



## WSIB Claims MUST Be Timely and Reported When You Seek Health Care, Sadly Members Are Submitting Claims After a Layoff

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Over the past year a troubling trend has emerged. Too often members fail to submit WSIB claims for fear of a layoff, or not wanting to harm the employers' financial interests. While the latter is noble, the inevitable layoff materializes, and the woe is me chorus begins (I'm a good guy, hard worker, and not a cheat).

Folks, this isn't rocket science, because most members have attended employer Safety and Orientation sessions when starting a new job. These sessions include a primer on health and safety, and to report ALL incidents and injuries, which members sign-off indicating they are aware of their reporting obligation. You'll see your signature on these documents when a WSIB appeal is filed.

### Workers Have A Legal Obligation to Report Injuries

It doesn't matter whether you delayed seeking medical attention, had hoped the problem would resolve with conservative treatment, or delays in clarifying the underlying diagnosis. As an injured worker you have a positive and legal obligation to report an injury to your employer when you suffer an injury.

As soon as you receive health care for an injury, workers are legally obligated to report this to the employer, and a claim should be registered with the WSIB if you sought health care.

This obligation is mandatory if you're aware the injury is work related and arose in the course of employment. You must also tell your treating health professional if the injury is work related, because this will trigger the filing of a WSIB **Form 8, Health Professionals First Report**.

Often members screw themselves and tell the health professional not to submit paperwork to the WSIB because this will sour the employment relationship for fear of layoff. Often times I discover the member failed to tell the health professional the injury was work related, and later on this causes problems because there is no clinical record you initially reported the injury being work related.

Another problem I frequently encounter is members expect employers and health professionals to submit paperwork to register a WSIB claim, not realizing that they too have a legal obligation to do so.

The general expectation is a health professional should file a **Form 8** with the WSIB, assuming you reported the injury was work related; however, it is the worker who has the legal obligation under section 22 of the *Workplace Safety and Insurance Act* to submit a claim. Bottom line, ignorance of the law is no defense in submitting a untimely WSIB claim.

### Time Limits to File Claims

From a legal perspective, once a worker becomes aware of a potential work related injury the reporting clock starts ticking under the law, and a worker must file a claim within 6 months, pursuant to section 22 of the *Workplace Safety & Insurance Act*. Failure to do so will result in a claim being barred because it was untimely, even though the claim may have merit and been allowable.

Although the law says 6-months, the expectation to formally report is days, or 1-2 weeks at most, at which point claims are denied on the basis of "no proof of accident."

Subsections 22(1) and (3) of the *WSIA*, stipulate the time limits that a worker must file a WSIB claim:

22(1) A worker shall file a claim and soon as possible after the accident that gave rise to the claim, but in no case shall he or she file a claim more than six months after the accident, or in the case of an occupational disease, after the worker learns that he or she suffers from a disease.

(3) the Board may permit a claim to be filed after the six-month expires, if in the opinion of the Board, it is just to do so.

With respect to disablement claims, where the injury emerged gradually, the policy stipulates:

In disablement claims (conditions that emerge gradually over a time) the six-month deadline begins from the date the worker reports the disablement as work-related. This can be reported to the employer, health professional, or the WSIB.

However, as the policy indicates, simple awareness of the condition does not start the time running for establishing a claim. Under the policy, the worker must be aware the condition (injury) in question could be work related.

WSIB Policy 15-01-03 stipulates that the Board will allow an extension of time for filing a claim where there are "exceptional circumstances", including:

- Compelling personal reasons
- The worker may have been unable to understand the time limit
- Whether the worker reported the accident to the employer, health professional, or co-workers.



Don't for one minute hang your hat on "compelling personal reasons" as your excuse for failing to file a timely WSIB claim. That bar is very high, and not easy to establish.

### WSIBs Five Point Checklist (allowable claim)

Under WSIB Policy 11-01-01, claims are adjudicated using a 5-point checklist. If there is one red flag, a claim is denied, and the worker must appeal:

- an employer
- a worker
- personal work-related injury
- proof of accident, and
- compatibility of diagnosis to accident or disablement history

In my experience the behaviour of an employer changes when a worker submits a WSIB claim. Often times they'll challenge a claim and submit signed statements from co-workers, including legal submissions, disputing a work injury happened, was never reported, and in some instances, produce evidence the injured worker made statements that the injury was not work related.

### Failure to Report - *De facto* Proof of Accident Dispute

The simple truth is the failure to report an injury becomes a proof of accident dispute, particularly in the absence of verifiable evidence that you suffered a work injury in the course of employment. There is a common expression that union reps tell members when dealing with workers compensation, health & safety, and grievances, that *DOCUMENTATION TRUMPS CONVERSATION*.

There is also settled case law that the failure of other parties to submit paperwork to WSIB, does not relieve the injured worker from

the section 22 burden of reporting an injury to the WSIB, particularly when there is a mature bargaining relationship between the workplace parties in a unionized environment.

### Steps in Registering a WSIB Claim

1. Request that your family doctor (or whomever first treated you) submit a **Form 8, Health Professional First Report** to the WSIB.
2. Once your health professional files a **Form 8** with WSIB, you must tell your employer that you saw a health professional and they reported a work injury to the WSIB. Injured workers should also be given page 2 of the **Form 8**, to give to your employer, because this documents your work/functional abilities.
3. Alternatively, a WSIB Functional Abilities Form (FAF) can be completed separately which you can download from my website [www.ibew353.org/wsib](http://www.ibew353.org/wsib)
4. Injured workers must also file a **Form 6, Workers First Report of Injury/Disease** with the WSIB, and give a copy to the employer. You can submit an Electronic **Form 6** by visiting the WSIB website, or obtain a downloadable PDF from my website [www.ibew353.org/wsib](http://www.ibew353.org/wsib)
5. Once the employer is aware you saw a health professional for a work injury, you must give them a copy of the **Form 6**. The employer must then file a **Form 7, Employers Report of Injury**.

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