

Injured Workers' Day June 1, 2009

Article: When Compensation Hurts

There was a time when employers had little regard for workers' safety. Even though workers could sue employers for negligence when they were injured, employers knew that the cost of a day in court was simply too high for most workers.

Governments responded with workers compensation laws – laws that were supposed to provide guaranteed compensation to workers injured on the job. But these laws came at a price. Most workers' lost their right to sue their employer and as a result, government bureaucrats – not the courts – determined the amount of compensation injured workers could receive. The experiences of early asbestos miners who developed cancer at work but were denied compensation provides an example of the hardships many workers faced. In such cases, workers not only fought against but often against government.

These trade offs continue to this day. In Ontario, it's almost impossible for a worker to sue his or her employer if he or she is injured on the job and though many more injuries and diseases are covered, many workers still find it difficult to obtain the compensation they deserve.

Not surprisingly, the Workplace Safety and Insurance Board ("WSIB"), the government agency that runs the compensation system in Ontario, has been the target of much criticism. Every June injured workers gather at Queen's Park to express their concerns about the difficulties they face and everyday organizations like the Injured Workers Advocacy Centre and the Industrial Accident Victims Group of Ontario support and advocate on behalf of workers whose claims have been denied by the WSIB. Despite, cries for change, the WSIB continues to have the first and often last word on the amount of compensation a worker is entitled to when injured at work.

A glimmer of hope...

Or at least that was the case until the landmark decision in *Re Ontario (Ministry of Community Safety and Correctional Services) and O.P.S.E.U. (Lariviere)*. In that decision, Mr. Lariviere, a unionized employee who had already received compensation from the WSIB, filed a grievance seeking additional compensation for injuries he suffered at work. The arbitrator found in favour of Mr. Lariviere. He found that the employer failed to provide a safe workplace as required by its collective agreement and that changes to the compensation laws in Ontario allowed for additional compensation to be awarded for such a violation. Although the decision is not binding on other arbitrators, many see it as a crack in a wall that was rock solid for close to 100 years.

So why is this the first time you've heard more about this decision?

Perhaps it's because the decision has no upside for the vast majority of workers who don't have access to arbitration and are still barred from suing employers in court. Unlike Mr. Lariviere, only about 30% of Ontario's workers are unionized, protected by a collective agreement and can

seek redress through arbitration. Nearly 70% are still wholly dependent on the adjudicators at the WSIB for compensation when they are injured.

Lesson learned...

What Mr. Lariviere's success really shows is that there are two tiers of employees when it comes to workplace injuries – those who are unionized and can get extra compensation and those who cannot. The decision makes it clear that our struggles to improve the way injured workers are treated will only be as effective as our ability to improve their access to collective forms of representation such as Unions and to do away with legislation that privileges a few at the cost of many.