

Email and/or Text Public Service Messages From IBEW Local 353 Organizers to Non-Union Electricians

IBEW Local Has A Workers Compensation Specialist on Staff

IBEW Local 353 has on Staff a Legal Representative who represents working and retired members with workers' compensation claims at the WSIB. WSIB is a stingy insurance company with 110 years of practice in how to deny work injury or disease claims. Worker's compensation is a unique area of law, plus hundreds of WSIB policies. Local 353 has the knowledge and assists members in filing a claim, or representing injured electricians at two (2) levels of appeal (court). This is an important benefit of IBEW membership.

Failing or Delaying to Report Injures Against the Law

Many employers, particularly non-union electrical contractors have a culture in failing to report, delay reporting, and encouraging injured electricians from submitting WSIB claims. This is against the law. In fact, under section 22 of the *Workplace Safety and Insurance Act*, any employer who attempts to dissuade you from reporting or delays in reporting and frustrates the registration of a WSIB claim has broken the law. This is a prosecutable offence. Local 353 has organized many non-union electricians, including former Mayfair workers and has **firsthand** experience how a CLAC union provides inferior representation of injured workers with their WSIB claims and challenge corrupt employer practices.

The Law Recognizes Two Kinds of Accident - Single Episode Trauma & Gradual Onsets

Under the law, there are two types of accidents that are recognized. Most workers definition of a reportable accident/injury and this includes union and non-union – there must be an accident e.g., fall off ladder. Or a distinct – cause and effect injury.

Section 2(1) of the *Workplace Safety and Insurance Act* recognizes two types of accident. The first is a **chance event**, which really means single episode trauma (fell, hit, twisted, etc.) as in a “sudden onset.” The other accident branch under the law is a disablement, which really means a gradual onset injury. Many workers fall into the trap when asked if there was an accident, when in fact, 50% of all electrical workers' injuries are gradual onsets, where the mechanism of injury is the pre-injury job. Remember, a worker may not have suffered a typical fall, cut or twist their knee, but may have suffered a gradual onset injury as a result of the physical demands of an electrician's pre-injury job.

Apprentices WSIB Loss of Earnings Benefits - Based On Journeyman Wage Rate

When registered apprentices are injured, the Law and WSIB Policy states apprentices who suffer Loss of Earnings, will have the Loss of Earnings benefits based on the journeyman wage rate, and not the pre-injury apprentice wage rate.

WSIB Operational Policies 12-04-13 Apprentices and 18-02-08 Determining Average Earnings – Exceptional Cases, and Ontario Regulation 175/98 stipulates this mandatory requirement.

When a worker is a registered apprentice with the Ontario Ministry of Colleges and Universities, as defined in Operational Policy 12-04-13, the usual rights of calculating the short-term rate and long-term rate (LRT) earnings basis average earnings do not apply.

Operational Policy 18-02-08 and Reg. 175/98 require that registered apprentices be paid the average earnings of a journeyman. Once established, earnings remain the same for the life of the claim with no recalculation.

Local 353 has seen how non-union contractors, including MAYFAIR make promises of apprenticeship, but delay registering an apprenticeship contract with the Ontario Government, and injured MAYFAIR apprentices are denied WSIB coverage because the employer failed to legally register an apprenticeship contract.

Psychiatric Injuries – Psychotraumatic Disability and Traumatic Mental Stress

Under the law, the WSIB recognizes two kinds of psychiatric injuries. The WSIB has long recognized that in addition to physical injuries, an injury can take place to the mind as well as the body. Under Policy 15-04-03, the WSIB will recognize mental health disorders that result or develop after a work related accident and/or disability. The Policy outlines the general entitlement if the psychological disability “is attributable to a work related injury and developed within 5-years from the injury.” Typical diagnoses that the policy covers are anxiety disorders and depression.

Traumatic Mental Stress is recognized under Policy 15-03-02 which covers injury claims where a worker experiencing a “sudden and unexpected event.” Workers who suffer a work accident that is objectively traumatic and/or witness a work related traumatic incident and develop Acute Stress that progresses into Post Traumatic Stress Disorder (PTSD) are entitled to compensation under the Law and Policy. Examples include witnessing a horrific work accident or death, experience a work accident that was potentially life-threatening, witness another worker seriously injured, are an example of traumatic events that arise out of and in the course of employment. Sometimes, the psychiatric injury is more disabling than a worker’s physical injuries. These tend to be complex cases and workers need legal representation to defend against hostile employer tactics and WSIB practices.

WSIB Uses Pre-existing Conditions (e.g., Arthritis) to Deny and Limit Benefit Entitlement

In 2011, the WSIB adopted Policy 15-02-03 which deals with Pre-existing Conditions, that should be followed when adjudicating claims. This policy is a tool to deny or limit a worker’s entitlement to benefits. The WSIB has a long history of denying claims because of pre-existing pathology, but they became more aggressive in limiting a worker’s entitlement.

The WSIB limits a worker’s entitlement when they suffer an injury and there is concurrent and pre-existing degenerative pathology in the same area of the work injury e.g., knee osteoarthritis. The worker may never have experienced a knee problem in the past, or perhaps 20-30 years ago had a sports injury. However, after surgery they recovered and continued working as an electrician for many years. Now a work injury superimposed on an asymptomatic pre-existing condition has rendered the underlying pathology or arthritis symptomatic.

In Ontario, a “significant contributing factor” analysis is used to determine whether a worker’s injury or condition is compensable. This test focuses on whether the work itself made a significant contribution to the worker’s injury. The work need not be the sole contributing factor to the injury. As long as the work contribution makes more than a *de minimis* or trifling contribution to the injury, workers will be entitled to compensation.

Where a worker’s pre-existing condition contributes to an injury sustained in the course of employment workers compensation in Ontario has traditionally applied the legal doctrine known as the “thin skull” principle.