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Sent: Tuesday, March 31, 2020 3:26 PM

To: lal@laliversidge.com

Subject: March 31, 2020 update re COVID-19 & WSIB/WSIAT - Message from L.A. Liversidge

Dear Valued Client:

You may be uncertain as to how COVID-19 will affect your workplace in terms of WSIB claim reporting. I wish to provide some very broad advice.

Should an employee report that he/she has been diagnosed with COVID-19 please follow the WSIB guidelines which we presented to you in our March 23 and 24, 2020 emails. If an employee specifically relates COVID-19 to the workplace, you are required to complete and submit a **Form 7**. Should you have doubts as to the work-relatedness of the condition, we recommend that you submit a letter with your concerns/objections to the WSIB along with the Form 7. We will be available to assist you immediately in the event such a claim is advanced to provide specific advice to you.

I have suggested to the Board that the public would benefit from example case scenarios. It is our understanding that the Board is working on them and once available we will provide them to you. However, the following may be of some guidance to you.

Please consider the following scenarios as broad examples. They are not meant to provide a template for actual cases. We encourage you to reach out to us in the event an actual COVID-19 case develops:

- 1) Employee A is a known or suspected carrier of COVID-19. Employee B had contact of the type known to transmit COVID-19 with Employee A. Employee B contracts COVID-19. Employee B reports this along with the suspect contact with Employee A to the employer. *Must a Form-7 be completed and sent to the WSIB?*
A **Form 7** must be submitted as a *potential* work-related injury has been reported, even if you are unsure there is a work connection.
This type of case will be very difficult for all parties to assess, including the WSIB. Remember, a report to the WSIB does not mean that a claim will be accepted; it simply is a fulfillment of the employer's reporting obligations. All cases will be decided on their individual merits through an application of the "significant contribution test," following a thorough investigation. In workplaces with a documented COVID-19 outbreak, such as some health care or residential facilities recently in the news, establishing whether or not the employment was a significant contribution will be less difficult. However, in no case is the WSIB legally able to presume causation absent a thorough investigation. All cases are still decided on the basic balance of probability standard. Again, these will be very difficult cases.
- 2) Employee A with COVID-19 is expelled from the workplace so as not to infect others, but Employee A has not reported that the diagnosis is work-related and has no known workplace exposure. *Must a Form-7 be completed and sent to the WSIB?*
No **Form 7** is required to be submitted as no work-related injury has been reported.

- 3) Employee A is sent home to self-isolate as a preventative measure but there is no COVID-19 diagnosis. *Must a Form-7 be completed and sent to the WSIB?*
No **Form 7** is required to be submitted as no work-related injury has been reported.

We also suggest that this would be the optimal time for you to ensure that your company is diligent in documenting its interactions/communications with employees and investigating reports of work-related injuries. In addition, it would be prudent for you document all proactive and preventative measures which have been taken to minimize the risk of your employees contracting COVID-19. This documentation/evidence will assist the WSIB in determining work-relatedness (should a claim be filed), particularly when it can be demonstrated that preventative measures significantly reduced the workplace risk. We suggest that there be ample signage posted in and around the workplace to and continued ongoing reminders/information provided to employees. We draw your attention to some official advice/suggestions that are publicly available.

- 1) Outline the steps to reduce the spread of COVID-19 [refer to <https://www.ontario.ca/page/2019-novel-coronavirus#section-9>]
 - a. wash your hands often with soap and water or alcohol-based hand sanitizer
 - b. sneeze and cough into your sleeve
 - c. avoid touching your eyes, nose or mouth
 - d. avoid contact with people who are sick
 - e. stay home if you are sick
 - f. avoid close contact with people outside immediate family (close contact includes being within two (2) meters of another person).

- 2) Outline the symptoms of COVID-19 to watch for [refer to <https://www.ontario.ca/page/2019-novel-coronavirus#section-9>]
 - a. fever
 - b. cough
 - c. difficulty breathing
 - d. muscle aches
 - e. fatigue
 - f. headache
 - g. sore throat
 - h. runny nose

- 3) What to do if symptoms appear [refer to <https://www.ontario.ca/page/2019-novel-coronavirus#section-9>]
 - a. Anyone who begins to feel unwell (fever, new cough or difficulty breathing) should return home and self-isolate immediately.
 - b. People who are self-isolating should seek clinical assessment over the phone either by calling their primary care provider's office or Telehealth Ontario 1-866-797-0000. If you need additional assessment, your primary care provider or Telehealth Ontario will direct you to in-person care options.
 - c. If you need immediate medical attention you should call 911 and mention your travel history and symptoms.

The following actions for employers are from <https://www.ontario.ca/page/construction-site-health-and-safety-during-covid-19> and are specifically for construction, however, can be applied for most workplaces:

- a. post and communicate COVID-19 policies to employees and contractors
- b. policies should cover how the workplace will operate, including, but not limited to:
 - i. the sanitization of sites
 - ii. how employees and contractors report illnesses
 - iii. how to ensure physical distancing
 - iv. how work will be scheduled
- c. ensure physical distancing by:
 - i. staggering start times
 - ii. staggering breaks
 - iii. staggering lunches
 - iv. restricting the number of people on-site and where they are assigned to work
 - v. controlling site movement (by limiting the potential for workers to gather)
 - vi. limiting the number of people who use elevators and other equipment at one time
 - vii. holding meetings in an outside or large space to enable physical distancing
 - viii. limiting unnecessary on-site contact between workers, and between workers and outside service providers, and encourage physical distancing in these areas
- d. ensure facility sanitation:
 - i. access to soap and water (ways to properly clean hands) or alcohol-based hand sanitizer
 - ii. washroom facilities
 - iii. sanitizing commonly touched surfaces, areas or equipment
 - iv. avoiding the sharing of hand tools and power tools. If sharing is necessary, enable sanitization of shared equipment
 - v. posting signage on hygiene in English and the majority workplace language so everyone can understand how to do their part
- e. Adjust on-site and production schedules giving consideration to:
 - i. limiting number of workers to critical number by staggering work schedules
 - ii. sanitation of sites and workspaces
 - iii. site planning to facilitate appropriate physical distancing (two metres) between workers during any particular shift
 - iii. work-site mobility and transportation, including operation of equipment

- f. Track and monitor your workforce
 - i. track where employees have worked
 - iv. track the contact information of employees in the event of exposure so that there is an exposure map for public health authorities.

Please let us know if you would like our assistance with any of the above.

Yours truly,

LAL

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