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COCA Update on WorkSafeBC Activities #520 November 3, 2011

Legislation Introduced to Change Workers' Compensation Act

End of Over-Compensation of Apprentices is in Sight

The government has just introduced a change -- effective January 1, 2012 -- to the Workers' Compensation Act to end the over-compensation of workers who are in an apprenticeship program.

COCA has actively lobbied for this change over a number of years.

The current system over-compensates apprentices who are on workers' compensation. The issue arises when a person who is an apprentice is injured at work. This applies to any apprentice in any industry, not just construction. After 10 weeks, the apprentice has his wage rate increased to the much higher journeyman level.

It takes up to five years to progress from apprentice to journeyman. For example, some apprentices make \$14.94 per hour and then over four or five years -- if they qualify through their performance -- move to \$33.21 per hour. WorkSafeBC currently moves the injured apprentice to this journeyman rate of \$33.21 per hour after only 10 weeks!

With the passing of this new amendment to the Act, workers in the apprentice program will be compensated in the same manner as other workers in BC.

Mental Health (Stress) Claims Revisited

In 2002, the BC legislature made a number of changes to the Workers' Compensation Act. One of these changes altered the acceptance criteria for a stress claim.

The Act was changed to read that a claim for stress would only be accepted when it was the result of a sudden traumatic event.

Other Provinces, before and after 2002, put in similar clauses.

One by one, the other Provinces have lost court cases that challenged the criteria for accepting mental health (stress) claims as discriminatory and unconstitutional. It is considered discriminatory because it treats physical injury differently from mental injury. A physical injury can be accepted for repetitive strain injury -- such as tendinitis, for example.

The BC provision on Mental Injury (Stress) claims has also been challenged in the courts.

The change will provide for compensation -- for those work-related claims that qualify -- as the result of the reaction to one or more traumatic events; the reaction to a significant work-related stressor or the reaction to a cumulative series of work-related stressors.

The legislative change will preserve important criteria that will be used to adjudicate claims for Mental Injury (stress).

Stress claims now make up 0.3% of claims where there is greater than 240 days lost from work. In comparison, Soft Tissue Injuries, Strains and Sprains make up 53% of these long-term claims.

The change will be effective as of January 1, 2012, for every claim that is made but not finally adjudicated by that date.

The condition must still be "diagnosed by a physician or a psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis."

It must also be “not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the working conditions, to discipline the worker or to terminate the worker's employment.” (Workers Compensation Act, Section 5.1) WorkSafeBC will be developing policy on when mental stress will be eligible for compensation. COCA will be reviewing these proposed policies as part of WorkSafeBC’s consultation process.

The amendments can be found under Workers’ Compensation Act -- online at: http://www.leg.bc.ca/39th4th/1st_read/index.htm