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Premium Holidays and Benefit Payments – How Ontario's Workers' Compensation System is Addressing COVID-19

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As governments respond on a daily basis to the COVID-19 pandemic and the resultant economic stresses placed upon employers and employees alike, we might not intuitively think of the Workplace Safety and Insurance Board (WSIB) as a likely hotbed of related activity. Nevertheless, WSIB premiums remain a significant cost of employment for a great many businesses in Ontario, and every element of relief can only be of benefit. As well, workers across the province who continue to attend at work – our hard working health care providers and first responders in particular – face a new workplace hazard in the risk of infection that arises from close contact with patients and members of the public alike.

Recently, the WSIB announced its own $1.9 billion contribution to the multifaceted forms of relief being provided at all levels of government: a deferral of WSIB premium payments by employers (and of the paperwork that goes with them) for six months, from March to August. Without requiring any sort of application process, this premium holiday permits all Schedule 1 employers in the province (those who pay WSIB Premiums on a regular basis) to hold off on premium reporting and payments until August 31, 2020. As well, the WSIB will stop charging interest and penalties during this same period.

Of course, workers of WSIB-registered employers continue to be covered for workplace accidents – or more specifically, for both workplace injuries and work-induced disease. The fact that WSIB covers such diseases usually means that workers who got mesothelioma from exposure to airborne asbestos or those who experienced retinitis from a welding arc, are entitled to WSIB benefits. In the present context, however, it also means that work-related COVID-19 can form the basis of a WSIB claim, and accordingly, on March 20, 2020, the WSIB released an “Adjudicative Approach Document” outlining the criteria under which such claims

will be adjudicated. The document outlines a two stage test, namely that the claimant be engaged in employment that creates a greater risk of contracting COVID-19 than the general level of risk faced by the public at large, and that the COVID-19 condition itself has been confirmed.

In investigating such claims, the WSIB always considers individual circumstances, but has identified a number of standard questions to be considered, including:

- Has a workplace COVID-19 exposure source been identified?
- Do the nature and the location of employment activities create an elevated risk of exposure?
- Can a compatible transmission route be identified?
- Is the apparent incubation period since such exposure compatible with current medical understanding?
- Regardless of whether a COVID-19 test has confirmed the diagnosis, have compatible symptoms been observed and assessed as arising from COVID-19 by a registered health professional?

It goes without saying that where others in the workplace have been exposed to the COVID-19 patient, they will be required to go into quarantine and stop attending work for the quarantine period at least. Such individuals, **unless and until they develop symptoms while in quarantine**, are not themselves eligible to receive WSIB benefits. Give that full WSIB benefits are 85% of take home pay, tax free, and that those in quarantine will, if unable to work from home, be entitled only to the Canada Emergency Response Benefit of $500 a week (taxable), there is, however, an increased risk that workers who recognize this differential may attempt to establish questionable WSIB claims.

In the current climate, active resistance of initial entitlement on such WSIB claims may not be the most useful focus of an employer's energy. Nevertheless, if questions arise on such matters, or on other issues relating to COVID-19, Blaney McMurtry's legal professionals are always just a phone call or an email away, to provide further detail, or to assist in developing the best approach for your particular circumstances.

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