

# The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

October 12, 2006

An Electronic Letter for the Clients of L.A. Liversidge, LL.B.

2 pages

## WSIB Set to Release Revised Draft Policies on Early and Safe Return to Work Next Week *Expect Significant Changes*

### WSIB Heeds Critics and Pulls Policies Released Last Year

In the January 19 and 23 issues of *The Liversidge e-Letter*, “**WSIB Releases Draft Policies on Early and Safe Return to Work: The Board Should Re-Group; Re-Think and Re-Draft**”, I strongly criticized the Board’s draft policies on early and safe return to work [“ESRTW”] released almost a year ago - on October 27, 2005.

#### The first draft policies missed the mark

The Board had developed those draft ESRTW policies purportedly to “*improve the understanding of the roles and responsibilities of the various parties*” in the RTW process, to “*help address the challenges the WSIB and the workplace safety and insurance [“WSI”] system face*”, and to “*demonstrate respect for injured workers and employers to mitigate the significant costs of existing claims*” [October 27, 2005 letter to “Stakeholders” from WSIB Chief Corporate Services Officer].

#### The policies as initially drafted would set back ESRTW several years

I argued in two special issues of *The Liversidge e-Letter* that those policies risked setting ESRTW back several years. I challenged the need for *any* changes, noting that the current ESRTW policies have been not only a resounding success, but *likely one of the most successful policy initiatives in the history of the Ontario WSI system*. I noted that ESRTW has evolved from concept, to policy, to becoming culturally imprinted in Ontario workplaces. *Who could ask for more than that?*

#### Critical changes were necessary – as written they were unfair to employers and would increase time on claim

I suggested that the proposed policies would result in unfair application to smaller businesses, and contrary to the declared policy expectations, in contrast with present policies, will actually extend, not reduce, time on claim. I suggested that if these policies are to be fairly applied, significant re-writes were required. I also spoke out against the use of the word “*timely*” and the improper avoidance of the word “*early*”. [continued on page 2]

### L. A. Liversidge Executive Seminar Series

#### Advance Notice:

*An interactive executive briefing on revamped WSIB ESRTW policies is scheduled for:*

**January 17, 2007**

**9:30 A.M. to 12:00 P.M.**

Early and safe return to work [“ESRTW”] is now the cultural standard in all Ontario workplaces. Yet, the WSIB still persists on fixing something that is not broken.

While the Board pulled back last year’s ill-conceived policies, a new slate of policies are being released for public consultation *while simultaneously* being implemented in four pilot projects.

These policies will impact *every* Ontario workplace. Make sure you are prepared.

Set aside this date now for an in-depth executive briefing on these critical policies and learn how you can develop an informed and influential response.

*Invitations will be e-mailed In November*

**Four critical changes were necessary**

I strongly recommended that the policies be pulled and called for four (4) critical changes:

***Critical Change No. 1: The policies must be changed to more fairly apply to small business***

I was of the view that the proposed policies would lead to unfair fines against smaller employers, noting that there was no distinction between potential liabilities for small and large businesses, a distinction that is recognized within the WSIA itself [employers regularly employing less than 20 employees, for example, are not subject to the reemployment provisions of the WSIA]. Additionally, the Board's experience rating programs meter accountability based on the size of the employer.

***Critical Change No. 2: The WSIB adjudication processes must be revamped for fairer case-by-case determinations***

I suggested that the issuance of a fine requires a different decision-making framework than benefit administration, and offered recommendations for fairer administration.

***Critical Change No. 3: WSIB must focus on awareness***

Once operational, I explained that the proposed policies would immediately empower Adjudicators to levy penalties against "non-cooperative" employers. I offered a simple transitional recommendation to ensure an increase in employer awareness before the Board starts levying fines.

***Critical Change No. 4: Dispute resolution must be "fast-tracked"***

I noted that ESRTW disputes are presently "fast-tracked" within the system. Disputes pertaining to ESRTW fines, to be fairly administered, must receive similar consideration. I recommended structural adjustments to the WSIB adjudication procedures to ensure that ESRTW fines receive appropriate and due consideration and disputes are quickly settled.

**Last Spring, the WSIB pulled the first draft policies**

In the face of widespread criticism, to its credit, the Board pulled the policies, and committed to an extensive re-write. As importantly, the Board slowed down the policy development process and agreed to a trial run in several pilots, before across the board implementation.

**The Board's current approach – process-wise at least – is a vast improvement**

While the initial policies were in my view, ill-conceived and were placed on a needless fast track ride towards swift implementation, the Board's current approach is a vast improvement. At least, process-wise.

**I am still unconvinced any changes to ESRTW policies are needed**

I am still unconvinced that any changes are needed to the current ESRTW policies. Earlier this year, I suggested that the proposed policies require a significant amount of work. A major re-write was needed. I encouraged the Board to view the first phase of consultation as simply that – a first phase. They seem to have accepted that advice.

**L. A. Liversidge Executive Seminar Series****Reminder:*****Town Hall Meeting with WSIB Chair******The Honourable Steven W. Mahoney*****November 2, 2006****8:30 A.M. to 12:30 P.M.**

**As part of his committed outreach, Mr. Mahoney will be meeting with L.A. Liversidge clients November 2, 2006 in a "town hall" question & answer session. Take advantage. Hear his plans 1<sup>st</sup> hand. Ask the tough questions. Your questions. Direct to the source. Sign up today**

***Invitations will be e-mailed***

**My bottom line advice to the Board was: *Re-group, re-think and re-draft.*** We will see how deep the changes have been, and if the Board "got the message".

**Revamped policies will be released October 16, 2006**

Revamped policies will be released soon, likely on October 16, 2006, for a four (4) month consultation period.

**The policies will be tested in four pilots**

Concurrently, the policies will be tested in four (4) pilots – three sector based (health care, service sector, and manufacturing) and one geographically based (Hamilton).

**Expect some significant changes – but – employers will still be subject to non-cooperation penalties**

The policies are likely to be more streamlined than the first drafts, and there are unlikely to be any references to "timely ESRTW" and will be a return to the legally proper "early" terminology. The Board, in all likelihood, revamped the templates for determining "productive" and "suitable" employment.

There is no timetable for these policies to go to the Board of Directors for approval. Hopefully, this means that the Board is taking its time to get it right.

While I am still very much opposed to the need for any changes to the current ESRTW policies, this approach, at least process-wise, is far preferable to the one announced a year ago. I will keep readers of **The Liversidge e-Letter** updated. Stay tuned.