



EAC, an initiative of Canadian Manufacturers & Exporters

EAC Submission on WSIB WR Policies  
February 15, 2011

Stakeholder Input and Notice Period:

The EAC wishes to thank the Workplace Safety & Insurance Board (WSIB) for the opportunity to provide feedback on the following interim Work Reintegration policies: Work Reintegration Principles, Concepts and Definitions, 19-02-01; Responsibilities of the Workplace Parties in the Return to Work Process, Policy 19-02-02, Determining Suitable Occupation, Policy 19-03-03, Work Transition Plans, Policy 19-03-05 and the Draft Work NEER, Policy 13-02-02.

To begin, the EAC is disappointed that the development and implementation of interim policies occurred without prior employer consultation. While EAC is cognizant of the challenges facing the WSIB, we also strongly believe that the foundation of a successful workers' compensation system can benefit from employer stakeholder input.

We understand that seventeen Work Reintegration training sessions were delivered by the Ontario Federation of Labour, and funded by the WSIB. The employer community, through EAC, would have also appreciated the opportunity to work with the WSIB in delivering sessions for employers.

As well, the introduction of non-cooperation penalties without a reasonable period of notification to employers is simply not acceptable. EAC is of the view that a pilot project or stakeholder consultation on the new interim Work Reintegration policies should have taken place and provided employers with ample time to understand the policies and train their staff appropriately. That being said, as a member of the Ontario Business Coalition, EAC wishes to extend its appreciation to the WSIB President for listening to our concerns and suspending the non-cooperation policies during the consultation period. We hope that any future changes will be handled with better consultations in advance of implementation.

EAC Response to Interim Policies:

Policy 19-02-01: Work Reintegration Principles, Concepts and Definitions:

With respect to the following principle, "A worker should be offered programs that are of a high quality and practical, and the WSIB must provide the worker with meaningful input and choice in relation to the programs offered," EAC believes that this principle has and may lead to biased application of this and other policies, against the employer.

With respect to the pre-injury clause in the Return to Work process, "in these cases, the workplace parties are expected to put in place a plan that achieves a return to the pre-injury

and/or restores pre-injury earnings where appropriate,” EAC recommends that “where appropriate” requires more clarity from the WSIB.

In addition, EAC would like the WSIB to define the duties and responsibilities of the Work Transition Specialist, as well as other key WSIB Staff members who play a key role in the Work Reintegration process.

#### Policy 19-02-02: Responsibilities of the Workplace Parties in the Return to Work Process

The EAC recommends that:

- In the case of a Return to Work dispute, the resolution process should occur within 30 days; this has not been the case and that further clarification be provided on the proposed resolution steps
- The title of Policy 19-02-02 be altered to “Re-employment” and the Return to Work processes be created under a separate policy (Cooperation of the Workplace Parties)
- The WSIB take additional steps to re-name the Work Reintegration policies and discontinue the practice of intermingling the various concepts, practices, policies and processes
- Fines and remediation be separated

#### Policy 19-03-03: Determining Suitable Occupation:

There has been considerable discussion on the definition of “suitability” and what this means to employers and workers. The EAC recommends that the Return to Work Specialist, an individual who has visited the place of work is the best person to rule on suitability. We do not believe that this decision should be left to the worker. In addition, EAC recommends that the WSIB incorporate a standard clause that obliges the worker to accept suitable work.

Regarding the maximization of the earning potentials through enhanced Work Transition, the EAC recommends further clarification on the concept of an enhanced Work Transition plan for young workers (age 15 -24); it is recommended that a clearer definition of the terms post-injury and part-time employment be created and communicated to employers with an understanding of the required conditions of employment.

The EAC recommends that additional levels of criteria be built into this policy to ensure that “determining suitable occupation” is based on actual provisions and scenarios and not merely to satisfy a time requirement. With respect to the Non-Economic Loss (NEL) the EAC recommends a clarification in the definitions of minor, major and severe impairments. Minor NEL awards should not trigger Loss of Earnings (LOE) benefits. Lastly, the EAC also recommends that it is time to evaluate the NEL process and make improvements that are more aligned to the Work Reintegration program.

With respect to “determining suitable occupation”, the EAC recommends that the WSIB remove any references to human rights as there is no reference of such in the Workplace Safety & Insurance Act, and that no additional burden be placed on new employers for injuries that a worker incurred with a previous employer.

#### Policy 19-03-05: Work Transition Plans:

In reference to this policy, in particular for workers 55 and older where the option to select the self-directed Transition Plan is available, EAC recommends that WSIB look for a more cost effective alternative. In addition, the EAC supports opportunities for employers to provide their own in-house training, pending that the proper educational levels have met the prescribed criteria. EAC is aware of the training, credentials and certification of the providers required through the outsourced Labour Market Re-entry process. EAC recommends that the WSIB provide clarification and confirmation that these are the same standards that will be applied to the new WSIB Return to Work experts.

#### Policy 13-02-02: Draft NEER:

EAC disagrees with the WSIB's decision to propose a retroactive policy and would like the WSIB to consider a variety of alternatives. As well, the EAC recommends that the WSIB ascertain if relevant research has been conducted on this topic and if so, to share the results with all stakeholders. It is unfair to go back to 2008 claims and attach a retroactive four year window. Any change to NEER should be put on hold pending the Harry Arthurs Funding Review and the outcome of the KPMG Service Delivery Model Audit.

In addition, the EAC would like to comment on the delay of the NEER statements which began with the June 2010 statements. Some members started receiving statements in the middle of September 2010 while others had yet to receive any notification by November 2010. Furthermore, the WSIB NEER statements indicated that the rebates will be posted to the accounts in mid-December with cheques being mailed in mid-January while surcharges accrue beginning December 31, 2010. This represented a change in the approach by WSIB; this can significantly impact the cash flow of our members. Employers do not see this as fair, especially since they were not advised in advance of a pending delay in receiving their NEER statements and refunds. The EAC would like to see the WSIB take a more proactive approach, including the transmission of statements in an excel format via electronic means. Lastly, refunds and surcharges should be delivered at the same time with plenty of advance notice to stakeholders.

Under the "Excluded Claims" category, please note that "hearing loss" has not been included in this category and the EAC recommends that the WSIB provide further clarification on this matter.

#### Conclusion and Recommendation Summary:

In summary, the EAC remains committed to working with the WSIB in the promotion of safe workplaces. The EAC would also like the WSIB to take note that the EAC will continue to work diligently on behalf of Ontario employers to ensure that their concerns are voiced and that the proper steps are taken to ensure an adequate and fair workers' compensation system model in the years to come.

As previously stated, we hope that with future consultations and more advanced notice, Ontario employers can work alongside the WSIB to develop a successful workers' compensation system for many years to come.

In summary, the EAC's recommendations are as follows:

1. That the definition of Restoring pre-injury earnings requires more clarity from the WSIB
2. That the WSIB better define the duties and responsibilities of the Work Transition Specialist, as well as other key WSIB Staff members who play a key role in the Work Reintegration process
3. That in the case of a Return to Work dispute, the resolution process should occur within 30 days
4. The title of Policy 19-02-02 should be altered to "Re-employment" and the return to work processes created under a separate policy (Cooperation of the Workplace Parties)
5. That the WSIB should take additional steps to re-name the Work Reintegration policies and discontinue the practice of intermingling the various concepts, practices, policies and processes
6. That fines and remediation be separated
7. EAC recommends that the Return to Work Specialist, an individual who has visited the place of work, is the best person to rule on suitability. We do not believe that this decision should be left to the worker.
8. EAC recommends that the WSIB incorporate a standard clause that obliges the worker to accept suitable work
9. That further clarification be provided on the concept of an enhanced Work Transition plan for young workers (age 15 -24)
10. That a clearer definition of the terms "post-injury" and "part-time employment" be created and communicated to employers
11. That additional criteria be built into this policy to ensure that "determining suitable occupation" is based on actual provisions and scenarios and not merely to satisfy a time requirement
12. That there be further clarification in the definitions of minor, major and severe impairments. Minor NEL awards should not trigger Loss of Earnings (LOE) benefits.
13. That the NEL process be re-evaluated with improvements made that are more aligned to the Work Reintegration program
14. That the WSIB remove any references to human rights as there is no reference of such in the Workplace Safety & Insurance Act
15. That no additional burden be placed on new employers for injuries that a worker incurred with a previous employer
16. That for workers 55 and older where the option to select the self directed Transition Plan is available, the WSIB look for a more cost effective alternative
17. That the WSIB provide confirmation that training, standards and certification for outsourced providers in the Labour Market Re-entry process are the same standards that will be applied to the new WSIB Return to Work experts.
18. That any change to NEER should be put on hold pending the Harry Arthurs Funding Review and the outcome of the KPMG Service Delivery Model Audit.
19. That clarification be given as to why "hearing loss" has not been included in the "Excluded Claims" category of NEER policy

The EAC welcomes WSIB's efforts to engage employers in more meaningful and proactive consultative processes and is willing to assist in the development of key programs that facilitates stakeholder value.

The EAC thanks you for your consideration.