Outstanding Questions from Webinar Attendees

Question: When will the indexing benefits go into effect?

This has already come into effect. The WorkSafeBC Cost of Living allowance will be indexed based on the full Consumer Price Index is effective November 24, 2022.

Question: Is this significantly different from the model created (and now discontinued) for COR Return to Work (less the auditing part)?

I think the COR Return to Work model was more extensive and comprehensive than the two new statutory duties (duty to cooperate and duty to maintain employment) as it concerned the development and maintenance of a complete return to work program. However, the COR model did not contain the duty to accommodate nor was there any risk of being fined for non-compliance.

Question: Regarding duty to maintain employment, what if the employee is terminated, for cause, while on WSBC claim? Does this prevent the employer from taking a labour relations action?

This is a great question. The six month timeline where you cannot terminate only begins to run after the employee returns to work, so if the employee is terminated for cause while still on claim and prior to returning, there is an argument that the section is not triggered. However, it may be interpreted that you must maintain employment during the period of time the worker is off as well. Also, there may be other exposures including a prohibited action claim or human rights claim. If you are planning to terminate for cause, you need to be sure that the decision is not tainted in any way by prohibited grounds or the fact that the worker raised health and safety issues.

Question: Do these administrative fines re duty to accommodate apply to Federally regulated employers?

At this time, it appears so. The penalty section falls within the compensation section (rather than the OHS section) and so it likely applies to federally regulated employers. The legislation allows for certain industries to be exempted by regulation, but we do not have any details yet.

Question: What if an employee doesn't complete rehab, leaves the country (without letting employer or Worksafe know) and was expected back at work on December 1st but doesn't have a return flight scheduled? Can that be considered quitting?

WorkSafeBC has the discretion to discontinue paying a worker when they disengage in return-to-work efforts/Vocational Rehabilitation for non-compensable reasons. Accordingly, WorkSafeBC can discontinue paying a worker when they leave the country. Work abandonment is engaged when there is clear and unequivocal intention from an employee to not return to work. Employers are recommended to inquire about the worker's personal or medical leave status before claim job abandonment.

Section 154.2 *Duty to Cooperate* imposes a reciprocal duty to cooperate between the worker and the employer. Employers can contact the Board to advise that an employee is failing to cooperate by not engaging in suitable work. The Board has 60 days to decide whether the worker failed to cooperate from the date the complaint is made (Section 154 (5)). If the Board agrees with the employer, the Board has jurisdiction to reduce or suspend the worker's payment until the worker cooperates (Section 154 (6)).

Question: The 6-month rule, is that a combination of time, or a 6-month run? And are these 6 months after the injury or after the worker returns to work?

Great question. The language of s. 154.3(8) says "within 6 months **after** the worker begins to carry out suitable work or begins to carry out the essential duties…" so I would say it begins to run after the worker returns to work and the period of time runs for 6 months consecutively rather than a combination.

Question: Are there special implications for young workers? It's my understanding that those now coming into a manufacturing setting must be 18 years old.

Bill 41 does not deal with young workers. The Occupational Health and Safety Regulation defines a young worker as any worker under age 25. Section 3.23 *Young or New Worker Orientation and Training* outlines the young worker's rights and employer's responsibilities, including health and safety specific orientation and training for all fields: https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-regulation/part-03-rights-and-responsibilities#SectionNumber:3.23

Question: Would it be considered suppression of claims if it takes a significant amount of time for a worker to see a doctor, and the employer pays normal wages for that time?

As long as there is no intent to dissuade the worker from making a compensation claim, I don't see that as claim suppression. If the injury was work related there is of course the obligation for the employer to report the injury to WorkSafeBC.

Question: Will the provisions of "reasonable expectation" as found in RSCM Vol 2, Policy Item 74.00 Reduction or Suspension of Compensation? Which basically requires WSBC to ask the worker why they are not co-operating prior to rendering a decision – so usually leads to delay in decision making

Policy Item 74.00 *Reduction or Suspension of Compensation* remain in effect. If a worker fails to attend an examination or obstructs the medical examiner the worker's right to compensation can be suspended until the examination takes place. The Board can also reduce or suspend compensation if the worker engages in unsanitary or injurious practices that delay recovery. Or when a worker refuses to engage in treatment reasonably essential to promote recovery.

Question: Is there any way to clarify the reporting process of a suspected injury to employers? Right now, there is no real suitable time period. (No report from employee for months after a possible injury)

Section 149(2) of the *Workers Compensation Act* obligates the worker to report a workplace injury to the employer "as soon as practicable after the occurrence". While there is no actual timeline given, this would generally mean immediately, within a few days or weeks. The employer in turn has an obligation to report the injury to the Board within 3 days of being informed.

Question: If an employee is in an accommodated position, that is not working out due to their ability, are we required to accommodate into a different position?

Interesting question. To be safe I would say that the duty to accommodate lasts for at least six months after the worker returns to work. So if it is not working out in one position, there would be an obligation to offer another position, assuming that alternative suitable work is available within the employee's skills set and your operations.

Question: In a social services workplace, where say someone has a limitation on working with a client with aggression... how would one handle that RTW piece if we cannot guarantee that no aggression would come up in any role, they would be suitable for?

In that situation you would have to carefully consider if you could modify the position to accommodate the worker. For example, can you screen the clients or put some protective measures in place to ensure that the worker doesn't have to deal with an aggressive client? Can you modify the position so that the worker does not deal directly with clients? If those options are not possible without creating an undue hardship, then you may tell WorkSafeBC that there is no suitable work available given the nature of the limitations.

Question: Is there any documentation yet written for seasonal worker cases? 6-months for a 3-month annual work-season could have 2 possible interpretations (at least).

The duty to maintain employment will apply to full-time and part-time employees who have been employed for a <u>continuous</u> period of 12 months pre-injury. This raises the interesting question of whether a seasonal worker who only works 3 months of the year is continuously employed or not. If the worker is formally laid off at the end of each season and works elsewhere, it could be argued that their employment is not continuous and starts anew each season. If that is the case, then the duty would not apply to this worker, as they would not meet the continuous 12 months.

Question: If a worker injures themselves at home and the employer is concerned that the worker may intensify that injury if they return to work too early, is the employer justified in discouraging an early return?

Any return to work will have to be in conjunction with the recommendations of the worker's medical team and WorkSafeBC's assessment. If the evidence indicates that the worker is at risk for reinjury by returning early, then the employer would be justified in discouraging an early return. However, if there is no evidence for the employer's position (i.e. the workers doctor and/or WorkSafeBC say that the worker is cleared to work) then taking this position could be problematic and lead to a non-compliance.

Question: How does one handle a situation where suitable Modified Duties are extended to an injured worker, but they choose to ignore them and stay at home?

If WorkSafeBC finds that the modified job offer is suitable and reasonably available to the injured worker, failure to accept the job may result in an end to their Vocational Rehabilitation benefits. Now, there will also a reciprocal duty to cooperate between the worker and the employer (Section 154.2 *Duty to Cooperate*). Employers can contact the Board to advise that an employee is failing to cooperate. The Board has 60 days to decide whether the worker failed to cooperate from the date the complaint is made (Section 154 (5)). If the Board agrees with the employer, the Board has the power to reduce or suspend the worker's payment until the worker cooperates (Section 154 (6)).