



Hiding injuries rewards companies

Star investigation reveals job safety numbers are under-reported, cutting employer costs

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The provincial government's highly touted campaign to improve workplace safety is rewarding companies for hiding injuries and rushing the wounded back to work.

A *Toronto Star* investigation has found that since 2000, companies have reported thousands of seriously injured Ontarians as having missed no time off work.



COLIN MCCONNELL/TORONTO STAR
Bum Sun Yoon says he was new to Canada and naïve when he accepted \$1,000 to not report serious injuries suffered when he fell off a loading dock. May 29, 2008

Some companies pressure or bribe workers not to report major injuries at all.

Some pay the wounded full salary to do degrading make-work jobs.

Others, such as construction giant Aecon Group Inc., have lied to make injuries look less serious.

The result is that companies cut costs under the Workplace Safety & Insurance Board's incentive plan.

The provincial agency's plan says that the faster a company gets an injured worker back to work, or off what is known as "loss time," the lower the insurance premium. Shortening this loss time or avoiding reporting it altogether can be lucrative, possibly leading to a rebate cheque from the WSIB.

The *Star* found that at least 11,000 worker injuries were downplayed or improperly handled over a seven-year period, including 3,000 fractures, dislocations, bad burns and other injuries, even amputations, that companies reported as resulting in not even one day off work.

These practices are dangerous because they give government an inflated sense of safety in Ontario workplaces. That's because Ministry of Labour inspectors rely, in part, on WSIB injury data to determine which companies to inspect. By downplaying serious injuries, unsafe companies may reduce the likelihood of an inspection. Meanwhile, many of the wounded have ended up pawns in a balance sheet game,

WORKING WOUNDED

The *Toronto Star* is investigating workplace injuries, death and illnesses in Ontario. The *Star's* Andrew Bailey has analyzed data on 650,000 worker injuries and illnesses between 2000 and 2007. Previous stories are available by clicking here. The WSIB fought the *Star* for two years. Eventually, the provincial agency gave us a snapshot of injury and illness claims records since 2000 but omitted names and other personal information. It also

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shuffled back to work under the regulatory radar and vulnerable to further harm.

"It's not acceptable for any employer to force an injured worker back to work prematurely," said Ontario labour minister Brad Duguid when presented with the *Star's* findings. "There's no question the incentive program needs to be improved."

Candace Zinkweg, who worked on an auto parts assembly line, had to wear a sandwich board after suffering a repetitive strain injury that would eventually require surgery.

Another injured worker, after more than a decade of service butchering for a meatpacker, was offered a job watching trucks full of pigs roll in and out of the facility. "Hog Unloading Monitoring," the company called it.

Bum Sun Yoon's story (*left*) shows the extreme lengths a company will go to avoid reporting an employee is off work and recovering at home.

Board chair Steve Mahoney agrees there are problems with the incentive program but does not think it should be scrapped. The program is already under a year-long review after the *Star* found the WSIB was giving hefty rebates to companies found guilty of fatal safety violations.

He said the *Star* was unfairly blaming his organization and its 4,300 employees for the "anecdotal" bad behaviour of a few companies.

"To be perfectly blunt, I know your story is painting our entire system in a negative light and that bothers me a great deal. We make a million decisions a year. We spend hundreds of millions of dollars a year. I think this is a tremendous organization," he said, adding that the newspaper's investigation is a "terrible disservice to injured workers."

The problem Mahoney says is not widespread has touched his own board.

One of the WSIB's former board members, Mike Archambault, is the senior manager of safety for construction firm Aecon Group, which often wins multi-million-dollar contracts from the Ontario government. Earlier this year, Aecon pleaded guilty and was fined \$125,000 after WSIB investigators found the firm lied about the amount of work time missed by several injured workers. In one case, a tunnel retaining wall partially collapsed on a worker in Toronto, seriously injuring his shoulder and back. The employee missed a week of work while Aecon said the man was back at work the day after the injury.

Archambault, who did not return phone calls to his Aecon office, left the WSIB board on April 2. The next day, Aecon signed a court document in which it admitted lying about injuries.

Aecon spokesperson Mitch Patten said Archambault's departure from the WSIB was unrelated to the guilty plea and that Archambault was not investigated. Patten added that Aecon has a reputation for safety and has improved its injury reporting since the offences he called "regrettable, embarrassing, wrong."

Here's how the injury reporting system is supposed to work:

only gave us data on companies with more than five claims.

For today's stories, the *Star* interviewed injured workers, senior government officials, Ministry of Labour inspectors, company executives and many experts. Through a variety of other sources, the newspaper found individual cases where injuries were either hidden or downplayed.

BY THE NUMBERS

The Star found more than 3,000 examples of apparently serious injuries being reported as resulting in zero "days lost." They include:

905

Fractures

323

Intracranial injuries

220

Crushing injuries

205

Dislocations

162

Concussions

34

Fingertip amputations

14

Asbestosis

An employer must, within three days, report an injury that causes a worker to need health care or miss work.

Once a claim is approved, the WSIB pays for medical expenses, typically 85 per cent of the worker's wage when time off work is necessary, and various other benefits that could kick in as a result of the injury. In exchange for paying premiums that fund the WSIB, companies are protected from worker lawsuits.

The WSIB says it is important employers report "loss-time" injuries so that the agency can make sure the injured worker is getting proper medical treatment and all his or her entitled benefits.

In addition to managing injury claims, the WSIB is also trying to make workplaces safer by encouraging companies to reduce injuries and work-related illnesses.

The WSIB relies on its graphic "Road to Zero" ad campaign that warns of fatal risks in the workplace. One ad depicts a chef, her face boiling after a vat of hot liquid spills on her head. Another shows a tradesman plummeting from a building into the windshield of a dump truck.

The incentive program is supposed to help, too, by giving rebates to companies that have made workplaces safer and levying surcharges to encourage unsafe workplaces into improving.

The program places a heavy emphasis on reducing "loss-time" injuries – that is, injuries that cause a worker to miss at least one shift of work. The WSIB considers such injuries a sign of an unsafe workplace.

The longer a loss-time injury persists and the prospect of future claim cost grows, the greater the expense to the company.

After Zinkweg got hurt, her boss at Pivotal Action Force temp agency told her to go curbside wearing a sandwich board advertising the agency. Until her injury, Zinkweg used a staple gun-type device to upholster car seats on an assembly line. She said the job put constant pressure on her right arm, from her fingers up to her shoulder. She developed what one doctor described as a "substantial" case of carpal tunnel syndrome.

Draped in the sandwich board, walking up and down the sidewalk in front of the temp agency on a recent afternoon, Zinkweg said, "This is humiliating. This has to stop."

Pivotal Action CEO Alan Kouba said wearing the sandwich board is valuable to the company because it attracts potential employees. Kouba said the WSIB ruled the sandwich board job "appropriate and suitable." He said it posed no health risk to a worker with injured arms.

"We have an exemplary record. We've received a rebate every year (from the WSIB)," Kouba said. "We are trying to limit our costs, but not at the expense of the (WSIB) or our employees."

The WSIB and labour ministry claim they are marching in lockstep on the Road to Zero, with the two agencies citing a dramatic 20 per cent decrease in workplace injuries since 2004 that resulted in companies saving billions of dollars.

But the 20 per cent reduction only refers to injuries that result in a worker missing time from work; Ontario companies have reported 50,000 fewer such injuries in the last four years.

The government statistic does not count the 3,000 serious injuries the *Star* found companies had reported as resulting in not even one day off work.

In addition to fractures and dislocations, the 3,000 injuries included amputated fingertips, cases of

6	Third-degree heat burns
2	Silicosis (respiratory disease)
1	Heart failure
1	Blood poisoning
1	Miscarriage

welder's flash, rotator cuff tears and crushing injuries.

Bryan Evans, a Ryerson University professor who until 2003 managed a WSIB department responsible for analyzing claims data, said these injuries should be resulting in time off work.

"It's not rocket science," he said. "Those are traumatic injuries."

About 8,000 workers suffered from equally serious injuries and long-term illnesses, such as post-traumatic stress disorder, and missed a partial shift or one work day.

One of the large employers that reported several serious injuries resulting in no loss time is Staffing Edge, a Brampton-based temp agency. Since 2000, WSIB data shows Staffing Edge employees suffered 10 fractures, three intracranial injuries, three crushing injuries, two concussions and one fingertip amputation, and not one day of work was missed.

Chief financial officer Victor Winney said a loss-time claim can be expensive and that the WSIB pushes companies like his to give the wounded work as soon as possible.

"If the (WSIB) pays the worker a dollar, it will cost (the company) five – that's just rough numbers. You're going to pay more," he said. "I have guys doing quality work on ensuring bolts are the right size, the right weight, sitting at a bench. (With) a broken femur, eventually when he's in a healing process, he could do that bolt job. His leg has to be elevated, yes, sometimes he needs to do special exercises to take care of the injury."

The *Star* found the WSIB's policy around "early and safe return to work" is loosely defined – companies often get to decide which jobs are suitable.

At Mississauga-based Purolator Courier, where 14 fractures, three intracranial injuries, four crushing injuries, one dislocation and three concussions have been reported as resulting in no time off work, human resources director Doug Kube says his company is following WSIB rules.

"It's not unusual that (a worker) may have something like a broken ankle, that they could do paperwork audits, administrative duties in an office, and sitting in a chair with their foot elevated and working at a computer," Kube said. "That's not unusual."

The WSIB tells the *Star* it is working on improving the return-to-work process and has created two new positions that will, starting this fall, help workplaces better understand the concept of a "suitable and productive" modified job.

Since 2000, grocery store chain A&P has reported 15 serious injuries that resulted in no time off work, including six fractures.

The company has an uncommon approach to dealing with some of its injured workers. A&P runs two "return to work" centres, one in an industrial strip mall in Mississauga and another in London.

A spokesperson said injured workers go to these centres to perform modified work such as "creating gift baskets" and "receiving/recording company documentation." The spokesperson said the work "is important work that would otherwise be done at the store level or head office, if the centres didn't exist." Each centre has a cot for workers not feeling well. The company would not allow a reporter to tour a centre or talk to workers on site.

As for the 15 serious injuries reported since 2000, the company says the injuries were either not serious or incorrectly catalogued by the WSIB. In addition to the broken bones, the injuries also included one dislocation, three crushing injuries and two cases of what the WSIB calls "traumatic" tendonitis.

Steering companies down the WSIB's profitable "Road to Zero" injuries is a cottage industry of consultants who teach how to work the system. Online, they boast about millions of dollars in workplace insurance costs saved. They advise bosses on how to most quickly get a wounded

worker back on the job. They sell their commitment to fight claims.

One consultant told the *Star* that unless "totally disabled," a worker should be able to do something "meaningful," like "answering a phone or shredding paper."

Another, on his company's website, posted a "supervisor's checklist" for employers that advises offering a modified job even before a medical diagnosis is available. Consultant Dr. Edward Gardiner explained: "WSIB expects us to do that. WSIB wants us to offer early and safe return to work as soon as we can. I think most people want to come back to work."

The *Star* shared its findings with three Ministry of Labour inspectors, including one high-ranking inspector, and others with knowledge of workplace safety issues in Ontario, and none was surprised.

The inspectors, who requested anonymity for fear of losing their jobs, say the WSIB and labour ministry allow companies to hide dangerous workplaces and cut costs at the expense of injured workers.

"We're still seeing injuries," said one inspector. "We're still seeing the same stupid things being repeated over and over."

The government's investigative files show many cases of companies failing to report accidents at all.

One high-profile WSIB prosecution involved retail giant Wal-Mart. In 2005, it pleaded guilty to 25 counts of failing to report an injury, and was fined \$500,000. The company said some store managers tried to report injuries but used the wrong fax number, and it has improved its reporting system.

It is impossible to tell if these cases of non-reporting shed only a sliver of light on the problem or if government inspectors are catching all offenders. There are millions of workers in Ontario covered by the WSIB – from grocers to autoworkers to temps. The WSIB has 19 inspectors to complement the ministry of labour's 430 – that's about 450 to patrol the 230,000 companies covered by the WSIB.

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CASE 1

Name

Bum Sun Yoon

Age

43

Employer

TIPS Inc.

What happened

Bum Sun Yoon slipped between a delivery truck and loading dock, his fall brought to a bloody halt.

"I fall down in the gap. My two balls hit, too much bleeding from my penis. I was shocked," said Yoon in broken English.

A new arrival to Canada, the native of South Korea was rushed to hospital. He was worried about permanent damage. But his boss at a Toronto company had other concerns.

"I can't work. I got injured. Badly injured," Yoon said. "The next day they call me and say 'How about you go to work?'"

A week after the injury, as Yoon continued his recovery at home, a manager at the company, TIPS Inc., asked Yoon to sign a letter to the WSIB saying he did not wish to make a claim. In return, Yoon was paid \$1,000 for his time off.

"A manager told me if I make trouble bad things will happen to me. I'm an immigrant. I don't know anything," said Yoon, now a part-time dishwasher at a Swiss Chalet.

The letter reads: "I, Bum Sun Yoon, wish not to file a claim ... for the injury sustained." The document he signed is a form letter. Another TIPS employee injured in a workplace accident signed a similar letter.

The WSIB classified the injury as "No Lost Time." The fraudulent reporting was uncovered after an unrelated accident that left five TIPS employees dead. There was an investigation and WSIB fined the employer \$5 million. The company folded.

Company response

TIPS' former president David Burleigh agreed Yoon's case amounted to "a shuffling of the deck of cards. I wasn't the one who (said) let's pay this fellow and tell him to be quiet. That appalls me that we even would have done that. (Mr. Yoon) is someone we definitely should have had as a loss-time injury," Burleigh said, adding, "If the incentives to hide these things would go away, the proper reporting would happen for the employees."

CASE 2

Name

Li Yan Chan

Age

52

Employer

Mandarin restaurant

What happened

Li Yan Chan gingerly unfolded a creased, lined piece of paper, her left thumb shaking involuntarily. In Cantonese, she read from her own handwriting:

"All the vegetables come in either boxes or bags. Every day I have to cut the following: First, onions, two bags, each bag 50 pounds. I have to cut carrots, one bag, 50 pounds. Green onions, two boxes, each box 20 pounds. Broccoli, I have to cut six boxes, each box 30 pounds ..."

Chan worked in the kitchen of a Mandarin restaurant at Yonge St. and Eglinton Ave., until spring, 2004 when pain in her hands and arms made the job unbearable. Four years later, she can barely open her purse.

"Every week I had to work 60 hours. Every day I work very fast to complete my work," she said through an interpreter. Chan said she did as her boss told her and did not report her crippled hands to the WSIB. "My boss told me to go see a doctor and don't tell him it's caused by the job. He said worker's compensation is very complicated, so much hassle.

Her injury did not improve. Chan says her boss told her to go on unemployment and to come back when healthy.

"At that time, I'm a newcomer ... I know nothing about Canada. The employer was not being honest."

When Chan, now 52, went on welfare, taxpayers, not Mandarin, began paying for her disability.

About a year later, an acquaintance told Chan the WSIB may compensate her for her injury. So Chan reported it and now receives some benefits.

Company response

Mandarin executive Allan Chow says Chan was "let go" after telling a manager she was "tired" by the physically demanding job. Chow said he did not know if the manager ordered Chan not to file a claim. "I cannot deny (managers) make some mistakes. My position is to tell them how the system works," he said, adding that it is company policy to properly report all injuries.