
HALDIMAND COUNTY

Report HRD-05-2024 Workplace Safety and Insurance Board - Presumptive Legislation Update



For Consideration by Council in Committee on October 8, 2024

OBJECTIVE:

This is an information report to provide council with a comprehensive update on the Workplace Safety and Insurance Board (WSIB) presumptive legislation, including recent changes to the legislation and potential impacts, to ensure informed decision-making regarding the associated risks and financial implications for the County as a Schedule 2 (self-insured) employer.

RECOMMENDATIONS:

1. THAT Report HRD-05-2024 Workplace Safety and Insurance Board - Presumptive Legislation Update be received.

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Approved: Cathy Case, Chief Administrative Officer

EXECUTIVE SUMMARY:

Presumptive liability legislation, first introduced in 2007, allows the Workplace Safety and Insurance Board (WSIB), under specified conditions, to presume that a specific disease, injury or illness is work-related unless it can be demonstrated otherwise. Currently, presumptive liability exists for firefighters concerning heart injuries and occupational diseases (cancers), as well as all first responders concerning Post-Traumatic Stress Disorder (PTSD). In Haldimand County. This legislation directly impacts benefit eligibility for the County's volunteer firefighters and paramedics within the Emergency Services Division.

To date, the Workplace Safety and Insurance Board (WSIB) has approved thirty-two (32) presumptive claims submitted by current or former first responders in Haldimand County, at an aggregate cost of approximately \$4.7M, funded by the tax levy, through employee compensation budgets. As a Schedule 2 employer, the County bears full responsibility for claims prevention, payment, and management. This report and the accompanying memorandum aim to provide an update to Council regarding the significant resource implications of this legislation, as well as preventative measures taken to mitigate liability and ensure a sound financial strategy is in place.

BACKGROUND:

In 2007, the Workplace Safety and Insurance Act (WSIA) was amended to establish presumptions for liability concerning heart injuries and occupational diseases (cancers) specifically for career firefighters. On November 4, 2009, the Ontario government extended this legislation to include volunteer firefighters. Additionally, in 2015, the WSIA was revised again to include presumptions related to Post-Traumatic Stress Disorder (PTSD) for all first responders.

Presumptive liability legislation allows the WSIB, under specified conditions, to presume that a specific disease, injury or illness is work-related unless it can be demonstrated otherwise. Since the introduction of the legislation, it has regularly expanded to include new presumptions,; for example in 2009 there were a total of 8 cancers covered under this legislation, whereas today, the legislation includes 20 different types. When amendments are made, claims can retroactively be made by current/retired fighter fighters or their eligible survivors. Accordingly, each of these amendments increases the liability to Haldimand and has the potential to increase actual employer’s claims costs.

As a Schedule 2 employer under the WSIA, the County self-insures all WSIB claims, meaning 100% of the costs are funded through municipal taxes. In addition, the WSIB charges an administration fee of 18.3% (established rate for 2024) to each dollar of approved claims costs. The WSIB claims transactions are administered internally through a Workers’ Compensation Reserve Fund (WCRF) which allows for the levy impact to be better managed year over year. Consequently, it is imperative that all WSIB claims costs and estimated future liabilities are reviewed regularly to ensure that the internal funding, through contributions to the WCRF, is sufficient.

This report provides an update in terms of the legislation, the current financial impact of presumptive liability-related WSIB claims, as well as provides an update on the financial status of the Haldimand County Reserve Fund and our strategic approach to managing the impacts of presumptive legislation.

ANALYSIS:

The County’s first claim was awarded in 2012. To date, there have been a total of thirty-two (32) presumptive claims approved by the WSIB, including both presumptive cancer and presumptive post-traumatic stress disorder claims. A worker qualifies for the presumption due to the nature of their work if they meet the minimum service criteria as outlined by the WSIB unless the contrary is shown.

As of September 2024, the total accumulated cost for thirty-two (32) approved claims is approximately \$4.73M, excluding future liabilities associated with each claim. Given the ongoing expenses linked to these claims and the potential for additional claims as new conditions are recognized, the costs related to presumptive liability WSIB claims have the potential to rise significantly in the coming years.

A list of the presumed occupational injuries and illnesses and associated service criteria that apply to First Responders (Volunteer Firefighters and Primary Care Paramedics) can be found in Table 1.

TABLE 1:

Occupational Injury/Illness	Service Criteria
Primary site – brain cancer	10 years
Primary site – bladder cancer	15 years
Primary site – kidney cancer	20 years
Primary site – colorectal cancer	10 years (diagnosed prior to 61st birthday)
Non-Hodgkin’s Lymphoma	20 years
Primary acute myeloid leukemia, Primary chronic lymphocytic leukemia, Primary acute lymphocytic leukemia	15 years
Primary site – ureter cancer	15 years
Primary site – esophageal cancer	15 years
Primary site – heart injury	Within 24 hours of attending a fire
Primary site – breast cancer	10 years
Primary site – multiple myeloma	15 years

Occupational Injury/Illness	Service Criteria
Primary site – testicular cancer	10 years
Primary site – prostate cancer	15 years
Primary site – lung cancer	15 years (no tobacco use 10 years prior to diagnosis)
Primary site – skin cancer	15 years
Post-Traumatic Stress Disorder (PTSD)	No later than 24 months after the day he or she ceases to be employed as a first responder
Primary site – ovarian cancer	10 years
Primary site – cervical cancer	10 years
Primary site – penile cancer	15 years
Primary site – pancreatic cancer	10 years
Primary site – thyroid cancer	10 years

Impact of Presumptive Cancer on WSIB Claims

As of September 2024, the WSIB has approved twenty-one (21) presumptive liability claims filed by Haldimand County (or its predecessor municipalities’) volunteer firefighters, related to presumptive cancers only. Potential costs associated with an occupational illness claim could include any combination of the following, depending on the situation: loss of earnings, health care, spousal lump sum payment, monthly pension award, non-economic loss award, funeral costs, transport costs, bereavement counseling, spousal assistance joining the workforce, survivor benefits and WSIB administrative charges at the rate of 18.3%.

To date, total cost for the approved claims is approximately \$3.7M. Costs are particularly high in claims with survivor benefits. To date, six (6) claims have ongoing survivor benefits, paid monthly, ranging from \$2,900 to \$3,600/month for 2024.

Denial of the presumptive entitlement is only valid if the evidence establishes on a balance of probability that 1) the work had negligible or no exposure 2) non-occupational risk factors were of such importance that they overwhelmed the occupational exposure. To rebut a claim, a municipality must file an appeal to allow the WSIB to consider other factors, rather than presuming that the illness is related to the individual’s firefighter duties. Factors that can be considered in such an appeal include the worker’s: primary employment history; relevant training records; smoking or other health history; family medical history; medical literature on causes; and records of how often the worker attended fires and what type of fires he/she responded to. If the County deems it appropriate to challenge a claim, medical expert and legal fees are also incurred. To date, this type of appeal has proven to be difficult for employers to prove and therefore are not commonly pursued unless strong evidence is available. At this time, staff have been successful in appealing 1 claim and are currently actively pursuing an appeal on another.

Impact of Post-Traumatic Stress Disorder (PTSD) on WSIB Claims

The 2016 amendments to the WSIA establish a presumption that PTSD diagnoses in first responders are work-related, facilitating quicker access to WSIB benefits and appropriate treatment. This legislation includes the following nine professions:

- Firefighters (full-time, part-time, voluntary) and fire investigators
- Police officers
- Emergency response team members
- Paramedics
- Emergency medical attendants
- Ambulance service managers

- Workers in correctional institutions or secure custody facilities
- Dispatch workers

The presumption applies to current workers in these roles, as well as those who leave and are diagnosed with PTSD within 24 months of their departure. Workers covered by this legislation are eligible for WSIB benefits if diagnosed with PTSD by a psychiatrist or psychologist, according to the DSM-5 criteria.

So far, eleven (11) PTSD claims have been filed by County first responders (firefighters and paramedics), representing approved claim costs of just over \$1M. Costs associated with presumptive PTSD liability claims within the County have included compensation for loss of earnings, related healthcare expenses, and, retraining expenses. It is important to note, PTSD claims are challenging claims to manage and result in high claims costs. To address this challenge, staff have been actively working, together with first responders, the joint health and safety committee and sector consultants over the past several years to implement and iteratively improve a proactive approach to claims management focusing on early detection and trust/support in the workplace. The County has seen success in managing this type of claim, and, in some cases, has been successful in returning first responders to their pre-injury job.

Claims Costs

Once a claim is approved, the WSIB awards the applicable benefit amount(s) owing. As noted above, claims can range from a single, one-time payment to ongoing healthcare and/or monthly payment amounts including potential survivor benefits. Most awards include a Non-Economic Loss (NEL) award, recognizing permanent impairment impacting the individual's quality of life. Based on the level of impairment, such as whether the individual is able to continue working or not, would determine what other benefits are eligible.

Parameters around maximum benefits and benefits adjustment are further detailed below:

- **Maximum Earning Ceiling**

Under the WSIA, the WSIB is required to calculate a yearly "Maximum Insurable Earnings Ceiling" for all occupations, based on the most recent published Ontario average industrial wage. This is meant to capture the maximum annual earnings that can be relied upon for calculating benefit payments. The WSIB maximum insurable earnings ceiling for 2024 is \$112,500.

Recognizing that volunteers may have different employment income levels, Volunteer forces, through WSIB Policy 14-02-11, have the ability to change the level of insurable earnings for volunteer firefighters, within parameters. If the WSIB's established maximum earnings ceiling is used, a firefighter who is injured while performing volunteer firefighter duties, is compensated at the maximum level, regardless of the individual's actual external/self employment earnings. If an alternate cap is selected, they are only compensated to the established level. The amount selected cannot exceed the annual maximum insurable earnings ceiling set for the calendar year and must be at least half the annual maximum.

As a Schedule 2 employer under the WSIB, the County self-insures all WSIB payments and therefore needs to consider an appropriate funding strategy.

Through Report CMS-ES-02-2013, Haldimand County Council established the annual insurable earnings level for volunteer firefighters at 50% of the maximum earnings ceiling. In the same report, the County committed to then "top up" volunteer firefighters to 85% of their actual annual earnings up to the maximum earning ceiling. This decision was meant to replicate the maximum potential benefit for eligible firefighters while ensuring they are not being overcompensated for earnings they would not otherwise have earned. Under this design, an eligible volunteer firefighter receives the minimum claim amount through the WSIB (which is charged back to the County with an added administrative fee) and

in turn, a top-up amount is administered directly by the County, based on the firefighters previous year's notice of assessment.

- **Benefit Adjustments / Super Indexing**

The WSIA currently permits annual adjustments to WSIB benefits on the basis of an indexing factor. As per Bill 149, amendments create an “additional indexing factor” which will permit the Ontario government to “super index” increases to the WSIB benefits above the annual rate of inflation through regulation for presumptive claims. To date, this is not enforced, however the Lieutenant Governor in Council is given related regulation-making powers. Staff will continue to monitor this legislation and the potential financial implications.

Proactive Measures

Proactive measures, early detection and support for those suffering from occupational cancer or PTSD is a priority for the employer, to not only mitigate the costs associated, but also the impact on employee groups. Human Resources staff continue to work collaboratively with Emergency Services and the Joint Health and Safety Committee (JHSC) to determine how best to manage the risk of occupational illness.

In response to the financial implications of WSIB presumptive liability claims, staff have taken the following steps:

- Conduct regular education and training to emergency services staff related to presumptive legislation and how to protect yourself;
- Implemented injury prevention initiatives, such as respiratory protection programs, decontamination programs (ex. washing machines, trucks, decontamination on-site), as well as a mental health awareness program that targets the hazards which give rise to these claims;
- Completion of exposure forms for both physical and psychological exposures, with ongoing monitoring to aid in early detection;
- Early intervention practices including immediate follow-up with Deputies upon exposure;
- Developed a peer support committee with trained members, in addition to regular access to our Employee and Family Assistance Program (EFAP);
- Continue to refine occupational-related medical absence management policies and procedures to ensure the effective management of WSIB claims;
- Search out best practices in managing presumptive liability claims and appeal WSIB decisions where appropriate;
- Training and education on risks, legislation, and preventive measures, in addition to mental health training for first responders (The Working Mind – First Responder, Mental Health First Aid);
- Increased data collection to allow staff to track and respond to exposure trends/risks;
- Early detection campaigns, including education for physicians on the risks associated with emergency services to encourage annual “check-up from the neck up”;
- Conduct an annual actuarial assessment of WSIB claim liabilities to ensure the County is adequately funded; and
- Adjust self-insured contributions to the WCRF as required based on the actuarial assessment.

Taking a proactive approach to managing WSIB presumptive legislation is critical for mitigating costs and protecting employees. By investing in prevention, training and support, Haldimand can better manage the implications of this legislation while ensuring the well-being of our first responders.

FINANCIAL/LEGAL IMPLICATIONS:

Presumptive legislation has proven to have a significant impact financially and is a driver in lost time claims within the County. Claims and claims costs can be unpredictable, as illustrated through the varying claims costs the County has experienced to date. While the average claim is approximately \$160,000 per claim, staff have noted actual claims costs ranging from \$2,000 to over \$1M for a single claim. Typically, average costs are used to assist in developing budgets, predict future funding requirements, etc., however, due to the wide range of costs representing presumptive claims, there is risk at being underfunded in this area if averages are used to predict future costs.

In 2024, staff underwent an actuarial review with an external consultant in order to predict the likelihood of future WSIB costs, for claims not yet filed but predictable due to the demographics of the workforce. Predictions were based on past claims costs, ongoing awards and industry trends, compared against the current funding design and balance of the Workers' Compensation Reserve Fund (WCRF). The consultant, along with human resources and finance staff determined the WCRF, currently at \$12M has adequate funding at the moment.

As noted above, as a Schedule 2 employer under the Workplace Safety and Insurance Act (WSIA), the County self insures all WSIB claims by making contributions to the internal WCRF, through the employee compensation budgets. Unlike other insurance programs where the County pays a premium and any benefit awarded is paid for by the provider, the County's self-funding model collects "premiums" by employee, through payroll, which are directed to the WCRF and later expensed corporately, as needed. Consequently, it is imperative that all WSIB claims costs and estimated future liabilities are reviewed regularly to ensure that the internal funding is sufficient. As part of the annual operating budget process, staff review the level of contributions that should be expensed through the employee compensation budgets and recommend adjustments where necessary. This is presented to Council through the regular presentation of tax supported operating budgets, as a portion of the employee compensation budget.

To mitigate against the risk of significant expenses and the impact on internal funding sources, the County previously purchased excess indemnity insurance to protect against significant WSIB claims costs which exceeded a specified deductible. However, in 2009, this type of insurance became unavailable to municipalities like Haldimand County, whose Volunteer firefighter workforce constituted more than 30 per cent of the total insured employees. Consequently, the County became ineligible for this type of insurance and is fully responsible for funding all WSIB costs, despite their total cost. This information was presented to Council through Report CS-HR-02-2010. At that time, the County became ineligible for excess indemnity insurance as our volunteer firefighting workforce represented 39% of our workforce which exceeded the eligibility require of 30% for this type of insurance. It was decided that, in lieu of purchasing excess indemnity insurance coverage, the County would contribute the base premium that it had been paying for insurance, in the amount of \$71,200, to the WCRF on an annual basis. This practice continues today, however, since that time, our employment base changed making the County eligible to purchase excess indemnity insurance again. Staff have investigated this option, but the quotes received have been extremely high and would only apply to claims on a go-forward basis. Based on the status of our funding and claims exposure to date, staff recommend maintaining the current funding strategy and will continue to monitor available options.

Changes to presumptive liability legislation are unknown but are expected to remain as is or continue to grow in eligible presumptions. Associated claims experience and costs are likely to be a very significant future expense. As a result, staff will continue to engage in an annual actuarial assessment to ensure our WCRF remains adequately funded and recommend changes to the funding strategy as necessary.

STAKEHOLDER IMPACTS:

Presumptive liability claims directly managed by Haldimand County under the WSIA apply to the Emergency Services Division exclusively at this time. However, given the financial implications that this changing legislation has shown, the Corporation must remain proactive in preventing and managing such claims.

Health and safety impacts all areas of the Corporation. Managers, Non-Union Supervisors, JHSC representatives and select employees are expected to commit time to provide input into the preparation of risk assessments, development of policies/procedures and participation in training and workplace inspections mandated by the County.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

REFERENCES:

None.

ATTACHMENTS:

None.