

WSIA Coverage for Personal Support Workers and Developmental Support Workers

Introduction

The *Workplace Safety and Insurance Act, 1997* (WSIA) provides a collective liability no-fault insurance scheme for work-related injuries and occupational diseases. It protects workers from the financial impacts of work-related injury or illness and employers from the financial impacts of litigation.

Currently, there is a patchwork of coverage for personal support workers (PSWs) and developmental support workers (DSWs). For example, PSWs in long-term care homes have mandatory coverage, but those working in privately-operated retirement homes may not. Some individuals may work part of the day with mandatory coverage and part of the day without.

Addressing this inconsistency would help support these frontline workers and help health care and social services providers retain them and increase their numbers to provide care during the ongoing COVID-19 pandemic.

The Ministry of Labour, Training and Skills Development wants your input on extending coverage to employers in workplaces that commonly employ PSWs and/or DSWs but are not currently subject to mandatory coverage (e.g. private retirement residences; private group homes; etc.).

Extending coverage to these employers would mean that all staff, both full-time and part-time would be afforded WSIB coverage protections.

The Operational Review

In May 2019, the Ontario government appointed two external reviewers to conduct an operational review of the WSIB to help ensure the WSIB's long-term sustainability and effectiveness. The WSIB Operational Review report, released on November 6, 2020, contains 25 recommendations including two that specifically address coverage:

- *The WSIB should move to an “exclusionary model” for coverage on a go-forward basis for new employers and industries. This would not affect currently non-mandatory covered industries, but it would apply to any new firms or industries operating in the province.*
- *The WSIB and the government should extend mandatory coverage to developmental support workers and those working in residential care facilities.*

The recommendation to extend WSIB coverage to DSWs and PSWs is intended to address uneven treatment of these workers who are doing the same activities and functions as their covered counterparts. Depending on their employer(s), some PSWs and DSWs are included in mandatory coverage and others are excluded. Workers can be doing the same work in a workplace that is subject to mandatory coverage and working in another workplace that is not, sometimes on the same day. The report notes that this anomaly in

WSIB coverage justifies immediate action to level the playing field for workers in these industries. There is heightened immediacy to consider this recommendation given the Government's efforts to support workers and employers through the COVID-19 pandemic.

Background on the WSIA system

The legislative framework sets out what industries are subject to mandatory coverage, what industries are omitted from mandatory coverage, and what industries are excluded from mandatory coverage. An employer who is not subject to mandatory coverage may choose to purchase WSIB coverage. An employer who is mandatorily covered cannot opt for private insurance coverage for its workers instead.

Extending coverage to employers of all PSWs and DSWs would require a regulatory change under O. Reg. 175/98, under the WSIA. If such a change was made, affected employers would have to register and pay premiums to the WSIB in the same manner as those employers who are currently subject to mandatory coverage.

WSIB administers the WSIA and operates at arm's-length from the Ministry of Labour, Training and Skills Development. It is entirely funded by premiums paid by covered employers. Employers are required to notify the WSIB whenever a work-related injury/illness occurs (including COVID-19 cases). In turn, the WSIB adjudicates the claim based on the merits and justice of each case. If the claim is allowed, the WSIB may pay loss of earnings benefits, health care costs, and provide return to work supports.

WSIB benefits and services include the following:

- Loss of Earnings – If a worker misses time from work because of a work-related injury or illness the WSIB pays for the worker's loss of wages, based on 85 % of their take-home pay.
- Non-Economic Loss – A worker may be eligible for this benefit if their work-related injury or illness causes them to have a permanent impairment.
- Health Care – If a worker needs need help with their recovery, the WSIB can provide benefits for treatment, medical devices, equipment and supplies, and prescription drugs.
- Return to work supports, including retraining – If a worker needs support to get back to work, the WSIB can provide services and build a customized return-to-work plan for the worker.
- Survivor Benefits – If a worker dies from a work-related injury or illness, the WSIB pays benefits to surviving spouses and dependents.

Discussion Questions

The Ministry of Labour, Training and Skills Development is seeking feedback on the following questions:

1. The WSIB covers work-related injuries and occupational diseases (including infectious diseases like COVID-19). Would extending mandatory coverage to all employers of PSWs and DSWs help improve worker protections?

2. What benefits and services would WSIB coverage provide to PSWs and DSWs that are not provided under private insurance schemes?
3. Would extending coverage to all employers of PSWs and DSWs help with recruitment and retention of these frontline workers?
4. The recommendation to extend mandatory WSIB coverage to DSWs and PSWs did not speak to what threshold to consider as a standard to extend coverage (i.e. PSWs and DSWs who make up a significant portion of an employer's workforce be covered, as opposed to an employer who may employ a single PSW or DSW in their organization). What might be an appropriate threshold (i.e. the proportion of PSWs/DSWs working for an employer) to consider as a standard to extend coverage?

If there are additional considerations, issues, or ideas about extending mandatory coverage to employers of PSWs and DSWs that are not addressed through these questions, please take this opportunity to share those thoughts as well.

Notice to Consultation Participants

Submissions and comments provided to the Ministry of Labour, Training and Skills Development (the Ministry) are part of a public consultation process to solicit views on extending mandatory WSIB coverage to all employers of PSWs and DSWs. This process may involve the Ministry publishing or posting to the internet your submissions, comments, or summaries of them. In addition, the Ministry may also disclose your submissions, comments, or summaries of them, to other parties during and after the consultation period.

Therefore, you should not include the names of other parties (such as the names of employers or other employees) or any other information by which other parties could be identified in your submission.

Further, if you, as an individual, do not want your identity to be made public, you should not include your name or any other information by which you could be identified in the main body of the submission. If you do provide any information which could disclose your identity in the body of the submission, this information may be released with published material or made available to the public. However, your name and contact information provided outside of the body of the submission (such as that which may be found in a cover letter, on the outside of an envelope, or in the header or signature of an email) will not be disclosed by the Ministry unless required by law. An individual who provides a submission or comments and indicates a professional affiliation with an organization will be considered a representative of that organization and his or her identity in their professional capacity as the organization's representative may be disclosed.

The Ministry is authorized to collect and use personal information for the purposes of this consultation pursuant to the *Workplace Safety and Insurance Act, 1997* and subsection 38(2) and clause 41(1)(b) of the *Freedom of Information and Protection of Privacy Act*. The Ministry is authorized to disclose personal information collected for the purposes of this consultation pursuant to clause 42(1)(c) of the *Freedom of Information and Protection of Privacy Act*.

If you have any questions regarding the collection of personal information as a result of this consultation, you may contact the Ministry's Freedom of Information Office, 400 University Avenue, 10th Floor, Toronto, Ontario, M7A 1T7, or by calling 416-326-7786.

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