



**ONTARIO NURSES' ASSOCIATION**

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# **Workplace Safety and Insurance Board (WSIB)**

## **A Guide for ONA Members**

**March 2021**

The Ontario Nurses' Association (ONA) is the union representing 68,000 registered nurses and health-care professionals, as well as more than 18,000 nursing student affiliates, providing care in hospitals, long-term care facilities, public health, the community, clinics and industry.

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## Introduction

You may at some point in your career suffer from a work-related injury, illness or disease. In Ontario, workers who become injured or ill on the job can file a claim for benefits through the Workplace Safety and Insurance Board (WSIB). Workers whose employers are required to have WSIB coverage are not able to sue their employer for any work-related injuries and must instead file a claim for WSIB benefits.

This guide will help ONA members understand:

- How and why to file a WSIB claim.
- Who pays for loss of earnings benefits or health-care benefits when you are injured at work.
- What to do if you receive an adverse decision from the WSIB.
- The WSIB appeal process; and
- ONA's WSIB appeals assistance and other resources.

**Although this guide is very detailed, the information contained is not exhaustive and is intended only to provide general guidance and information about WSIB claims.**

## How to use this guide

**Section A: WSIB Claims** – Explains the process of filing a WSIB claim and will help you to understand and navigate the WSIB system during your claim.

**Section B: WSIB Appeals Process** – Explains the appeal process if the WSIB has made an adverse decision in your claim.

**Section C: ONA WSIB Appeal Assistance** – Outlines how ONA can help you with a WSIB appeal.

**Section D: Employer Appeals** – Explains the process if your employer appeals a WSIB decision in your claim.

### ONA is here to help!

If you receive an adverse decision of the WSIB **or** notice of an employer appeal, please contact ONA's WSIB Intake:

- Email: [WSIBintake@ona.org](mailto:WSIBintake@ona.org) or
- Phone: 1-800-387-5580, press "0" and ask to speak to WSIB Intake or extension 7721.

## What is the WSIB?

The WSIB is an independent agency that is responsible for administering the no-fault insurance and compensation scheme for Ontario workplaces. It is governed by the *Workplace Safety and Insurance Act, 1997* (WSIA). The WSIB is funded by employers who are required to register and pay premiums into the insurance scheme. The number and type of claims that occur at a workplace has an impact on the premiums an employer has to pay.

The WSIB adjudicates these claims and makes decisions concerning a worker's entitlement to various benefits under the WSIA such as health care, loss of earnings benefits and permanent impairments. The WSIB is only able to provide benefits in accordance with the WSIA legislation and its policies. Both workers and employers have the right to appeal the decisions of the WSIB.

## WSIB Claim Process

### Accident/Injury at work

- Report the incident right away to employer and seek medical attention as soon as possible.

### WSIB Claim Filed

- Form 6: Worker's report of injury to WSIB – must claim within six months of injury/accident.
- Form 7: Employer's report of injury to WSIB.
- Form 8: Initial medical report to WSIB.

### WSIB Entitlement Decision

- Grants entitlement to
  - Injuries to specific areas of the body and diagnoses.
  - Health care and LOE benefits.
- Time limit to appeal: six months from date of decision letter.

#### Health-care benefits

- WSIB covers health care it considers necessary, appropriate and sufficient for the areas/diagnoses for which entitlement has been granted.
- Time limit to appeal: six months from date of decision letter.

#### Loss of Earnings (LOE) benefits

- WSIB will pay LOE benefits if the objective medical evidence supports that the work-related injury completely prevents the worker from working OR the worker is able to return to work, but the WSIB determines the work available is not suitable:
- Time limit to appeal: six months from date of decision letter.

#### Ongoing Issues

- WSIB will continue to monitor recovery and return to work using the objective medical reports on file.
- This information will be used to continue to make entitlement decisions concerning LOE and health care.
- Any new areas of injury or new diagnoses will result in a new decision concerning entitlement – you must report this new information to WSIB.
- Time limit to appeal: six months from date of decision letter.

#### References

- If a worker suffers a significant deterioration that did not result from a significant new incident and is clinically compatible with the original workplace injury, they may be entitled to benefits for a recurrence.
- Time limit to appeal: six months from date of decision letter.

#### Return to Work (RTW)

- Employers are required to offer modified work that is safe, productive and within a worker's functional abilities as soon as possible after an injury. A worker is expected to cooperate and return to suitable modified work.
- The WSIB provides assistance with Return-to-Work Specialists. The focus is to return the worker to their pre-injury position, and usually involves a return-to-work plan.
- Failure to cooperate can impact benefits.
- WSIB will provide a RTW assessment if it determines a worker cannot return to their pre- injury job.
- Time limit to appeal: 30 days from date of decision letter.

### Maximum Medical Recovery/Permanent Impairment

- The WSIB will determine when a worker has:
  - Fully recovered from the workplace injury and close the claim file.
  - Reached maximum medical recovery and determine if there is a permanent impairment and possible non-economic loss award.
- Time limit to appeal: six months from the date of decision letter.

## Section A: WSIB Claims

### Accident or Injury at Work

If you are injured at work:

- Report the injury/illness/disablement/exposure to your employer right away, no matter how minor. This may include strains or pulls after doing job-related tasks.
- Complete an incident report and provide detailed information about how you were injured (such as body positioning, the task[s] you were performing, and any awkward movements) along with any changes in your work (increased workload, staff shortage, heavier or more acute patients, etc.). Provide as many details as possible.
- If you miss time from work following your injury, tell your employer it is related to your workplace injury - do not call in "sick."
- Seek medical attention as soon as possible. Make sure you advise the treating professional that your injury occurred at work and advise your employer that you sought medical attention.
- The sooner you report your injury to your employer and seek medical attention, the more likely the WSIB will grant initial entitlement to your claim.

### Types of Injuries

The WSIB classifies work-related injuries\* into three categories:

- Chance event occasioned by a physical or natural cause (for example, slip and fall).
- A disablement arising out of and in the course of employment:
  - A condition that emerges gradually over time (for example, repetitive strain injury); **or**
  - An unexpected result of working duties (for example, onset of acute back pain while performing regular duties).
- Occupational disease (for example, Hepatitis or latex allergy).

**\*References to workplace injuries within this Guide applies to any of the accidents/disablements/diseases above.**

**You must report your work-related injury within six months of the date of injury.**

If your injury is more gradual, you must report within six months of the date you became aware that it was caused by your work duties.

Occupational disease claims must be filed within six months of the diagnosis.

### Reporting an Exposure

If you are exposed (i.e.: needle stick) but you **do not**:

- Become ill;
- Lose time from work; **and**
- Do not require health care

You should report the exposure to the WSIB using the Worker's Exposure Incident Reporting Form – PEIR which can be found on the WSIB website. The purpose of this

form is to obtain information about the incident you experienced should future illness or disease occur.

If you are exposed and you:

- Become ill;
- Lose time from work; or
- Require health care

If you feel pressured by your employer not to file a WSIB claim, contact your bargaining unit representative. ONA encourages its members to file a Form 6 for all workplace accidents.

You should seek health care as soon as possible and advise your employer that you have sought medical attention.

## Filing a WSIB Claim

### Form 6: Worker's Report of Injury/Disease

This form is completed by the injured worker and sent to the WSIB after a workplace injury. It is an opportunity to provide detailed information about the workplace injury to assist the WSIB in making its decision to allow initial entitlement.

It is best to complete the Form 6 as soon as possible after your injury and provide as much detail as you can concerning the injury. When you sign and submit your Form 6, you are also providing consent to your treating practitioner to provide you, your employer, and the WSIB information concerning your functional abilities. You can access the Form 6 on the WSIB's website. If you feel pressured by your employer not to file a WSIB claim, contact your bargaining unit representative. ONA encourages its members to file a Form 6 for all workplace accidents. (*See Resources*)

#### Tips for completing the Form 6

- Make sure you identify all areas of the body that you think are injured or affected by your workplace injury, even if it seems minor.
- Be as detailed as possible:
  - What were you doing? How was your body positioned? Was there any awkward movement? When did you feel the onset of pain? Where did you feel the pain? What was the frequency and duration of the pain? Was there anything different about your duties that day? (for example, staff shortages, acuity of patients, etc.).
  - If you're reporting a gradual onset injury like a repetitive strain injury (RSI), when did you first experience symptoms? What activities would aggravate it? How frequently did you experience symptoms?
- WSIB staff are not familiar with your working environment. Take the time to explain what your job entails.
- If you self-treated your injury or needed assistance from your coworkers, include that information. If there were witnesses, provide their contact information.
- Provide a copy of your completed Form 6 to your employer and inform your local union.

## Form 7: Employer's Report of Injury/Disease

An employer is required to report a work-related injury/disease to the WSIB if:

- The employer becomes aware that a worker has sought medical treatment for a work-related injury or disease;
- A worker is absent from their regular work because of a workplace injury; or
- A worker is performing modified work or modified hours because of the workplace injury and is receiving less than regular pay.

An employer must file the Form 7 within three days of becoming aware of any of the above information. If your employer refuses to complete a Form 7, notify the WSIB and ensure that you complete and file a Form 6 with the WSIB.

The employer is required to give you a copy of the Form 7. Review the Form 7 that is provided to you and advise the WSIB if you notice any factual errors. Ensure that the accident date is correct and review the earnings information as well. Remember that earnings also include things like shift premiums, pay in lieu of benefits, etc.

## Form 8

This form is filled out by a treating professional when:

- You advise them that you are claiming WSIB benefits for a workplace injury; or
- Your treating professional thinks that your injury/illness is caused by your workplace.

Your treating professional will submit the Form 8 to the WSIB on your behalf. They will also provide you with a copy of the last page of the Form 8, which outlines your ability to return to work and your functional abilities. You should provide a copy of the last page of the Form 8 to your employer.

## WSIB Initial Entitlement Decision

The WSIB will review the information contained on the Forms 6, 7, and 8 to make a decision on initial entitlement. If the WSIB feels there is not enough information on these forms, a WSIB Eligibility Adjudicator or Customer Service Representative may contact you to obtain additional information.

**Remember:** WSIB staff are not familiar with your working environment. When speaking with the WSIB, take the time to explain any technical terms and describe what your physical working environment looks like:

- What kind of nursing do you perform? What is your patient assignment? What tasks are you completing for patient care? How is your body positioned? What kind of equipment do you use? How heavy is it? How often and for how long do you perform your various tasks?

The WSIB will use this information to make a decision on initial entitlement. These decisions contain the following information:

- Whether or not there is a workplace injury;
- If so, classify the type of workplace injury (chance event, disablement or occupational disease); and

- The specific areas of injury, (for example, back, right shoulder) and diagnoses (for example, sprain/strain, rotator cuff tear), for which you may be entitled to benefits.
- The WSIB may determine that your workplace injury (for example, back strain or repetitive strain injury) was not caused by your work duties and deny your claim altogether.

### Entitlement to Benefits

Initial entitlement decisions are important because the WSIB will only allow benefits that it determines are directly related to your workplace injury or illness. In other words, you will only receive WSIB benefits that are a direct result of the areas of injury and diagnoses for which the WSIB has granted you initial entitlement.

If you disagree with the WSIB's decision concerning entitlement to health care, an Intent to Object Form must be filed within six months of the date of the decision letter. Go to page 19 to see how ONA can help you.

Notify the WSIB right away if you start to experience problems in other areas of your body, or a new/different diagnosis is provided by a treating professional that you think is related to your workplace injury. The WSIB will review this information to determine whether it is related to your workplace injury and make another entitlement decision concerning the new area of injury and/or diagnosis.

### Health-care Benefits

The WSIB covers health care that it determines is necessary, appropriate and sufficient for the areas of injury/diagnoses for which you have entitlement.

The WSIB will only provide treatment until it determines that your workplace injury or illness has resolved. The WSIB does not provide ongoing "maintenance" treatment such as physiotherapy, chiropractic or massage therapy once it has determined that you have fully recovered or reached maximum medical recovery. *(For further information, see page 12)*

If you disagree with the WSIB's entitlement decision, an Intent to Object Form must be filed within six months of the date of the decision letter. Go to page 19 to see how ONA can help you.

You may choose your initial treating professional for your workplace injury, such as a physiotherapist. Before changing a treating professional in relation to your WSIB claim, you should notify the WSIB to ensure that the WSIB will continue to cover treatment with the new treating professional. The WSIB will not cover treatment for multiple practitioners (such as a physiotherapist and a chiropractor).

If you choose to see a treating professional in your occupational health department for the treatment of your workplace injury, you may encounter problems with your WSIB claim because this treating professional also works for your employer. Where possible, ONA strongly encourages you to seek treatment outside of your occupational health department. It is, however, perfectly fine and absolutely necessary to discuss the specifics of your functional abilities, restrictions and ability to return to work with your occupational health department. ONA does not recommend that you discuss any specific diagnosis or

broadly consent to your occupational health department discussing matters with your treating professional.

The WSIB may also refer you to its specialty clinics for additional treatment to assist with your recovery. Failure to attend treatment requested by the WSIB (whether its own specialty clinics or other types of treatment it deems necessary) may negatively impact your benefits, such as suspension of your loss of earnings benefits.

### Loss of Earnings (LOE) Benefits

WSIB will pay LOE benefits if the objective medical evidence on file supports one of the following:

- The work-related injury completely prevents the worker from working, (for example, you are totally incapable of working in any capacity). Note: you must be authorized off from work by a treating professional;
- The worker is capable of returning to work in a modified capacity, but there is no work available for the worker; or
- The worker is capable of returning to work in a modified capacity, and there is work available for the worker, but it is not suitable for the worker.

The WSIB will make this decision based on the objective medical evidence provided by your treating practitioners, along with any offers of modified work from your employer, (whether verbal or written).

If you disagree with a WSIB decision concerning LOE, an Intent to Object Form must be filed within six months of the date of the decision letter. Go to page 19 to see how ONA can help you.

### Medical Evidence

The WSIB relies on the objective medical evidence provided by your treating professionals in order to make decisions concerning your entitlement to WSIB benefits. Lack of objective medical information is one of the most common reasons that the WSIB will deny benefits or deny a claim altogether.

The evidence provided by your treating professional(s) is necessary for the WSIB to determine:

- Whether you are entitled to loss of earnings benefits;
- The nature of your functional abilities/restrictions in order to assess your ability to return to work;
- Whether your condition or any ongoing symptoms is a result of your workplace accident; and
- If any additional health-care treatment is necessary.

It is your responsibility to provide updated medical information to the WSIB. Send copies of any reports/forms relating to your workplace injury to the WSIB. Keep the WSIB informed of any referrals to specialists or diagnostic tests.

When you visit your treating professional for your workplace injury/illness, remember the following:

- Explain to your treating professional how your workplace injury occurred with as much detail as possible;
- Make sure your treating professional has physically examined you and that they have documented all of your physical findings in your clinical records (such as range of motion, spasming, etc.).
- Bring any offers of modified work to your treating professional and seek their input as to whether it is suitable for you to perform. Likewise, advise your treating professional if you are experiencing any problems with returning to work and why.
- Maintain regular contact with your treating professional regarding your workplace injury.

NOTE: The WSIB views pain as subjective, and often denies entitlement if the only complaint is pain. More objective information (ROM, spasms, etc.) is necessary than complaints of pain to support entitlement.

The WSIB will review objective medical evidence to support any entitlement decision. This includes physical findings (such as range of motion), along with X-rays, MRIs, and other medical tests. This information is used to confirm the connection between your injury and the workplace accident, and also the

level of disablement that may have resulted from it. The information provided from a family physician is important, but the WSIB will always prefer a specialist's opinion over a family physician. If your workplace injury is complex, it is ideal to have your family physician make a referral to a specialist as soon as possible.

The WSIB may also consult its own internal medical consultants if it is unsure whether your condition or ongoing symptoms are a result of your workplace injury. In these situations, a medical consultant will review the information on your WSIB claim file that was provided by your treating professional(s) and provide their opinion to the WSIB who will then make an entitlement decision.

## Return to Work

The WSIB's mandate is to return injured workers back to work (ideally in their pre-injury job), with the same employer. The WSIB takes the position that injured workers are better off at work unless they are totally disabled and incapable of returning to any kind of work (including modified).

When you are injured at work, your employer is required to provide you with an offer of modified work as soon as possible that is safe, productive, and within your functional abilities. It is very common for employers to offer you modified work as soon as you report a workplace injury. These offers are often based on "standard restrictions" for the type of injury you have sustained and not your actual functional abilities.

Injured workers are expected to cooperate and return to work that is within their functional limitations. Remember that pain alone is not considered to be a reason that would totally prevent an injured worker from returning to modified work.

## Responsibilities in the WSIB Return to Work (RTW) Process

As a worker, you are expected to:

- Maintain communication with your employer. Regularly contact your employer to update them on your recovery and progress.
- Work with your employer to identify modified work that is safe, productive and within your functional abilities.
- Provide updated medical information with respect to functional abilities and restrictions to the WSIB and your employer.
- Advise the WSIB if you experience any changes in your medical condition or income. Employers are expected to:
  - Contact you as soon as possible after they become aware of your injury.
  - Stay in contact with you regarding your recovery and progress.
  - Provide you with modified work that is safe, productive and within your functional abilities, and keep the WSIB informed about any offers of modified work.
  - Advise the WSIB if there are any issues with your return to work.

## Offers of modified work

When your employer presents you with an offer of modified work:

- Advise your employer that you are happy to cooperate and participate in early and safe return to work, but you first need to see your treating professional (family doctor, physiotherapist, chiropractor) in order to properly determine your functional abilities.
- Request a copy of the offer of modified work and a Functional Abilities Form (FAF) from your employer and provide these documents to your treating professional.
- Your treating professional should complete the FAF with details about your abilities and restrictions and provide it to the WSIB. You should provide a copy to your employer.
- If your treating professional is of the opinion that the modified work is not within your functional abilities or you are unable to do any work during the acute phase of your injury, then they should provide written reasons on the FAF supported by objective clinical findings to support their rationale.

You must see your treating professional as soon as possible. If there is any delay in getting an appointment, you should go to a walk-in clinic or an emergency department to have the offer of modified work reviewed and the FAF completed. Otherwise, WSIB may not pay LOE benefits for the period of the delay.

## Return to Work (RTW) Meetings

The WSIB provides assistance with return to work with your employer. This usually happens if the injured worker and the employer are having difficulty identifying suitable modified work during the recovery period. If this kind of assistance is required, you will be contacted by a Return-to-Work Specialist (RTWS) who will help to develop a plan. A RTWS is an employee of the WSIB who provides support and intervention in returning an injured worker to their pre-injury job.

The RTWS will set up a meeting that will include you, your employer, and the RTWS. You have the right to representation in these meetings and we strongly encourage you to include your ONA Bargaining Unit representative in these meetings. It's better to involve the local union earlier rather than later in the proceedings.

At these meetings, a RTW plan will be created that generally increases the duties and hours that you are performing with the ultimate goal of resuming your pre-injury job. It is always a good idea to provide updated functional abilities information from your treating professional prior to this meeting.

If you disagree with a return-to-work decision, an Intent to Object Form must be filed within 30 days of the date of the decision letter. Go to page 19 to see how ONA can help you.

A RTWS will determine if the modified work offered by your employer is suitable and within your functional abilities/restrictions. If a RTWS determines that the offered work is suitable, but you decline to perform the modified work, you will not receive any LOE benefits for any lost time.

Note: if you require accommodations for reasons unrelated to your workplace injury, (which may include other/different physical and mental health

restrictions), you must also identify the nature of the accommodations (not diagnoses) to the WSIB. You may be required to provide medical to the WSIB to support these accommodations. Both the WSIB and your employer are required to take into consideration any other accommodations under the *Ontario Human Rights Code* along with any restrictions from your workplace injury when creating a return-to-work or work transition plan. However, the WSIB is only required to provide benefits that are related to your workplace injury.

### Return to Work (RTW) Assessments

If the WSIB determines that the nature of your injury will prevent you from ever returning to your pre- injury job, it will conduct a RTW assessment to assist you in locating another position that will restore your pre-injury earnings as much as possible. Generally, the WSIB will look to your employer for suitable alternative positions first and will assist with any required upgrading or retraining if necessary.

If no suitable work can be found with your employer, then the WSIB will review your qualifications and work history and create a RTW Plan which will identify a “suitable occupation” based on your skills and work history. The WSIB may provide some retraining or skills upgrading for the identified suitable occupation. Generally, for ONA members this may mean job search training or computer skills upgrading.

Upon completion of the RTW Plan, the WSIB will determine what kind of wage it thinks you would be able to earn in the suitable occupation and may or may not provide ongoing benefits.

If you disagree with a return-to-work decision, an Intent to Object Form must be filed within 30 days of the date of the decision letter. Go to page 19 to see how ONA can help you.

### Ongoing Issues

Once you have filed a WSIB claim, the WSIB will continue to monitor your progress, recovery and return to work. This may involve different WSIB staff including a Case Manager, a Nurse Consultant and a RTWS. The WSIB will use the information provided by you, your treating professionals, and your employer in order to monitor the claim and make any necessary entitlement decisions.

If you experience any new areas of injury or receive any new or additional diagnoses related to the workplace accident or injury(ies), you must inform the WSIB of this new information. The WSIB will then review your claim to determine whether you are entitled to this new area of injury or diagnosis.

Similarly, if you experience any issues with your return to work, especially if you need to take time off work or are working less hours because of your workplace injury, you must advise the WSIB. The WSIB will review the information on your claim file and determine if you are entitled to loss of earnings benefits or if assistance is needed from a RTWS.

### **IMPORTANT**

Read all correspondence you receive from the WSIB. If you disagree with a WSIB decision, an Intent to Object Form must be filed by the deadline outlined in the decision letter. Go to page [#] to see how ONA can help you.

## **Recurrences**

If you experience a significant deterioration or worsening in your condition:

- Notify your employer, seek medical attention and advise the WSIB.

The WSIB will review your claim to determine if the medical evidence supports a deterioration and whether it is compatible with your original workplace injury. If so, you may be entitled to further/additional benefits.

If you disagree with a decision regarding a recurrence, an Intent to Object Form must be filed within 6 months of the date of the decision letter. Go to page 19 to see how ONA can help you.

## **Workplace Injuries Related to Mental Health Chronic Mental Stress**

The WSIB will provide entitlement to benefits for chronic mental stress if the evidence supports that:

- You are diagnosed with an appropriate mental stress injury (Diagnostic and Statistical Manual of Mental Disorders (DSM) diagnosis).
- The mental stress injury was caused by a substantial work-related stressor that arose out of and in the course of your employment.
  - The WSIB must be able to identify the substantial work-related stressors through information provided by other coworkers, supervisors etc. Work-related stressors are considered substantial if it is excessive in intensity and/or duration in comparison to the normal pressures and tensions experienced by workers in similar circumstances. It must be the primary, or main cause, of your mental stress injury.

The WSIB does not allow entitlement for chronic mental stress injuries caused by decisions or actions made by your employer concerning your employment such as changes to your schedule, the nature of the work performed, discipline and terminations.

## **Traumatic Mental Stress**

The WSIB will provide entitlement to benefits for traumatic mental stress if the evidence supports that:

- You are diagnosed with an appropriate mental stress injury (DSM diagnosis).
- The mental stress injury was caused by one or more traumatic events that arose out of and in the course of your employment.
  - The WSIB must be able to identify the traumatic event(s) occurred meaning that it must be clearly and precisely identifiable, objectively traumatic and can be established by the WSIB through information or knowledge of the events provided by coworkers, supervisors etc. It is generally sudden and unexpected.

The WSIB does not allow entitlement for traumatic mental stress injuries caused by decisions or actions made by your employer concerning your employment such as changes to your schedule, the nature of the work performed, discipline and terminations.

### Post-Traumatic Stress Disorder (PTSD)

A member of the College of Nurses of Ontario who directly provides patient care and who is diagnosed with PTSD by a psychiatrist or psychologist is entitled to WSIB benefits. This presumption is captured in legislation as a result of ONA's advocacy.

If you meet these criteria, it is presumed that the diagnosis of PTSD arose out of and in the course of your employment and the WSIB will allow initial entitlement to the diagnosis of PTSD. The WSIB will then make subsequent decisions concerning your entitlement to health-care benefits, loss of earnings, etc.

The WSIB does not allow entitlement for PTSD caused by decisions or actions made by your employer concerning your employment such as changes to your schedule, the nature of the work performed, discipline and terminations.

### Case Closure/Maximum Medical Recovery/Permanent Impairment

The WSIB will continue to monitor the information provided by you, your employer, and your treating professionals to determine when you have:

- fully recovered from your workplace injury and close your WSIB claim file; or
- reached maximum medical recovery (MMR) and determine whether there is a permanent impairment and possible non-economic loss award.

### Full Recovery

The WSIB will review the information on the claim file and determine if you have recovered from your workplace injury. In some cases, the WSIB may close your claim file even if you are still experiencing ongoing symptoms, or do not feel that you have recovered. The WSIB will often decide that any ongoing symptoms are not related to your workplace injury, but instead pre-existing or degenerative conditions. You may appeal the WSIB's decision to close your claim file.

### Maximum Medical Recovery

Based on the evidence on your claim file, the WSIB will determine whether you have reached a plateau in your recovery and if it is unlikely that you will recover further. If so, then the WSIB will determine whether you have a permanent impairment as a result of your workplace injury.

### Permanent Impairment

A permanent impairment is a physical or functional abnormality or loss, including disfigurement. This is established through the objective medical information on your claim

file to support whether there is a permanent functional abnormality or loss, such as decreased range of motion or permanent workplace restrictions.

### Non-Economic Loss (NEL) Award

If the WSIB determines that you have a permanent impairment as a result of your workplace injury, you may receive a NEL award. A NEL award is a lump sum award that is calculated using a prescribed rating schedule. It is intended to reflect the presence and degree of a worker's permanent impairment, reflected as a percentage of a whole person impairment. It is not intended to compensate for pain and suffering, or loss of earnings.

If you disagree with a WSIB decision regarding the closure of your claim file, MMR, permanent impairment or NEL, an Intent to Object Form must be filed within six months of the date of the decision letter. Go to page 19 to see how ONA can help you.

### Other Income Resources

When you file a WSIB claim, you may be faced with a situation where you are unable to work due to your workplace injury or you are encountering difficulty with your return to work with your employer. The WSIB may make the decision that you are capable of working, even if your doctors authorize you off from work, and deny entitlement to LOE benefits. You can appeal this decision, but the WSIB appeals process can be lengthy, so you may need to investigate whether there are other income sources available to you during this time.

We strongly recommend that you speak with your Bargaining Unit representative. They will be able to advise you of your options and whether there is any possibility of filing a grievance.

### Short-Term Disability/Long-Term Disability

Depending on your status, how long you've been employed and the sector you work in you may be able to access short-term (STD) and long-term disability (LTD) benefits. If you receive either STD or LTD and your WSIB claim is allowed on appeal, you will be required to reimburse the amounts that you received while on STD/LTD. You may also be required to receive 15 weeks of Employment Insurance (EI) benefits as a bridge between STD and LTD, which also requires reimbursement if successful on appeal.

**Note:** Even if the WSIB accepts your claim and pays LOE benefits, it is beneficial to apply for LTD within the insurance carrier's deadline. This way, if a problem arises later on with your WSIB claim, you may still be able to access your LTD benefits.

Please note that WSIB LOE benefits are 85 per cent of your net average earnings, and STD is up to 100 per cent of your wages. You may be required to reimburse the employer the difference if you are successful on appeal.

Check your collective agreement and contact your Bargaining Unit representative if you have any questions or concerns about accessing STD/LTD.

### Employment Insurance Sickness Benefits

If you do not have employer-sponsored STD or LTD coverage, you may apply for employment insurance sickness benefits through the Government of Canada.

### ONA Johnson Insurance

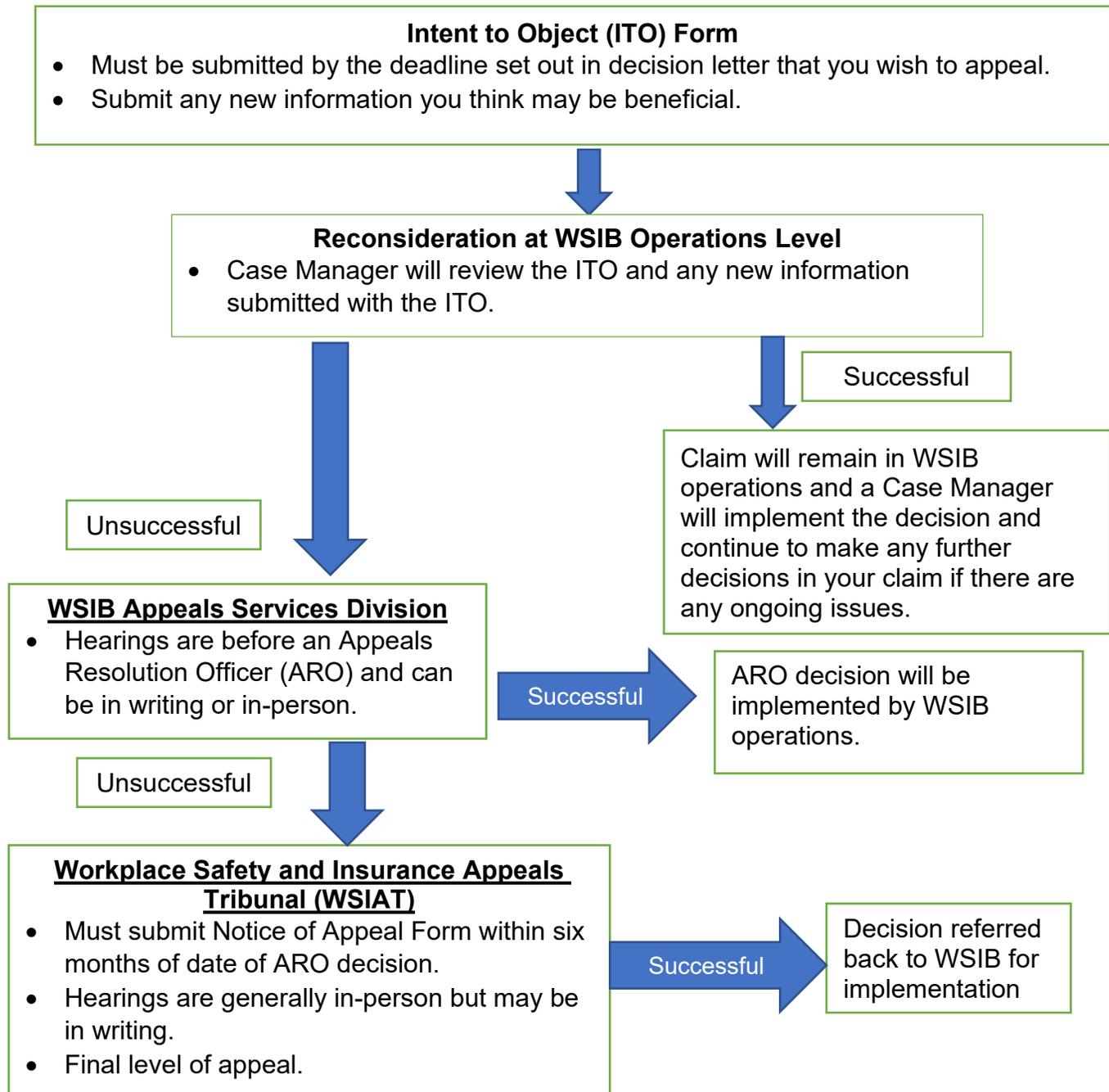
As an ONA member, you may also be eligible for long-term disability coverage through Johnson Insurance. To apply, contact Johnson Insurance directly. For further information, please see the resources page.

### Reimbursement/Income tax adjustments

If your WSIB claim is allowed on appeal and you receive retroactive LOE benefits from the WSIB, you will be required to reimburse the amounts that you received from any insurance carrier/benefit provider, (such as the ones noted above). You may also need to file an income tax adjustment.

Please seek advice from a qualified professional if you think this may be the case.

## Section B: WSIB Appeals Process



### ONA is here to help!

If you receive an adverse decision from the WSIB that you wish to appeal **or** notice of an employer appeal, please contact ONA's WSIB Intake:

- Email: [WSIBintake@ona.org](mailto:WSIBintake@ona.org) or
- Phone: 1-800-387-5580, press "0" and ask to speak to WSIB intake or extension 7721.

For more information on ONA's assistance with WSIB appeals, please refer to **Section C** of this guide.

## Intent to Object Form

When the WSIB makes a decision on your entitlement to benefits, they will provide a written letter that explains the criteria they used to make the decision and the rationale used to make its decision concerning your entitlement to benefits. Within this letter, there will be an appeal deadline. In order to appeal the WSIB's decision, an Intent to Object (ITO) Form must be filed before that deadline.

If an ITO is not filed in time, then the issues contained in that decision letter cannot be appealed. The WSIB may extend the timeline to appeal, but extensions are granted for very limited reasons, such as serious illness.

### **ONA is here to help!**

If you receive an adverse decision of the WSIB and you wish to appeal this decision, ONA will file an ITO on your behalf. Contact ONA's WSIB Intake immediately:

- Email: [WSIBintake@ona.org](mailto:WSIBintake@ona.org) or
- Phone: 1-800-387-5580 press "0" and ask to speak to WSIB intake or extension 7721.

For more information on ONA's assistance with WSIB appeals, please refer to **Section C** of this guide.

If you are unsure whether you want to appeal the WSIB's decision, it is better to err on the side of caution and file an ITO. Filing an ITO with the WSIB preserves your right to appeal that decision, but you are not required to move forward with an appeal. The ITO form can be found on the WSIB's website.

## Reconsideration at WSIB Operations Level

When the WSIB receives a completed ITO form, it then reviews the form, including any new information that may have been provided. This is the first level of appeal at the WSIB. The WSIB may:

- Uphold its original decision. This means that the WSIB has not changed its decision, and the matter will proceed to the next level of appeal to pursue entitlement to WSIB benefits.
- Reconsider its original decision. This means that the WSIB has changed its decision and will advise you how your entitlements (LOE, health care) have changed based on the reconsideration decision.

## WSIB Appeals Services Division

The WSIB Appeals Services Division (ASD) is the next level of appeal at the WSIB. It is an internal division of the WSIB, but it is separate and independent from the WSIB operations level. An appeal is heard by an Appeals Resolution Officer (ARO), and it may be in writing or in-person.

A completed Appeals Readiness Form (ARF) indicates that a matter is ready to proceed to the WSIB's Appeals Services Division.

The ARO will review the WSIB claim file along with any other information that was provided, but a hearing before an ARO is an opportunity for a fresh review of the issue(s) that are being appealed. The ARO will make their decision based on the evidence in the claim file, and any written submissions or testimony provided by you and any witnesses.

When your matter is ready to proceed to the ASD, an Appeals Readiness Form (ARF), must be completed and submitted. An Appeals Resolution Officer can only make a decision on the specific issue(s) or decision(s) that are contained in your Appeals Readiness Form. Multiple adverse decisions (such as a denial of LOE and MMR) can be heard during the same hearing before an ARO.

### Appeals Services Division – Process

These are the steps that will occur prior to a hearing before the ASD:

- Ensure that all the necessary evidence has been gathered, including any witnesses, (if applicable). This information must be submitted with the ARF.
- Complete and submit the ARF. The ARF indicates to the WSIB that all the evidence has been gathered for the appeal, and the party is ready to proceed with a hearing.
- Indicate whether the appeal will proceed by way of an oral hearing or in writing. Reasons for requesting an oral hearing must be provided with the ARF.
- If the matter is proceeding by way of a hearing in writing, then written submissions must be provided with the ARF.
- Submit the ARF and any additional documents. The WSIB will notify your employer that you are proceeding with an appeal and give them an opportunity to indicate whether they wish to participate in your appeal. If they choose to participate, they will receive access to your WSIB claim file, your ARF, and any documents you provided with the ARF.
- The WSIB will review the documentation and determine whether the matter will proceed by way of oral hearing or in writing.
  - If an oral hearing was requested, and the WSIB decides that the matter should proceed in writing, the WSIB will allow time for written submissions to be provided.

### ASD Hearings – Written

Once it is determined that a matter will proceed in writing, your employer will have an opportunity to provide submissions in writing if they are participating in your appeal. The ARO will then review all of the information on the claim file, including any submissions received from the worker and employer and issue a decision in writing.

### ASD Hearings – Oral

Once it is determined that a matter will proceed by way of an oral hearing, your employer will have an opportunity to indicate whether it will be participating in the oral appeal. Once this is confirmed, the ASD will contact you to schedule a date for a hearing. Typically, the ASD will want to schedule a date within 90 days of the submission of the ARF and expects that there will be no unnecessary delays in scheduling the hearing.

While a hearing before an ARO is not as formal as a court proceeding, it still follows a similar format. On the day of your hearing, you will provide testimony before the ARO, (and if there are any witnesses, they will also provide testimony). If your employer is participating, they will also have the right to ask you (and any of your witnesses)

questions, as well as provide testimony from their own witnesses (who may also be cross-questioned). The ARO might also ask you and the employer questions directly.

A good written submission will:

- Explain the reasons why the WSIB's decision is wrong and connect the explanation to any evidence such as medical reports or documents in the claim file.
- Identify the relevant WSIB policies applicable to the case.
- Not ignore the gaps or weaknesses in the case and explains them as best as possible.
- Be as concise as possible and easy for the ARO to read. If referring to specific documents, it will reference the name and date of the document.

A strong oral hearing advocate:

- Is familiar with the WSIB claim file and knows where to locate documents ahead of time.
- Identifies the relevant law and policies and explains how the evidence meets these criteria.
- Is clear and concise. This is not an opportunity to rehash everything that has happened in the WSIB claim.
- Listens to any questions that are being asked and offers thoughtful answers – no guessing.
- Asks for clarification if necessary.

After the hearing is complete, the ARO will not provide a decision on the spot, rather, the ARO will send all parties a written decision in the mail.

### **Remember! ONA is here to help!**

If you want assistance with a WSIB appeal, please contact ONA WSIB Intake immediately:

- Email: [WSIBintake@ona.org](mailto:WSIBintake@ona.org) or
- Phone: 1-800-387-5580 press "0" and ask to speak to WSIB Intake or extension 7721.
- For more information on ONA's assistance with WSIB appeals, please refer to **Section C** of this guide.

### **Workplace Safety and Insurance Appeals Tribunal (WSIAT)**

If you are unsuccessful at the WSIB Appeal Services Division level, the next and final level of appeal is before WSIAT. The WSIAT is an independent administrative tribunal whose sole mandate is to hear appeals of WSIB Appeals Resolution Officer (ARO) decisions.

## WSIAT process

If you wish to proceed to the WSIAT, a Notice of Appeal Form must be submitted within six months of the date of the ARO decision. Once WSIAT receives the Notice of Appeal Form, the following will happen:

- WSIAT will send a Readiness Form, which allows the WSIAT to prepare the case record. The case record is a hard copy of your entire WSIB claim file, which is sent in the mail along with a Confirmation of Appeal Form.
- When the case record is received, it should be reviewed in its entirety to determine if there is any information missing, or whether additional information should be obtained to support your case prior to proceeding with your hearing.
- When all of the evidence has been gathered, the Confirmation of Appeal Form must be completed and submitted. This Form must be completed within 24 months of your first contact with WSIAT (which is usually the Notice of Appeal), otherwise the WSIAT may consider the appeal abandoned and close the appeal file.
- Along with the completed Confirmation of Appeal Form, any new information or documents that are intended to be used at the hearing that are not already in the case record should be enclosed.
- Most hearings at WSIAT are oral hearings. The WSIAT has hearings in writing for certain matters. A written hearing may be requested, but the WSIAT will ultimately decide the manner in which a hearing will proceed.
- Upon receipt of a completed Confirmation of Appeal Form, WSIAT will proceed to schedule your hearing.

Once your hearing is complete, a written decision will be received in the mail. WSIAT is the final level of appeal for WSIB matters.

## Implementation

If successful at any level of appeal, the implementation of your appeal will be handled by the WSIB operations level. A case manager will review the decision and determine what benefits you are entitled to. This will result in another decision, which you may or may not choose to appeal.

## Section C: ONA WSIB Appeal Assistance

If you receive an adverse decision from the WSIB or you are notified that your employer is appealing a decision on your WSIB claim, and you meet ONA's representation criteria, ONA will represent you with respect to your WSIB appeal. If you do not meet the representation criteria, we may provide you with self-help kits.

Please note that there is no guarantee on the timeframe for ONA to do your appeal. You have the option at any time to do the appeal on your own, or with an outside representative, but ONA will not pay for any costs associated with this such as legal fees or costs for medical reports.

### Representation Criteria

ONA is not legally required to provide representation on WSIB matters for its membership. The ONA Board of Directors has set the following criteria for representation on WSIB appeals for its members:

#### **ONA will NOT provide WSIB representation in the following circumstances:**

1. Member or employer appeal has no reasonable chance of success.
  - This includes but is not limited to cases unsupported by medical documentation; situations where significant and necessary evidence from a witness is not available; there is no or minimal evidence that the member was cooperating at the time in question and *WSIA* regulations and policies do not support the member's position.
2. Member fails to meet WSIB time limit for member or employer appeal.
  - The time limit to notify the WSIB of a member appeal is usually **six months**, but it is only **30 days** for Return-to-Work decisions. The time limit to respond to an employer appeal is usually **less than one month**. The time limit for the appeal is set out in the correspondence from the WSIB. You must notify ONA as soon as possible with enough time to meet the WSIB's time limits on your behalf.
3. Member fails to cooperate.
  - ONA will not represent members who are not prepared to cooperate with ONA staff trying to assist them. This includes members who are unwilling to file necessary grievances or to attempt necessary suitable accommodation as arranged through the ONA Labour Relations Officer; members who don't provide ONA staff with the requested information and members who don't provide assistance in obtaining medical information and/or see another health-care practitioner, if necessary. This also includes members who had been previously represented by ONA on a WSIB issue and the claimant chose not to proceed and that decision impacts negatively on the current claim; members who didn't respond to calls and letters and members who obtained another representative after ONA staff had begun work on their case.
4. Member has alternative representation.
  - ONA will not represent members who elect or elected to be represented by persons other than ONA; members whose claims are or have been handled by

other representatives and members who elect to sue a third party. This does not include members where the prior alternative representation in previous issues or claims has no impact on the current claim or issue.

5. Member or employer appeal regarding increase in permanent impairment/non-economic loss award.
6. Member or employer appeal solely for health-care benefits where initial entitlement has been granted.
7. Member or employer appeal regarding earnings basis calculations.
8. Member or employer appeal regarding access to member's WSIB claim.
  - Pursuant to the WSIA, the accident employer is entitled to access a member's WSIB claim file including all relevant health information, if it wishes to pursue or participate in an appeal.
9. Member or employer appeal regarding employer request for member to undergo independent medical examination (IME).
  - Pursuant to the WSIA, the accident employer is entitled to request that a member undergo an IME.
10. Employer appeal regarding second injury enhancement fund (SIEF).

### ONA WSIB Appeal Process

If you receive an adverse decision of the WSIB or notice of an employer appeal, please contact ONA's WSIB Intake as soon as possible:

- Email: [WSIBintake@ona.org](mailto:WSIBintake@ona.org) or
- Phone: 1-800-387-5580 press "O" and ask to speak to WSIB intake or extension 7721.

### Authorization Forms

You will be sent two authorization forms to complete:

- **WSIB Direction of Authorization – Claims.** This form allows ONA to act on your behalf and request and receive information from the WSIB, including your claim file.
- **ONA Authorization.** This form is the agreement between yourself and ONA regarding ONA's representation on your WSIB appeal.

**Complete and send these forms to ONA's WSIB Intake as soon as possible.**

You will also be asked to complete a questionnaire that asks questions about your workplace injury.

### ITO Form

If you have not submitted an ITO for the decision you wish to appeal, and you have contacted ONA within the timeframe to appeal the decision, we will submit an ITO for the adverse decision you have identified. If you have already submitted an ITO for the

decision you wish to appeal, ONA will request a copy of your WSIB claim file from the WSIB.

### WSIB Claim File Received/Reviewed by ONA WSIB Appeals Team

Once ONA receives a copy of your WSIB claim file, a Labour Relations Officer (LRO) on the WSIB Appeals Team will review your claim file to assess for merit to proceed. If your appeal has merit to proceed, it will be placed in queue to be assigned to a LRO in the future. When the assigned LRO is ready to start working on your appeal, you will be contacted by the assigned LRO to discuss your appeal.

If it is determined that your appeal does not have merit to proceed, you will be contacted by the LRO.

**Important:** If you receive any further decisions from the WSIB after ONA has opened your file, please contact WSIB Intake at (416) 964-1979, ext. 7721 or email [WSIBIntake@ona.org](mailto:WSIBIntake@ona.org) and provide us with a copy of the decision immediately. This way, we can ensure that your time limit to object to the decision can be met. If you fail to advise us of any further decisions and, as a result, the timeline to object cannot be met, we will not proceed with acting as your representative on those decisions.

- If you are aware of any previous adverse WSIB decisions that you did not object to, please send a copy of the decision to ONA WSIB Intake immediately, and we will advise you whether this decision can still be appealed.

### Merit

Reviewing your appeal for merit is an ongoing process that will occur at every stage in your appeal. ONA may close your appeal file at any time during the appeal process if the LRO determines that there is no reasonable chance of success.

If at any time your ONA WSIB Appeal file is closed, you may proceed on your own or with an outside representative. The closure only pertains to your file with ONA; your WSIB claim file remains open indefinitely. In these cases, ONA will not pay for the costs associated with proceeding with your appeal such as legal fees or medical reports.

### Downside Risk

During the process of your WSIB appeal, your Labour Relations Officer (WSIB Appeals Team) may identify a downside risk in proceeding with your appeal. A WSIB ARO or the WSIAT may also identify a downside risk in proceeding with your appeal. A downside risk occurs when there is a possibility that you may jeopardize other entitlements that you already have in place by proceeding with your appeal.

If a downside risk is identified, you will be asked whether you wish to proceed with your appeal. ONA will require you to clearly identify that you understand the downside risk and indicate whether or not you wish to proceed with your appeal.

## ONA WSIB Appeal Process: What to Expect

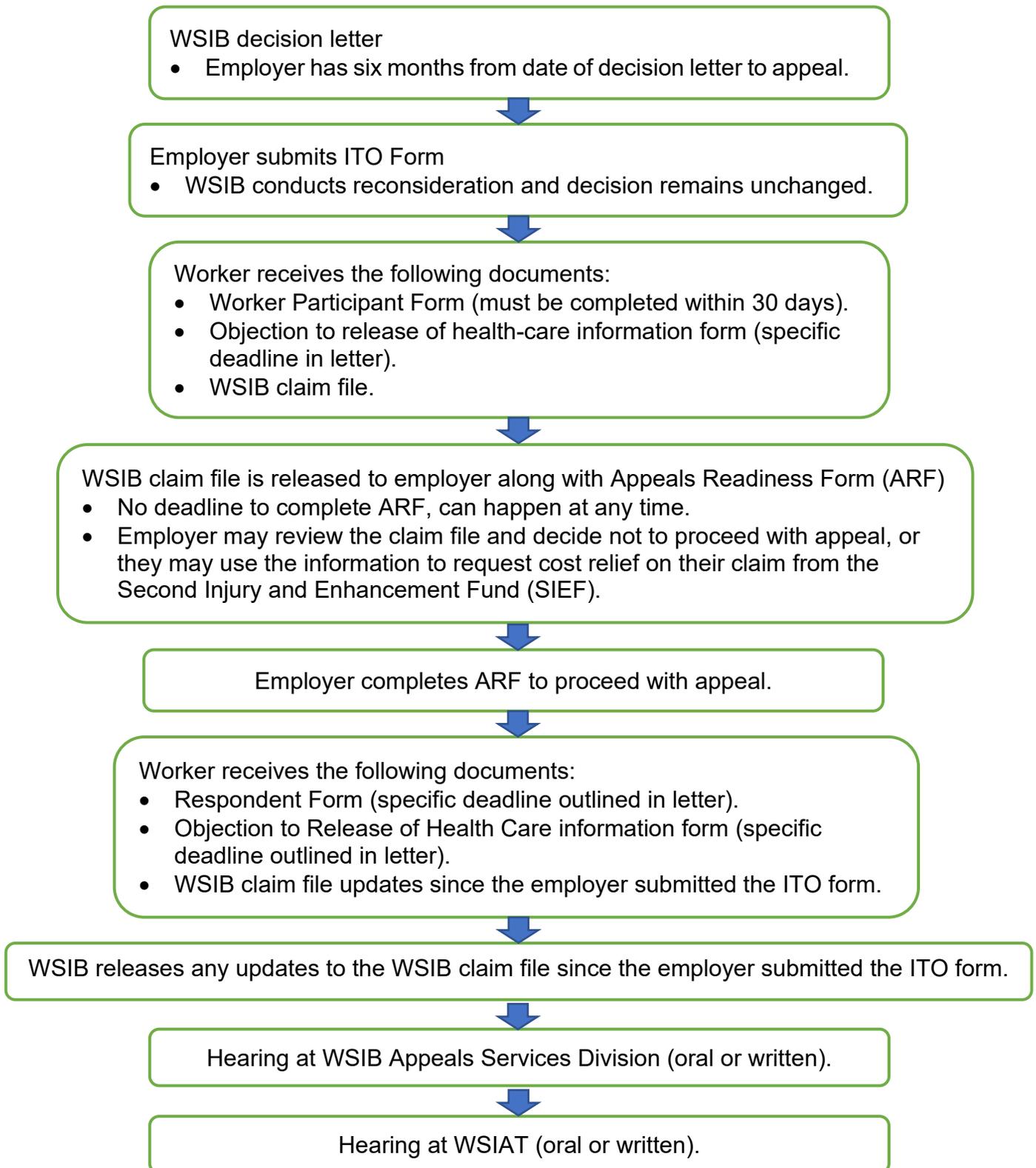
You will be expected to actively participate with the ONA LRO (WSIB Appeals Team) in order to help move your appeal through the WSIB system as quickly as possible.

- You are expected to advise ONA WSIB Intake if you receive any further decision letters in your WSIB claim file after your appeal file is opened with ONA.
- You will likely have several conversations over the phone regarding your appeal with your LRO. Please advise your LRO if you require any accommodations with respect to meetings.
- Please sign all requested authorization forms including medical consent forms as quickly as possible. Contact your LRO if you have any questions about any of the forms they have asked you to complete.
- These forms also authorize ONA staff to share information, including medical information, with other ONA staff as required. If ONA staff are representing you in another proceeding, ONA shares information in order to represent you in all relevant proceedings.
- Your LRO may ask you to consent to them requesting your medical records prior to your workplace injury. Advise your LRO if you have concerns about this, and they can advise you how this may impact your appeal. Failure to cooperate with this request may result in your LRO closing your ONA WSIB appeal file.
- You may be asked to provide contact information for any witnesses you identify.
- You may be asked to assist in locating supporting documentation, medical information, and to speak with your treating professionals about medical reports.
- If your matter proceeds to an oral hearing (either at ASD or WSIAT), you will be expected to participate in preparation meetings in advance of the hearing. These meetings may take place in-person or over the phone at the discretion of the LRO. You will also be expected to attend and participate at any hearing.

## Alternatives to ONA Representation

You are not required to choose ONA as your representative for your WSIB appeal. The WSIB will only allow one worker representative on your claim at a time. If you do not want an ONA representative, you may choose to hire an external representative or represent yourself. Please note that in these cases, ONA will not pay for the costs associated with proceeding with your appeal such as legal fees or medical reports. Please also see the resources section of this guide.

## Section D: WSIB Employer Appeal Process



## Overview

The employer has a right to appeal a WSIB decision concerning your entitlement. When you become aware that your employer is appealing a WSIB decision, contact ONA WSIB Intake right away for assistance.

## ONA Employer Appeal Representation

ONA will provide representation on employer appeals as long as it meets the representation criteria outlined on page 19.

Worker Participant Form, Objection to Release of Health Care Information Form and WSIB Claim File In most cases, you will first receive notice of your employer's appeal with the arrival of a large package from the WSIB. This package contains the following:

- Worker participant form:
  - Must be completed within 30 days of the date of the letter sent with the form. By completing this form, you are indicating to the WSIB that you wish to participate in the appeal, and you will continue to receive updates.
- Objection to release of health-care information form:
  - Must be completed by date specified in the letter sent with the form.
- WSIB claim file:
  - Review your WSIB claim file, especially the section labeled "medical" to determine whether you have any concerns about this information being released to your employer.

## Release of Health-care Information

The WSIB must release the relevant portions of your claim file in order for the employer to participate in the appeals process. This includes the medical information that is relevant to your workplace injury.

Review your WSIB claim file and advise the WSIB if you locate information that is irrelevant to your WSIB claim, such as:

- Copies of documents like direct deposit enrolment forms, employment insurance documents, garnishment orders, etc.
- Health-care information that is **not** relevant to making a decision in your claim file, (for example, blood work results would not be relevant when your workplace injury is a sprained ankle).

Note: any documents contained in the section of your WSIB claim file labeled "No Access" **will not** be released to your employer. Only you and/or your representative will receive a copy of this section.

**If you have no concerns with the health-care information being released:** complete section "A" of the Objection to the Release of Health Care Information Form and send it to the WSIB before the specified deadline along with the Worker Participant Form.

**If you do find irrelevant health-care information: complete section "B" of the Objection to the Release of Health Care Information Form. Clearly identify the specific documents that you object to releasing and explain why.** Submit the Form to the WSIB before the deadline along with the Worker Participant Form. The WSIB will review the information and decide whether to disclose the specified health care information. Following this decision, either party has 21 days to appeal this issue to the WSIAT. Please note that ONA does not provide representation for these kinds of appeals.

## Respondent Form and Objection to Release of Health Care Information Form

If your employer decides to proceed with the appeal to the WSIB ASD, you will then receive another package from WSIB with the following:

- Respondent form:
  - This form indicates that you wish to participate in the appeal and provides an opportunity to indicate whether you agree to the format of the hearing (oral or written) and provides space for additional information and identifies any witnesses. This form must be completed by the date specified in the letter you received with the package.
- Objection to Release of Health Care Information form:
  - This form needs to be completed by the date specified in the letter sent with the package.
- Updates to your WSIB claim file:
  - These are the updated documents from your claim file since the first package that you received.

As before, review the updated information and complete the Objection to the Release of Health Care Information form before the specified deadline. Provide the Respondent Form if you wish to participate in the appeal.

## Second Injury and Enhancement Fund (SIEF)

The Second Injury and Enhancement Fund (SIEF) provides financial relief on an employer's WSIB claims costs if it is determined that a pre-existing condition enhances or prolongs a work-related disability. Employers may request financial relief from the cost of a WSIB claim under the SIEF. If the WSIB grants SIEF, some of the costs of the WSIB claim are not charged to the employer, but instead to the WSIB's SIEF.

An employer's request or appeal for SIEF alone generally does not impact your entitlement to benefits under the WSIB scheme. ONA does not provide representation on appeals where SIEF is the only issue at appeal. If you are uncertain if this is the case, contact ONA WSIB intake for assistance.

If you receive notice of an employer's SIEF appeal, ONA recommends that you review the copy of the WSIB claim file and complete the Objection to the Release of Health Care Information Form by the deadline outlined in WSIB's correspondence.

It is up to you if you wish to participate in the employer's SIEF appeal. ONA recommends that you review the employer's request for SIEF or their appeal submissions, (which will be in the WSIB claim file), and if there are any factual errors that you wish to clarify for the WSIB, you should complete the participant form or the respondent form by the deadline outlined in the WSIB's correspondence.

For further information on the employer appeal process, please refer to Section D of this Guide.

### **ONA is here to help!**

If you receive notice of an employer appeal, please contact ONA WSIB Intake immediately:

- Email: [WSIBintake@ona.org](mailto:WSIBintake@ona.org) or
- Phone: 1-800-387-5580 press "0" and ask to speak to WSIB Intake or extension 7721.

## Frequently Asked Questions (FAQs)

### My WSIB case manager isn't returning my calls. What can I do?

Make note of the dates and times that you have called your case manager. Leave a voicemail message every time you call. If you don't receive a response in a reasonable timeframe (generally around two business days), speak to a customer service representative and ask to speak to your case manager's manager.

Alternatively, you can put your requests or questions in writing and send them to the WSIB. Make sure you date your correspondence and follow-up by telephone. Make sure all correspondence that you send to the WSIB has your WSIB claim number on it.

If you don't receive a response within a reasonable timeframe, ask to speak to a manager concerning the delay. You can also speak with the Fair Practices Commission (see Resources section).

### The WSIB case manager was very rude to me. How do I complain?

You may wish to speak to a manager first to see if they can address your concerns. Failing that, you may wish to contact the Fair Practices Commission (FPC), which handles complaints about the manner in which the WSIB provides its services. The FPC will not handle complaints relating to WSIB claim decisions. The only way to challenge a WSIB decision concerning your benefits is to appeal the decision. For more information about the FPC, see the Resources section.

### The information that my employer provided on their Form 7 is incorrect. What can I do?

Call the WSIB and advise them if you see any incorrect information on the Form 7. Provide backup documentation if you have any.

### The information provided by my treating professional is incorrect. What can I do?

Make an appointment with the treating professional to discuss your concerns. If the treating professional provides additional clarification, ensure that the WSIB receives this information. Do not change any information on the forms/documents provided by your treating professional.

### I've only lost two days from work. Do I need to file a WSIB claim?

You have an obligation to report any injury that occurs at work to your employer. Under the *Workplace Safety and Insurance Act*, your employer is required to report the workplace injury to WSIB if you require health care, lose time from work, or require modified hours/duties and are receiving less than full pay. The WSIB will make the decision concerning whether a workplace accident took place, and whether you are entitled to loss of earnings benefits.

ONA advises its members to always report any workplace accident to your employer and the WSIB.

### Can't my employer just pay my loss of earnings from my short-term disability?

Some employers may provide WSIB LOE advances while the WSIB is making the decision to allow your WSIB claim. Contact your Bargaining Unit representative for more information.

My employer paid my wages while I was off, but when they realized it was a WSIB claim, they took money from my paycheque. What do I do?

Contact your Bargaining Unit representative immediately for further assistance.

I am receiving WSIB LOE. What about my health benefits and pension contributions?

WSIB will not pay your portion of contributions for health benefits provided by your employer or your pension contributions. Contact your employer or your plan administrator(s) and advise them that you are receiving WSIB benefits.

WSIB approved my claim and now my employer is appealing. What do I do?

Contact ONA WSIB Intake as soon as you become aware that your employer is appealing a WSIB claim decision. For further information on employer appeals, please see **Section D** of this Guide.

The WSIB says I'm capable of returning to work, but my doctor says I can't. How do I get paid?

The WSIB will only pay full loss of earnings if your medical information supports that you are:

- Totally incapable of performing any work (i.e., totally disabled);
- There is no available suitable modified work for you; or
- Modified work is available for you, but it is not suitable.

For more information regarding loss of earnings see page 7 and for information regarding modified work, see page 9.

You may be able to access other income resources, such as STD/LTD or EI Sickness Benefits. See page 12.

I don't want to provide medical information to the WSIB. What do I do?

The WSIB can request further medical information from you in order to make a decision concerning entitlement. Sometimes this may include your medical history for up to five years prior to your workplace injury. You do not have to provide your consent if you do not wish the WSIB to obtain these records. However, the WSIB will not adjudicate your claim without the information it considers relevant to make the decision which will impact your entitlement to WSIB benefits.

I tried to perform modified work, but it's making my injury worse. What do I do?

Advise your employer and Bargaining Unit representative right away. Seek medical attention and advise the WSIB that you are having difficulty performing your modified work and you have sought medical attention. You, your employer, the WSIB, and ONA should work together to find modified work that is within your functional abilities and restrictions. Remember that you have a duty to cooperate in the return-to-work process and should attempt to perform modified work if it is within your functional abilities and restrictions.

I re-injured myself and my doctor agrees, but the WSIB says that it's a new claim?

The WSIB only considers a re-injury as a recurrence if there is no new significant incident/exposure (if you re-injured yourself reaching for something on a shelf, for example). If your re-injury occurred as a result of an incident with some significance, (such

as a slip and fall or an assault by a patient), the WSIB will open a new claim. If your doctor believes that it is related to your prior claim, advise the WSIB accordingly.

### I'm fed up with dealing with the WSIB and return to work. What if I resign my job or retire early? What if I change my employment status?

The WSIB generally views resignation of your employment or the decision to retire as a decision you are making that voluntarily severs the employment relationship. As a result, you may lose entitlement to WSIB benefits as of the date of your resignation or retirement.

Similarly, if you change your employment status from full time to part time or casual, the WSIB may also view this as a voluntary decision on your part and may impact your benefits.

Please consult with your Bargaining Unit representative or contact WSIB Intake prior to making this decision.

### The WSIB says I've fully recovered, but I haven't. What do I do?

The WSIB will close claim files when it determines that the work-related injury has resolved and often states that your ongoing symptoms are related to pre-existing, degenerative conditions, or the ongoing issue was not caused by your workplace injury. If you disagree with this decision, you must appeal the decision. ONA can help you appeal this decision – see **Section C** of this Guide for further information about how ONA can assist you.

## Glossary

The following are acronyms that are used in this guide and also terms that you may find within your WSIB claim file:

ARF – Appeals Readiness Form ARO – Appeals Readiness Officer  
ASD – WSIB Appeals Services Division FAF – Functional Abilities Form  
FPC – Fair Practices Commission HCB – Health-Care Benefits  
IME – Independent Medical Examination ITO – Intent to Object Form  
LOE – Loss of Earnings Benefits LRO – ONA Labour Relations Officer LT – Lost Time  
LTD – Long-Term Disability Insurance MMR – Maximum Medical Recovery NEL – Non-Economic Loss Award NFA – No Further Action  
NLT – No-Lost Time  
PLOE – Partial Loss of Earnings  
REC – Regional Evaluation Centre (WSIB treatment clinic) RSI – Repetitive Strain Injury  
RTW – Return to Work  
RTWS – Return to Work Specialist  
SIEF – Secondary Injury and Enhancement Fund  
STD – Short-Term Disability  
TX - Treatment  
WSIA – Workplace Safety and Insurance Act, 1997 WSIB - Workplace Safety and Insurance Board

## Contact Us: ONA WSIB Appeals

If you have any questions about this guide, your WSIB claim or other WSIB issues, please contact the ONA WSIB Intake Line:

Monday-Friday, 8:30 a.m. to 4:30 p.m.

416-964-8833 ext. 7721

1-800-387-5580; press "0" for Toronto office and enter ext. 7721. After hours:

Please leave a message and your call will be returned within

48 hours Email: [WSIBintake@ona.org](mailto:WSIBintake@ona.org)

## Additional Resources

### Employment Insurance Sickness Benefits – Government of Canada

Apply for EI sickness benefits online, over the phone or in-person at any Service Canada location. [www.canada.ca](http://www.canada.ca)

Phone: 1-800-206-7218

### Law Society of Ontario Law Society Referral Service

The Law Society of Ontario provides an online referral service for Ontarians who require legal assistance with a lawyer or paralegal. The Law Society of Ontario will provide the name of a lawyer or paralegal who will provide a free consultation of up to 30 minutes to help you determine your rights and options. There is no fee to use this service. [www.lso.ca](http://www.lso.ca)

### Occupational Health Clinic for Ontario Workers (OHCOW)

The Occupational Health Clinic for Ontario Workers (OHCOW) is a non-profit organization. It is one of the Safe Workplace Associations funded by WSIB.

OHCOW's mission is to prevent occupational illnesses and injury, and to promote the highest degree of physical, mental and social well-being of all workers. It provides clinics throughout Ontario that are available to provide medical examinations for a full range of work-related illnesses. The clinics are open to anyone with a possible occupational health problem and are free of charge to workplace parties.

Tel: (416) 510-8713

Toll-free: 1-877-817-0336

Fax: (416) 443-9132

Website: [www.ohcow.on.ca](http://www.ohcow.on.ca)

Email [info@ohcow.on.ca](mailto:info@ohcow.on.ca)

### ONA Johnson Insurance

ONA members who do not have access to an employer-sponsored STD or LTD plan may be eligible for LTD benefits through Johnson Insurance. For further information, please contact Johnson Insurance directly.

Website: [www.ona.johnson.ca](http://www.ona.johnson.ca)

Phone: 1-877-638-4753

Email: [ona.claims@johnson.ca](mailto:ona.claims@johnson.ca)

## Workplace Safety and Insurance Board

WSIB forms and policies can all be found on the WSIB website.

You can file a Form 6 and upload documents for your WSIB claim on the WSIB's website – this is the quickest way to send documents to the WSIB:

<https://www.wsib.ca/en/onlineservices>

You can also send all claims-related documents to the address or fax number below. Make sure to put your name and claim number on each page.

Head Office – Toronto 200 Front Street West Toronto, ON M5V 3J1 Tel: (416) 344-1000

Toll-free: 1-800-387-0750

TTY: 1-800-387-0050

Fax: (416) 344-4684 or 1-888-313-7373

Website: [www.wsib.ca](http://www.wsib.ca)