

## Health Safety Wellness

## ISSUES

ISSUE 2015-01: JULY 22, 2015

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### WorkSafeBC Update

#### WCAT Decisions

Two recent WCAT decisions are of interest to our sector.

The first decision deals with extra-curricular activities and can be found [here](#). In this decision, the teacher was injured while playing floor hockey at lunch. The worker's injury occurred on the employer's premises, in the school gymnasium. This was an employer-provided facility for recreational, exercise, or sports activities. The evidence of the school principal was that the intramural floor hockey game was for the benefit of the employer's business. The activity of organizing a game between teachers and students was not something done solely for the worker's own benefit. The evidence in this case indicates that in playing floor hockey in the school gymnasium, the worker was using equipment provided by the employer. The school principal advised that the worker was the sponsor of the lunch hour intramural floor hockey program during the time period in question. As such, it was his responsibility to ensure the equipment was in place. The panel inferred from this evidence that the worker was not only using equipment provided by the employer, it was his responsibility to ensure that the appropriate equipment was brought out and subsequently put away in connection with the floor hockey games for which he was the sponsor.

Section 17(2) of the *School Act* provides that "Teachers must perform the duties set out in the regulations." The worker's representative further notes that section 4(1)(b) of the School Regulation states that the duties of a teacher include "Providing such assistance as the [school] board or principal considers necessary for the supervision of students on school premises and at school functions, whenever and wherever held." The worker submitted that the Collective Agreement, read together with the *School Act*, and the fact the worker is a salaried employee, means that the worker was on paid time during the lunch time floor hockey game.

The worker's injury was found to have arisen out of and in the course of his employment. In summary, the factors that favoured workers' compensation coverage are that the worker's injury occurred on the employer's premises, his activities were for the employer's benefit, he was using equipment provided by the employer, his injury occurred as a result of contact with a student, he was providing supervision to students while engaged in the noon hour activity, and the floor hockey game involved an intention to foster good relations with a section of the public (the school students) with which the worker deals.

The second decision relates to a teacher who developed an anxiety disorder with mood disorder which she attributed to working with behaviourally challenging students in her classroom and can be found [here](#).

In summary, the key determinations of the Panel are as follows:

The worker had a diagnosed mental disorder as described in the applicable version of the American Psychiatric Association "Diagnostic and Statistical Manual of Mental Disorders" - i.e., an adjustment disorder with mixed anxiety and depressed mood - as required by Section 5.1(1)(b) of the Act.

With one exception, the Panel accepted that all of the incidents described by the worker, with respect to the behaviour of the two students, occurred. The Panel concluded that these incidents described by the worker were "clearly and objectively identifiable events and/or work-related stressors."

The Panel determined that "while many of the incidents experienced by the worker were likely distressing and upsetting to her, she did not experience a traumatic event or a series of traumatic events" (as these words are defined in the applicable WorkSafeBC Policy).

The Panel next considered whether the "identifiable events" were "significant work related stressors" as per Section 5.1(1)(a)(ii) of the Act. In this regard, the Panel noted the description of a "significant work-related stressor(s)" in the applicable WorkSafeBC Policy as being "excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment." The Panel concluded that many of the behaviours of the two students involved stressors that were of excessive intensity from the normal pressures and tensions of the worker's employment; i.e., many of the identifiable events were "significant work related stressors" for the purpose of Section 5.1(1)(a)(ii) of the Act.

The next question raised by the Panel was whether the worker's adjustment disorder was "predominantly caused" by the significant work-related stressors (as required in Section 5.1(1)(a)(ii) of the Act). The medical evidence presented to the Panel opined that the worker's experience with the severe behaviour of the two students in her class in the Fall of 2013 was the predominant cause of her adjustment disorder, and in fact the only cause (the Panel specifically noted that this medical opinion was not contradicted by any other specialist medical opinion evidence).

The Panel lastly considered the applicability of Section 5.1(1)(c) of the Act, which states that compensation will not be provided to a worker for a mental disorder if the mental disorder is "caused by a decision of the worker's employer relating to the worker's employment." The Panel acknowledged that this consideration of the scope of Section 5.1(1)(c) of the Act involves a question of statutory interpretation. The Panel then reached the following conclusions concerning the interpretation to be given to the exclusionary provision in Section 5.1(1)(c):

- The term "caused by" in Section 5.1(1)(c) requires more than a basic "but for" connection between the employer's decision respecting the employment and the mental disorder before the exclusion can apply.
- In cases with multiple causes, the Panel was unable to conclude that the exclusion of compensation for employment relations matters is triggered if the decision of the employer only meets the causative significance test.
- The standard to be applied was whether, on a balance of probabilities, the worker's mental disorder was "caused by" the employer's decision respecting the worker's employment within the meaning of Section 5.1(1)(c). Applying the above principles, the Panel concluded that the preponderance of the evidence supported that the severe behaviour of the two students was the predominant cause of the worker's adjustment disorder, and that the employer's decisions relating to the worker's employment - although part of the chain of causation - "were too remote from the worker's mental disorder." Accordingly, the Panel determined that the exclusionary provision in Section 5.1(1)(c) of the Act was not applicable in the circumstances of the worker's case.

The finding by the Panel, with respect to whether the worker's mental disorder was "predominantly caused" by the significant work-related stressors, is one that was based on the medical opinion evidence presented to the Panel. As there was no contrary medical opinion provided, the Panel was required to accept and apply the medical opinion evidence presented

to it (i.e., that the worker's experience with the severe behaviours of the two students in her class in the Fall of 2013 was the "predominant cause" of her adjustment disorder).

Districts that receive reports of claims with similar case facts should contact BCPSEA for advice.

## **Bill 9**

Bill 9, Workers Compensation Amendment Act 2015 (Royal Assent May 14), has brought about a number of important changes related to inspections and sanctions that districts need to pay attention to.

WorkSafeBC has implemented new policies related to investigations. Preliminary investigations need to be undertaken within 48 hours (not including weekends in school districts). Interim policy comes into place in July 2015. There is a consultation period; however, new regulations will be in place during this time and changes as a result of consultation could happen in January 2016. Interim policies D10-175-1 (preliminary investigations) and D10-176-1 (full investigation) identify the required content for each report. This information can be found in the [WorkSafeBC Prevention Manual](#).

WorkSafeBC has updated their [online incident investigation form](#) and a revised document that meets the new requirements is now available. Districts that have their own locally developed forms will need to review them to ensure they are in compliance with the new policy and regulations.

Other important elements of Bill 9 are the changes to how Serious Incident Investigations will be carried out by WorkSafeBC. It will be important to determine if the team that comes in to investigate is the "For Cause" Investigation Team or the "For Prosecution" Investigation Team. If it is the latter, you should ask to see a warrant and let the team know you wish to consult legal counsel, in private, and contact legal counsel immediately.

## **Proposed Changes to Stop Work Orders**

Bill 9 also enabled the expansion of Stop Work Orders. Policy changes are available for consultation, with that input opportunity being open until October 15, 2015. Please [click here](#) for more information.

If you have input for the consultation, please forward a copy to Sue Ferguson at BCPSEA ([suef@bcpssea.bc.ca](mailto:suef@bcpssea.bc.ca)).

## **Asbestos Programs**

In the past few months there have been a few asbestos-related incidents associated with school districts. WorkSafeBC has expressed a concern that not all school districts may still be in compliance with requirements for asbestos programs.

In particular, with changes in staff and renovation projects over the years, check that your district's asbestos inventory is up to date and that all staff are aware of potential exposure to asbestos should that substance be disturbed. Once school district responded that each year they check the logs and advise all new staff, including teachers, if there is asbestos in their site and, if so, what the process is in the case of an accidental exposure. They also include asbestos awareness in their orientation program.

Expect to see random inspections in all school districts by WorkSafeBC prevention officers in the next school year.

WorkSafeBC has the following resources to assist you:

[http://www2.worksafebc.com/PDFs/construction/AsbestosBeware%202015resources\\_Jun9.15.pdf](http://www2.worksafebc.com/PDFs/construction/AsbestosBeware%202015resources_Jun9.15.pdf)

## **2016 Assessment Consultation**

WorkSafeBC is having public consultation on the assessment rate for 2016, starting the week of July 22, 2015. All employers are welcome. Sessions will be held around the province.

The preliminary rate for 2016 remains the same as 2015 at \$0.64 per \$100 of assessable payroll. The maximum wage rate will increase from \$78,600 per worker to \$80,600.

| Date    | Time                 | Location      |
|---------|----------------------|---------------|
| July 22 | 1:00—3:30 p.m.       | Richmond      |
| July 23 | 1:00—3:30 p.m.       | Kamloops      |
| July 24 | 9:00—11:30 a.m.      | Kelowna       |
| July 27 | 9:00—11:30 a.m.      | Langley       |
| July 28 | 11:00 a.m.—1:30 p.m. | Fort St. John |
| July 29 | 9:00—11:30 a.m.      | Prince George |
| July 30 | 8:30—11:00 a.m.      | Nanaimo       |
| July 30 | 2:00—4:30 p.m.       | Victoria      |

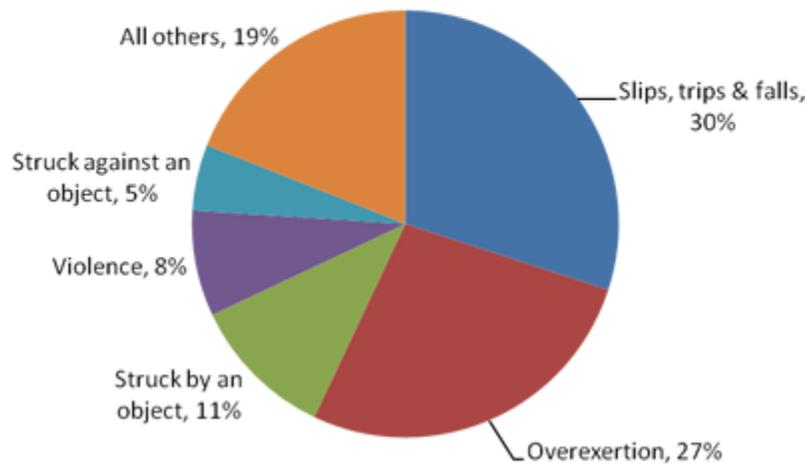
To reserve your seat, please confirm your attendance with WorkSafeBC by submitting your [RSVP](#) or calling 604 247 7333.

An education sector-specific consultation is being planned for September 1, 2015 from 11:00am to 12:00 pm. This is being arranged so that attendance can be by conference call. Details will be circulated when they are available.

## Statistics

Slips, trips and falls remain the most frequent type of accident. Districts wishing to address this reality might start with a conversation on appropriate footwear. While there are other causes such as wet floors, poor housekeeping, and leaving out tripping hazards, many problems occur where footwear is a factor. As the weather remains warm, the desire grows to wear open-toed sandals and even flip flops. Footwear must be appropriate for the work-related tasks employees must carry out.

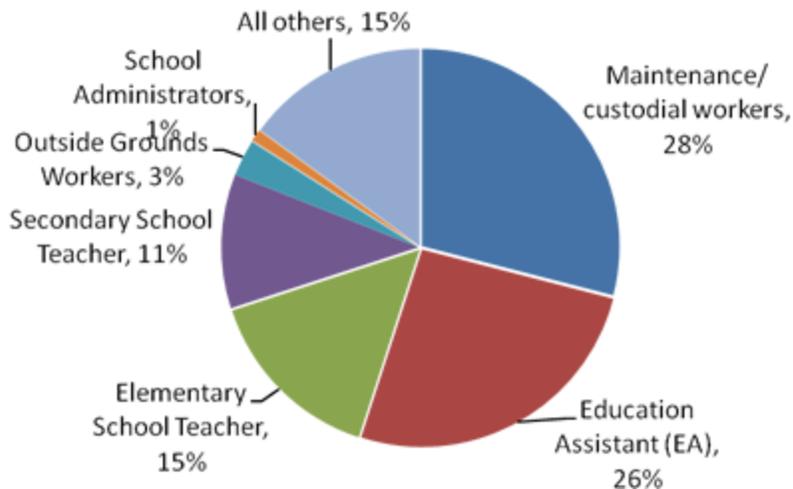
**Claims by Accident Type (Five Year Average) 2009-2013**  
Public School District (classification unit 765008)



Data Source: WorkSafeBC Statistical Services, August 2014

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## Claims by Occupation Type (Five Year Average) 2009-2013 Public School District (classification unit 765008)



Data Source: WorkSafeBC Statistical Services, August 2014

### Free Resource for Wellness

Consider signing up for [Wellness Fits](#). This resource, sponsored by the BC Cancer Society, provides an excellent newsletter as well as information and tools.

### Questions

If you have questions about the issues raised in this newsletter, or any health, safety or wellness issue, please contact Sue Ferguson at 604 730 4502 or [suef@bcpsea.bc.ca](mailto:suef@bcpsea.bc.ca).

**Have a safe summer!**



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