



Practice Direction #16

Access to Workers' Information When the Issue in Dispute is at the Workplace Safety and Insurance Board (WSIB)

1.0 This Practice Direction

- describes the legislation and principles governing appeals about access when the issue in dispute is at the WSIB
- describes the process that happens when a worker objects to the employer's access

2.0 Legislation and Principles Governing Access

- 2.1 When there is an issue in dispute, the *Workplace Safety and Insurance Act, 1997* (the *Act*) and WSIB Policy allow workers and employers to have access to the information in a worker's claim file.
- 2.2 This Practice Direction uses the principles on access in the *Act* and WSIB Policy. Both parties need access to relevant information in order to have a fair hearing.

3.0 Process for Objecting to Access

- 3.1 The employer is entitled to access a worker's claim file when there is an issue in dispute at the WSIB. A worker can object to the release of health care information found in their claim file.
- 3.2 If a worker objects, the WSIB makes a decision about whether the information should be released to the employer.
- 3.3 If a party is not satisfied with the WSIB's decision, they can appeal it within 21 days of the decision. The WSIB will refer the appeal to the WSIAT.
- 3.4 The WSIAT may contact the parties to find out if the access issue can be resolved with mediation. This would happen before sending an access appeal to a Vice-Chair for a decision.

- 3.5 When the WSIAT gets an objection to the release of documents, WSIAT staff ask both the worker and the employer to provide submissions to the WSIAT. The submissions must be in writing. They should include
- why access should or should not be granted
 - if the information is relevant to an issue in dispute
 - if the information is prejudicial or harmful to the worker – if so, in what way

The WSIAT decides if the employer does or does not get access to the information. The WSIAT does not decide the issue in dispute.

- 3.6 If the worker does not provide written submissions, a Vice-Chair will decide if the objection has been abandoned.
- 3.7 If the Vice-Chair finds that the objection has been abandoned, they will send a letter to the parties to confirm the decision. The information is sent back to the WSIB. They release the information to the employer 15 business days after the date of the letter.
- 3.8 If the parties provide written submissions, the access appeal is referred to a Vice-Chair for a decision.
- 3.9 Most access appeals are decided by a Vice-Chair by a hearing in writing. This is based on the written submissions and review of the documents in question. If the appeal raises unusual or extraordinary issues, the WSIAT may decide that an oral hearing is needed.
- 3.10 The Vice-Chair will decide if access to the information should or should not be granted to the employer. Sometimes, the Vice-Chair may set conditions for access. A written decision will be sent to the parties.
- 3.11 Once a decision is made, the matter is sent back to the Workplace Safety and Insurance Board (WSIB). If access is granted to the employer, the information is released by the WSIB. This will happen 15 business days after the WSIAT decision is released. The WSIB will decide the issue in dispute.

4.0 References and Resources

4.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 57, 58, 59 (access to records sections) and 131 (the WSIAT can determine its own practice and procedure)

4.2 Related Practice Directions

#6 – Mediation – 2-Party Appeals

#26 – Closing Appeals by the WSIAT

#33 – Role of the Vice-Chair Registrar

#36 – Delivery and Filing Documents

4.3 WSIB Documents

WSIB Operational Policy Manual, Document No. 21-02-02 – Disclosure of Claim File Information (Issue in Dispute)