

# WCB & DISABILITY LAW UPDATE



Last week, I ended a three-part series on the role of prevention during Covid-19. This week, I will be discussing a few takeaways on claim acceptance during Covid-19. As we have now started to see claim decisions being appealed.

## Background

With members starting to return to work, there will likely be a greater number of exposures and claims related to Covid-19. Currently, the WCB has no policy that specifically addresses the occupational disease of Covid-19. Instead, exposure to this condition is being adjudicated on a case-by-case basis.

The basis for claim acceptance must meet the following two criteria:

1. There must be evidence that a worker has contracted Covid-19 either:
  - a. Through a medical diagnosis in a medical report
  - b. Non-medical evidence establishing the existence of Covid-19
2. The nature of the worker's employment created a risk of contracting the disease significantly greater than the ordinary exposure risk of the public at large.

Covid-19 may still be accepted when these criteria have not been met but there stands a larger likelihood of denial given the guidance the Board has provided us with.

## *Application*

The guidance developed by the Board has come under review at the Review Division of the WCB. In Review Decision R0263778, the Review Officer considered entitlement to benefits for a pharmacy assistant employed in a private community pharmacy.

However, the Review Officer accepted that the worker continued to attend the workplace and have interactions with customers. Moreover, the Review Officer accepted that when not at work, the worker was staying at home and limiting her interactions with the public at large. Furthermore, the worker was engaged in employment that has been considered an essential service.

## *Take-aways*

There are a few take-aways to be had from this recent case:

1. Workers who are employed as essential service providers appear likely to fare better on exposure claims.
2. Context is important. It is one thing to work in an area with a greater exposure than the general public, but it is also helpful to provide evidence of a lack of other potential exposure. Drawing this evidence out when filing a claim may be critical for claim acceptance.
3. Just because an employer has taken steps to limit exposure does not mean that exposure is prevented. In other words, a reduction of risk is only that, a reduction and not an elimination.

## COMING UP

Next week, I will be going over the newly released legislative proposals for the Workers Compensation Act. There are a number of items to be excited about.

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