

Information Sheet: New WSIAT Practice Direction #17 — Right to Sue Applications

A new WSIAT Practice Direction #17 – Right to Sue Applications comes into effect on May 6, 2024. The new Practice Direction introduces significant changes that will govern all right to sue applications filed with the WSIAT on or after May 6, 2024.

The new Practice Direction will:

- make our right to sue materials and process clear and easy to understand
- integrate the right to sue process with electronic communication (E-File/E-Share)
- allow parties to identify preliminary issues and their willingness to participate in mediation at the outset of a Right to Sue Application
- create opportunities to resolve Right to Sue Applications on the basis of the written record, by way of an agreed statement of facts or through mediation in addition to oral hearings

Two significant changes to be aware of are the introduction of two new forms: the Right to Sue Application Form and the Right to Sue Participation Form. The new Practice Direction and Forms will be available on the WSIAT's website on May 6, 2024.

The Right to Sue Application Form

The content requirements for the Applicant's Right to Sue Statement remains the same under the new Practice Direction. However, an Applicant will be required to file a Right to Sue Application Form along with their Applicant's Right to Sue Statement. The Right to Sue Application Form will require the Applicant to provide specific information about:

- civil actions commenced in relation to the incident at issue in the application
- claims for Statutory Accident Benefits in relation to the incident at issue in the application
- the specific determination sought in the application
- whether any of the parties have applied for Workplace Safety and Insurance Board (WSIB) benefits
- whether any of the parties are registered with the WSIB as employers

The Right to Sue Application Form also asks the Applicant to confirm whether they are open to participate in a mediation with a Vice-Chair or Panel in an attempt to resolve the application. Finally, the Right to Sue Application Form asks the Applicant to confirm whether there are any preliminary matters that would require a pre-hearing conference.

Once the Right to Sue Application Form and the Applicant's Right to Sue Statement is filed with the WSIAT and served on all Interested Parties, the Applicant's Right to Sue Statement is reviewed by Tribunal Counsel.

The Right to Sue Participation Form

Once Tribunal Counsel has completed their review, the WSIAT will write to all Interested Parties to the application and provide them with a Right to Sue Participation Form. All Interested Parties will be required to file a completed Right to Sue Participation Form with the WSIAT within 3 weeks if they intend on participating in the application. If a party does not return the Right to Sue Participation Form within 3 weeks, the WSIAT will assume that the party does not intend to participate in the application and they will receive no further communication from the WSIAT other than the final decision.

The Confirmation Letter

Once the deadline to return the Right to Sue Participation Form has elapsed, the WSIAT will send a Confirmation Letter to the participating parties to the application. The WSIAT will also send out Addendum 1 to all participating parties. Addendum 1 will contain the WSIAT Status Memo about employer accounts, claim files, WSIB policy and a party list.

The Confirmation Letter will specify the deadline for the parties to file and serve their Right to Sue materials. Co-Applicants will be required to file their Co-Applicant's Right to Sue Statement within 4 weeks of the Confirmation Letter. Respondents will be required to file their Respondent's Right to Sue Statement within 8 weeks of the Confirmation Letter. Applicants will be required to file any reply materials within 10 weeks of the Confirmation Letter.

The Assignment of a Vice-Chair or Panel

Once all materials have been filed with the WSIAT, Tribunal Counsel will request that a Vice-Chair or Panel be assigned to the application. The Vice-Chair or Panel will decide whether a decision will be issued on the basis of the written record or whether the matter should be scheduled for an oral hearing, mediation or pre-hearing conference.

Requests for Reconsideration

Under the new Practice Direction, a request to reconsider a right to sue decision must be received by the WSIAT and the other parties within 60 days of the date of the final decision. This is a change from the current Practice Direction which requires that a request to reconsider a right to sue decision be made within 40 days of the date of the final decision.

What will Happen to Applications Filed With the WSIAT Before May 6, 2024?

Applications filed with the WSIAT before May 6, 2024 will continue to be processed under the WSIAT Practice Direction – Right to Sue Applications effective July 1, 2014. Questions related to the new WSIAT Practice Direction #17 – Right to Sue Applications can be directed to Kayla Seyler in the WSIAT's Tribunal Counsel Office (416) 725-2498.