 months of the Date of Accident. Also, in even more limited circumstances, an injured worker can received worker's compensation benefits AND also sue for damages through the civil Court system. Such cases are very rare, will require the written consent of the W.S.I.B. or the employer, and will result in the repayment of the value of all W.S.I.B. benefits received from any civil settlement or Court judgment; these claims will most certainly require the involvement of an experienced personal injury lawyer.

RETURN TO WORK

Q What are my obligations to my employer while I am off work due to injury? Do I have to provide them with medical information?

A The *Workplace Safety and Insurance Act* imposes an obligation on both the employer and the injured worker to maintain contact with one another immediately following the injury in an attempt to effect an Early and Safe Return to Work ('ESRTW'). The worker must keep the employer aware of any ongoing limitations or restrictions that should be in place to guide the worker's return to work. Similarly, the employer must try and identify suitable modified work that may help the injured worker return to the workplace. In order to be kept apprised of the injured worker's progress and treatment, the employer can ask that the worker have her physician fill out a Functional Abilities Form (FAF) from time to time. The worker is obliged, at reasonable intervals, to have her doctor fill out an FAF which identifies any ongoing limitations or restrictions necessary to permit a return to work. A copy of the FAF is provided to the employer, the worker, and the W.S.I.B.

Q Does my employer have to hold my job for me while I am off work due to injury?

A Some employers have an obligation to re-employ injured workers, others do not. The law states that where the injured worker has been employed continuously for at least one year prior to the date of accident, then the employer must offer to re-employ the worker. There is an exception to this rule, however, in that smaller employers (ie. those that regularly employ fewer than 20 workers) are not subject to this re-employment obligation. Furthermore, the re-employment obligation is time limited. An employer that is subject to the re-employment obligation only has to offer to re-employ the injured worker until the earliest of :

- two years from the date of accident,
- one year after the worker is deemed medically able to perform the essential duties of his or her pre-accident job, or
- the date the worker reaches 65 years of age

Q What if my employer refuses to accommodate my return to work?

A Most workplace injuries are not so severe that the injured worker will never work again. Injured workers should remember the Worker's Compensation regime is designed to return them to work. The first goal of the W.S.I.B. is try and return the injured worker to his usual, pre-accident job. If that cannot be accommodated, the next goal is to try and find suitable modified work for the partially disabled worker. If the worker believes the employer could do more to accommodate the return to work, she can request the services of a W.S.I.B. Return to Work Mediator.

The Return to Work Mediator will meet with the parties (ie. worker and employer), attend at the job site to view the various potential jobs and, if necessary, can request the assistance of a W.S.I.B. Ergonomics Specialist. An 'Ergonomist' is someone with expertise in assessing work sites to see if accommodations can be made based on physical limitations imposed by the worker's injury. The Egonomist can also suggest changes to the workplace (ie. raising or lowering the height of a work bench, provide a sit/stand stool for a worker, changing the way work is performed to lessen the impact on an injured worker's particular injury, providing other assistive devices or co-workers to help the worker perform the job function).

Q What if I cannot return to my regular job and my Employer cannot offer me modified work?

A If attempts to effect an ESRTW have failed, the employer cannot find suitable modified work, and the Return to Work Mediator services have not succeeded, the W.S.I.B. may offer the injured worker Work Transition ('WT') services. WT services are designed to assist the workplace parties in identifying suitable and sustained work opportunities first with the Accident Employer.

If the workplace parties are unsuccessful in arranging a return to suitable and sustained work with the Accident Employer, the W.S.I.B. will provide a Work Transition Assessment. This assessment will determine what assistance an injured worker requires in order to return to work with the Accident Employer or identify a Suitable Occupation ('SO') that is available in the labour market. When determining an SO, the W.S.I.B. will consider the other jobs available with the Accident Employer and may provide the injured worker with direct placement, accommodation or retraining.

If ultimately, the Accident Employer is unable to offer any employment, even with upgrading and/or retraining, the W.S.I.B. considers opportunities in the injured worker's local labour market when identifying an SO. There must be labour market demand for the job prior to proceeding with a WT Plan.

For injured workers aged 55 and over who require a WT Plan to obtain employment with a new employer have two options:

· participating in the WT Plan developed by the W.S.I.B.; or
· choosing a 12 month Transition Plan ('TP') focused on a self-directed WR

In any event, WR/WT services do NOT guarantee that the W.S.I.B. will in fact find the re-trained worker an actual job; the W.S.I.B. will merely provide the necessary skills to permit re-entry into the labour market in suitable, alternative employment.

THE APPEALS PROCEDURE

Q How does the appeals procedure work?

A As noted above, workers (and indeed, even employers) who disagree with a decision made on their claim can appeal the decision by first filing an 'objection' with the Claims Adjudicator.

Q Will I have to go to court?

A No. Appeals in the Worker's Compensation system are not dealt with through the Court system. The Worker's Compensation system has its own system of appeals. Generally speaking, there are three levels of appeal which are as follows:

1. <u>Objection to the Claims Adjudicator</u>.

   After filing a notice of Objection, the worker will receive a copy of his claims file and an 'Objection Form'. In the Objection Form, the worker

identifies the decision with which she disagrees (ie. "Claims Adjudicator's decision of October 14th which denied my claim"), states what the desired outcome is (ie. "grant initial entitlement in my claim, pay Loss of Earnings benefits and reimburse medical expenses") and references any additional evidence supplied in support of the Objection (ie. "see reports from family physician, Dr. Jones, dated November 12th and Orthopaedic Specialist, Dr. Smith, dated November 23rd"). Many lawyers specializing in Worker's Compensation appeals will also providing a detailed written submission explaining the client's position, referencing the additional evidence submitted (ie. medical reports, witness statements, etc.) and quoting the applicable legislation and W.S.I.B. policy which governs the issue that is the subject of the particular appeal.

All Objections that a worker files regarding decisions on her claim must first be reconsidered by the Claims Adjudicator who made the original decision. Sometimes, with the submission of additional evidence and argument, the Claims Adjudicator will overturn her prior decision. Many times, however, even in the face of additional, persuasive evidence, the Claims Adjudicator will deny the Objection and uphold the original decision. In any case, the Claims Adjudicator will provide a written decision in response to the Objection. If the worker is still dissatisfied with the decision, she can appeal further to the:

2. <u>Appeals Branch of the W.S.I.B.</u>

The Appeals Branch of the W.S.I.B. is operated out of the Toronto office of the W.S.I.B. When an objection is received at the Appeals Branch, it will be assigned to an Appeals Resolution Officer (ARO). Unlike an initial Objection to a Claims Adjudicator, the ARO is someone who is completed new to the worker's claim, not having been involved in any prior decisions on the worker's claim. The ARO will contact the worker and ask if they wish to proceed to an 'oral hearing' or if they wish to have their case dealt with by way of '60-day decision' option. In the '60-day decision' option, the ARO will simply conduct a review of all documents in the claims file and render a written decision. If the party wishes to have an oral hearing, a formal hearing will be scheduled. The worker can attend represented by her lawyer, the worker can give evidence, other witnesses can be summoned to testify and the lawyer can make additional submissions and argument in support of the worker's claim.

Workers should be aware that their employer at the time of the accident is also entitled to participate in <u>all</u> appeal proceedings. So, if the appeal is being dealt with at the initial Objection stage as noted above or by way of a '60-day decision' option, the employer and its lawyer can submit fresh evidence and make argument as to why the worker's appeal should <u>not</u> be granted. If the appeal is proceeding to a formal hearing, the employer (or

a representative on behalf of a corporate employer) can attend with legal counsel, call witnesses to testify and make submissions to the ARO in response to the worker's claim.

Whether the proceedings before the ARO are by '60-day decision' option or by an oral hearing, the ARO will render a written decision. If the worker still disagrees with this decision she can file a further appeal to the:

3. Workplace Safety & Insurance Tribunal or 'W.S.I.A.T.'

An appeal to W.S.I.A.T. is the final appeal in the Worker's Compensation process, and must be submitted to W.S.I.A.T. within 6 months of the final decision of the W.S.I.B. Appeals Resolution Officer. The W.S.I.A.T. is completely separate from the W.S.I.B. The W.S.I.A.T. also offers a mediation service, the Alternative Dispute Resolution ('ADR') office, for certain cases that meet the ADR office's qualifying criteria; for instance, cases will usually only be dealt with by the ADR office where both parties are participating and consent to having the matter dealt with by alternative dispute resolution.

If ADR is unavailable or has not produced a negotiated result, the matter can then proceed to a hearing. Like proceedings before the W.S.I.B., some appeals can be heard by way of a 'paper review' (ie. without an oral hearing). If it is determined an oral hearing is necessary, the case will be heard by a panel of either one or three W.S.I.A. Tribunal Vice-Chairs. Like proceedings before a W.S.I.B. Appeals Resolution Office, workers are expected to testify and should have proper representation to ensure all evidence and arguments are properly presented.

Workers who suffer an on-the-job injury in Ontario are entitled to generous benefits; to replace their lost income, cover health care and prescription drug costs, compensate for permanent impairment and, where necessary, re-train them for new employment if they cannot return to their old job. The Worker's Compensation process can be a long and complicated one. The W.S.I.B. makes many bad decisions that deny injured workers their lawful entitlements. Since the law permits injured workers to receive income replacement up to age 65, the cost to an injured worker of an unjustly denied or terminated claim can run into the hundreds of thousands of dollars.

If an injured worker feels he is not getting a just adjudication of his claim he should consult with a lawyer familiar with the law and the appeals procedure. The Ontario Trial Lawyer's Association, dedicated to helping injured people get justice, can help you find such a lawyer.