



Ken Rayner:

Think you have to face a WSIB claim or appeal on your own? Think again. There's a little known resource in Ontario that's been quietly saving employers time, money, and stress, and it doesn't cost you a dime. The Office of the Employer Advisor, also known as OEA, provides expert guidance, representation and support to employers just like you, especially in construction where 87 per cent of IHSA's member firms operate. So whether you're brand new to the WSIB system or neck deep in paperwork, this episode could be a game changer for you.

Announcer:

It's time for the *IHSA Safety Podcast*.

Ken Rayner:

Welcome to the *IHSA Safety Podcast*. I'm your host, Ken Rayner. With 87 per cent of IHSA's member firms coming from Ontario's construction industry, this episode is packed with timely and relevant information just for you, including how to access services tailored specifically for construction employers, what the most common questions are from companies like yours, and how the OEA continues to innovate in supporting small businesses. It's a pleasure to welcome to the *IHSA Safety Podcast*, the OEA's Director, Susan Adams, and one of their employer specialists, Dunstan Francis. Great to have you both here.

Dunstan Francis:

Great to be here.

Susan Adams:

Thank you. Glad to be here.

Ken Rayner:

Excellent. All right. Very excited to get into this because I know a little bit about the Office of the Employer Advisor, but I myself am looking to learn more during this podcast. So why don't we start, Susan and Dunstan, with an overview of the services that the Office of the Employer Advisor provides to Ontario employers.

Susan Adams:

Thanks, Ken. Glad to help with that. So the OEA team provides legal advice to Ontario employers about their Workplace Safety and Insurance Board [WSIB] claims and cost issues. We can represent employers at the WSIB appeals level and at the External Appeals Agency, the Workplace Safety and Assurance Appeals Tribunal. Our representation services are primarily provided to Ontario employers with fewer than a hundred employees. So for example, we can assist with concerns such as when a worker has appealed a WSIB decision.

You've received a decision from WSIB and would like to understand what's happened. You disagree with the decision, would like to discuss it, or maybe there's a question about claims costs, your premium rate or a business was contacted by the WSIB about an audit. The OEA can also provide advice and best practices if you're experiencing difficulty returning an injured person back to work.

We also have a mandate to support employers if they receive notice of an unlawful reprisal allegation application under the *Occupational Health and Safety Act*. For this work, we represent employers with fewer than 50 workers. And more generally, we present webinars approximately twice per year about key areas of the WSIB process, like return to work and claims management tips. Information is also offered through our website content posts of current topics on our social media accounts and presentations. Our services are prepaid, so it's free when employers call because we're funded through WSIB premiums that employers pay and we're still separate from the WSIB.

Ken Rayner:

Wow. So all that, and I'm surprised that you are as underutilized perhaps as some of us believe to be in this has got to be something for our listeners. They say, "Wow, I need to start engaging with the OEA." Susan, you covered a lot of information there. Maybe we can focus in on maybe the top three reasons that an Ontario employer, particularly those with that are small business, would want to engage with the OEA.

Dunstan Francis:

All right. Ken, I would say we have to start from the beginning. So the OEA was created to serve primarily small employers. And of course, as we know, small employers have many challenges. The challenge of just attempting to run a successful business, it can be immense. So limitations on their available resources are often significant. Our agency specializes in the workplace safety and insurance system, so we're well positioned to provide advice and representation in this particular area. We're consistently working to ensure that employers are treated fairly at all levels of the workplace safety and insurance system.

Secondly, navigating and attempting to gain an understanding of the WSIB's legal requirements and obligations can be very overwhelming. So our expert legal services can make a difference between compliance and penalties. As Susan mentioned previously, the OEA we're prepaid, so it's free service. The employer has already paid for our service. So we save you time and we save you money. And you asked for three, so I would say the other benefit engaging with our agency stems from managing claims and WSIB decisions.

So we can review a decision, particularly those that involve an appeals process or a potential appeals process, and we can provide you with practical advice to help you decide whether to spend valuable time participating in the appeals process or allowing the process to continue without your participation.

Similarly, we can advocate for the employer in return to work scenarios. So we'll provide you with information and advice that's needed to return your person, your worker, back to work safely following an accident or an incident. So I would say the top three reasons in a nutshell, you have limited resources, so we'll be able to provide you with free legal services and legal advice. We'll save you time and money and we can provide you with representation for an appeal or return to work process.

Ken Rayner:

Wow. And amazingly enough, all at no cost to the employer?

Dunstan Francis:

That's right.

Ken Rayner:

Wow. Okay. Dunstan, you mentioned something there about engagement. So maybe we can get into that. Susan and Dunstan, by what means can Ontario employers engage with OEA?

Susan Adams:

So we're easily accessible. So employers can start a conversation with OEA by phone email at askoea@ontario.ca and using our website contact page, we have social media accounts and employers can attend in-person events that we present jointly with system partners and chat with the team in-person there. So when working with an employer, the team can meet an employer in person at their place of business or at a local government office. For client convenience, we often meet virtually using video conference apps. When we hear from an employer, most often we respond by phone.

Situations are fact-specific and they can be detailed. We probably have questions which makes it practical and beneficial for the employer and our team member to talk so that we can provide advice directly related to the situation the employer is facing.

Ken Rayner:

Amazing. So lots of options. That's fantastic. I'm going to repeat something I said a couple of times in the introduction because I think it is important. So IHSA as part of its membership has 87 per cent of the 157,000 firms that we represent coming from Ontario's construction industry. And on the OEA website you offer what appears to be a specific service for construction employers. Can you explain why the services are separate for construction employers and an understanding of those services specific to the construction industry?

Dunstan Francis:

Ken, thanks for the question about the website. A lot of work goes into producing that page. We have three separate sections available in English and in French. Our website offers information to employers with queries about unlawful reprisal matters, but then we also have a separate non-construction employer versus the construction employer sections of the webpage itself.

So the construction industry has legal obligations that are unique and different from non-construction. So to start with, there's a mandatory requirement to have a WSIB account. So if you're an independent operator working in industrial, commercial or institutional construction, you are likely to have a requirement to have a WSIB account.

Now, given the nature of the industry, the employer and employee relationship is not always very clear. It can lead to some confusion about WSIB registration. Obligation requirements. Like I said previously, if you're an independent operator, the assumption was that you're in business for yourself so you don't have to have a WSIB account. So through the separate pages we highlight these differences and the best practices for securing the information that you're seeking.

As well, there are differences in the obligations to re-employ a worker following the initiation of a claim. So we provide some clarity of that WSIB policy and we also offer some online return to work resources to assist with that process. The website also aims to help businesses in construction understand potential liability issues such as WSIB coverage. We help construction employers determine the complexities of the legal status of sole proprietors, partnerships and executive officers and whether or not coverage is required. There are certain coverage exemptions and we have information on the site that will aid in understanding if your firm qualifies for those exemptions.

Clearance certificates, it's always important in the construction industry. So the WSIB issues a clearance to relieve a principal contractor of any liability for unpaid premiums or other amounts that the subcontractor that they're potentially going to engage in business which potentially owes to the WSIB for the validity period of the clearance. Now without a clearance certificate, the principal contractor may be liable for a contractor's payment of obligations to the WSIB.

So the importance of the clearance certificate is to avoid being responsible for somebody else's bills basically. Then there's always the issue of premium calculations. So we have resource material on within the webpage for the employer to better understand how their premiums are calculated. At the end of the day, construction employers receive the same great services that we provide to all of Ontario's small to mid-size employers, but there are differences in the industry that require some clarity.

Ken Rayner:

So Susan and Dunstan, I'm just imagining an employer and maybe it's a construction employer listening to this podcast and just being dumbfounded that they weren't aware of the services you provide and that all of the services that you provide to them are prepaid or free essentially. I can imagine you're going to be getting a lot of calls after this podcast. I certainly would hope so. Maybe we can get into some of those most frequent questions that you receive from employers, maybe the ones in particular from construction employers.

Dunstan Francis:

All right. So if all 150,000 of your members call, I'm not so sure if we'll be able to handle that volume, but...

Ken Rayner:

That would be great if we crashed your website. We could say that there's definitely an intention afterwards.

Susan Adams:

We'd like to try to answer them though.

Dunstan Francis:

Yeah. We'll make the attempt. If they do call, they're probably going to ask these frequently asked questions. So the first one of course is very often, "Do I need to register or pay premiums to the WSIB?" And that's a good place to start. So the answer for the construction industry, again is likely yes. Most construction employers have a mandatory obligation to register and pay premiums to the board and definitely if you hire a worker, you need to be registered.

We get lots of questions about individuals, whether they're a worker or an independent operator. So to provide some clarity on the definition of both. So a worker is generally defined as a person who's hired to perform a contract of service. So this is the usual employer-employee relationship. The employer controls where the work is done and how the work will be performed. The worker will receive a salary or maybe an hourly wage.

You'll see source deductions on your pay stub. The fact that you're receiving a pay stub, that's probably an indication that you're a worker. Now, for an independent operator, they're hired to perform a contract for service. So the independent party will receive payment for a specific job, but they could control how the work will be completed. They're responsible for reporting their earnings to the CRA. They may also decide when they're available to do the work.

So in construction, both the employee and independent operators are considered to be workers. However, the independent operator must pay their own WSIB premiums. Now, when employers or principal contractors contact us to clarify the definition of these two, it can get a little bit murky because sometimes you get details that the independent operator might actually be an employee, right? But that's a routine question for us and our staff is fully available to provide you with some clarity between the two.

We often get questions about workers' claims and whether or not there's an impact from a previous work experience, potentially with a different employer. Depending on your region of the province and the type of construction projects happening around you, you'll hear things about specific workers, especially if you get into smaller portions of the province and you have individuals who work with each other on a regular basis or there's maybe just a limited number of drywall operations.

You'll have the individuals who are kind of working for the same firms. So it doesn't take much for a business owner to share an experience about a former employee or a subcontractor, and that potentially leads to concerns that a pre-existing condition is enhancing a worker's impairment. Right? So now depending on the circumstances of what led to your worker's current claim, there could be some skepticism about the things that might exist that might be enhancing the worker's ongoing impairment.

So, again, that's a question that we receive on a pretty regular basis. Employers always have concerns about the claim. Well, I shouldn't say always. I shouldn't say that. Oftentimes employers have concerns about a claim not being their responsibility or possibly the responsibility of somebody else or another party or another instance or another situation. Especially if there's evidence of concurrent work being done with another company or if there's knowledge of an activity outside of work that might have contributed to the worker's condition.

So I'll give you a quick... And I won't give too much detail, but I'll give an example. I had a client where the worker was a family member. They had previously sustained a neck and back injury on the soccer

pitch. The injured worker or the injured party was the niece to the owner of the company. So the owner of the company was very instrumental in nursing their niece back to health. So this happened when she was in college or university. So we fast forward a few years, the niece is now an employee and she was claiming a neck and back pain resulting from her job duties.

Of course, my client knew that she had issues with her neck and back for a number of years, but there was very little medical support in the claim file. And when the niece or when their worker completed the worker's report of injury, she checked the box stating that she never had issues in that area previously and that started a wild appeals process. So employers, if they have knowledge of additional information that might point to something else being the impact or being the reason or the cause for the worker's impairment, and especially if they're in the midst of an appeal or an objection or they gave consideration to an appeal or an objection, they'll contact our office and then we can go through the details.

Players ask oftentimes, "How long do we have to keep a person employed following an injury?" I mentioned previously that construction employers have a separate set of rules as opposed to non-construction employers. So for example, construction employers is obligated to re-employ its workers regardless of how many construction workers it employs or the worker's length of employment, which is different than the policy for non-construction employers who have a length of employment or organizational size minimal limits.

In addition to that, there are return to work obligations that need to be considered. So failing to comply with these obligations, the return to work obligation, also the re-employment obligation, if there's a failure to comply with these obligations, it can result in serious penalties. So our office will assist and advise the employer based on the specifics of the case.

Claim suppression. It doesn't come up that often, but some employers ask if they can pay their worker rather than filing a WSIB claim. Now, the WSIB will frown on this approach as it's suggestive of an attempt to suppress a claim. Our best advice is to follow your legislative responsibility. The worker has notified you that they sustained a workplace incident or workplace injury, disease, what have you. They've sought medical attention. We suggest you submit the Form 7, which is the employer's report of injury, and let the decision makers make their determination.

Choosing to potentially suppress a claim can lead to penalties or fines and you might be subjected to a provincial offense charge as a consequence. And I'd say oftentimes employers, again, they see clarity on the work-relatedness of an injury. Was the worker traveling? Were they off the employer's premises? Is it possible that they were doing something that would take them out of the course of their employment?

Comes up sometimes maybe they... Were they consuming alcohol? Was there horseplay involved? Things of that nature. So having questions about an injury being work-related when certain details don't necessarily add up, that's very natural.

Ken Rayner:

I'm getting the sense that after every one of your responses, I'm going to say, I can't believe this is all free. And so maybe I'll just stop that now and not have to provide that after every answer. That's

incredible. Again, the services that you provide... I think this is going to be an eye-opener for many of our listeners in terms of the ability for them to contact OEA and get some... as a trusted resource and really better understand what their obligations are.

It's been five years since the start of the pandemic, and I can imagine that the OEA was no different than many other service providers that the pandemic probably significantly altered the way that you deliver services to Ontario employers. Is that correct? Did the pandemic change the way that you engage and the way you provide services to employers?

Susan Adams:

Thanks for the question. I'll start actually with what didn't change. So the OEA continues to provide advice and gather information from employers by phone. It's still a really good and effective way for the client to get to know your local team member and to discuss the situation. And from there, the pandemic definitely accelerated the number of services in the system that are available electronically and there's more interest in comfort level to meet by phone or video compared to pre-pandemic.

Within the WSIB system, the format for appeals hearings is now primarily video conferencing at both the WSIB and the appeals tribunal. The OEA adapted to appeals hearings by video conferencing and we can work with the client, the employer, about the most comfortable and cost-effective way for the employer to participate in that process. So document filings are now completed electronically with the board and the tribunal, and the board's work to make more information accessible to employers through online services.

So also our OEA webinar series was really successful during the pandemic. There are introductory topics for individuals newer to interacting with the system and more detailed sessions with reminders and tips for employers with some experience in the process. So recently there are more opportunities to present and attend events in person, which we're also looking forward to. So in summary like so many other industries after the pandemic, there's more online and video conference interaction sort of with us and throughout the system.

Ken Rayner:

And you mentioned Susan, you mentioned WSIB, you mentioned the appeals tribunal. How does the OEA collaborate with those type of system partners and with employer associations to address the challenges faced by small businesses?

Dunstan Francis:

So it's extremely important for the OEA to maintain regular communication with system partners. I mean, we have a legislative responsibility to advise, educate, and represent. So we need to be up-to-date with everything happening in and around the system. We participate in consultations about changes to policies, processes. We provide feedback based on our experiences with smaller businesses. Oftentimes, they don't have a forum to share their story, so we're the voice for the small employer.

Based on our observations of client experiences, we raise issues with system partners about areas where a process is not working as well. We also let system partners know what is working, what is considered to be a great success. We collaborate with employer associations to share news. So for

example, we have a webinar series that's starting next week. I don't know when this podcast will be released, but that series happens biannually.

Usually, we would have a spring session and then we'll have a fall session. And in these sessions we share our perspective and suggestions that will assist the employer and the employer community in understanding the workplace safety and insurance system. This podcast for example... So I'll give an example of us collaborating with system partners. So this podcast is a result of a networking event that myself and a colleague had attended in Hamilton maybe November of last year, November or December of last year. So we're always open to accepting invitations to attend associations, conferences or committee meetings about workplace safety and insurance.

Ken Rayner:

Yeah, that's great, Dunstan. And that is how it came up. I believe you were speaking to one of our instructors, I think it was Taylor Vander Doelen had a conversation with that at the stakeholder event and right afterwards sent me an email saying, "If we haven't done a podcast on the OEA, we need to because there's some great, great information here."

Dunstan Francis:

Well, he was great. He was great.

Ken Rayner:

Excellent. Okay, so we've covered a lot of what the services that you provide today. Maybe we can get into a little bit about are any innovative programs or pilot projects plan to further improve the OEA's impact on workplace safety and insurance matters?

Susan Adams:

Thank you. Great question. So we're focused on leveraging our digital tools. So we're working on content-based social media posts to share information and practical tips about WSIB issues. So we post on LinkedIn and X, formerly Twitter. We're reviewing and streamlining our web content to make it easier for employers to use and find information when they need it. We're also exploring client surveys after connecting with an employer for advice and after representing a client so that we can learn from our clients about their experiences with us to improve and adapt.

The team as Dunstan mentioned also monitors changes at WSIB and at the tribunal. So for instance, the board's policy updates and the tribunal's recently implemented process changes. And then as a system partner and stakeholder, we participate in consultations, share feedback, and work with employers to represent their perspective and promote their access to the system.

Dunstan Francis:

I'll add a couple more points. We're trying to keep up with the WSIB because WSIB is now in the process of modernizing their services, especially their online services. And as Susan described, we're attempting to keep in lock and step with the board as it relates to those updates. And as we try to modernize our

own internal systems... Again, what does not change is our dedication to helping employers with their legal issues and our goal of providing excellent and responsive client services.

Our ongoing issue of the OEA is raising the awareness of our services. So seeking out opportunities to share information with the employer community is always beneficial. And being given the opportunity to present to your members today is by way of this particular podcast episode is greatly appreciated. So again, Ken, thank you for the invitation.

Ken Rayner:

Ah, great to have you both here and this is fantastic. And again, just imagining that we're going to have listeners that immediately want to contact OEA and get a better understanding of how the OEA can help them in particular. So why don't we end with that question. I was going to say, if an Ontario employer. I don't know why an Ontario employer wouldn't contact OEA. So let's say that an Ontario employer is interested in learning more about OEA and its services, what do you recommend for them as next steps?

Susan Adams:

Yeah, thank you. We're here to help. So for busy business owners recommend reaching out by phone. OEA can be reached at 1-800-387-0774 or in the Greater Toronto Area at 416-327-0020. So we're happy to talk to share information about our work and answer questions an employer might have about WSIB issues. As we've said, our services are prepaid through the premiums employer pay to WSIB. So reaching out is free. Employers can also start a conversation at any time that's convenient for them by email by writing to askoea@ontario.ca.

And more generally, employers can learn about OEA by attending a webinar, attending an in-person presentation hosted by a system partner like IHSA or an association checking out our website or following us on social media. So on LinkedIn and X, we post tips and updates about WSIB content. Our website has helpful overviews about key areas in the board's process in a short form to contact us when you're ready to reach out.

The team, as we've said, is glad to provide support for employers with claims and appeals issues, return to work matters, and questions about premiums. And we can also help smaller employers who have received notice of an application related to unlawful reprisals under OSHA. So please reach out when you have a question and thank you to IHSA for inviting us to talk with you and share information about the team.

Ken Rayner:

Fantastic. Dunstan and Susan, thank you so much for being here and really providing clarity on the services you provide and the help that Ontario employers can receive from OEA. So thank you so much for sharing this information today.

Susan Adams:

Thank you. We really appreciate it.

Dunstan Francis:

Thanks for having us.

Ken Rayner:

And thank you to our listeners listening to this episode on the Office of the Employer Advisor. Be sure to subscribe and like us on your podcast channel and visit us at ihsa.ca for a wealth of health and safety resources and information.

Announcer:

The *IHSA Safety Podcast*. For more episodes, tips and all things safety, go to ihsasafetypodcast.ca.
Thanks for listening.