



Workers' Compensation Newsletter

Labour Market Re-Entry Plans: Millions Down the Drain/Millions in Employer Penalties

The first four pages of a typical Labour Market Re-Entry Plan are attached to this edition of the newsletter (for subscribers only). Labour Market Re-Entry Plans are the focal point of the duty of employers to accommodate injured workers within the context of the Workplace Safety and Insurance Act (WSIA). Labour Market Re-Entry Plans have been developed, pursuant to draft regulations which have been circulated for review and implementation by the Workplace Safety and Insurance Board (WSIB), over the past two years. An Ontario employer, no matter how small, who refuses to employ an injured worker, no matter how brief his pre-injury employment, could be compelled to reimburse the WSIB the total cost of the Labour Market Re-Entry Plan. In the example attached, the ramifications of such a Plan to the Employer were a penalty levied against the Employer of \$42,573.00 (for the cost of the Plan) plus a \$65,000.00 WSIB liability (being the cost of ongoing benefits paid to the worker for the duration of the Plan).

Employers should consider the catalogue of penalties they face for not re-hiring a disabled employee:

- for breach of s.40 of the WSIA, the "cooperation" section:-up to \$150,000.00;
- for breach of s.41 of the WSIA, the "reinstatement" section:-up to \$35,000.00;
- for breach of WSIA experience rating:-up to \$200,000.00;
- for breach of the Ontario Human Rights Act:-up to \$50,000.00;
- for breach of The Employment Standards Act:-one to two weeks' salary for each year worked;

A TOTAL OF NEARLY ONE-HALF OF A MILLION DOLLARS!

In the attached sample, the worker is receiving a two-year training program to become a computer graphic specialist. This plan is an abomination! Consider the following facts: The construction ironworker for whom the plan was approved strained his neck, after 3 days on the job. He has a major drug problem (percocet and alcohol), and has worked an average of 2 months per year since his first neck injury, in 1989, with another employer. His current employer

offered him welding work, following his latest accident. However, he asserted that the 13.8 ounce welding helmet would be too heavy for him to wear. The WSIB accepted this "cock and bull" story, on the basis of a recommendation from the worker's Doctor, who had absolutely no understanding of the work requirements of welding. For the same reasons, supervisory positions, available with the employer, were deemed highly inappropriate to be offered to the worker. This worker will never work as a computer graphic specialist. He already completed a Board-sponsored Vocational Rehabilitation Plan, in 1990, following which he merely returned to his seasonal employment as a construction ironworker. At a recent Appeals Officer Hearing, the worker stated that the stress of the Hearing caused him to miss two weeks of school!