

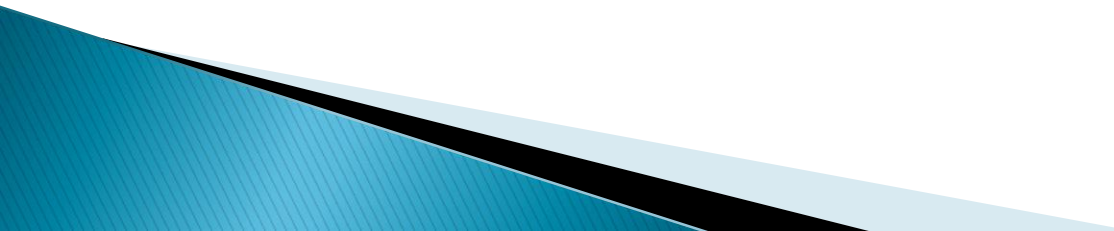
Should Dentist Employers Apply for Workers Compensation Coverage?

What are Dentist Employers' rights concerning injured or sick employees who are unable to work?


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Workers Compensation Law

- ▶ The Ontario Workplace Safety and Insurance Board provides compensation for certain categories of workers injured in the workplace.
 - ▶ WSIB benefits are paid on a no fault basis.
 - ▶ To receive compensation workers must be covered under the WSIB scheme, and the worker must be injured in the course of their employment.
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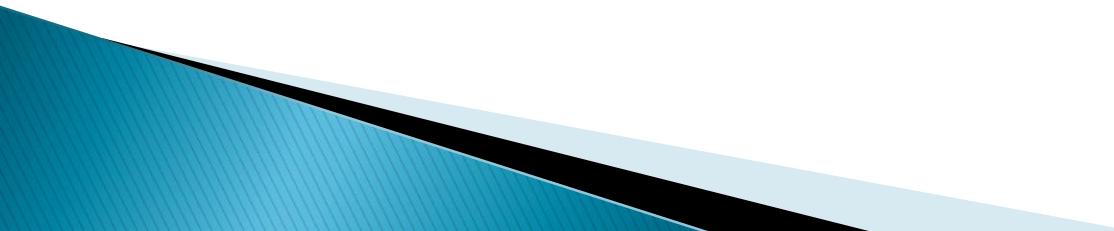
Historical Context

- ▶ Workers Compensation Laws arose in late 19th Century England.
 - ▶ Prior to the enactment of Worker's Compensation Laws, only those employees injured through the fault of the employer, could sue their employer successfully for damages.
 - ▶ Workers Compensation schemes remove the employee's right to sue in exchange for no fault wage loss and health benefits.
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Dentists and the WSIB

- ▶ Dentists are not automatically covered under the Workplace Safety Insurance Act.
 - ▶ WSIB allows dentists to apply to have their employees covered under the *Workplace Safety Insurance Act*.
 - ▶ A dentist can buy Workplace Disability coverage with WSIB by filling out an application form, and paying monthly premiums based on the number of their employees.
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Benefits of WSIB coverage

- ▶ No fault protection from lawsuits by employees for work related injuries or illness.
 - ▶ Protection for your employees from the costs related to work related injuries including income loss and health costs.
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What type of lawsuits could a Dentist Employer face without WSIB coverage?

- ▶ Any workplace accident where the employee is injured through the fault of the dentist or his or her other employees.
- ▶ Examples:
 - Filing Cabinet falls on employee's foot.
 - Employee trips over a carpet or chair and breaks their ankle.
 - Employee is jabbed with a needle used on an HIV positive patient.
 - Employee gets sick from mould in building.


What about private liability insurance?

- ▶ Most dentist have liability insurance which covers them for claims for injuries arising in the workplace.
 - ▶ **Caution:** Liability policies routinely contain an exclusion that claims by employees for bodily injury suffered in the workplace are excluded. The dentist should check with their insurance broker to see what their insurance policy covers.
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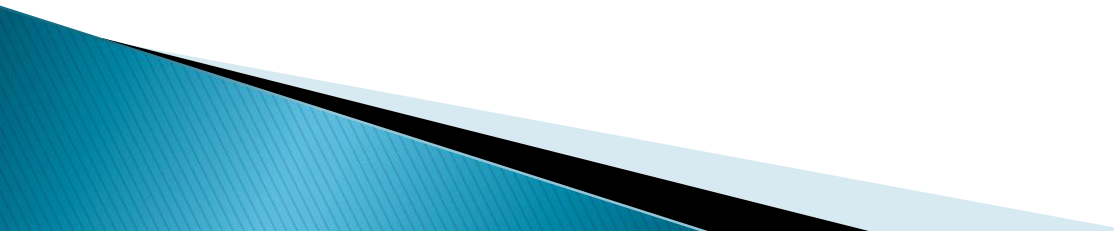
Question to ask the Insurance Broker.

- ▶ Does my liability policy for my dental practice cover me for claims by my employees against me for injuries or illness in the workplace?

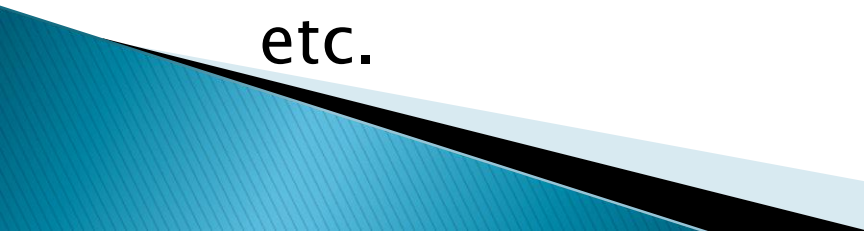
Employer's obligation to sick or disabled employees.

- ▶ **Overall advice:** Grin and bear it.
 - ▶ Employers have an obligation to accommodate employees in respect of illness or disability.
 - ▶ Simply put, dentist employers must keep their sick or disabled employee's job open for them until they are able to return to work.
 - ▶ This obligation of accommodation arises from *Ontario Human Rights Code* which prohibits discrimination on the basis of disability.
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Employee's Duties to Employer During Accommodation Process.

- ▶ The Ontario Human Rights Commission advises employees that they have an obligation to provide sufficient information to the employer to allow accommodation.
 - ▶ In short, employees have an obligation to keep their employer posted with respect to their medical status.
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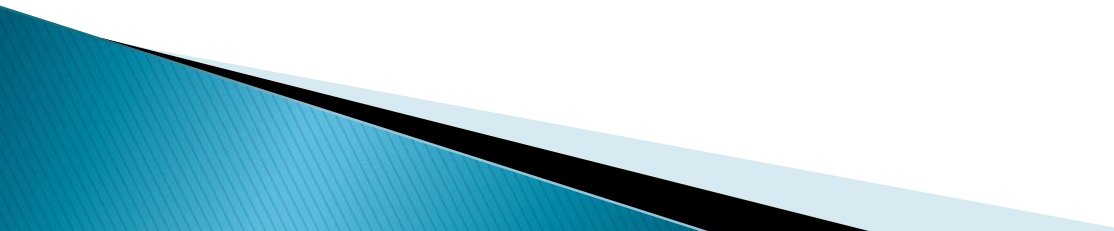
Employee's Duties to Employer During Accommodation Process. cont.

- ▶ Unless an employment contract provides for better information, the employee simply has to provide a doctor's note indicating that the employee is absent for medical reasons.
 - ▶ OHRC tells employees that the Employer does not generally have the right to know what the disability is.
 - ▶ With a well drafted employment contract, the employer would be entitled to obtain a medical report setting out the diagnosis and prognosis etc.
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What about employees who are taking advantage of the system?


- ▶ Dentist doesn't have to accommodate if there are legitimate reasons for acting otherwise.

Typical Examples:


- ▶ Employee is off sick, and the dentist finds out the employee has been on a tropical vacation.
 - ▶ The dentist finds out employee has taken another job while allegedly off sick.
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What about employees who are taking advantage of the system? Cont.

Remedy:

- ▶ Employer can write a letter to the employee pointing out the inconsistency between the alleged total disability, and the employee's actions, and asking for a reply. If a satisfactory reply is not received, the dentist may consider treating the employee as having abandoned their job.
 - ▶ This is a risky approach, because of the potential of a human rights complaint.
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Frustration of Contract Doctrine

- ▶ If the employee's absence is indefinite, a dentist employer may be able to terminate that employee.
 - ▶ This concept is based on the contract law principle of frustration of contract, meaning that the employment contract has been frustrated by the indefinite absence. This is very difficult to prove.
 - ▶ Workers must be either totally permanently disabled or absent for several years, before this can be adopted.
 - ▶ Otherwise, employers must keep jobs open, sometimes for years.
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Maternity Leave Issues

- ▶ The *Employment Standards Act* obliges dentists to give employees returning from maternity leave their former position or a comparable position, if the former job no longer exists.
 - ▶ This duty is a specific articulation of the dentist's general obligation to accommodate disabled employees.
 - ▶ Pregnancy is considered a disability under the *Ontario Human Rights Code*.
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