



Confronting the Myths & Workplace Prejudice Whether Injured Workers Are Allowed or Prohibited from Working Overtime

By: Gary Majesky, *WSIB Consultant & Executive Board Member*



Over the years members and Business Representatives ask me to clarify whether injured workers are allowed or restricted from working overtime, or alternatively, can injured workers be scheduled to work premium pay shifts.

In my experience, overtime is a source of controversy for injured workers. However, the simple answer is Yes an injured worker can work OT, so long as the work you're performing is suitable, meaning modified and within your medical/functional limitations. However, an employer does not have to create a modified job on the overtime shift, and that fact is important to bear in mind. If there is suitable work available by virtue of the work/job tasks being suitable on the OT shift, an injured worker should be given the opportunity.

It's no secret that many employers and supervisors will take the position "if Gary is injured and on modified duties, how can he work overtime?" They see this as contradictory and counterintuitive. From my perspective, being denied OT is a form of discrimination particularly when it is not contrary to an injured workers Functional Abilities Form (FAF).

Moreover, working OT is not against the law, or stipulated in the *Workplace Safety and Insurance Act*. Simply, there is no statutory stipulation that restricts an injured worker to working a 37 1/2 hr/week or whatever work week you're scheduled (e.g., 4/9s, 40/wk, etc). Even though there is no legal prohibition that restricts an injured worker from working OT, real world prejudice tends to rear its head, often times well intended, and that's what injured workers are up against.

In my opinion, working OT, so long as you're performing work within your medical & functional abilities should not attract an adverse inference regarding the genuineness and legitimacy of your injury ("Gary is a piece of work, he says he's injured but wants to work overtime").

Once the workplace parties cut through the political posturing, there is one overarching caveat. The employer is not obligated to provide an injured worker with modified/suitable work if it is not available during the OT shift. Mind you, the employer is obliged to make meaningful efforts to coordinate and plan work so that an injured worker can enjoy the bounty that able bodied electricians are enjoying.

When the other lions (able bodied OT workers) start snarling and growling while feasting on the OT, the injured lion may not be able to fight back. There is a Darwinian, survival of the fittest aspect to this.

From my perspective, put your maw into the body cavity and eat and gorge with the other lions, assuming they give you seat at the table and

let you share in the bounty. You may find that it isn't the employer who objects to an injured worker working OT, but your coworkers.

Distribution of Overtime (injured worker not offered OT)

Often times an employer's immediate response when overtime surfaces is they don't want the injured worker to suffer further injury or frustrate their medical recovery in the belief that overtime is medically contraindicated.

WSIB Law & Policy Silent on Overtime

Under the *Workplace Safety and Insurance Act*, and related WSIB policies, there is nothing that limits or circumscribes a members' ability to work overtime, or for that matter, an employer's obligation to offer suitable work during OT.

More importantly there is no remedial mechanism under the law for WSIB to enforce the equitable distribution of overtime in relation to injured workers. Respectfully, overtime is a labour relations issue, and WSIB is not the court of competent jurisdiction to deal with this matter.

Generally, when an injured worker submits a Functional Abilities Form (FAF) it delineates their medical precautions, and typically there is no reference to hours of work, unless the health professional stipulates part-time hours, which is a graduated return to work. If you are on a graduated RTW, and not working fulltime hours, you can forget about OT.

Is Suitable Work Available during Overtime

If an injured worker can identify OT jobs that they can perform, which are within your medical precautions, then I see no reason WHY an injured worker would not be offered this opportunity.

However, it is important to document, in writing, what overtime job tasks that you believe you can perform, but speak to and involve your steward and Business Representative. The knee jerk reaction of most employers is it's counterintuitive for an injured worker to work overtime because this represents an intolerable risk for re-injury.

However, one could make the same argument about working a 40 hr. / wk, yet no one, particularly the WSIB, ever makes that argument.

Identifying Suitable OT Work vs Employer Creating a Modified OT Job

Injured workers should formalize their request to work overtime in writing, including the job tasks you can perform. This will allow you to rebut an employer response that they are being forced to create a



modified OT job. What you're advocating is being assigned suitable work that exists during OT, which doesn't require any significant effort to coordinate or cobble job tasks together.

At the end of the day the employer will likely argue there is no suitable work available during overtime or under the mistaken belief that they are being forced to create an OT job, when this is merely a *job carving* exercise.

Injured workers often times have a hostile experience when on an active WSIB claim, consequently, the last thing an accident employer wants to do is reward an injured worker by offering overtime.

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Canada's Wonderland

IBEW 353's annual summer picnic will be at Canada's Wonderland on **Saturday, July 20, 2019**. The cost will be **\$25.00** per person. This includes the entrance fee, park rides and a buffet luncheon. For members with a season pass, the cost of the buffet luncheon will be **\$10.00** per person. These prices are for members and **their dependants only**. Guest passes are available at a cost of **\$50.00** per person or **\$20.00** per person for the meal only.

Registration and payment is available at all four union halls starting May 1st, 2019. Age two (2) and under are free. Three (3) years of age and up requires an entrance ticket. Parking is \$22.00 per car (paid by the member).

In order for you to pick up your tickets on the day of the event by 12:00 noon sharp, you must bring your paid receipt.

Note: IBEW 353 kiosk will be open from 9:00am to 12:00 noon sharp and is located between the berms in front of the park entrance turn stiles. **Members arriving after 12:00 noon are on their own.**

Website: www.canadaswonderland.com

Absolutely No Refunds!

Please keep an eye on the events web page for the latest event updates.

**Canada's Wonderland
Saturday, July 20, 2019**

REGISTRATION DEADLINE: July 12, 2019

In order for you to pick up your tickets on the day of the event by 12:00 noon sharp, you must bring your paid receipt.

Member Name:

Members Card & Daytime Phone

Absolutely No Refunds!

of People in your Group