



A MEMBER'S GUIDE TO
THE WORKPLACE
SAFETY AND
INSURANCE BOARD

December 2021

The Elementary Teachers' Federation of Ontario (ETFO) is the union representing 83,000 elementary public school teachers, occasional teachers and education professionals across the province of Ontario.

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Workplace Safety and Insurance Board (WSIB)

Applying for WSIB benefits can be confusing and frustrating as you navigate your way through the complicated WSIB process. We hope this general summary will assist in making the WSIB process less stressful. Your local ETFO office can also provide you with information regarding the WSIB and your employer.

Benefits

WSIB entitlement provides for two forms of benefits in the event of a workplace injury:

Loss of Earnings (LOE) – wage replacement

If you lose time from work due to a workplace accident, you may be entitled to LOE benefits. LOE is paid at 85 per cent (85%) of your net average salary. There is a yearly maximum salary cap. If permitted under your collective agreement, your WSIB benefit may be topped up.

WSIB benefits are non-taxable.

Health Care Benefits (HCB) – treatment expenses

The WSIB pays for most medical treatments related to a workplace accident (medications, physiotherapy, chiropractic care, etc.). The WSIB has established caps for most health care benefits.

Another form of compensation that may occur is a Non-Economic Loss (NEL) award, which is a lump sum of money that may be granted where there is a permanent impairment as a result of a workplace accident. This impairment does not necessarily prevent an injured member from earning full wages. It is for general pain and suffering.

Filing a WSIB Claim

All accidents/injuries that occur while on the job, no matter how trivial, should be reported to your employer. This does not mean, however, that every injury is reported to the WSIB. Your employer only needs to report your accident to the WSIB if you lose time from work due to the injury or if the injury necessitates medical attention or some form of health care, i.e., physiotherapy.

When you are injured at work, you need to complete your school board generated *Incident Reporting Form* to record the details of your injury. If you are unable to do this, a principal or witness can fill it out on your behalf. This form is then submitted to the school board where the information is transferred to an official WSIB Form 7, which is the *Employer's Report of Injury/Disease*.

Official Reporting Forms

Employer's Report of Injury/Disease (Form 7)

Form 7 is the employer's reporting of the accident. Form 7 comes in triplicate, and you have the right to a copy from the employer. Injured workers have no ability to revise the employer's Form 7. A Form 7 will trigger the start of the claim process with the WSIB.

Health Professional's Report (Form 8)

When you seek medical attention for a work-related accident, the treating health care professional is obligated to complete and submit a Form 8. A Form 8 is the physician's report of the accident based upon the physical examination done at the time. A Form 8 will also trigger the start of the claim process with WSIB. You are required to provide page two of the Form 8 to your employer.

Worker's Report (Form 6)

You must also report the accident to the WSIB through a Form 6. This form is your opportunity to describe the workplace accident and/or injury suffered. A Form 6 will also trigger the start of a WSIB claim. This form is available online at wsib.on.ca. Any information you provide on this form should be accurate, and WSIB will expect that it is consistent with your doctor's Form 8. You are required to provide a copy of the Form 6 to your employer.

Functional Abilities Form (FAF)

As an injured worker, you are obligated to consent to the release of functional abilities information as per Section G on the Form 6. This information outlines your medical restrictions and limitations due to the workplace injury. The form is provided to the employer and used to assess whether you can return to your job and/or whether accommodations would enable you to return.

The FAF is given to you by the employer for completion by your physician. The information is then released to the employer. Some employers will request your permission to write to your doctor for additional information or to speak directly with your doctor regarding your absence. Your employer is entitled to functional abilities information under WSIB rules but there are limits to what other medical information an employer may obtain. You should always consult with your local office before unnecessarily signing away your right to keep your medical information private.

Mental Health Injuries

It is important to keep in mind that not all injuries are visible. The WSIB may provide benefits to workers who suffer mental health injuries, as well.

Chronic Mental Stress (CMS) Claims

Ontario workers have entitlement to WSIB benefits for workplace chronic mental stress. To be eligible for WSIB benefits, a person must have developed a diagnosed mental health condition caused by “a substantial work-related stressor.” Stress caused by an employer’s managerial decisions (for example, a change in assignment, disciplinary actions, or a poor performance evaluation) is generally not compensable.

More information about the CMS policy is available on the WSIB website at Workplace Safety & Insurance Board (wsibresources.ca) or you can consult ETFO’s PRS Matters Bulletin, *Workers’ Compensation for Chronic Mental Stress* available at [PRS Matters Chronic Mental Stress](#).

Traumatic Mental Stress (TMS) Claims

A worker is entitled to benefits for work-related traumatic mental stress. A worker is not entitled to benefits for traumatic mental stress caused by decisions or actions of the worker’s employer relating to the worker’s employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the employment.

Before any traumatic mental stress claim can be adjudicated, there must be a diagnosis in accordance with the Diagnostic and Statistical Manual of Mental Disorders (DSM).

In all cases, the WSIB decision-maker must be satisfied, on a balance of probabilities, that the traumatic event(s), or the cumulative effect of a series of traumatic events:

- arose out of and in the course of the worker’s employment; and
- caused, or significantly contributed to, an appropriately diagnosed mental stress injury.

The Importance of Medical Evidence

Medical evidence is the key to a successful claim. A claim that is filed with the proper information is often paid without unreasonable delay. However, if not reported properly, numerous problems can arise. Lack of medical evidence is often the reason for negative decisions. There are a variety of reasons that a claim may be denied, or benefits terminated, such as:

- lack of medical documentation to support the claim;
- medical documentation in the file is not current;
- delay in reporting an accident to the employer and/or filing a WSIB claim;
- all injured parts of the body are not listed on Form 7, Form 8, or Form 6;
- delay in seeking medical attention for the injury;
- no proof of accident/illness;
- non-co-operation in a return-to-work plan; and
- factual disputes about the reported accident.

You must keep in regular contact with your treating health care practitioner to help establish continuity of medical treatment and to demonstrate the seriousness of the injury/accident. You should obtain appropriate medical care for each injury or body part affected.

Medical evidence is often needed to address the following issues:

- whether the condition is disabling;
- what medical restrictions or limitations remain;
- whether the disabling condition arose out of the workplace accident; and
- what additional treatment or health care is needed.

While a family physician's report will always be important in a WSIB claim, the WSIB relies heavily on the opinion of a specialist who has expertise in the area of your illness/injury. It is crucial that such an opinion be obtained as soon as possible, particularly if the injury/disease is complex. A specialist can only comment on their area of expertise. The WSIB will, in general, not accept the opinions or advice of alternative practitioners such as naturopaths, osteopaths, etc.

The WSIB looks for objective medical evidence in assessing the merits of a claim. Objective evidence includes test results, medications, x-rays, CT scans, MRIs, and other medical tests. These are needed to help confirm the connection between the injury/disease and the workplace accident, along with the severity/disabling nature of the injury.

Although the WSIB is required to gather medical evidence, more often than not the onus falls on the injured worker to provide missing medical documentation in order to support their on-going claim.

The Return to Work (RTW) and Medical Accommodation Process

Under the *Workplace Safety and Insurance Act*, you are obligated to co-operate in any RTW plan or discussion. The WSIB usually encourages parties to engage in early and safe RTW options at their earliest opportunity. You are expected to co-operate with this process. You may be expected to return to work even though you are experiencing residual effects of your injury. Failure to co-operate in the RTW process may result in denial or suspension of your WSIB benefits.

The district school board has obligations to accommodate an employee's return to work. These obligations are defined in the *Workplace Safety and Insurance Act*, Ontario's *Human Rights Code* and, often, the collective agreement. The limit of this obligation is accommodation which would cause the employer undue hardship.

If you require a medical accommodation, you will need to produce a list of medical restrictions and limitations as outlined by your treating physician. Sometimes these are provided through the WSIB process, but you may need to provide additional updated medical in the form of medical restrictions and limitations directly to your school board as well. Be sure to discuss the RTW plan with your doctor(s) prior to accepting a school board's offer.

Under the *Labour Relations Act*, ETFO has a duty of fair representation to its members with respect to RTW issues, including requests for medical accommodation. Therefore, ETFO local union representatives must participate in WSIB RTW plans and/or medical accommodations. Members have a right to union representation throughout the entire process, and local union representatives regularly advocate on behalf of members returning from medical leaves, including WSIB-related leaves.

Work with your local ETFO office to navigate the medical accommodation and RTW process specific to your district school board.

Possible Return to Work Outcomes

Every RTW plan is different, and each case is based on a member's medical documentation. It is possible that you might return to:

- your own assignment;
- your own assignment with modifications in duties or hours;
- your same school - with a different but comparable temporary assignment;
- your same school - with a suitable temporary assignment; or
- a different school - with a different job assignment.

Your physician or specialist does not decide what type of assignment you should have. The workplace parties - which include the school board, the local and the member - are responsible for the process, and all parties must have input. If the employer's offer of work meets your qualifications and does not violate your medical restrictions and limitations, then the WSIB will likely deem it suitable work.

The WSIB Return to Work Meeting

As an injured worker, you and your employer are obligated to co-operate in any RTW plan or meeting. Failure to participate may result in the suspension or termination of your WSIB benefits.

A WSIB Return-to-Work Specialist (RTWS) will often facilitate a RTW meeting, although an employer representative may also serve this role. The RTWS (or the employer) reports the outcome of the meeting to the Case Manager. However, the decision to accept/approve the RTW plan rests with the Case Manager.

A RTW plan is based on your medical restrictions and limitations as outlined by your treating health care professional. The start of any RTW discussions must be with the pre-injury job in mind. You should always have your local ETFO representative in attendance at any WSIB RTW meeting.

At the end of the meeting, the meeting facilitator will report to your WSIB Case Manager, outlining the specific elements of the RTW plan agreed upon by the workplace parties. It is up to your Case Manager to decide whether to accept or reject the RTW plan.

Although not specifically addressed under WSIB rules, applying for WSIB benefits brings with it a duty for you to mitigate your circumstances while awaiting benefit entitlement. This means you are expected to try and take whatever measures you can to help reduce the effects of the workplace accident and would assist you in getting back to work. Remember - you do not have to be fully recovered to return to work.

It is advisable to demonstrate a willingness to attempt to return to work whenever possible and safe, even if you have concerns about your ability to do so. However, RTW plans are intended to be flexible, and if the return to work is causing harm to your well-being you should immediately report your difficulties to your employer, your WSIB Case Manager and your doctor to discuss additional medical accommodations. This might include a reduction in hours.

Time Limits

There are time limits for appealing decisions made at the WSIB level and at the Workplace Safety and Insurance Appeals Tribunal (WSIAT). It is critical that you meet all the applicable timelines associated with your claim.

If your claim has been denied, you will receive written correspondence from the WSIB indicating any applicable time limit. Upon receipt of that correspondence, you should complete and submit the WSIB *Intent to Object Form* (ITO) as soon as possible if you wish to preserve your right to appeal an unfavourable decision. The ITO clearly indicates where the form is to be sent. There is no need to provide additional information on the ITO - you will have the opportunity to do so at a later date, if you choose. The important thing is to meet the time limit; otherwise, you will likely not be able to pursue an appeal in the future.

Appealing a Negative Decision

If your claim has been denied or terminated and you do not agree with the decision, you have the right to appeal. As per above, your first step is to complete the ITO which is available online at wsib.on.ca.

If the WSIB decision maker does not change the decision after reviewing the ITO and any new information you provided for reconsideration, ETFO WSIB staff can help you prepare a formal request for reconsideration. Following this second step, the submission of the Appeal Readiness Form starts the formal appeal process. While there is no time limit for returning the Appeal Readiness Form, there are very strict rules as to when and under what conditions the form may be submitted. Please carefully review the *Worker Instruction Sheet: Appeal Readiness Form* for further information before considering proceeding with an appeal.

The ETFO provincial office provides assistance with respect to WSIB appeals. Please contact the ETFO PRS staff on duty to discuss the type of assistance that may be available to you.

It is important to note that members should not rely on a WSIB appeal for immediate financial relief. The WSIB appeal process can take years to play out, and a successful financial outcome is not guaranteed.

Appeals Resolution Officer

When an appeal is referred to the Appeals Services Division, a written decision will be issued by an Appeals Resolution Officer (ARO). An appeal may be addressed via a written submission or an oral hearing. An oral hearing is not provided in every case. The WSIB will determine if an oral hearing is necessary.

Workplace Safety & Insurance Appeals Tribunal

If the Appeals Resolution Officer upholds the decision to deny or terminate your claim, you may proceed to the final level of appeal with the Workplace Safety and Insurance Appeals Tribunal (WSIAT). The appeal format at the WSIAT is usually addressed through an oral hearing. The decision of the WSIAT is final.

1. Eligibility Adjudicator/Case Manager reviews all documentation and renders a decision on entitlement.
2. If claim is denied or terminated, an Intent to Object Form is filed.
3. If the initial decision (i.e., denial or termination) is upheld, move to a formal request for reconsideration, directed to the original WSIB decision maker.
4. If reconsideration is denied, claim moves to WSIB Appeals Services Division.

Appeals Services Reviews

- a) Written Submission or Oral Hearing
- b) Appeals Resolution Officer (ARO) Decision
- c) If ARO denies, appeal may be made to the Workplace Safety and Insurance Appeals Tribunal (WSIAT)

WSIB CLAIM FLOW CHART

INJURY/CLAIM
Forms 6, 7, 8



Eligibility Adjudicator/
Case Manager



If claim denied, move to Request for Reconsideration, directed to Eligibility Adjudicator/Case Manager. If reconsideration denied, move to WSIB Appeals Services Division.



Appeals Resolution Officer (ARO) reviews



Written Submission



Oral Hearing (not automatic)



ARO Decision



If appeal denied, move to Workplace Safety
and Insurance Appeals Tribunal (WSIAT)



Oral Hearing



WSIAT FINAL DECISION

WSIB and Sick Leave

If you suffer a workplace injury and are medically unable to return to work, your salary will be suspended and you will begin to access sick leave credits. Once entitlement is granted by the WSIB and your school board is notified, your absences will be recorded as WSIB-related in place of sick leave.

The WSIB pays at a rate of approximately 85 per cent (85%) of a worker's net average earnings. Under our current Central Agreements, there are rules regarding the 'topping-up' of WSIB benefits. Contact your local ETFO office for the applicable top-up protocol in your district school board.

WSIB and Pension

Members receiving WSIB benefits continue to be active members of their pension plan. WSIB Loss of Earnings benefits are pensionable. Members with longstanding WSIB claims are advised to contact the pension plan to confirm the process for making the required contributions.

Financial Assistance

It may take some time for you to receive a decision from the WSIB on your claim. No WSIB benefits will be paid until entitlement has been granted by the WSIB. If you have exhausted your sick credits but have not yet qualified for WSIB benefits, you may qualify for financial aid through the following government programs:

Employment Insurance (EI) Sickness Benefits

These benefits may be paid for a maximum of 15 weeks after a one-week waiting period. You must have accumulated 600 insurable hours in the 52 weeks preceding the claim. There is an application process that requires your Record of Employment (ROE) from your school board, along with a medical certificate signed by your doctor confirming you are medically unable to work. The ROE is completed by your employer after your last day of paid work and the exhaustion of any sick leave. For more information, contact Service Canada.

Ontario Disability Support Program (ODSP)

This form of social assistance may include financial assistance provided to a person with a disability as well as accommodation, basic living expenses, prescription drugs, and basic dental care. There are eligibility requirements. For more information, please check the website at mcss.gov.on.ca.

If your WSIB claim is approved, you will be expected to repay any monies you received from EI or ODSP.

WSIB and LTD Claims

If it is anticipated that you are going to be away from work for a lengthy period of time due to the work-related injury, it is recommended that you apply for LTD, even if you are already receiving WSIB benefits. WSIB and LTD claims can run concurrently, though you will not generally receive benefits from both for the same period.

WSIB will be the first payor. If the WSIB claim is denied and the LTD claim has been approved, LTD can be activated so that you are not without some income.

If you are considering an LTD application, please keep in mind that you are responsible for being aware of, and meeting, all associated LTD time limits. It is imperative that you do not miss the deadline for filing an LTD claim. Please consult the *ETFO Member's Guide to LTD* available here [ETFO Member's Guide to LTD](#) for further details. Contact your local ETFO office for more information about concurrent WSIB and LTD claims.

Provincial Assistance with WSIB Claims

Procedure

The ETFO Executive has established guidelines for assisting members in WSIB disputes. The provincial office may only become involved with a member's claim when the claim has been denied or terminated. To qualify for support, all cases must also meet ETFO's WSIB case selection criteria. Legal assistance will not be provided automatically. You may contact the PRS staff on duty at the provincial office to discuss the type of assistance that may be available to you.

Return to work and medical accommodation issues associated with a WSIB claim will be dealt with by ETFO locals and, when necessary, in consultation with ETFO's Professional Relations Services (PRS) staff.

ETFO Case Selection Criteria

ETFO will not provide representation to members in the following WSIB circumstances:

1. Permanent disability and Non-Economic Loss (NEL) awards (increases and arrears).
2. Health care benefits unless an appeal would have a significant impact on other entitlements such as return to work or loss of earnings benefits.
3. Cases involving Loss of Earnings (LOE) and Health Care Benefits (HCB) for less than 7 working days.
4. Recovery of overpayments.
5. No lost time claims.
6. Employer access to WSIB file. *Note: ETFO staff will have discretion to provide assistance to a member if an employer's request for access to a member's WSIB file, particularly the medical evidence, is being used to harass the member or may have a negative impact on the member's employment status.*
7. Employer requests for medical assessments. *Note: ETFO staff will have discretion to provide assistance to a member if they believe the employer's request for medical assessment is being used to harass the member or may have a negative impact on the member's employment status.*

8. Earnings basis calculations (these calculations affect the way benefits are calculated. All information comes from the employer).
9. Where time limits have expired or there is insufficient time to review a file prior to the expiration of a time limit or an appeal hearing/or submission date. For instance:
 - The WSIB Intent to Object Form was not submitted to the WSIB within the required six-month or 30-day deadline.
 - The appeal process has been initiated by the member and ETFO was not involved prior to initiation.
10. Non-co-operation with ETFO. For example:
 - Non-compliance with timelines or requests as set out by ETFO.
 - Refusing to report a material change in circumstance as required under the *Workplace Safety and Insurance Act*.
 - Refusing to disclose information to ETFO that is pertinent to the WSIB claim/dispute.
11. A member has engaged their own legal counsel or has an alternative representative.
12. If the member's claim arose when they were a member of another union or another organization.
13. If a member has retired or resigned from their employment and the provincial office was not involved in the member's claim prior to the retirement/resignation date.
14. If, in ETFO's opinion, the claim is not sufficiently strong to succeed at an appeal to the Appeals Services Division and/or Tribunal (i.e., case insufficiently supported by medical documentation; situation when significant and necessary events from a witness are not available; no ability to obtain additional supportive medical evidence).

Frequently Used WSIB Acronyms

ACT (WSIAct): Workplace Safety and Insurance Act

ADJUDICATE: Decide

A/E or AE: Accident Employer

ARO: Appeals Resolution Officer

CM: Case Manager

COMP: Compensation

CPP: Canada Pension Plan

DOA: Date of Accident

EMP: Employer

ENT: Entitlement

ESRTW: Early and Safe Return to Work

FAE: Functional Assessment Evaluation

FAF: Functional Abilities Form

FU: Follow-Up

HCB: Health Care Benefits

IE: Injured Employee

INJ: Injury

IW: Injured Worker

LDW: Last Day Worked

LO: Lay Off, Laid Off

LOE: Loss of Earnings

MC: Medical Consultant

MMR: Maximum Medical Recovery

MVA: Motor Vehicle Accident

MW or Mod. Work: Modified Work

NC: Nurse Consultant

NEL: Non-Economic Loss

NFA: No Further Action

NLT: No Lost Time

NON COMP: Non-Compensable

ODD: Occupational Disease Department

OHCOV: Occupational Health Clinics for Ontario Workers

OP: Overpayment

O/S: Outstanding

PD: Permanent Disability

PI: Permanent Impairment

PENS: Pension(s)

PPD: Permanent Partial Disability

RC: Rehabilitation Counsellor

REC: Regional Evaluation Centre

REO: Re-Open (claim)

REP: Representative

RTW: Return to Work

RTWS: Return to Work Specialist

RX: Prescription

TRIBUNAL: Workplace Safety and Appeals Tribunal

WSIAT: Workplace Safety and Appeals Tribunal

WSIB: Workplace Safety and Insurance Board

TK:JS:MMC

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NOTES



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