

Tom Bell

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November 17, 2021

Mr. David Frame
Construction Employers Coalition c/o Ontario General Contractors Association
180 Attwell Drive, Suite 280
Toronto, ON M9W 6A9

Dear David:

Thank you for your letter dated October 19, 2021, addressed to me and WSIB Chair Elizabeth Witmer, regarding the potential impact of a person's COVID-19 vaccination status on their return to work (RTW) with the injury employer and WSIB benefits. You asked for confirmation of how the WSIB would address an unvaccinated person's RTW with the injury employer where the injury employer has a vaccination requirement, and requested that the WSIB develop a specific and official policy for these circumstances, which the Workplace Safety and Insurance Appeals Tribunal (WSIAT) would be required to apply in cases they hear.

The WSIB has considered the impact of vaccination requirements on the RTW process, and is of the view that a person's inability to meet an injury employer's vaccination requirement is an employment matter unrelated to their work injuries/illnesses. Where a person is not vaccinated and this is the barrier to them returning to suitable and available work with the injury employer, loss of earnings (LOE) benefits may be adjusted. Where a person has a valid medical or other exemption from being vaccinated, the WSIB will consider all parties' obligations under human rights legislation.

A specific policy addressing the concept of "availability" as it relates to the personal circumstances of a person participating in RTW is not necessary at this time. We believe the *Workplace Safety and Insurance Act, 1997* (WSIA) and the WSIB's existing operational policies provide transparent authority to make decisions. Specifically, the WSIB's operational policies outline the meaning of "available" as it applies to both the injury employer and the general labour market. The policies also take a person's individual circumstances into account in accordance with applicable human rights legislation. We have analyzed the approaches of other Canadian jurisdictions on this issue and ours is consistent on the use of existing legislative and policy language.

I thank you for your input and offer you my assurance that the WSIB will continue to monitor decisions made in cases involving COVID-19 vaccination requirements and RTW by both WSIB decision-makers and WSIAT.

As others may share your concerns, we will be adding this issue to our Frequently Asked Questions section on our website.

Sincerely,

A handwritten signature in black ink that reads "Tom Bell". The signature is fluid and cursive, with the first name "Tom" being more prominent than the last name "Bell".

Tom Bell
President and CEO

Copy: Elizabeth Witmer, Chair, WSIB
Diane Weber, Special Advisor to the Chair, WSIB