

Ontario Legal Clinics'

WORKERS' COMPENSATION NETWORK

Réseau d'échange des cliniques juridiques
de l'Ontario sur la loi des accidentés du travail

Reply c/o: ARCH Disability Law Centre, 425 Bloor Street East, Suite 110, Toronto, Ontario M4W 3R5
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September 27, 2010

Ms Judy Geary, Vice-President of Work Reintegration
Workplace Safety and Insurance Board
200 Front Street West
Toronto, ON
M5V 3J1

Dear Ms Geary:

Re: WSIB Work Reintegration Program

As you may know, the Ontario Legal Clinics' Workers' Compensation Network is comprised of injured worker advocates who work in the community legal clinics in Ontario. Members of the Network work in all areas of the province, in both general service legal clinics and in legal clinics specializing in workers' compensation. Our clients are injured workers with very little means. Before their injuries, these clients were non-unionized workers, generally earning low wages, generally non-English speaking and very often those facing mental health issues. For our clients, work reintegration can be significantly challenging.

We understand that you are leading the Board's new Work Reintegration Program through which injured workers are to be supported as they return to employment. This program is to replace the current Labour Market Re-Entry and Early and Safe Return to Work programs. We understand further that the development of the Work Reintegration Program is well underway and that the Board plans to begin handling referrals to work reintegration in November 2010.

Members of the Network are even now beginning to hear of shifts in approach to return to work by WSIB case managers. We are hearing reports of injured workers who are being pressured to "get back to work" without regard to the nature of their disabilities or their ability to engage in return to work programs. These reports are regrettable as the benefits of work reintegration through programs that respect the worker and his or her injury are many and significant.

We know that you have heard the concerns of our colleagues in the legal clinic system as well as other stakeholders. As you develop the principles which underpin the new

program, we urge you to consider adopting benchmarks to ensure that the program meets the needs of injured workers and truly reintegrates workers in a manner that is sustainable and provides the accommodation necessary for a return to meaningful work.

We are guided in recommending benchmarks for the new Work Integration Program by research that you are no doubt familiar with. An often cited example of this research is the Sherbrooke Model developed by Dr. Patrick Loisel, who found that successful return to work programs involve:

- acute stage health care left in the hands of the worker's primary care physician
- intervention beginning only at the subacute or early chronic stage, 6 to 49 weeks after the accident
- employers who volunteer to participate
- unionized workplaces
- multidisciplinary rehabilitation teams including a GP with skills in musculoskeletal disorders and the rehabilitation process, an occupational therapist, a kinesiologist, a psychologist, an ergonomist and a team co-ordinator and a back pain specialist available when needed
- the family doctor having the final decision making authority to approve return to work.

Research has also shown that specialized return to work programs can be therapeutic and can improve the rate of return to work after injury. The determining factor in the success of such programs is the *program* itself, not an emphasis on an "early return" to work which puts pressure on the worker to return to work during the immediate post accident acute stage.

Considering this research and our experience as advocates for injured workers, the benchmarks that we believe are necessary for a good reintegration program are these:

1. The program protects the time that is necessary for an injured worker to heal.
2. The program accepts the opinion of the worker and the treating physician in determining both the appropriate time for returning to work and the suitability of the work.
3. The work to which the injured worker returns is suitable, meaningful and sustainable.
4. The program ensures that the employer and co-workers provide a supportive work environment for the returning worker.

5. The program assesses whether the work environment is toxic for the worker and whether there are risks that the injured worker will be terminated by “any other means”.
6. The program assesses whether there is special protection/support for non-union workers returning to work.
7. The program is not driven primarily by cost management. This applies not only to savings for the WSIB but also to employers who may misuse the program to simply improve their experience rating and not to provide true reintegration to work that is decent, safe and sustainable.
8. The program must provide for financial security for the worker if return to work fails.
9. Resources dedicated to workers who are not accommodated by the accident employer should be improved.
10. The goal and result of vocational rehabilitation must be decent, safe and sustainable work for the worker who is actually employed as a result. The process must not result in deemed earnings in setting the level of benefits for the worker, where the worker remains unemployed
11. The program must include the understanding that ongoing work with the accident employer is not always sustainable, even if the work is technically suitable. Some examples of these circumstances are workers from other provinces who are in Ontario for work, but have their families back home; people who are injured in temporary jobs; or, who are new entrants to the workforce, etc.
12. The program should provide on-going supports to injured workers and non-accident employers in working towards work reintegration.
13. The program must also recognize and provide for the eventuality that a worker with a permanent impairment, who loses his or her job for any reason, may have special difficulties in obtaining another job.

In addition to these benchmarks, we refer you to the guide prepared in 2009 by the Institute for Work and Health entitled *Red Flags, Green Lights: A Guide to Identifying and Solving Return-to-Work Problems* for other recommendations on the elements of successful return to work programs.

We would be pleased to meet with you to discuss these bench marks in more depth. We will be in touch soon to arrange such a meeting.

Thank you for considering our input.

Yours truly,

Ontario Legal Clinics' Workers' Compensation Network

Per:

Ivana Petricone

cc. Mr. David Marshall, President & CEO, WSIB