

Mike Johnston  
Executive Director, Regulatory Services

**wsib**  
**cspaat**  
ONTARIO

*JS*

Head Office:  
200 Front Street West  
Toronto, Ontario  
Canada M5V 3J1

Siège social :  
200, rue Front Ouest  
Toronto (Ontario)  
Canada M5V 3J1

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Phone/Téléphone: (416) 344-5580  
Toll Free/Sans frais: 1-800-387-0750  
Fax/Télécopier: (416) 344-4166  
Email/Courriel: [Mike\\_Johnston@wsib.on.ca](mailto:Mike_Johnston@wsib.on.ca)  
[www.wsib.on.ca](http://www.wsib.on.ca)

Industrial Accident Victims Group of Ontario  
Community Legal Clinic  
489 College St., Suite 203  
Toronto, Ontario  
M6G 1A5

To Whom it May Concern:

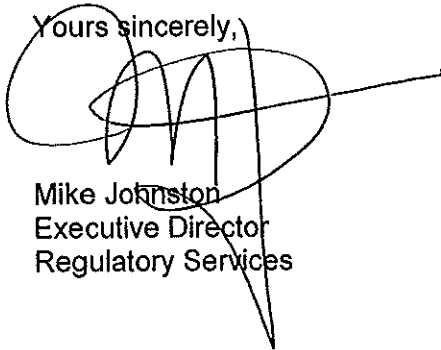
Further to our correspondence of March 12, 2015, we have now completed our Guidance Document for WSIB staff for making surveillance referrals.

The attached document, entitled "Worker Surveillance Referral to Regulatory Services" reflects our process for surveillance referrals, and we trust that it demonstrates adherence to the provisions of the Ontario Human Rights Code.

As your concerns regarding our surveillance guidelines had been addressed to the Ontario Human Rights Commission (OHRC), we are also forwarding a copy of our Guidance Document to their office.

Please do not hesitate to contact me directly with any questions or concerns you may have in this regard.

Yours sincerely,



Mike Johnston  
Executive Director  
Regulatory Services

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18-11-2015  
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**Administrative  
Guideline**

**Subject**  
*Worker Surveillance Referral To Regulatory  
Services*

**Purpose**

The starting point for a worker surveillance request is the identification of a possible false or misleading statement or misrepresentation, or a failure to inform the WSIB of a material change in the worker's circumstances which may impact benefit entitlement.

There is no one factor that would result in a decision to do surveillance, and surveillance is only used after considering all relevant information about a case. Please note that only a handful of cases within the WSIB system have surveillance approved, representing 0.075% of the total cases received annually.

A referral to Regulatory Services may be appropriate whenever WSIB staff have a reasonable basis to believe that a false or misleading statement or misrepresentation, or a failure to inform the WSIB of a material change in the worker's circumstances has occurred. The following are examples of alleged false or misleading statements or misrepresentations and material changes in circumstances that would be considered potential referrals to Regulatory Services to consider a period of surveillance. Also provided are examples of content that may be found within a case file that would support the surveillance referral.

WSIB staff are encouraged to contact Regulatory Services (Compliance Specialists) for assistance and support.

***Step One:** A potentially false or misleading statement or misrepresentation, or a potential failure to inform the WSIB of a material change in the worker's circumstances which may impact benefit entitlement, is identified.*

**Examples of Potentially False or Misleading Statements/Misrepresentation & Material Change**

1. The worker is in receipt of full Loss of Earnings benefits claiming to be unfit for any type of work, however a tip is received by a third party (e.g. injury employer or confidential source) alleging that the worker is employed elsewhere and earning an income.
2. The worker is in receipt of full Loss of Earnings benefits claiming to be unable to perform any type of work, however a WSIB employee noted that the worker:
  - drives a vehicle with business signage, or
  - has an answering machine that indicates a business name, or
  - answers or returns calls from what appears to be a business setting

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3. The Case Manager notes that despite the worker claiming total disability and being housebound, it was documented in the claim that the worker was:
  - able to travel out of the province or country, or
  - able on multiple occasions to leave the home for personal reasons or to visit family or friends.
4. The Case Manager notes that when observed by WSIB staff or providers, the worker presents with what appears to be grossly exaggerated symptoms not supported by medical documentation.
5. The worker is claiming total disability requiring assistance for activities of daily living and is unable to work, however Internet searches located:
  - a business sharing the worker's home address and/or phone number, or
  - social media posts (e.g. Facebook or Twitter), photographs or videos informing of work, social and/or recreational activities exceeding their stated abilities
6. The worker claims to be unable to drive and has not driven since the accident, however Ministry of Transportation documents indicate the worker:
  - maintains a valid license and had a driving conviction post- accident, or
  - applied for an AZ or DZ license (truck driving-requires medical clearance), or
  - maintains multiple actively plated vehicles

**Step Two:** When referring a matter for surveillance (*once a possible false or misleading statement/misrepresentation/material change has been identified as per Step One above*), staff should also consider highlighting for Regulatory Services the following examples of supporting case file documentation:

**Supporting Case File Content Examples**

- a) The Case Manager notes that while the worker continues to claim total disability or a further deterioration in the medical condition, there are non-cooperation issues in regards to actively participating in WSIB arranged medical/vocational intervention

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- b) The Case Manager notes that medical documents indicate:
- excessive pain-focused behavior with symptom magnification inconsistent with medical findings, or
  - MRI results opposite to the symptoms, or
  - Neuropsychological scores well below recommended cut-offs for adequate effort, or
  - Validity scale designed to measure exaggeration indicates the worker may be malingering, or
  - worker claimed to be sedentary for an extended period of time, however no muscle wasting is noted
- c) The Case Manager notes that the worker was self-employed prior to the accident and reports that the business has been inactive since the injury
- d) The Case Manager notes that the worker had failed to report that the compensable injury was made worse by a post-accident non-compensable injury or condition.
- e) The Case Manager notes that despite claiming to be unable to return to work, the worker:
- Is difficult to reach at home during business hours, or
  - only returned calls after business hours, or
  - returned calls from area codes outside the province/country, or
  - is only able to attend appointments after business hours

*Please note: Examples such as these may lead to findings of dishonest behavior which will require benefit entitlement to be re-considered, or could equally lead to a determination that benefit entitlement is appropriate and no wrongdoing has occurred. In either event, Regulatory Services is here to assist you in reviewing the rationale for a potential surveillance request, and conducting other compliance searches for information where feasible, to determine whether an assignment for surveillance is appropriate.*

Date of Guideline: November, 2015