



Daryl Seupersad

dseupersad@sherrardkuzz.com
416.603.6950

Changes Coming to Ontario's WSIAT Appeal Process

April 6, 2024

On May 6, 2024, the Workplace Safety and Insurance Appeals Tribunal (“WSIAT”) will introduce a suite of changes that will impact how employers in Ontario prepare for and respond to appeals under the [Workplace Safety and Insurance Act](#). The changes are intended to create more timely and efficient pre-hearing processes to avoid appeals aging and becoming stale before the hearing stage.

The WSIAT is the final level of appeal in the workplace safety and insurance system in Ontario. It is separate from and independent of the Workplace Safety and Insurance Board (“WSIB”) which is responsible for the administration of the workplace safety and insurance system in the province.

What is changing?

The WSIAT will make changes to its processes to:

- Reduce the time between filing an appeal and scheduling a hearing
- Create new consent forms
- Create forms to indicate when parties are ready to proceed to hearing
- Remove the ability to introduce new evidence or witnesses as of three weeks before a hearing
- Create a new service within the WSIAT to assist self-represented parties
- Default to electronic case materials
- Revise the process to close an abandoned appeal

Reduce the time between filing an appeal and scheduling a hearing

Under the current system an appellant has two years from the date they signal their intention to appeal, to file a Confirmation of Appeal, which starts the appeal process. The new system removes this two-year window. Instead, once the Tribunal receives notice of the intention to appeal, it will provide a copy of the Case Record to the appellant, starting the appeal process.

Tips for Employers

An employer is frequently the respondent in an appeal to the WSIAT. The elimination of the two-year waiting period means that once an employer is notified of an appeal, it should closely monitor the progress of the appeal as it may move quickly to hearing.

Create New Consent Forms

A new Consent Form will be sent to a worker, together with a copy of the Case Record. Once signed, the Consent Form allows the WSIAT to share the worker's information, including medical information, with the other parties to an appeal.

Under the current system, a worker is asked to consent on the Notice of Appeal before the worker has a copy of the Case Record (though the worker would have a copy of the WSIB file).

Tips for Employers

If a worker does not consent to their information being shared with other parties in an appeal an employer may make submissions on why that information is needed to adjudicate the appeal. This is not new. However, employers are often unaware they can make these submissions.

Create forms to indicate when parties are ready to proceed to hearing

Once the parties have received the Case Record, they will be asked to complete a "Hearing Ready" form. This form is used to indicate whether a party intends to rely on any further evidence or witnesses. If a party is not ready to proceed, it can complete the "Hearing Not Ready" form and explain to the WSIAT why and how long it will need before being ready. If the WSIAT agrees the party is not ready to proceed, it will place the appeal into inactive status for a reasonable amount of time to allow the party to prepare for the appeal.

Tips for Employers

Once an employer receives a Case Record, it should be reviewed thoroughly, with an eye to determining what information, and witnesses, should be added to the file to be relied on at the hearing.

Remove the ability to introduce new evidence or witnesses as of three weeks before a hearing

Without leave of the Hearing Panel, a party will not be able to tender new evidence or witnesses within three weeks before the hearing commences.

Tips for Employers

Given that the WSIAT appeal is the final level of appeal in the workplace safety and insurance system, an employer is well advised to hire a legal professional to conduct a thorough review of the Case Record and ensure all necessary evidence is before the WSIAT. There will be no opportunity to offer further documentation and witnesses without leave of the Hearing Panel.

Create a new service within the WSIAT to assist self-represented parties

The WSIAT has stated it will create a "Navigation Services" group within the WSIAT to provide services to those without legal representation (lawyer, paralegal or union representative). However, Navigation Services will not advise or represent parties.

Tips for Employers

Navigation Services may be helpful in explaining what is required of a party under the new appeal process. However, it will not provide advisory or representative services. An employer in need of such services, should retain a legal representative.

Default to electronic case materials

The WSIAT's new process expects representatives to work electronically, meaning the WSIAT will no longer print the Case Record and Addendum as a default. However, a paper copy will be available to any party who can demonstrate a need.

Revise the process to close an abandoned appeal

Under the current system, if an appellant does not respond to a letter from the WSIAT, a Notice to Intent to Close letter is sent within 60 days, and thereafter the case is closed at the discretion of the Tribunal. Typically, the Intent to Close letter indicates a date by which the party must contact the Tribunal - usually from 30 days to three months. Under the new rules, the 60 day-period will be reduced to 30 days. However, if the parties maintain communication with the WSIAT, it will not move to close an appeal.

Tips for Employers

The shortened time-frame means an employer must pay close attention to all correspondence sent to it by the WSIAT and ensure any information to be provided to the WSIAT is delivered in a timely manner. If a case is closed, a party can make submissions as to why the case ought to be reopened (e.g., why a timeline was missed). Practically, this is more of an issue for workers than employers.

For assistance with any workplace safety and insurance matter (including reviewing, appealing and/or managing claims costs), contact the workplace safety and insurance experts at Sherrard Kuzz LLP.

Daryl Seupersad is an award-winning workplace safety and insurance 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.

The information contained in this briefing note is provided for general information purposes only and does not constitute legal or other professional advice, nor does accessing this information create a lawyer-client relationship. This briefing note is current as of April 3, 2024 and applies only to Ontario, Canada, or such other laws of Canada as expressly indicated. Information about the law is checked for legal accuracy as at the date the briefing note is prepared but may become outdated as laws or policies change. For clarification or for legal or other professional assistance please contact Sherrard Kuzz LLP.



LEXPERTRANKED

**Chambers
and Partners**

Sherrard Kuzz LLP, Employment & Labour Lawyers

Changes Coming to Ontario's WSIAT Appeal Process - April 2024

Main 416.603.0700 / 24 Hour 416.420.0738 / www.sherrardkuzz.com