

COVID-19, THE LONG HAUL & WORKERS' COMPENSATION

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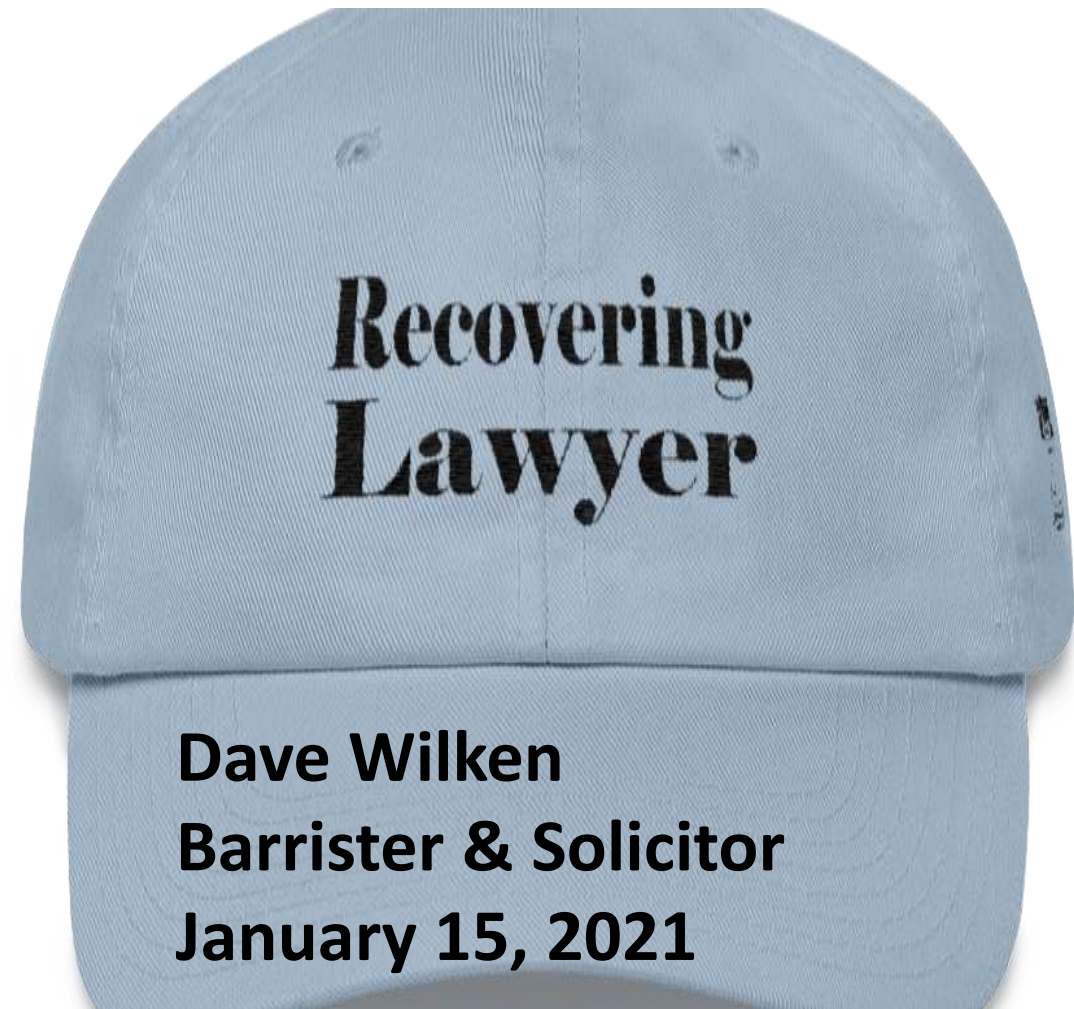
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THE LAWYER HAT PART

1. Report, report, report
2. What we know about COVID-19 WSIB claims
3. What we don't know about COVID-19 claims, but can be entitled to assume based on past experience

THE OHCOW PART

1. Individual cases
2. Intake Clinics





The Heavy Lifting

- REPORT, REPORT, REPORT to WSIB
 - Claims
 - Positive test results and/or symptoms
 - Exposure incidents – PEIR/CEIR
 - Known exposure to CoV-SARS-2 virus
- Especially important due to the “long haulers” phenomenon
 - Less than immediate reporting always increases problems
 - 6 month time limit to report claims applies
 - Time limit can still be met in all cases due to 6 month “time out” on statutory time limits = one year, March 14 at the earliest in most cases

WHAT WE KNOW ABOUT WSIB CLAIMS - 1

As of January 8, 2021,

12,909 claims submitted

5,909 Exposure Incident Reports

Of decided claims (n=12,100)

85% allowed (n=10,318)

15% denied (n=1,782)

Health Care (nursing and residential care, hospitals and ambulatory health care) accounts for nearly half of all claims (n=6,151)

<https://www.wsib.ca/en/covid-19-related-claims-statistics>

WHAT WE KNOW ABOUT WSIB CLAIMS - 2

Claims are lagging behind cases

- As of November 18, 2020, using public health data the Ontario Health Coalition had tracked
12,128 workplace outbreak cases in non-health care industries alone
- Explosion of second wave cases in Long Term Care
- Anecdotal reports of direct employer claim suppression
 - Workers “told” they were infected in the community rather than at work
 - In some cases, employers have reported to the Ministry of Labour, Training and Skills Development even while failing/refusing to report to WSIB in violation of WSIB reporting obligations
 - Misinformation/warnings re: double dipping
 - No direct WSIB-related incentive to suppress COVID-19 claims
 - Schedule level, not employer or sector

Indirect Claims Suppression

Navigation difficulties

- Employers willing to pay full wages
- Multiple benefit systems (CERB, then CRB, CRSB, CRCB)
- Restrictions on WSIB entitlement
- Fear of WSIB delay/ difficulties vs. CERB open doors
- Fear of double dipping
- Breakdown of supports



The Fine Motor Work



- **Double Dipping?**

- WSIB benefits are not employment earnings or incorporated by regulation into federal COVID benefit eligibility of amount calculations (CERB, CRB, CRSB, CRCB)
- Employers eligible for partial reimbursement as compensation advance if paid worker directly

- **Benefits Amounts**

No offsets, but still...

Federal = \$500 per week

WSIB range = \$402.22 to \$1,229.12 per week

full LOE for a single person with no dependents working full-time (minimum wage to maximum coverage)

Federal benefits are time limited

- **Risk/Benefit Analysis**

potential for serious, permanent harm

WSIB the easy way

- Identifiable incident
- Witnesses
- Immediate reporting to employer
- Immediate uncontested reporting by employer to WSIB
- Immediate symptoms
- Immediate medical treatment
- Immediate reporting by doctor
- Textbook medical compatibility
- Clear medical restrictions
- Early and Safe Return to Work
- Complete recovery in textbook timeframe

Known and likely problem areas: COVID-19

- Claims suppression and delayed reporting
- Assumptions re: community vs. workplace risks of transmission
 - WSIB vs. WSIAT standard
 - WSIB – “worker’s employment created a risk of contracting the disease to which the public at large is not normally exposed”
 - WSIAT Dec. Nos. 1053/15, 2970/16 – greater than the risk facing the community at large is not part of the legal test – significant contribution test
- Assumptions re: effectiveness of workplace protective measures
- Determinations re: number and order of infections in a workplace and conclusions drawn
 - Testing reliability, who has been tested, etc.
- Symptom-free workers
 - Subjectivity
 - Analytic confusion

OHCOW can help

- Modes of transmission
- Effectiveness of PPE and other protective measures
- Reliability of testing
- Contact tracing
- Up-to-date medical information
- Assessment of secondary conditions
- NOT level of disability

Relevant OHCOW Services

- General information
- Primary prevention assessment and advice
- Individual case review
- Intake Clinics for workplace outbreaks
 - Getting claims submitted
 - Documenting work processes and conditions
 - Assessing individual cases
 - Working remotely, tailored to situation
 - By individual workplace or by industry

QUESTIONS?



- ask@ohcow.on.ca
- 1-877-817-0336