



What's New in HR Law

Changes to WSIAT Pre-Hearing Process

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Overview

Effective May 6, 2024, the Workplace Safety and Insurance Appeals Tribunal (“WSIAT”) introduced significant changes to its pre-hearing procedures that will affect the way employers and workers alike manage appeals under the *Workplace Safety and Insurance Act*. The WSIAT introduced these changes to improve efficiency, sustainability, and timely adjudication for parties litigating in the workers’ compensation system.

The most significant of the changes are:

- Elimination of the 3-Week Rule;
- Elimination of the Confirmation of Appeal Form;
- Changes to the Notice of Appeal Form;
- New Consent Form;
- New “Hearing Ready Form” and “Not Ready for a Hearing Form”; and
- Introducing an internal navigation service for self-represented individuals.

Key Changes

Elimination of the 3-Week Rule

This is perhaps the most significant change introduced by the WSIAT. Previously, parties were given the opportunity to introduce new evidence or names of witnesses up to three (3) weeks before the hearing date – known as the “3-Week Rule.” With the elimination of the 3-Week Rule, any new evidence or

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names of witnesses must be submitted at the outset of the appeal and along with the Hearing Ready Form. Any materials received after the end of the disclosure period will be considered late and will not be automatically incorporated into the addendum. At the outset of the hearing, the Vice-Chair or Panel will decide whether to enter the new evidence into the record. At this stage, parties should be prepared to explain why the new evidence was not tendered on time and why it should be allowed on record.

Elimination of the Confirmation of Appeal Form

Previously, the party seeking an appeal of a decision had two (2) years to file a Confirmation of Appeal (“COA”) from the date they signal their intent to appeal, in order to start the appeals process. Now, under the new procedures, both the COA and the 2-Year Waiting Period have been eliminated. Going forward, the WSIAT will treat all cases as ready for the Case Record once it receives the completed Notice of Appeal (“NOA”). This means that appeals should be adjudicated more quickly. Employers should be aware of this accelerated timeline and be prepared to litigate the matter once the NOA is submitted.

New and Revised Forms

Revised Notice of Appeal Form: There have been five (5) revisions to the NOA Form. These changes include:

- 1) The option to indicate an interest in Alternative Dispute Resolution (“ADR”), such as mediation, to resolve the appeal earlier in the process;
- 2) Making electronic materials the default option for case materials (though paper copies will be available if necessary);
- 3) The requirement for parties to identify whether they have any outstanding issues or other proceedings related to the appeal (either at the WSIB or other agencies);
- 4) The option for parties to indicate if they have a preference for in-person, written, teleconference, or videoconference hearing; and
- 5) The request for parties to identify any accommodation-related needs to ensure access to services and participation in hearings.

New Consent Form: The WSIAT has introduced a new Consent To Release Materials Form. The “consent to release case materials” was previously part of the NOA Form. The WSIAT has removed this section from the NOA to create a separate Consent To Release Materials Form, which will allow workers the opportunity to review and provide their consent to the case materials before those are sent to participating parties. Workers will have four (4) weeks to review the case materials, complete the Consent Form and respond to the WSIAT, failing which the WSIAT will release the case materials to the participating parties.

New Hearing Ready Forms: The WSIAT has also introduced a “Hearing Ready Form” and “Not Ready for a Hearing Form”.

The “Hearing Ready Form” invites parties to outline their position in written submissions, file any new evidence, and list the witnesses to be called during the appeal. At this stage, it is important for employers to send in any new evidence or submissions they want the WSIAT to contemplate during the appeal such as medical records, employee files and sworn affidavits from witnesses. The “Hearing Ready Form” allows the WSIAT to understand the scope of the matter so that it can schedule the appropriate format and time required for a hearing.

Parties can also file a “Not Ready for a Hearing Form” if they require additional time. Parties who select this option will be required to provide an explanation for why they are not ready and how much time they require before proceeding with the appeal. If the WSIAT agrees that the file is not ready to proceed, the file will be placed into inactive status to allow the parties time to prepare for the appeal. Representatives filing a “Not Ready for a Hearing Form” must copy their clients on the form.

The “Hearing Ready” and “Not Ready for a Hearing” Forms must be submitted within four (4) weeks of the date on the Issues at Appeal letter. Any information or evidence not provided in these Forms will be considered “late” and must be addressed as a preliminary matter on the first day of the hearing.

Service to Assist Self-Represented Workers

The WSIAT has introduced a new navigation service for self-represented individuals to help guide them through the appeals process. These navigation services will be provided at two (2) stages in the pre-hearing process. The first stage will assist individuals with starting the appeal and providing consent, while the second stage will focus on preparing the appeal.

When Do These Changes Take Effect?

Although these changes came into effect on May 6, 2024, there is a transition period in effect to ensure a smooth changeover.

Cases that are older than 18 months with no COA filed, will still be subject to the 2-Year Waiting Period to file their COA. Following this, parties will receive a letter from the WSIAT outlining the next steps in accordance with the new pre-hearing process. However, any appeals that are already with the WSIAT scheduling department to arrange a hearing will proceed under the old process (meaning that the 3-Week Rule for disclosure will continue to apply).

If the case is younger than 18 months, the WSIAT will send out letters to the parties advising of next steps in the new pre-hearing process. This could take up to six (6) months as the WSIAT begins this gradual transition.

Takeaway

As of May 6, 2024, the pre-hearing process for all matters at the WSIAT has substantially changed. This update summarizes only some of the changes that employers should know. Employers should re-consider their pre-hearing practices for all workers' compensation appeals matters and ensure that their practices are aligned with the WSIAT's new procedures and accelerated timelines.

Need More Information?

For more information or assistance with workers' compensation matters, contact [Nikki Banwait](mailto:Nikki.Banwait@filiation.on.ca) at nbanwait@filiation.on.ca or your [regular lawyer](#) at the firm.



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