WSIB Policy and Procedural Changes to Employer Counts and Costs

Submitted by: Tillsonburg District Chamber of Commerce

Issue:

The WSIB recently posted information on their website announcing that effective July 1, 2022, all costs and counts associated with COVID-19-related claims will now be applied in calculating premium rates to individual Schedule 1 employers.

Background:

COVID-19 claims with disease dates before June 30, 2022, are allocated on a Schedule wide basis and do not affect the calculation of each individual employer's premium rate. The experience rating change was made from collective or group employer liability to individual employer liability for COVID-19 claims, and this change was made without consultation with employer organizations. The current arbitrary and mandatory change made by the Ontario government and WSIB, effective July 1, 2022, may have significant cost impacts on Ontario Employers with allowed covid claims.

The new WSIB Rate Framework system implemented in January 2020 has significantly changed the duration of the claim cost life cycle for employers. A newly allowed claim now directly affects employers for six years of active claim costs and potentially up to another five or more years until the employer account has reduced all risk bands to the pre-injury levels. An incorrectly or hastily adjudicated decision could now affect an employer for 11+ years. Claim decisions are typically made within one week. Employers who are required by law to fund this system should be able to rely upon adjudication that is not hasty but based upon fair and objective comprehensive evidence. The adjudication of COVID-19 claims on the cost statements of individual employers raises concerns for adjudication and proof of accident.

Other occupational diseases are not experienced-rated on individual employer accounts. It is questionable, and even doubtful, that COVID-19 should be correctly classified as an occupational disease. It is a highly contagious pandemic virus, spread widely in the community without any public health precautions.

COVID-19-related claims should either be deemed a continued collective employer liability or be removed entirely as a compensable condition. The WSIB Claims Appeals and Tribunal process is complicated, costly, time-consuming, and somewhat biased against the employer (especially at the WSIAT).

This recent WSIB policy change now has the potential for a major impact on Schedule 1 employers relating to:

- Lost time claims (especially for long-term COVID-19 cases), NEL permanent disability assessments, and fatality claims have the potential for significant cost impact.

- Annual employer premium rates on individual employer liability vs collective liability, including prolonged claim, costs up to 11+ years due to the WSIB prospective system banding and scaling methodologies.
- A much higher cost burden will be placed on all employers for COVID-19 claims, including many industrial classes outside the high COVID-19 sectors (e.g. healthcare, residential care).
- Because this change can potentially increase costs, Employers might be incentivized to take more steps to mitigate claims. Community transmission is unquestionably dominant. Hazard controls used to minimize claims (continued mandatory masking and mandated vaccines) may negatively affect the hiring and labour market competitiveness.
- The COVID-19 Questionnaire administered by the WSIB to determine causation is inadequate because it depends on the subject beliefs of the person claiming that COVID-19 was acquired at work. No proof is required by PCR tests, which will verify the variant of COVID-19 received. If two people in the same workplace have two different variants of COVID-19, they are unrelated.
- The 2022 number of COVID-19 claims is higher than the previous three years.
- The percentage of Lost Time Claims has increased significantly in Ontario, from 32% to 46% in 2022.
- The adjudication of COVID-19 claims does not specify how or what data will be used by claims managers to determine if the person's employment created a greater risk of contracting COVID-19 to which the public at large is not exposed.
- The adjudication criteria for COVID-19 claims do not ask: do you have children in school? Do you have a spouse who works in a high-risk setting? Are you masking while in public? Has anyone you know been diagnosed with COVID-19 in the past two weeks? Have you been out for any public activity in the past two weeks (dinner, theatre, sporting event, grocery shopping)? How often and when do you test yourself for COVID-19 at home (people who are actively trying to avoid acquiring the COVID-19 virus can quickly identify their most high-risk encounters).

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. Remove COVID-19 pandemic-related disease compensation from allowable WSIB claims or occupation disease benefits.
2. Additionally, in anticipating future pandemics, flu and similar diseases should be considered global and community-driven, not a workplace issue.
3. Have workers report COVID-19 claims to Employment Insurance (EI) rather than WSIB.
4. A government-sponsored group insurance plan may be made available for workers with no group benefits or short-term or long-term disability benefit program.

    a. A reverse onus provision should be implemented to protect employers from paying for claims arising from community transmission in a global pandemic. These claims should presumptively be denied unless the workers can rebut the presumption.

b. In addition to establishing evidence-based protocols for determining causation with these claims, they should be adjudicated as occupational diseases outside the employer's direct annual premium calculations.
c. The WSIB should return to Schedule wide cost allocation until further consultation and research are conducted.
d. More correctly, COVID-19 should not be deemed a compensable condition arising out of and in the course of employment. It should be treated as the common cold or flu (the default is that these are generally not compensable).

5. Make the WSIA and WSIB Policy Manual more user-friendly and transparent to all stakeholders. WSIA Section 15 Occupational Disease needs to identify the worker's claim standard of proof evidence.

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