



# Stewards Assembly, Better Injury Reporting Required

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



In October I was asked to speak at our Stewards Assembly, a forum where Stewards are invited and briefed on emerging issues and to report their concerns and issues to the union leadership. Stewards are our *Cop-in-the-Shop*, and it's great to hear their concerns on a range of issues and the problems they face representing members. This kind of interaction will make us a stronger union.

My message to Stewards was very simple. There are too many members who fail to properly report injuries in a timely manner. The reasons for delayed reporting are typical, such as I thought I would get better, it didn't seem like much at the time, and co-workers were aware I was hurt or that something happened. Beneath the surface is another reality. By not reporting injuries many members believe they've spared themselves a future layoff because this act of heroism will endear themselves to the boss, but more often than not, many members believe a work injury is a first class ticket to a layoff.

## Law Says 6-months, But Immediate Reporting Required

I explained to our Stewards that although the section 22 of the *Workplace Safety and Insurance Act* ("WSIA") states a worker must file a WSIB claim within 6 months of an accident/injury, this is not a 6-month grace period for inaction. In fact, if a worker delays reporting an injury to an employer for a number of days and fails to seek medical attention even waiting a week or more, WSIB claims are routinely rejected because there is "no proof of accident."

It's amazing this message has to be repeated,

because it is common sense. When you get injured or have an incident at work you are legally obligated to report and document what happened. This falls under the doctrine "documentation trumps conversation." All employers have a reporting process to document and log workplace incidents, but amazingly, this paperwork is not shared with the union and frequently used by employers for their own purposes. Often times these accident reports are submitted as evidence against the worker because it contains some admission to repudiate a work injury claim. All too often these reports contain anecdotal references to pre-existing conditions, prior injuries, MVAs, plus sports and recreational activities that steer attention to other non-work related factors underlying an injury, with the sole purpose to dispute you sustained an injury at work.

## Never Give a Nickel If a Penny Will Do (talk less, listen more)

In my experience, I believe there is an information and privacy crisis regarding the degree of background information accident employers seem to possess regarding our members and details surrounding your personal and health history. My suspicion is that members offer way too much information, a form of **Exploitation by Invitation**, by freely volunteering medical history and personal details. Here's some helpful legal advice that all members should

adopt

– **Never give a nickel if a penny will do.** I realize we must be civil and forthcoming in our interactions with employers, but a little more discipline is required.

## LU 353 Accident Incident Report (Start Using It)

So what is the solution? Some time ago I developed an **LU 353 Accident Incident Report** to be completed by members, Stewards and Business Representatives. The intent was to generate "union paperwork" at the job site that can be relied on as evidence in proof of accident disputes.



I encouraged Stewards to complete the **LU 353 Accident Incident Report** so we have documentation regarding a workplace incident/injury should a dispute arise concerning an alleged injury. Here is a link to my website so you can download a PDF file - [www.ibew353.org/wsib](http://www.ibew353.org/wsib) (the accident report can be found in the middle of the page).

### Workers Form 6 Must Be Filed In Every WSIB Claim

Another issue I have discovered lately is more members have WSIB claims in which a **Workers Form 6, Workers Report of Injury/Disease** was not submitted. Two comments I'd like to make on this point. First, members are either receiving the **Workers Form 6**, but failing to complete the form in the belief that it is redundant because the accident employer has filed a **Form 7, Employers Report of Injury**. Second, perhaps the WSIB is not sending a **Workers Form 6** to injured workers. I suspect the latter is happening which prejudices an injured worker in providing details about their injury claim. Evidence that may be probative in establishing you were injured at work. Regardless who is responsible for the communication breakdown, every injured worker must complete and submit a **Workers Form 6** for the following reasons:

1. Each injured worker is required under law to make a statutory election to claim WSIB benefits and release functional abilities information to their employer. Failure to do so within 6 months can render a claim statute barred as the claim was not filed in a timely manner. By *completing, signing* and submitting a **Workers Form 6** to the WSIB fulfils an important legal requirement under s. 22 of the WSIA.
2. It offers injured workers an opportunity to provide details of the accident/injury, areas of bodily injury, witnesses, and who they reported the accident/injury to. A key point to remember, whether you are an injured worker or co-worker - **accidents don't have to be personally witnessed**. There are many instances where an accident/injury takes place and co-workers are around a corner or close-by. Often times members get cross-questioned by employer representatives that "you didn't see or witness an accident" therefore co-workers cannot offer concrete evidence regarding proof that something took place. Please don't fall into that trap. Unfortunately, some co-workers hide behind that excuse so they don't have to step-up and be counted.

### Eye-Witness Not Required, Mere Awareness Sufficient

It is important to understand that the legal test is not whether you personally witnessed an accident or incident, because that is not a requirement under the law. It is equally important whether co-worker(s) were made aware or told that something happened. Corroboration (referred to as a complaint) is very important in an inquiry system and can validate that something happened as alleged, proximal to an incident/injury, even if the reporting is done on a coffee or lunch break. However, as the passage of time becomes days or weeks before there is any vocalization of an incident or injury, you've now got a "proof of accident" dispute and your work injury claim will be denied by WSIB.

As 2013 comes to a close, I want to thank the membership for your support, patience, and above all, hard work, and wish you, your families, LU 353 Staff, Officers, and Retirees a wonderful Holiday Season. May 2014 bring prosperity and good health to all.

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## DUES INCREASE EFFECTIVE JANUARY 1ST, 2014

1. At the IBEW International Convention which was conducted in Vancouver, British Columbia in September 2011, the delegates approved amendments to Article IX of the IBEW Constitution.
2. The amendments require an increase in dues for all members of \$2.00 per month, effective January 1st, 2014 and the increase will be applied to the Per Capita Fund.

**Basic Dues will be as follows:**

"A" Members - \$39.70 "BA" Members - \$22.00