
WSIA Coverage for Personal Support Workers and Developmental Support Workers

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PSW/DSW Coverage Consultations
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About

The **Durham Community Legal Clinic (DCLC)** is a Community Legal Clinic that provides legal services, information, education, and representation for historically marginalized and low-income residents of Durham Region. DCLC also engages in advocacy and law reform activities, in particular to ensure that our laws properly consider the perspectives of historically marginalized and low-income Ontarians. The main areas of services DCLC provides includes employment law and related services, housing and tenancy issues, and social benefits.

The **Durham Access to Justice Hub**[®] (the “Hub”) was established by the clinic in 2019 with the assistance of LAO. This inter-agency and inter-disciplinary initiative intended to provide legal services beyond the income thresholds and subject matter of LAO, and other social, financial, and psychological services. These cooperative relationships seek to foster better client-centered services, reduce administrative barriers and silos, and improve efficiency of services that are funded or subsidized by taxpayer dollars. Some techniques used to achieve these goals include recruitment of volunteers to contribute towards improving access to justice, and by embedding students into workflows and innovative projects through experiential education. Through the Hub, DCLC provides even broader services to focus on the root causes of poverty and engages in deeper forms of poverty alleviation.

Omar Ha-Redeye is a lawyer and the Executive Director of DCLC. He holds a JD from Western University, and an LLM from Osgoode Hall. He has received numerous awards for his efforts in law reform and advocacy on behalf of historically marginalized and low-income populations, including the Queen Elizabeth II Diamond Jubilee Medal, and the OBA Foundation Award.

Reid Jackson is a Community Legal Worker and Paralegal with the Durham Community Legal Clinic. He focuses primarily on human rights law, employment law, and workers’ compensation law at the clinic. He was previously a Human Resources Specialist within the construction industry, with a focus in labour relations and workers’ compensation.

Kelsey Henderson is a Paralegal Candidate and Law Clerk student at Durham College. She is a Durham Region resident, and a volunteer with the Durham Community Legal Clinic and Access to Justice HUB.

Shaun Bernstein is a former employment lawyer, and is a volunteer and newly-elected Board member of DCLC. He holds a JD from the University of Windsor and practised exclusively in the areas of employment law and human rights. He lives in Oshawa, Ontario and currently owns The Write Stuff Agency, a marketing and content writing agency catering to professionals and small businesses.

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Question 1: The WSIB covers work-related injuries and occupational diseases (including infectious diseases like COVID-19). Would extending mandatory coverage to all employers of PSWs and DSWs help improve worker protections?

The Workplace Safety and Insurance Board (“WSIB”) was established in 1914 to provide empowerment to workers who were exposed to unsafe working conditions and protection if they suffered from a work-related injury or illness.¹ Since its establishment, the WSIB has been providing benefits, compensation, and assisting in the safe return-to-work process. Extending mandatory coverage to all employers of Personal Support Workers (“PSWs”) and Developmental Services Workers (“DSWs”) would improve worker protections, by allowing these frontline workers to access WSIB benefits and services that they would not be entitled to previously.

There are many inherent workplace risks associated with the tasks PSWs and DSWs are required to perform, such as challenging behaviours, including aggression and tantrums, as well as physically-demanding tasks, such as assisting residents in moving, washing or dressing themselves.² For example, in 2009, a PSW injured her left shoulder while assisting a resident, but because her employer was covered by WSIB, the PSW was placed in a Function Restoration Program and was entitled to Loss of Earnings, as she was unable to work due to complications. When the worker later suffered from chronic pain as a result of her workplace injury, she was found to be entitled to Chronic Pain Disability.³

This case is one of the many examples of the injuries that occur while performing everyday tasks as a PSW or DSW. Extending mandatory coverage to all employers of PSWs and DSWs ensures that all workers who perform similar duties and are at risk of or are exposed to other workplace hazards are provided the protection and entitlements that they should be.

¹ Workers’ Compensation Law, online: Ontario Workplace Tribunals Library <<http://www.owtlibrary.on.ca/english/print/wcl.pdf>>.

² A Burned Out Workforce, online: Ryerson Journalism <<https://grad.journalism.ryerson.ca/a-burned-out-workforce/>>.

³ 20180037 (Re), 2018 CanLII 67306 (ON WSIB).

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Question 2: What benefits and services would WSIB coverage provide to PSWs and DSWs that are not provided under private insurance schemes?

Private insurance schemes can vary considerably, largely depending on the type of coverage the employer has purchased, but typically focus on short-term disability assistance. There is an extensive list of benefits and services provided under WSIB coverage that would be available to PSWS and DSWs, should they sustain an injury or illness in the workplace. Many of these benefits and services are not usually provided under private insurance schemes, such as assistance in a safe return to work, benefits for non-economic loss, and benefits for loss-of-retirement income.⁴

In addition to the many benefits and services available to employees, employers often find it more beneficial to receive WSIB coverage rather than private insurance schemes. Although WSIB coverage can initially be more costly than private insurance, the average a premium rate of \$1.37 on every \$100 of insurable payroll for Schedule 1 employees,⁵ ultimately ends up costing the employer less due to the no-fault liability that WSIB provides. The no-fault collective liability insurance means employees who suffer from a workplace injury or illness are entitled to workplace safety and insurance benefits by proving that the injury or illness was work-related, and they do not need to show that the employer was to blame for the injury or illness. This system is extremely beneficial to employers because it prevents them from being civilly sued for work-related injuries,⁶ which typically could end up being far more costly than the WISB premiums, especially when legal fees are considered.

Enrollment in WSIB ensures that employers and employees work together to promote health and safety, and that compensation does not come directly from the employer. The non-adversarial approach taken by the board can therefore promote the development of better health and safety cultures within organizations.

⁴ WSIB Benefits, online: WSIB Ontario <<https://www.wsib.ca/en/injured-or-ill-people/claims/wsib-benefits>>.

⁵2020 Premium Rates, online: WSIB Ontario <<https://www.wsib.ca/en/2020premiumrates>>.

⁶ Workplace Safety and Insurance Board operational review, online: Government of Ontario <<https://www.ontario.ca/page/workplace-safety-and-insurance-board-operational-review>>.

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Question 3: Would extending coverage to all employers of PSWs and DSWs help with recruitment and retention of these frontline workers?

The extension of coverage to all employers of PSWs and DSWs would assist in the recruitment and retention of these workers because it signals to these frontline workers that their safety is valued, and they would be protected if they suffered from a workplace injury or illness. Feeling valued and protected is now paramount for these frontline workers more than ever, as they are constantly risking exposure of the COVID-19 virus in order to care for their patients in care settings. Health care and frontline workers generally reported feeling burnout, fear, anxiety, and in extreme circumstances even report post-traumatic stress disorder after being constantly exposed to COVID-19 patients.⁷ In workplaces where no WSIB coverage is available to these frontline workers, these fears would presumably be inflated, knowing that if they suffer from this occupational disease there would be less benefits and services available to them or their families.

There are over 70,000 Ontarians with disabilities who require constant care and receive care, predominantly from DSWs and PSWs. However, due to burnout, these frontline workers are also facing low retention rates.⁸ A large portion of the burnout and retention rates can be attributed in part to the fact that these workers feel undervalued and unprotected. Although WSIB coverage may not alleviate all of the stress and anxieties these workers feel, the knowledge of being protected if they experience a work-related injury or illness would help to remove some of these anxieties and stress by demonstrating that they are valued members of our society. This could ultimately help with improving recruiting and retention these invaluable frontline workers, especially during these difficult times.

Although COVID-19 has highlighted the importance of PSWs and DSWs, and the occupational hazards they are exposed to daily, these frontline workers have been exposing themselves to many risks long before the pandemic. The hazards that have existed before the pandemic will remain afterwards, which is why it is critical to ensure they are provided WSIB coverage to aid them beyond the pandemic, but for the entirety of their future careers.

⁷ Health-care and front-line workers described dealing with anxiety, PTSD due to COVID-19, online: CTV News <<https://www.ctvnews.ca/health/health-care-and-front-line-workers-describe-dealing-with-anxiety-ptsd-due-to-covid-19-1.5287174?cache=yes%3Fclipid%3D89680%3Fclipid%3D263414>>.

⁸ *Supra* Note 2.

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Question 4: The recommendation to extend mandatory WSIB coverage to DSWs and PSWs did not speak to what threshold to consider as a standard to extend coverage (i.e. PSWs and DSWs who make up a significant portion of an employer's workforce be covered, as opposed to an employer who may employ a single PSW or DSW in their organization). What might be an appropriate threshold (i.e. the proportion of PSWs/DSWs working for an employer) to consider as a standard to extend coverage?

Due to the importance of the tasks these frontline workers perform, and the risks associated with these job descriptions, an appropriate standard to consider mandatory coverage would be a workplace where 25% of the workforce is made up of PSWs or DSWs. This percentage is appropriate because while PSWs make up a large portion of the staff in nursing and retirement homes, they provide 70-80% of community care in the home.⁹ By only requiring coverage for workplaces where PSWs and DSWs make up 25% or greater of the total staffing complement, we strike an appropriate balance between ensuring that workers are protected and allowing employer's flexibility to operate in challenging industries.

The pandemic has demonstrated the importance of PSWs and DSWs, the crucial role they play in our society, and how they protect our most vulnerable. The pandemic has also highlighted that these workers are themselves vulnerable, often low-income individuals, who enjoy comparatively little power and autonomy in their employment.

We are encouraged by the steps this government has already taken which demonstrate a willingness to help these workers, including covering tuition and fees in order to bolster the ranks of these professions.¹⁰ Extending WSIB protections to these workers would be send a strong message that they are both essential and appreciated.

⁹ Person support workers' perception of safety in a changing world of work, online: BioMed Central <<https://safetyinhealth.biomedcentral.com/articles/10.1186/s40886-018-0069-x>>.

¹⁰ Ontario's PSW plans include free tuition for sped-up training, online: CBC News <<https://www.cbc.ca/news/canada/ottawa/ontario-psw-train-jobs-tuition-1.5926837>>.