

Suppression of workplace injury and illness claims: Summary of evidence in Canada

This *Issue Briefing* highlights findings from two recent reports by Prism Economics and Analysis on the incidence and risk of employers inducing workers not to claim or to misreport instances of workplace injury or illness. The first report was prepared for Ontario's Workplace Safety and Insurance Board (WSIB) and the second was commissioned by the Workers Compensation Board (WCB) of Manitoba.

Claim suppression can be defined as actions undertaken by an employer that hinder the appropriate reporting of a worker's injury or illness resulting from work. This includes instances where the employer induces the worker not to report the occurrence to a provincial workers' compensation authority. Additionally, claim suppression includes situations where the employer's actions lead to the under-reporting of the severity of the worker's condition or, alternatively, the amount of time that the worker was off work due to his or her injury or illness.

Claim suppression can be the result of coercive and overt actions by the employer, such as intimidating the worker with the threat of repercussions. Claim suppression can also be more subtle. For instance, an employer may wrongly offer an injured worker continued wages in lieu of the worker submitting a claim for workers' compensation.

Claim suppression is distinct from both employer under-reporting and worker under-claiming of a workplace injury or illness. Although claim suppression may inherently involve employer under-reporting and worker under-claiming, without inducement by the employer, these events alone do not constitute claim suppression.

Literature summary

Worker non-claiming: As described in both the Ontario WSIB and Manitoba WCB reports by Prism, previous research provides varying estimates of the extent to which workers in Canada do not file workers' compensation claims for workplace injuries and illnesses. While both higher and lower estimates exist, the general consensus is that approximately 20 per cent of all plausibly compensable work-related injuries and illnesses are not claimed by workers.

Additionally, some evidence supports the existence of demographic risk factors for non-claiming. Higher non-submission rates have been linked to younger workers, individuals with educational attainment at the high school level or lower, and

KEY MESSAGES

- The prevalence of claim suppression is difficult to quantify given the obstacles associated with uncovering injuries or work absences that are intended to be hidden.
- Analysis of compensation claim files and survey responses in Manitoba support the conclusion that claim suppression is a material problem. Although less conclusive, findings in Ontario suggest claim suppression may occur where employers are broadly non-compliant with legislated obligations.
- In a survey of 200 injured workers in Manitoba, overt claim suppression was reported by six per cent of respondents who had a lost-time injury but did not apply for lost earnings benefits and by 7.7 per cent of respondents who did not apply for medical expense benefits.

persons working in smaller workplaces. Immigrant workers and agricultural workers have also been highlighted as likely having higher rates of worker non-claiming. As well, a lack of knowledge of rights to workers' compensation and how to claim benefits was found to be a potentially strong contributor.

Employer under-reporting: Two Canadian surveys support an estimate of approximately seven to eight per cent as the rate of employer non-reporting of plausibly compensable workplace injuries and illnesses (IWH & IBM, 2005; Ipsos Reid, 2008). However, Prism noted that these figures may be under-estimates due to the nature of both survey designs.

Along with employer non-reporting, the misreporting of workplace injuries and illnesses by employers is recognized in the literature as a problem. Specifically, studies suggest that three to 9.5 per cent of no-lost-time claims are misreported because the worker does, in fact, take time off work (Prism, 2013).

Employer-induced claim suppression: Although plausible estimates exist for the rate of worker non-claiming and employer under-reporting, the evidence from the literature is too limited to support an estimate of the rate of claim suppression. The distinction between worker non-claiming, employer under-reporting and employer-induced claim suppression is complicated by the interpretation of what constitutes inducement. Many subtle factors may or may not be seen as inducement and, depending on how they are viewed, can alter claim suppression estimates.

Canadian jurisdictional scan

For the WSIB report prepared by Prism, interviews were conducted in most Canadian provinces and territories to gather information on policies surrounding employer-induced claim suppression. It was found that, when it comes to penalizing known instances of claim suppression, administrative penalties are common; most jurisdictions do not rely on criminal prosecutions of employers due to the costs and difficulties associated with legal proceedings. Although many provinces and territories have legislation directly prohibiting claim suppression, Saskatchewan, Ontario, Quebec, Prince Edward Island, and Newfoundland and Labrador do not.

One point to note is that Newfoundland and Labrador has a financial incentive structure that successfully encourages prompt medical reports of workplace injuries and illnesses. Because the medical reports are often received before the claim submission by the worker, employers are thought to be discouraged from suppressing claims. In no jurisdiction is there a systematic way of identifying all cases of claim suppression because, by nature, these cases are intended to be hidden. Rather, most jurisdictions rely on workers coming forward to express concerns and on the suspicions of claims officers.

Anecdotal evidence of claim suppression

In 2010, Harry Arthurs was commissioned to conduct an independent funding review of Ontario's workplace safety and insurance system. Within the report, titled *Funding Fairness*, Arthurs describes anecdotal evidence of claim suppression in Ontario, which was later highlighted in Prism's report for the WSIB. The evidence surfaced in public hearings throughout the spring of 2011, with "some 50 first- and second-hand accounts of workers victimized by employers intent on avoiding surcharges or claiming rebates" (Arthurs, 2012).

Stories were told of both subtle and blatant actions by employers, yet all but one of the many testimonials were uncorroborated and, therefore, anecdotal. The one exception among the personal statements was a situation in which the employer, a neutral arbitrator and the union representing the injured worker all confirmed that the employer had falsely represented the workplace injury to the WSIB.

Due to the non-statistical and largely unconfirmed nature of the evidence heard in the hearings, not enough information was available for Arthurs to gauge the magnitude of the problem of claim suppression. Specifically, he had no way of knowing whether these instances comprised the majority of the occurrences of claim suppression in Ontario, or whether they were just the tip of the iceberg (Arthurs, 2012).

To further investigate the issue, Arthurs examined previous WSIB investigations into claim suppression throughout 2009 and 2010. He found that 49 employers had been convicted, but he couldn't ascertain whether the prevalence of claim suppression was as modest as it seemed, or whether many instances of claim suppression were not uncovered and appropriately prosecuted.

In contrast to the low number of convictions, in 2010 alone, the WSIB imposed approximately 4,500 administrative penalties for instances of claims-related employer non-compliance. It is possible that, due to the ease of penalizing employers with administrative penalties rather than convictions, claim suppression may have been behind many of the administrative penalties. However, the extent to which this is the case is unknown.

Prism's file analysis for Ontario's WSIB

Review of enforcement files: As part of its study for Ontario's WSIB (Prism, 2013), Prism analyzed 100 enforcement files. These files were randomly selected from files in which charges had been laid against an employer between 1996 and 2012. Of the 100 enforcement files, 48 contained indications of the employer directly trying to prevent a worker from filing a claim. Overt threats towards injured or ill workers made up nine of these 48 cases, and the other 39 cases involved more subtle forms of inducement.

Prism also found certain trends among the employers within these enforcement files. Nearly half had failed to register with the WSIB, potentially signalling overarching non-compliance. The construction industry and the food services/hotel industry were overrepresented—a possible indication of a greater risk of employer-induced claim suppression in these sectors. Moreover, 80 per cent of the workers were male, and the vast majority of the workers affected by claim suppression were in non-supervisory positions.

Review of no-lost-time claim files: Prism also investigated indications of possible misreporting among 2,707 WSIB no-lost-time claim (NLTC) files to further detect instances where there may have been claim suppression. This analysis was conducted to identify NLTC files that should have been submitted as lost-time claims (LTCs). The 2,707 NLTC files were selected by a pre-screening process to identify a subset of injuries that were believed to be more likely to require time off from work.

This subset of files was manually reviewed to identify anomalies suggestive of the likelihood of lost time, including severe injuries, use of an ambulance, admission to hospital, medical recommendations to take time off work, and evidence in the file of lost time. For instance, in 48 cases an ambulance was required, and in 46 cases the worker was admitted to hospital. Although the misreporting of lost-time injuries and illnesses as no-lost-time claims could not be proven, the research suggests a material risk of misreporting based on anomalies and inconsistencies in the claim files.

Review of abandoned lost-time files: Along with employers inducing workers not to report workplace injuries and illnesses, claim suppression may also encompass instances where employers persuade workers to discontinue the claims process part way through. Accordingly, Prism investigated a sample of LTC files that were abandoned by the claimant between 1991 and 2011. The purpose of this analysis was to identify risk

markers of files where the abandonment may have been the result of employer-induced claim suppression.

Of 3,016 abandoned files, more than 80 per cent were lacking the worker's report of injury or illness. Additionally, in 768 files, the worker failed to respond to the WSIB's request for further information. It is unknown why the volume of workers who did not complete a worker's report or provide adequate information was so high. Claim suppression could be one of many factors that may have contributed to this.

Curiously, in many cases, files were abandoned even though there appeared to be a material amount of lost time. Moreover, claim suppression may have been present in some of the cases of wage continuation. In 15.7 per cent of the files, there were records of wage continuation that may have been provided in lieu of WSIB benefits.

Similar to the other forms of file analysis, the magnitude of actual claim suppression could not be discerned from the investigation of the abandoned lost-time files. It cannot be definitively concluded that worker under-reporting combined with a non-trivial number of lost-time days was the result of claim suppression.

Prism's findings for Manitoba's WCB

Manitoba survey of injured workers: As documented in Prism's report to the Manitoba Workers Compensation Board (Prism, 2013), a telephone survey of 200 people with workplace injuries was conducted in Manitoba throughout July and August of 2013. It was found that 70.8 per cent of the respondents who had lost time from work received some form of wage continuation from their employer for their time off. This potential form of subtle claim suppression appeared to be very common for short-term absences in particular.

The survey also found that failing to apply for workers' compensation benefits was less commonly the result of overt claim suppression. Situations such as employers providing workers with incorrect information on eligibility, pressuring workers not to submit a claim, or workers believing they would get in trouble should they submit a claim were all categorized as overt claim suppression. It was found that overt claim suppression was likely to have affected up to six per cent of workers who did not apply for lost earnings benefits and up to 7.7 per cent of workers who did not apply for medical expense benefits. Furthermore, a number of workers were aware of peers who had experienced overt claim suppression, such that 11.5 per cent of respondents had either experienced first-hand overt claim suppression or were aware of colleagues who had experienced it.

The main implication was that claim suppression was material among this sample of injured workers. The suppression tended to be more subtle (e.g. in the form of wage continuation) than overt.

In terms of trends, the incidence of claim suppression was found to be higher among workers under the age of 35, whereas gender, immigration status and unionization status did not appear to have an impact. Although there were too few observations to make strong conclusions across industries, the rate of claim suppression in manufacturing was noted to be potentially

higher than average. Additionally, claim suppression activities were found among employers of all sizes, yet workplaces with 10 to 24 workers were found to have the highest rates of claim suppression.

Review of accepted no-lost-time claims: Prism reviewed 1,329 accepted NLTCs in Manitoba to identify indicators of high risk for misreporting. Its aim was to find potential instances where an NLTC was submitted even though the worker required time off work, possibly due to claim suppression. A telephone survey of 121 claimants was also conducted among a pool of claimants whose files were thought to be high risk.

From the analysis, it was found that many files did not include employer incident reports. Interestingly, approximately half of the files that had no employer incident report indicated that the incident was serious enough that the worker had to visit an emergency room or a hospital. Overall, the investigators judged that 11.4 per cent of the accepted NLTCs were likely to have involved time off work.

From the telephone survey, it was found that approximately 40 per cent of respondents experienced lost time even though they filed an NLTC. Additionally, 36.3 per cent of respondents reported having experienced at least one claim suppression activity by their employer; that percentage fell to 19.8 per cent when wage continuation was excluded.

Factors influencing misreporting irrespective of the influence of claim suppression were also documented. Confusion over eligibility and how to apply for workers' compensation benefits were reported as main barriers. Among the sample of suspicious NLTCs, estimates of misreporting of accepted NLTCs ranged from 14.3 to 35.1 per cent; it was thought that, in some instances, the misreporting may have reflected claim suppression.

Review of disallowed lost-time claims: Prism also investigated disallowed LTCs from Manitoba using 922 disallowed LTC files and a follow-up survey of 47 workers among some of the higher-risk files. Among the 220 files that were disallowed because a work-related injury could not be established, 80.9 per cent included a doctor's assessment that the injury was work-related. Additionally, 74.7 per cent of all 922 files contained evidence of lost time, and almost half of the files contained reports from a medical professional indicating that the worker was disabled beyond the date of his or her injury.

Due to the circumstances of many of these files, Prism perceived it to be unusual that so many workers did not pursue their claims or appeal the disallowance. From the disallowed LTC file analysis, a conservative estimate of the disallowed claims influenced by claim suppression was found to be 32 per cent, which fell to 18 per cent when wage continuation was omitted.

The results of the survey of 47 workers echoed the potential for claim suppression. Over half of the survey respondents experienced more than five days of lost time due to their injury, and the majority of respondents reported that their injury had caused them notable financial losses. The survey also found that 25 of the 47 individuals reported employer-induced claim suppression, although the sample size was too small to substantiate firm conclusions. Of these instances, 11 were wage continuation and the other 14 were overt forms of inducement.

Conclusion

The Prism review of Manitoba WCB files, coupled with the survey evidence, supports the conclusion that claim suppression is a material problem in the Manitoba workers' compensation system. The Prism review of Ontario WSIB files shows a material risk of claim suppression, similar to the Manitoba findings. However, no follow-up survey was done in Ontario to determine the degree to which the estimated risk of claim suppression was likely reflected in actual claim suppression. Owing to the significantly longer time span of the files examined in the Ontario study and the unreliability of employee contact information, follow-up surveys were judged impractical.

Both reports illustrate the difficult nature of quantifying the prevalence of claim suppression because of the obstacles associated with uncovering instances of injuries or work absences that are intended to be hidden. Although the file analyses could not provide clear-cut evidence of claim suppression, the review of files did identify anomalies that were strongly suggestive of a risk of claim suppression.

In the case of the Manitoba study, risk estimates could be linked to survey data to support a plausible estimate of the magnitude of claim suppression. The surveys conducted in Manitoba confirm a serious problem. From the 200-person survey of injured workers in Manitoba, overt claim suppression, such as pressuring a worker not to submit a claim, was experienced by six per cent of respondents who had a lost-time injury but did not apply for lost earnings benefits. Furthermore, 7.7 per cent of injured workers who did not apply for medical expense benefits reported that they had experienced overt claim suppression. From the accepted NLTC survey and the disallowed LTC survey,

References

Arthurs H. Funding fairness: A report on Ontario's workplace safety and insurance system, 2012. Toronto, ON: Queen's Printer. Available from: <http://www.wsib.on.ca/cs/groups/public/documents/staticfile/c2li/mdex/~edisp/wsib011358.pdf>

Institute for Work & Health and IBM Business Consulting Services. Assessing the effects of experience rating in Ontario: Case studies in three economic sectors, 2005. Available from: http://www.iwh.on.ca/system/files/documents/neer_case_studies_2005.pdf

Ipsos Reid. WSIB consumer satisfaction survey report 2008 (selected slides), 2008. Provided to Prism by WSIB.

Prism Economics and Analysis. Claim suppression in the Manitoba workers compensation system: Research report, 2013. Prepared for Manitoba Workers Compensation Board. Available from: <http://www.wsib.on.ca/cs/groups/public/documents/staticfile/c2li/mdex/~edisp/wsib011817.pdf>

Prism Economics and Analysis. Workplace injury claim suppression: Final report, 2013. Prepared for Workplace Safety and Insurance Board. Available from: <http://www.wsib.on.ca/files/Content/FundingReviewClaimSuppressionStudy/WSIBClaimSuppression-FinalReport.pdf>

Workers Compensation Board of Manitoba. WCB releases comprehensive report on claim suppression in Manitoba, 2014. Available from: <http://www.wcb.mb.ca/wcb-releases-comprehensive-report-on-claim-suppression-in-manitoba>

Workplace Safety and Insurance Board. Claim suppression study: Update, n.d. Available from: http://www.wsib.on.ca/WSIBPortal/faces/WSIBDetailPage?cGUID=WSIB015382&rDef=WSIB_RD_ARTICLE&_afLoop=251390401046000&_afWindowMode=0&_afWindowId=mg4k8brgf_18#%40%3FcGUID%3DWSIB015382%26_afWindowId%3Dmg4k8brgf_18%26_afLoop%3D251390401046000%26rDef%3DWSIB_RD_ARTICLE%26_afWindowMode%3D0%26_adf.ctrl-state%3Dmg4k8brgf_34

it was found that the percentage of workers who experienced claim suppression increased substantially when wage continuation was included as a form of inducement.

In response to the findings of the two Prism reports, both the Ontario WSIB and the Manitoba WCB announced steps to improve the integrity of claim reporting practices. The WSIB has recognized that a lack of understanding among workers and employers of their obligations to report claims may contribute to misreporting and under-reporting and has stated it will continue to explore how to promote awareness of reporting rights and responsibilities. The WSIB recently introduced an e-learning series for workers and employers that emphasizes responsibilities concerning the reporting of work-related injury and illness. These new information resources are in addition to the WSIB's existing authority to enforce employer obligations through prosecutions.

The Manitoba WCB has also committed to a variety of actions in response to the evidence of claim suppression. It is undertaking a new compliance framework with a particular focus on overt claim suppression (Workers Compensation Board of Manitoba, 2014). This includes increasing staff and resources to investigate claim suppression, as well as assessing a potential increase in administrative penalties related to claim suppression.

A review of the rate model has also been undertaken in Manitoba to look into removing financial incentives that may provoke claim suppression. As well, the WCB will be implementing targeted outreach to vulnerable workers within Manitoba, as well as a public awareness campaign promoting the reporting of workplace injuries and illnesses by employers and workers.

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