

# Safety Pays

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## Psychotraumatic Disability

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Since your accident, have you been feeling down or anxious? Have you been experiencing low self-esteem? Have you become angrier? Do you suffer from nightmares or recurrent thoughts of the accident? Are you afraid that you will re-injure yourself with even the slightest activity? Have you become homebound or even had thoughts of ending it all? Workers should always report these matters to their family doctor and seek treatment. It should also be reported to the WSIB as part of your compensable injury in accordance with Board policy 15-04-02.

If you have experienced or continue to experience these types of changes in your mood or psychological health, then you may qualify for further benefits from the Workplace Safety & Insurance Board under the psychotraumatic disability policy.

The Board has a long-standing policy that recognizes that some workers are seriously impacted psychologically as a result of their workplace injuries. Many workers, unfortunately, do not seek active treatment or discuss these matters with their family doctor because of the stigma of being labeled "mentally ill". Often, the psychological reaction to an injury is intertwined with the physical injury. So long as the worker suffers physically, they will continue to be depressed or anxious about their future. The two do often work hand-in-hand making a full recovery somewhat difficult.

Board policy states that the condition must have "manifest[ed] within 5 years of the injury, or within 5 years of the last surgical procedure." Benefits may be payable "if it is evident that a diagnosis of a psychotraumatic disability/impairment is attributable to a work-related injury or a condition resulting from a work-related injury". Entitlement may be granted if the psychotraumatic disability is an indirect result of the physical injury, or "is shown to be related to extended disablement and to non-medical, socioeconomic factors, the majority of which can be directly and clearly related to the work-related injury".



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If the condition is found to be permanent, you would be entitled to a non-economic loss award. Often, entitlement to a psychotraumatic disability benefit can show that you are in fact, permanently unemployable and unable to work.

It is important to discuss these matters with both your family doctor and the WSIB since these issues can alter the course of your Labour Market Re-entry plan and the final result at the WSIB.

## Permanently Laid Off? You May be Entitled to WSIB Benefits

In March 2003, the Workplace Safety & Insurance Board introduced five new policies concerning work disruptions. Work disruptions include seasonal layoffs, short-term layoffs, permanent and long-term layoffs, strikes and lockouts. The focus of the policy is the concept of employability. The Board looks at whether an injured worker's work-related impairment and associated medical restrictions present a clear obstacle to the worker obtaining alternate work with the accident employer or another employer.

When a worker's employability is clearly affected, the Board may provide additional benefits including: loss of earnings benefits, temporary total disability benefits, future economic loss supplement, labour market re-entry services or s.147(2) supplements.

Employability is determined by examining whether a worker is in the early phase of recovery from the injury or is receiving active Board approved healthcare treatment on a regular basis. Workers will receive benefits if it is apparent that they cannot reasonably work and that a job search and the likelihood of being hired elsewhere is low.

For a long-term or permanent work disruption, it is generally presumed that the worker will seek employment elsewhere. Therefore, the focus shifts to whether the worker has the skills required to find suitable work elsewhere compared to an uninjured worker. In determining whether an injured worker is entitled to further labour market re-entry benefits, the Board will review the work performed at the time of the work disruption and consider the following:

- Is the worker unable to perform the pre-accident job due to the work related impairment?
- Is the worker's impairment permanent?
- How different is the work being performed at the time of the work disruption from the worker's pre-injury position?
- The length of time the worker has been performing these duties.
- The work available in the local job market.
- Whether the wages are comparable in the local job market to what the worker was earning.
- Did the pre-layoff work involve modified duties?
- The likelihood that another employer will provide the required accommodations.



If you have been permanently laid off, were previously injured, worked modified duties, received a Non-economic Loss award, or have permanent restrictions, be sure to let the WSIB know that you have been laid off. Look for work. Keep a record of your efforts and seek legal advice. You may be entitled to further Labour Market Re-entry services and Loss of Earnings benefits.

## LMR Completed—Now What?

You've finished your Labour Market Re-entry program (LMR). While looking for work, it becomes clear to you that there are no jobs available and you've come to the conclusion you may never work again. Now what?



The Board will re-evaluate your loss of earnings benefits upon completion of the retraining program to reflect your potential new earnings. It is usually the Board's opinion that you have received skills and are therefore, able to find employment in the suitable employment or business (SEB) which was chosen for you. For example, if you are retrained as a customer service representative, the WSIB would presume that you have the appropriate skills and should be able to find employment at an entry-level wage in this job category. They would then reduce your benefits by the amount of the anticipated entry-level wages in this SEB, in this example, a customer service representative. This decision is of course, appealable. The appeal must be filed within 6 months of the date of decision.

There are of course times when workers cannot find employment in their training program for a number of reasons and the following factors should be considered in determining whether or not an appeal will be successful:

### **1. The availability of employment in the goal set by the Board.**

There are still plans that are established in which the injured worker will be disadvantaged once completing school. Obviously this argument is very dependant upon the economy. There may be a number of goals which may not have jobs available following the completion of a retraining program. Some that come to mind include:

- CAD/CAM
- Mechanical Engineering
- Automotive Sector manager

In addition, the worker's scope of job search or geographical location may come into play. For example, if a worker's previous job was in Leamington and they've always worked in Leamington and have issues with transportation, the local job market which should be reviewed is the Leamington area rather than the entire Windsor-Essex County area.

### **2. Adequacy of skills to perform the job or obtain employment in the SEB identified.**

An example of this is an injured worker who obtains a certificate of social work from a business college. This individual may not have the necessary skills to complete and/or perform the duties of a social worker. The starting points for these types of arguments are the job requirements set out by the National Occupation Code (NOC) which is available through Employment Canada. This index of job descriptions identifies the basic job requirements including the minimum education requirement. For example, if the job requires a grade 12 education or a college/university degree. If this level of education has not been provided, then a worker may be successful in arguing that they did not receive the necessary skills to be successful in obtaining employment in the job identified by the Board.

### 3. Physical inability to perform the duties required.

Success on this point depends heavily upon medical information and in some cases, a deterioration of your physical injury may have to be shown. Strong medical evidence must be obtained which clearly shows that the worker is unable to work in the chosen SEB.

### 4. Permanently unemployable.

This argument encompasses not only a worker's physical and mental abilities, but also their transferable skills, education and even age.

It is important that a worker, if in disagreement with a Board decision, immediately appeal the decision and obtain appropriate advice in order to maximize the benefits they are legally entitled to from the Board. It is extremely important, regardless of whether or not you as a worker agree with the WSIB, that you continue to search for work even if you believe you can never return to work again. A job search is critical in ensuring that you have mitigated your losses as an injured worker and made a whole-hearted attempt at finding employment in the area which you have been retrained. A failure to do this can result in either a negative decision or a reduction of benefits.

## New Forms

The WSIB has now released new forms as part of their Form Improvement Package. These include: Employer's Progress Report, Worker's Progress Report and Physician's Progress Report. The improvements are aimed at streamlining the forms and obtaining relevant information to assist the Board in the decision making process. These forms are available for access on the Board's website at: [www.wsib.on.ca](http://www.wsib.on.ca)

Be sure to use the Worker's Progress Report and Functional Abilities Form regularly to keep the WSIB or your employer up to date.

### Upcoming Events

#### Lost In the Web of the WSIB?

Suzanne Dajczak invites you to join her for a FREE information session.

**Tuesday April 22, 2008**

College Avenue Community Centre

3325 College Avenue

1:30 p.m.—3:30 p.m.

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*If you have any questions or concerns regarding WSIB and your claim,  
please contact my office at:*

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*Suzanne is a lawyer who assists clients in the area of Workplace Safety and Insurance Law.  
This newsletter is not intended to be legal advice. If you require legal advice, please contact us.*