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## Work-related COVID-19 claim costs will now impact WSIB premiums of individual schedule 1 employers

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Posted on September 26, 2022

Ontario's Workplace Safety and Insurance Board (WSIB) recently announced a change to how it will cost COVID-19 related claims.



Effective July 1, 2022, the cost of a COVID-19 related claim which arose on or after July 1, 2022 will be allocated to the individual Schedule 1 employer. Prior to this change, the WSIB did not allocate the costs of a COVID-19 claim to the individual employer, but instead distributed those costs across all employers in Schedule 1.

In the past, many employers may not have challenged COVID-19 related claims because employers were not financially impacted on an individual level. This is no longer the case.

### **The impact on employers**



The costing change has the potential to significantly, financially impact any Schedule 1 employer with a qualifying COVID-19 related claim.

That said, with the lifting of most COVID-19 related restrictions across Ontario, there are now many more sources of COVID-19 in the general community, outside of work, making it more difficult (we would argue) to demonstrate that work significantly contributed to an illness.

For a COVID-19 claim to be allowed, evidence must show the employee's risk of contracting the disease through their employment is greater than the risk to which the public at large is exposed and that work significantly contributed to the employee's illness. According to the WSIB, examples of occupations with high COVID-19 risk in the workplace that would be considered for benefits and services may include (but are not limited to):

- Healthcare workers where direct care is given to patients known to be COVID-positive
- First responders who acquire COVID-19 after assisting someone known to be COVID-positive
- Personal support workers who acquire COVID-19 caring for residents of a long-term care home

## **When to report**

Although some COVID-19 infections may be work related, many will not. If it is not clear where and how an employee contracted COVID-19, and the workplace has no known cases of COVID-19, there is no requirement to report the illness. However, if there is reason to believe an employee who contracted COVID-19 was exposed in the workplace then there is an obligation to report the illness to the WSIB.

## **Decisions and the right to appeal**

The WSIB will investigate and determine if a COVID-19 infection was work related. If an employer disagrees with the WSIB's decision the employer can challenge that decision. The deadline to file an intent to object to a decision is six months from the date of the decision.

In light of the WSIB's new approach, employers should seriously consider challenging any WSIB decision in which there is evidence the employee contracted COVID-19 outside the workplace.

## **Bottom line for employers**

The potential cost of a work-related COVID-19 claim has gone up, possibly quite considerably. While it is too soon to know the magnitude of the impact on employers, it is safe to say it will not be zero.



As always, it is prudent to have strong COVID-19 health and safety protocols tailored to your workplace and vigilantly enforced. The goal is to prevent infection from entering the workplace and if it does, spreading to others. Should either occur, comprehensive record-keeping and internal reporting protocols will be the key to demonstrating the workplace did not significantly contribute to the illness.

For assistance with any WSIB-related matter, contact Sherrard Kuzz LLP.

*This article was written by Daryl Seupersad, a lawyer with Sherrard Kuzz LLP, one of Canada's leading employment and labour law firms, representing employers. Daryl can be reached at [dseupersad@sherrardkuzz.com](mailto:dseupersad@sherrardkuzz.com). It was originally published on the firm's website on September 23, 2022.*

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