



Daryl Seupersad

dseupersad@sherrardkuzz.com
416.603.6950

**Proposed changes to Workplace Safety and Insurance Act
to increase WSIB wage loss benefits and
expand presumptive entitlement to firefighters with esophageal cancer**

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This past Fall, the Ontario Government tabled [Bill 149, Working for Workers Four Act, 2024](#) (“Bill 149”). Currently, at Standing Committee, if passed, Bill 149 will provide further protections for employees under various employment statutes, including the *Workplace Safety and Insurance Act, 1997* (“WSIA”). Specifically, Bill 149 will permit indexed increases to workplace safety and insurance board (“WSIB”) benefits above the annual rate of inflation and reduce from 25 to 15 the years of service necessary for a firefighter or fire investigator to take advantage of the presumptive entitlement provisions for primary-site esophageal cancer under the WSIB’s policy - Cancer in Firefighters and Fire Investigators.¹

Each of these amendments has the potential to increase an employer’s claims costs and WSIB premiums.

Indexing of benefits

At present, benefits received by an eligible injured worker are adjusted annually to reflect the cost-of-living based on the federal Consumer Price Index (“CPI”). To be eligible for indexing, a worker or the worker’s survivor must be entitled to wage loss benefits as of December 31 of one calendar year and that entitlement must continue into the next calendar year. The cost-of-living adjustment was 6.5% in 2023, and 4.4% in 2024. At present, 134,000 injured workers are eligible for indexation.

Bill 149 will give the Lieutenant Governor discretion to add an additional indexing factor, known as “super indexing.” If applied, super indexing will increase the benefits paid to a worker which, in turn,

¹ OPM Doc # 23-01-01

will increase an employer's claims costs and WSIB premiums. To date, there are few details as to how super indexing will be calculated or applied.

Tips for employers

In anticipation of Bill 149 becoming law, and the possibility for increased costs, employers may want to take a hard look at their existing claims to identify opportunities to reduce potential exposure.

For example:

- Whether and the extent to which it is feasible to return injured workers to suitable employment as soon as medically possible; and
- Whether it is appropriate to appeal the WSIB's initial decision to allow wage loss benefits in the first place. If successful, the worker's claim for benefits can be reduced or even overturned.

Esophageal cancer in firefighters and fire investigators

Bill 149 will allow firefighters and fire investigators diagnosed with primary-site esophageal cancer, with **15 years of service**, presumptive entitlement to benefits under the WSIA. At present, there is a presumptive entitlement after 25 years of service. A firefighter includes a part-time, volunteer, and full-time firefighter. A worker who meets these requirements will be presumed to have contracted primary-site esophageal cancer because of their work-related duties unless the contrary can be shown.

The WSIB uses the concept of presumptive entitlement to recognize the work-relatedness of an occupational disease and streamline the evidence needed to determine entitlement in a claim. To determine when to apply presumptive entitlement the WSIB consults with the government and scientific community to identify occupational diseases which have strong and consistent scientific links between an occupational process and exposure to the disease. In addition to WSIB policy, occupational diseases to which a presumption applies are listed in the WSIA, Schedules 3 and 4.

Tips for employers

Any employer that employs firefighters and/or fire investigators should be aware that the WSIB's presumption can be refuted. To successfully do so, an employer must demonstrate, on a balance of probabilities, that:

- The firefighter or fire investigator was never exposed to the hazards of a fire scene or other known occupational risk factors that would lead to primary-site esophageal cancer; or
- The firefighter's or fire investigator's non-occupational risk factors for primary-site esophageal cancer was of such significance it overwhelmed any occupational exposure and rendered it insignificant. For example, if it can be shown a firefighter's exposure to non-occupational risk factors such as smoking overwhelmed the firefighter's occupational exposure then the presumption will be rebutted and entitlement to benefits denied.

For more information and assistance reviewing, appealing and/or managing your WSIB claims costs, contact the WSIB experts at Sherrard Kuzz LLP.

Daryl Seupersad is an award-winning WSIB lawyer with Sherrard Kuzz LLP, one of Canada's leading employment and labour law firms, representing employers. Daryl can be reached at 416.603.0700 (Main), 416.420.0738 (24 Hour) or by visiting www.sherrardkuzz.com.

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