



## Under New Government Law Employers Will Face Prosecution and Fines for Suppressing or Dissuading Injured Workers in Filing WSIB Claims - (Bill 109)

By: Gary Majesky, WSIB Consultant & Executive Board Member



In May 2015, the Ontario Government introduced Bill 109, *An Act to amend various statutes with respect to employment and labour*. One of those statutes is the *Workplace Safety and Insurance Act* ("the WSIA").

The Standing Committee on Justice held hearings in November 2015 on a wide array of amendments to Ontario labour laws, but one provision in particular will have far reaching implications for injured workers and employers.

Under the new law, employers who engage in claims avoidance behaviour, suppress and fail to report injury claims will be prosecuted. Local 353 has the advantage in dealing with the entire electrical industry, who for the most part play by the rules, file claims, and use the WSIB policies to their advantage.

However, there are some contractors whose behaviour and organizational culture is geared to avoiding WSIB claims and steering members onto union disability benefits. In some instances, the member is complicit in not filing a WSIB claim, which I refer to as "Exploitation by Invitation."

Leaving aside a member's job security calculus whether to file a WSIB claim, the proposed amendments will be a rude awakening for employers who fail to report accidents and injuries.

As the person responsible for litigating our members WSIB claims, I see claim histories where the failure to report an injury years ago impacts my ability to establish a medical relationship between a current medical problem and an unreported injury. This falls under the heading "**not reported, does not exist.**"

The following amendments to Section 22, of the WSIA will encourage compliance with claims reporting:

- 22.1 (a) (1) No employer shall take any action, including but not limited to the prohibited actions set out in subsection (2), in respect of a worker with the intent of,
- (a) Discouraging or preventing the worker from filing a claim for benefits under section 22, or

- (b) Influencing or inducing the worker to withdraw or abandon a claim for benefits made under section 22.

22.1 (2) For the purposes of subsection (1), the following actions are prohibited.

1. Dismissing or threatening to dismiss a worker.
2. Disciplining or suspending, or threatening to discipline or suspend a worker.
3. Imposing a penalty upon a worker.
4. Directly or indirectly intimidating or coercing a worker with threats, promises, persuasion or other means.

### Curbside Adjudication

A common tactic I encounter is employer curbside adjudication. In this scenario there is a tendency for employers to act as though they are the decision maker whether a worker suffered an injury that arose out of and in the course of employment. The classic example is "**you didn't have an accident**" in the absence of single episode trauma, however, there was a gradual onset repetitive strain injury or cumulative trauma disorder. In these instances the employer is acting as a medical authority on the issue of medical compatibility and causation, but acting outside their scope of knowledge, and conflicted by a personal financial motive.

In my experience, these tend to be lopsided situations involving vulnerable members who are either recent immigrants, financially insecure (who isn't), or lack the political sophistication to deal with complex legal and medical matters. Unfortunately, some members are willfully compliant and surrender their rights on the theory they may curry influence and favour with the employer. All too often I hear the plaintive wail and buyers' remorse for failing to file a WSIB claim and the explanation "*Gary, you know how it is out there...if you're injured, you have a target on your back and will on the next round of layoffs.*"

### Claims Abandonment

Another grey area are claims which are properly registered in compliance with the WSIB rules, however, once registered, that next



problem relates to claims abandonment. This results when a worker fails to submit a **Form 6, Workers Report of Injury**, or stops submitting other requested information so the WSIB can adjudicate a claim for ongoing benefit entitlement. When this happens, the WSIB deems a claim abandoned.

A typical reason for claim being abandoned is the worker failed to act with due diligence and ignored their legal obligation to submit paperwork to the WSIB. Although some workers are lackadaisical regarding reporting, there are ample instances where I suspect jiggery pokery (meaning trickery, hocus pocus, fraud) as the underlying reason WHY a workers claim was abandoned.

Under the new law if an employer facilitates claims suppression by encouraging or offering inducements to an injured worker to thwart ongoing adjudication of a WSIB claim, this too is a punishable offence.

Fortunately, most members and employers treat their WSIB reporting responsibilities seriously, but the new law will force every employer to hit the reset button and reassess their organizational policies and practices to ensure they are in compliance with their reporting objections.

Next month I will review the WSIB's new Administrative Guideline for authorizing worker surveillance and referral to the Regulatory Services Division for investigation. The Guideline Document outlines the tell-tale signs of fraud, and serves as a reminder to any member who runs a side business while on WSIB benefits.

### **Gary Majesky**

WSIB Consultant

Direct Line (416) 510-5251

gary\_wsib@ibew353.org

## **Sweetheart's Dance**

### **Saturday, February 13, 2016**

The Sweetheart's Dance will be on Saturday, February 13, 2016 at the Hilton Toronto/Markham Suites located at 8500 Warden Ave.

Included in the ticket price is a **buffet dinner with wine, dessert and one complimentary cocktail drink**. The cost is **\$80.00 per couple** and **\$40.00 per single**, Apprentices Only cost is **\$20.00 per single \$40.00 per couple**. Parking is included and parking passes will be issued with the tickets. Tickets will be on sale after Monday, December 14, 2015 at all 4 union halls.

- Registration at 5:30 pm • Cocktails at 6:00 pm
- Opening Doors at 6:45 pm • Dinner at 7:00 pm
- Raffle draw at 8:30 pm • Dancing: 9:00 pm to 1:00 am

Coffee and sandwiches will be available at midnight.

Please call the hall at 416 510-3530 and register with Jennifer or submit on-line through the LU 353 web page: <http://www.ibew353.org>. Click on Committees then click on Social Events. Limited seating available!

Anyone on a restricted diet can be accommodated with a minimum of two weeks notice prior to the event.

*Ticket sales deadline is January 31, 2016 after which the ticket price increases to \$100.00 per couple and \$50.00 per single no exceptions.*

No Ticket sales at the event, should you show up at the event without your receipt or tickets paid you will be charged \$100.00 per ticket no exception.

The hotel group rate will be \$139.00 + applicable taxes for this event. Book your room before January 8, 2016 to guarantee this rate. For room reservations please call the Hilton Toronto/Markham Suites directly at 905-415-7608.

Keep an eye on the Social Events page for the latest updates.

**Terry Fischer,**  
*Social Committee Chairman*

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## **Sweetheart's Dance**

### **Saturday, February 13, 2016**

Member's Name: \_\_\_\_\_

Card #: \_\_\_\_\_

Phone #: \_\_\_\_\_

# of Adults: \_\_\_\_\_

Email: \_\_\_\_\_