

**BEST PRACTICES IN
OCCUPATIONAL HEALTH, SAFETY,
WORKERS COMPENSATION AND CLAIMS
MANAGEMENT FOR EMPLOYERS**

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WORKERS COMPENSATION AND CLAIMS
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**ASSISTING EMPLOYERS IN NAVIGATING
“THE ROAD TO ZERO”**

LISA GRANGER



Universal-Publishers
Boca Raton

*Best Practices in Occupational Health, Safety, Workers Compensation
and Claims Management for Employers:
Assisting Employers in Navigating “The Road to Zero”*

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INTRODUCTION

General Introduction

The intent of this book is to provide a general understanding of the legislation relevant to health and safety and give some helpful tips on managing both health and safety programs and disability management effectively and efficiently. This information will assist companies in developing and implementing sound disability management practices in order to ensure compliance, cost efficiency and effective business strategies. Cost management is a critical part of efficient business strategies. Developing, customizing and implementing best practices in disability management will help any human resources professional or manager and is necessary in managing costs and human capital effectively. Effective health and safety programs and efficient disability management will provide any company with the following advantages:

- Improved morale
- Decreased frequencies of injuries
- Decreased severity of injuries
- Decreased lost time from injuries
- Decreased potential for penalties and fines for non-conformance to legislation
- Decreased lost productivity
- Increased productivity

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- Decreased potential for mandated Workwell audit
- Decreased claims costs
- Increased potential for premium adjustments for workplace injury insurance, including rebates, decreased premiums, etc.
- Tools to achieve health and safety targets and objectives
- Increased investment in labour capital
- Lower employee turnover
- Lower potential of Ministry of Labour visits
- Employee participation in the program(s)
- Tools for accurate project forecasting, including claim costs, surcharges, premiums, etc.
- Increased understanding of legislative requirements and processes
- Access to potential obscure rebates

Introduction to Disability Management

Disability Management is a process in managing human capital, medical intervention, recoveries, restrictions, costs, accommodations and legislation. There are several wage loss benefits programs for workers that require effective disability management practices by companies which include but are not limited to short term disability, long term disability, and workers' compensation. In Ontario, the workers compensation insurance program is dictated by Workplace Safety and Insurance Act (WSIA) and managed by the Workplace Safety and Insurance Board (WSIB). The Ministry of Labour (MOL) enforces the WSIA.

The WSIA mandates that each company report any workplace injuries to the WSIB, and depending on the severity, some injuries also must be reported to the MOL. The WSIA outlines when and how a company is to report an injury as well as the duties and responsibilities of all parties involved in the recovery process. Unfortunately, the WSIA does not explain in detail how companies develop and implement plans to manage what happens after the workplace injury occurs. The information herein will provide a general understanding of best practices in disability management, a general understanding of the workers' compensation programs and the laws of the land.

Introduction to Workers' Compensation

In order to develop and implement a functioning disability management program, there must be some understanding of the workers' compensation program. Learning about the program will help to develop practices that will ensure compliance to legislation, cost efficiency and effective business strategies.

The purpose of a workers' compensation insurance program is to provide wage replacement and coverage of health care costs during the recovery process of a workplace injury. In Ontario, the government administers the workers' compensation program. This program is called the Workplace Safety and Insurance Act (WSIA) of Ontario. It is a mandatory program where the employers pay the premiums for the insurance coverage of the workers.

The WSIA outlines the roles and responsibilities of all the parties involved. One unique condition of this government based insurance program is that the worker forfeits their right to sue the employer for the workplace injury in exchange for the wage replacement and the coverage of the health care costs.

Relevant Legislation

To perform business anywhere in the world, each company has to respect and incorporate the laws of the land in which they operate into the way they do business. In Canada, there are three (3) levels of legislation: federal, provincial, and municipal. Within each of these levels of government, disability management programs are affected by several pieces of legislation.

A company operating a business in Ontario will be subject to legislation governed by the Canadian government like the Canadian Charter of Rights and Freedoms, by the Ontario government like Workplace Safety and Insurance Act (WSIA) and Occupational Health and Safety Act of Ontario (OHSA), and, by the municipal government like municipal taxes.

Some significant pieces of legislation in Ontario that impact disability management programs include but are not limited to:

- Workplace Safety and Insurance Act (WSIA)
- Occupational Health and Safety Act of Ontario (OHSA)
- Regulation 1101 First Aid
- Human Rights Code

- Privacy Act
- Employment Standards Act
- Canada Labour Code
- Pension Act
- Labour Relations Act
- Bill C-45 (outlining executive, management and supervisor responsibilities under the criminal code for gross negligence in a workplace injury)
- Bill 168 (Violence in the Workplace)
- Bill 118 – Prohibiting the use of handheld electronic equipment while driving a vehicle

Business in Ontario

Every business operating in Ontario must register with the Workplace Safety and Insurance Board (WSIB) either as an Independent Operator or as an employer. The WSIB is a provincial government branch responsible for the enforcement and administration of the Workplace Safety and Insurance Act (WSIA). The WSIB administers the workers compensation insurance program to provide payment for wage loss and health care costs incurred for workplace injuries.

A business operating in Ontario that is owned and operated by one person can apply for Independent Operator status with the WSIB. The Independent Operator must complete an Independent Operator questionnaire which can be found on the WSIB website in order for the WSIB to determine if the business is classified as one of an Independent Operator.

In general, according to the WSIA, the Independent Operator is a person who operates a business but does not have any employees whereas, the employer has employees. For more discussion on the independent operator status vs. the employer status, please see the chapter on Independent Operators later in this book.

The employer registers with the WSIB as an employer stating the number of employees. When a business registers with the WSIB, they receive an account number and a firm number. The company is also assigned to a rate group determined by the industry and type of business of the company. Each company may have more than one rate group depending on the type of business they operate.

The WSIB tracks the performance of each company's health and safety program through the number of injuries and the severity of

the injuries claimed. The WSIB uses the costs of the claims registered to the company's account number and firm number as a unit of measure for frequency and severity.

The WSIB calculates the average of all the members in the same rate group. The average is then used to measure the performance of each of the companies within the rate group against the rate group as a whole. The rate group's average is referred to as the industry standard for all companies operating like businesses.

For those companies who have performance ratings higher than the industry standard, the WSIB will flag the company as a poor performer. The Ministry of Labour (MOL) will begin to visit those companies listed as poor performers unannounced to audit the company's health and safety program. These visits may result in fines, penalties and various orders to improve the safety standards or procedures in the company.

Those companies who have performance ratings lower than the industry standard will likely not be subject to as many unannounced visits by the MOL. The assumption is that the lower amount of incidents indicates that the company's health and safety program is functioning well and the workers are at less risk of getting injured at the workplace.

Once an employer has an account and a firm number, the WSIB will assign the company to a sector. Each sector is comprised of a team of the WSIB decision makers. Prior to March 2009, the team included Account Manager, Claims Adjudicators, Nurse Case Manager, a Mediator, and an Ergonomist. Some positions like the Mediator and the Ergonomist were shared among a few sectors. In this structure one claims adjudicator would be responsible for making decisions in the claim from start to finish of the claim. The claims were assigned randomly by computer by case load.

However, post March 2009, the WSIB has restructured their administrative services for claims administration. The new structure resembles a division of decision making responsibility according to the different phases in maturity of the claim. There will now be a different adjudicator for each phase of maturity of the claim. For example, the first adjudicator will review the claim for initial entitlement. The second adjudication team will make decisions on the claim from the period of entitlement to 180 days of the life of the claim. Finally, the last adjudication team will make decisions on claims for claims that are post 180 days in life.

The last level of adjudication is the group that determines if the injured workers are assessed for the Labour Market Re-entry (LMR) program. There will be further discussion on the adjudication team and their responsibilities and impact during the disability management process throughout the course of this book. Best practices start with establishing a good rapport with all the adjudicators of the WSIB. A good relationship and strong communication skills are required in working with the decision makers at the WSIB in order to develop, implement and maintain a well-functioning disability management program.

The WSIA outlines the regulations for the workers compensation insurance program for Ontario. As mentioned before, participation in this program is mandatory for all employers. The employer pays premiums to the WSIB monthly. The premiums are proportional to the amount of payroll paid for the month and the number of employees.

The premiums are used to pay the costs of the claims in addition to all of the administrative costs of the WSIB. Unfortunately, for many years the revenue from only the premiums was not sufficient to cover the administration costs and all of the claims costs. The deficiency of funds to cover all the costs contributed to the rising amount of deficit called the unfunded liability.

The WSIB considered adjusting the premiums for each rate group in order to collect enough money to pay down the cumulative deficit. However the WSIB determined that increasing the premiums would not be sufficient to pay down the deficit. As a result, the WSIB developed and implemented a system of rebates and surcharges based on a company's health and safety program (injury) performance.

The rebates and surcharge program were calculated based on the company's performance against their respective rate group. The development of the rebate/surcharge program has enabled the premium rates per \$100 payroll remain relatively stable over time and focus on the companies with poor health and safety performances paying for the deficiencies in the unfunded liability since the poor performers continue to be the major contributors to the rising unfunded liability.

Therefore, every business in Ontario (indeed, the world) should have a functioning and effective health and safety program in order to reduce the number and severity of injuries in their workplace in order to reduce the worker's compensation costs. Strong disability

management programs will assist in reducing the worker's compensation costs by managing the costs through return to work programs, independent medical evaluations, cost relief awards, terminating claims appropriately, etc.

Highlights of a comprehensive health and safety program can include the following:

- Health and safety policy clearly outlining the company's (and executive) commitment to the health and safety program and the health and safety of all workers
- Setting targets and objectives for the program for each year
- OHSAS 18001 Certification
- Health and safety risk assessment of our workplace
 - OSHA requirements
 - Ergonomic development into engineering design as well as corrective action
 - Developed and implemented procedures for managing or working with risks identified safely
 - Incident reporting procedure
 - Corrective actions and prevention initiatives
- Joint Health and Safety Committee (JHSC)
- Communication – open door approach
- Training
- Mentoring
- Auditing
- Continuous Improvements
- Completed Ergo training for Industrial and Manufacturing Engineers:
 - Intro to Ergonomics
 - Ergo Risk Factors and Injuries
 - Ergo Design Specifications
 - Review of Possible Engineering and Administrative Controls
 - Review of Anthropometric Data
 - Developed an Ergonomic Design Specification

In addition to satisfying a company's environmental health and safety legal obligations and responsibilities, a well-developed and comprehensive health and safety program including an effective disability management program will allow the company to establish practices of due diligence. These practices will also demonstrate commitment to the health and wellness of all workers.

Similar to a good quality program, an efficient health and safety program can contribute to increased productivity, increased morale, and increased employee retention resulting in profitable business operations. As with all good business practices, it takes some investment to develop and establish the programs that will have the most impact on a long term, sustainable, and profitable bottom line.

Ontario Ministry of Labour

Another branch of the provincial government in Ontario that is a key participant in the health and safety program development, implementation and maintenance is the Ministry of Labour (MOL). The MOL's responsibilities include (but are not limited to):

- Enforcing the Occupational Health and Safety Act of Ontario (OHSA)
- Supporting the Workplace Safety and Insurance Act (WSIA)
- Monitors the health and safety of workers in Ontario
- The WSIB will flag the MOL when a company reports a critical injury, exhibits higher trends of injuries than industry standards, reports suspicious type of injuries, etc.
- Supporting the WSIB through:
 - High risk flagging
 - Increase random visits to the company's workplace
 - Workwell audits activity
 - Critical injuries investigation and follow up including penalties and fines
 - Follow up for long term/latent injuries from occupational illness and disease

- The WSIB provides the MOL with annual reports on all companies who have significant levels of severity and frequency

A representative from the MOL can and will show up at any Ontario workplace at any time of the day or week. The visits may be prompted by an anonymous tip, the WSIB statistics, critical injury, police, health care professional, the company, for no specific reason, etc.

Upon visiting a workplace, the representative from the MOL must identify him/herself with proper identification. The inspector has full authority to enter any workplace in Ontario without a subpoena. The inspector will request to review company records and documents relating to compliance to the Occupational Health and Safety Act (OHSA) and, indirectly, the WSIA. The employer must allow the inspector in and must comply with the inspector's requests.

The MOL can write orders to the company to develop and implement any corrective actions to address deficiencies to compliance to the OHSA. The MOL can also levy fines and penalties for any significant non-compliance and significant infraction to the OHSA. The MOL is interested in reviewing evidence that the company's Internal Responsibility System (IRS) is functioning and effective. The MOL will request to examine documentation supporting the company's commitment to compliance of the law. An inspector will also request evidence that all the workers are not only knowledgeable of law and of the health and safety concerns of their workplace but also that the workers are part of the solution.

The MOL will enter any Ontario business facility at any time without notice. Once on the premises, the MOL representative will ask to speak with the Health and Safety Management Representative as well as the JHSC Co-Chair Worker Representative. In accordance to the OHSA, Section 9, the size of the company will determine the existence and size of the Joint Health and Safety Committee (JHSC).

The company has to comply with all the requests of the MOL inspector. The inspector may request to review such evidence as JHSC meeting minutes, incident reports, the WSIB reports, training records, etc. The MOL will request this documentation as proof that the company has a functioning IRS (Internal Responsibility System) and monitor compliance to OHSA. Failure to comply with the requests of the MOL will result in written orders, fines, penalties, and can go as far as litigation.

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It is very important to document all policies, procedures, meeting minutes, training content, training requirements, training certifications, training attendance, communications, postings, etc. Documentation is the strongest evidence for any company to prove attempts at compliance.

Monitoring the results of all training as well as monitoring the application of all training will also provide evidence to the MOL that the company is supporting compliance to the law. Written documentation is always more credible in any legal proceedings compared to reliance on memory.

Evidence of a functioning and effective IRS can be determined by a number of methods including, but not limited to:

- JHSC
- JHSC meeting minutes
- Incident reports
- Interviews with the JHSC
- Interviews with workers regarding the health and safety program and the JHSC
- Minutes from any problem solving meetings including workers (non-management personnel)
- Training records
- New hire orientations
- Health and safety policy
- Risk assessments
- Risk evaluations
- Pre-Start Health and Safety Review (PHSRs)
- Certifications and licenses (ie: forklift operation, skilled trades, etc.)
- WHMIS
- Records of communications regarding health and safety concerns
- Records of management responses to health and safety concerns

When interacting with the MOL, it is important to remain calm, confident and cooperative. The MOL will ask questions regarding what they want to know. The company Representative should be honest, forthright, and informative. Keep the answers concise, simple and relevant to the point. The MOL has a right to get these cop-

ies without a subpoena according to the Occupational Health and Safety Act of Ontario.

Sometimes, the MOL will request a tour or to see a specific location in the building. Should the MOL spot a worker violating any part of the OHSA, the company, the Supervisor and/or the worker may be fined depending on the training records available and the violation. For example, a lift truck operator may not be wearing a seat belt while operating the forklift. The MOL may fine the operator \$300 on the spot for not wearing the seat belt. The Supervisor may also be fined unless the company can produce training records and discipline records supporting that the operator ought to have known that wearing the seat belt was required.

The documentation will be evidence that the supervisor coached, trained, and disciplined the operator regarding wearing the seat belt. Without this documented evidence, the Supervisor will likely be fined for not enforcing the OHSA. The MOL may fine Executives of the company for allowing this to happen in the facility.

It is important to understand the power and influence the MOL has on developing a sound disability management program. The MOL enforces the compliance of OHSA. Therefore the MOL shapes or influences the company's health and safety program. The health and safety program is the foundation of the disability management program.

OHSA including any Canadian Standards Association (CSA) guidelines viewed by the MOL as enforceable, will shape the development of the best practices of a health and safety program resulting in influencing the development of the best practices in disability management program. A sound health and safety program is heavily interdependent on a sound disability management program.

Injury prevention is the main focus of a sound health and safety program. Best practices in disability management can facilitate the understanding of the nature of the injuries. This understanding will assist in the implementation of corrective actions through the root cause analysis process. The MOL will ask questions on both the company's commitment to health and safety through policies and procedures as well as how the company responds to injuries through their disability management program.

SECTION I

UNDERSTANDING INJURIES

Objectives:

After reviewing this chapter, the reader should be able to understand and explain the following concepts:

1. Define an injury;
2. Understand different types of injuries;
3. Define a critical injury as defined by Occupational Health and Safety Act of Ontario;
4. Understanding the role of the Ministry of Labour in Ontario with respect to critical injuries;
5. Describe and contrast disease, illness, and disability;
6. Explain and contrast short term and long term disability; and,
7. Distinguish between impairment and permanent impairment.

CHAPTER I

INJURY

There are many different types of injuries. To understand the types of injuries, the definition of an injury must first be discussed. According to Wikipedia, an injury is:

... damage or harm caused to the structure or function of the body caused by an outside agent or force, which may be physical or chemical, and either by accident or intentional. (Wikipedia, 2009)

For the purposes of this book, an injury is simply defined as the damage or harm done to any part of the human body whether accidentally or intentionally. The damage or harm can be in many forms such as physical trauma or illness, emotional or psychological trauma, disease, etc. The illness can be viral, bacteria, chemical, or a result of a genetic defect. Illness and disease will be further discussed in the next chapter.

Injuries can be intentional or accidental. An intentional act of harm to another person or to one self, is as it implies, the offender has intended or purposefully inflicted harm on the victim. However, the general understanding of an accidental injury is an injury that is caused from an act which had no intention to cause harm or the injury. The accidental injury is an injury that is an unexpected by-product of an act to accomplish another goal.

Most disability insurance programs make distinctions between accidental and intentional injuries. Private disability or life insurance programs will generally exclude the intentional self-inflicted act of harm such as suicide.

Other forms of deliberate harm and damage may also not be covered depending on the event. The law in Canada and in the United States, indeed, in most developed countries have provisions addressing deliberate or intentional acts of violence on another as a criminal offence or in the very least, a case for damages to be awarded under the civil court system. For further discussion on the legal impact on intentional violence, one should consult a lawyer.

Personal injury also known as non-occupational injury is an injury sustained as a result of personal activities or activities outside of the normal course of employment or work. Short term and long term disability insurance programs address wage replacement for non-occupational injuries usually with the exception of suicide or attempted suicide. In Canada, Canadian Pension Plan (CPP) is also a wage replacement program for people who experience permanent disability so severe that the disability prohibits the person from working.

According to the Workplace Safety and Insurance Act (WSIA) of Ontario, a workplace injury is an injury that happens as a result of a workplace accident. The WSIA (Section 2(1), defines an accident as:

- ...(a) a wilful and intentional act, not being the act of the worker,
- (b) a chance event occasioned by a physical or natural cause, and
- (c) disablement arising out of and in the course of employment; (“accident”) (WSIA, 1997)

A workplace injury is defined as an injury that occurs out of the course of employment. Interestingly, the Workplace Safety and Insurance Act (WSIA) does not make a distinction between intentional act or unintentional act. The employer is expected to sort that distinction out and act in accordance with pieces of relevant legislation such as the Occupational Health and Safety Act of Ontario, the Human Rights Code of Canada and of Ontario, the Criminal Code of Canada and of Ontario, the Violence and Harassment in the Workplace amendment to the OHSA of Ontario (Bill 168), etc.

Preventing workplace injuries is one of the most important responsibilities of the employer. However, despite the most effective prevention program, injuries still may occur at the workplace. Workplace injuries can range in severity. They can be as simple as a minor cut to the finger from cutting a box open, to as severe as a fatality from a forklift hitting a pedestrian. The Occupational Health and Safety Act of Ontario (OHSA) and the Workplace Safety and Insurance Act (WSIA) will assist the employer in understanding their role and responsibilities in the workplace injury reporting system. .

The severity of the injury will dictate to the employer the required course of action. Injuries that do not require medical attention should be reviewed by the employer's Internal Responsibility System (IRS) to plan corrective action activities. The course of action required for those injuries that require medical attention will be dictated by the Workplace Safety and Insurance Act of Ontario (WSIA). Should the injury be so severe that the injury falls under the classification of a critical injury, in addition to the requirements of the WSIA, the employer will have additional responsibilities as dictated under the Occupational Health and Safety Act of Ontario (OHSA).

Critical Injury

Under the OHSA of Ontario, a critical injury is an injury that is life threatening. Consistent with the Occupational Health and Safety Act (OHSA), Regulation 834, a company has 48 hours (Section 51(1)) to report a critical injury to the Ministry of Labour (MOL) in addition to the WSIB. The MOL considers an injury to be critical if the injury is classified as one of the following:

- ...A "critical injury" is an injury of a serious nature that,
- (a) Places life in jeopardy,
 - (b) produces unconsciousness,
 - (c) Results in substantial loss of blood
 - (d) involves the fracture of a leg or arm 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.
- (OHSA, 2009)