



## Time to Heal After Surgery WHY Are Electricians Back to Work after Surgery & Losing their Re-employment Rights Under the Law?

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**T**here is a double standard when members suffer personal injuries *versus* work related injuries, and I'm referring to recovery time after any surgical procedure involving fractures, hernias, including arthroscopic repair of the knee and shoulder injuries.

### WSIB vs GWL – Same Injury, Different Outcome

Let's look at a puzzling situation, because we have two members with the same injury. One suffers a right wrist displaced commuted fracture at work after falling off a ladder; the other electrician has an identical wrist injury, but slipped and fell at home. Each member is diagnosed with a complex high risk fracture because there is orthopaedic concern for bone non-union that requires Open Reduction Internal Fixation surgery to install hardware (pins, plates and screws) so the bones are in correct anatomical alignment. Each is discharged home after surgery and told not return to work until reassessed in the fracture clinic (usually 7-14 days after surgery, and ongoing). Each is in severe post-operative pain and heavily medicated (e.g., Oxycodone, Oxycodone, and Percocet – 9 tabs/day).

The member with a work injury is immediately visited at home by the employer Health & Safety Representative who provides modified work to be performed at home (i.e., As-Builds, read Health & Safety Manual). The member is told they can work at their own pace in-bed or the kitchen table, and not to worry because the employer will continue paying them for their lost wages after surgery. The reality is the member is in a diminished mental and physical capacity and incapable of making an informed decision when they sign the employer's "return to work plan" - nor did

they have the benefit of consulting with a union or legal representative concerning their rights. When their claim is established, the WSIB makes some perfunctory calls to the employer, who they call first, then the worker.

### Members Falsely Report "no lost time"

The employer says there was no lost time, even after surgery because they offered and provided modified work. The worker, also being a good team player, tells WSIB there was no lost time. In fact, the member on their Worker Progress Reports sent to the WSIB reaffirms there was no lost time, reporting they did modified work, even though they swear to me that they were in no mental or physical shape to perform any work for at least one week or longer after surgery. One member said, I'm left handed, I broke my left wrist, so how could I even do the As-Builds which required me to use my left hand to write?

In contrast, the member who had the slip and fall at home will apply for union disability benefits through Great-West Life, but they have an entirely different experience. First, they will be at home recovering from a serious injury, then involved at some point in aggressive physiotherapy, and likely absent from work for 3 to 12 months after the at-home injury.

This begs the question, WHY is there differential treatment between these two electrical workers? And furthermore, what are the implications to injured workers?

Let me examine two additional cases, one involving a member who tore his left distal bicep tendon at work, requiring surgery to repair and re-attach the tendon at the elbow. The other an electrician

who suffered a complex ankle fracture in two places that required surgery to install hardware. In both instances, the workers were offered modified work right after the injury. Both employers reported to the WSIB these were no lost time claims.

### Recovering From Surgery, Report the Lost Time

The electrician who recently fractured their ankle was given As-Builds by the employer to work on at the kitchen table and told not to worry if no work was done (do as much as possible). Yet this member was bed-ridden and immobile post-operatively, could not shower for six (6) days after the injury, even though there was a shower in the ensuite bathroom, nor able to ambulate around the house or the few stairs to answer the door when the employer came calling. The worker in this case suffered a high risk ankle fracture due to the potential for non-union of one of the ankle fractures.

### Why Ignore Usual Healing Times

Leaving aside that members routinely make admissions against their interests to the WSIB that they returned to work right after surgery, the reality is quite different when I probe the situation. In my experience, WSIB decision makers seem quite indifferent and ignore their own "usual healing times" when investigating claims because certain types of injuries, particularly post-operative recovery times, are well known. This begs the question, since when did electricians become super-human X-MEN that spontaneously recover from surgery like Wolverine?

The common explanation that our members offer is they were just obliging the employer and did not want to harm their employment



relationship once they recovered, but this soon becomes an exploding cigar for injured workers – *KABOOM!*

Typically, the WSIB will rule that the workers recovered from their work injuries, as they did in the above cases. In other words there was no residual permanent impairment nor entitlement to a Non-Economic Loss award pursuant to sections 46 and 47 of the *Workplace Safety and Insurance Act*, and Operational Policy 18-05-03 (Assessing Permanent Impairment). Therefore, each worker was forced to go back to work and appeal the WSIB decision.

In each claim when an injured worker is laid-off, I file a re-employment submission with WSIB that there was a re-employment breach, pursuant to section 41 of the *WSIA*, and Ontario Regulation 35/08 (Re-employment in Ontario Construction). The rationale is that our members did in fact suffer lost time after an injury, and often times continue to have ongoing limitations related to their work injuries that

impedes their ability to be competitively employable in their pre-injury job.

### Re-employment Rights Triggered after 1-Day Lost Time

Injured workers get a rude awakening when WSIB issues a decision denying there is no evidence the member was **“UNABLE TO WORK”** or worked at less than the pre-injury wage. Under the law, the trigger in activating your re-employment rights as an injured worker is a lost-time claim, even 1-day, but not including the day of injury. Unfortunately, most injured workers believe a 1-day lost time claim will cost their employer, so they play along. However, in reality, employers are not charged a lost-time frequency against their WSIB account for the first week (7-days) after an injury. It’s not whether you missed work a day here and there, but whether WSIB recognized the lost time, which is an important distinction.

What does this mean to injured workers? Frankly, you are trading away your re-

employment rights under the law by misrepresenting that you were fit and able to perform suitable work after surgery. When you do receive a layoff (ROE) that you thought wouldn’t happen, usually weeks after the WSIB rules you are fully recovered, you are surprised when you assert your re-employment rights under the law, and learn that by returning to work the day after surgery this is used against you. It also suggests you suffered a trifling injury. This is what I call exploitation by invitation.

More troubling is that some members are engaged in Health & Safety home study while “high as a kite” on pharmaceutical medication. There is a section regarding “fit for duty” and not reporting under the influence of any sort of drug. Personally, I find this deeply offensive, what say you?

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## Thanksgiving Day

Statutory Holiday to be observed is on Monday, October 13th, 2014. If your employer asks you to work on this day, you must be paid double time for working on this holiday!

## Dues Increase effective January 1st, 2015

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 “A” Members of \$1.00 per month, effective January 1st, 2015 and the increase will be applied to the Per Capita Fund.

**Basic Dues will be as follows:** “A” Members - \$40.70