



2016 Edition

Ontario Workplace Safety and Insurance Act: Quick Reference

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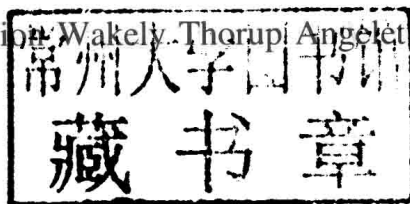
Megan Beal, J.D.

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About the Authors

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ACKNOWLEDGMENTS

This Quick Reference was originally published in 2004 and has been updated annually since then. In each successive year, we have tried to not only keep it current, but make it better. I have had the good fortune to work with a number of talented and motivated co-authors from the outset, including the excellent team that is responsible for this 2016 edition.

I also want to make particular mention of two of my former co-authors. Alexandra Tinmouth was largely responsible for the original text. Natasha Savoline stepped in to help expand and improve the text from that original foundation. The work of Alex and Natasha continues to be reflected in the current edition and will remain integral to the Quick Reference for many years to come.

I also recognize my original and long-standing contacts at Carswell, Derry McDonell and Ben Wentzell. Without the support and encouragement of Derry and Ben, this publication and many others like it would never have got off the ground. Carswell continues to provide excellent support and I particularly appreciate Sheila McLeish's determination and persistence in ensuring that we at least come close to meeting publication deadlines. Without people like Sheila — and Derry and Ben before her — all sorts of good ideas and better intentions would float around aimlessly and never be subjected to the discipline of writing and editing.

I moved my labour and employment law practice to Filion Wakely Thorup Angeletti LLP in the spring of 2004, shortly after the original edition of this Quick Reference was completed. Since then, I have benefitted from the willing and capable support and contributions of my partners and colleagues in the publication of this Quick Reference and many other Carswell publications. For many years, Cynthia Kontra was primarily responsible for keeping this Quick Reference current, relevant and ever-improving. Cynthia has left our firm to pursue a career as in-house counsel at Sun Life Financial, but continued to be involved up to and including the 2014 edition. Bonnea Channe has

Acknowledgments

been my co-author since 2009 and, with Cynthia's departure, Bonnea now has primary responsibility for organizing updates and fresh content. Bonnea and I were happy to welcome Lauren Chang MacLean to our team in 2012 and Megan Beal in 2013 and we look forward to working together on this publication for many years to come.

Bonnea, Lauren, Megan and I are all busy with our practices throughout the year. We cover the full spectrum of labour and employment law. It is inevitable that we will not catch all of the important developments in Workplace Safety and Insurance law over the course of the year. If you know of a key development or find something in our text that could be expanded on or better explained, we always welcome feedback and input. Please feel free to send any of us an email - you can find us at www.filion.on.ca.

Jamie Knight

Filion Wakely Thorup Angeletti LLP

September 2015

PREFACE

For the past century, a system has been in place in the province of Ontario that requires most employers to pay into a workplace insurance fund. This fund is designed to protect workers and their families in the event that an injury or illness originates in, or is aggravated by, the workplace environment. Most obviously, compensation is made available to incapacitated workers to replace lost income. Employers fund other aspects of what is now known as the Workplace Safety and Insurance System, including medical costs for workplace illness or injuries, non-economic compensation, re-training costs, and all of the operational costs of the system itself.

In return for funding the system, employers gain immunity from civil suits which otherwise might be commenced by workers for workplace injuries or illnesses. With few exceptions, workers have no choice. If their illness or injury arises from the workplace, and their employer is subject to the *Workplace Safety and Insurance Act* ("WSIA"), workers will have to pursue their claim for compensation and any other assistance through the Workplace Safety and Insurance System.

For the Ontario government, as with all governments in Canada, an overriding objective of labour and employment law is to maximize the safety of workplaces. The obvious legislation that concerns itself with this overriding objective is the *Occupational Health and Safety Act* ("OHSA"). Increasingly, the WSIA is also concerned with supporting safe workplaces as a primary purpose. As such, it is a true partner with the OHSA. Using principles that first appeared in human rights legislation, a key part of the WSIA deals with returning injured or ill workers to work, either to their pre-injury positions or to modified work, in accordance with well known principles of accommodation to the point of undue hardship. This expectation of a prompt return to the workplace where the injury occurred is itself a powerful prod to employers to try to ensure that workplace compensation situations do not arise in the first place.

Preface

Workplaces are also now accustomed to terms like “accommodation”, “ergonomics”, “repetitive strain”, “physical demands analysis” and “functional abilities”. The concepts behind these terms reflect a rapidly developing focus on the science of performing ongoing, long-term work in a manner that is efficient and productive on the one hand, while on the other hand minimizing or eliminating harmful or dangerous effects on the human body and mind. This focus on safe and effective work practices is true whether the work is in an office, manufacturing plant, construction site or other environment.

If workers cannot be returned to work, it is the Workplace Safety and Insurance System, funded by employers, that provides for training and strategies to encourage the re-entry by injured workers into other occupations. The Workplace Safety and Insurance Board (“WSIB”), which administers the *WSIA*, and is itself funded by the mandated employer contributions, also has a strong educational role. This includes public advertising and other methods of stimulating public awareness, both generally and in specific workplaces.

As you might expect, with a system that is intended to be an insurer, a teacher, a worker advocate, and a leading force in favour of safer and healthier workplaces, the Workplace Safety and Insurance System gobbles up funds. As a result, there is always pressure to raise additional revenues from employers. Employers, for their part, typically resist the ever-present demands for revenue, both by disputing individual claims and by challenging their rate classifications. The adversarial nature of the Workplace Safety and Insurance System has been assured with the introduction of experience rating. Experience rating penalizes workplaces with a poor accident record and high accident costs relative to comparable workplaces. As a result, it is inevitable that employers will try to bolster their record and drive down their costs not only by improving the safety of their workplaces, but also by challenging questionable claims and pushing hard for early returns to work.

The 2016 Edition features the following additions, as well as highlights of statutory or jurisprudential developments:

- Overview of the Board’s Policy Agenda for 2015.
- Amendment to definition of permanent impairment (PI).

Preface

- Review of changes to the WSIB's Operational Policy Manual, including changes with respect to how the Board considers pre-existing conditions.
- Expanded coverage for firefighters.
- Information about the Board's new Small Business and Health and Safety Program.

As you proceed with your review of our detailed summary and provisions of the *WSIA*, we trust that you will keep in mind some prevailing trends, especially the ever-closer ties to workplace safety. Readers are also encouraged to keep in mind the huge impact of modified work and the many financial demands on the workplace insurance system. This in turn encourages an adversarial role, which prudent employers need to assume, at least to some degree, in order to keep costs down.

Jamie Knight,
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