



February 15, 2017

Mr. Michael D. Werier
Chairperson
WCA Legislative Review Committee 2016
PO Box 1296, Winnipeg Main PO
Winnipeg, Manitoba
R3C 2Z1

Dear Mr. Werier:

RE: REVIEW OF THE WORKERS COMPENSATION ACT

On behalf of the Canadian Union of Public Employees (CUPE) Manitoba, please accept this submission to the 2016-17 Review of *The Workers Compensation Act* (WCA). With approximately 639,000 members across Canada, and over 25,000 members in Manitoba, CUPE is Canada's largest union and represents workers in a large variety of areas, including health care, long-term care, education, municipalities, libraries, post-secondary education, social services and public utilities.

CUPE members play a vital role in our communities, delivering the core services which all Manitobans depend upon. CUPE members take great pride in their work, and dedicate themselves to providing the public services which all Manitobans depend upon. CUPE members sacrifice unfortunately extends to their own health, as all too often they find themselves injured or sick due to hazards, injuries and illnesses they face on the job.

The future of the Workers Compensation Board is of utmost importance to CUPE and our members. We trust that you'll find the enclosed response to the questions identified by the Minister in his Mandate Letter for the legislative review helpful when you're formulating your review.

In solidarity,

A handwritten signature in black ink that reads "Kelly Macvet". The signature is written in a cursive, flowing style.

PRESIDENT, CUPE MANITOBA

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Enclosures

**CANADIAN UNION OF PUBLIC EMPLOYEES
SUBMISSION OF THE REVIEW OF THE WCA**

Question 1

Can the WCA be amended to better reflect the system's foundation (Meredith) principles in a modern context?

It is essential that the Meredith principles (no fault compensation, collective liability, guaranteed benefits, independent administration and exclusive jurisdiction) continue to be the foundation of the workers' compensation system in Manitoba.

However, we are of the opinion that the WCB's use of experience rating - whereby employers' premiums are largely based on individual claim history - creates a strong financial incentive for employers to suppress claims. In essence, the use of experience ratings undermines the rights of workers to guaranteed, no-fault, secure benefits. The Manitoba Federation of Labour has extensively documented Manitoba's claim suppression problem - findings which have been echoed by external reviews of the rate model.

CUPE recommends that the best way to reflect the Meredith principles would be to abolish experience ratings. The ratings system should be altered to reward investment in prevention, and eliminate incentives to suppress workers' claims.

In addition, there must be further investments in public education, so that more workers are aware of their right to report injuries free from employer harassment.

WCB needs to better involve workers, employers, and workers' medical practitioners in developing and implementing "Return to Work" plans. The WCB must be more vigilant in intervening when doctor's orders are not being respected by employers.

Finally, there needs to be harsher penalties and stronger enforcement to curb employer claim suppression. Those employers who have been found guilty of claim suppression should be publicly identified through the creation of a public registry.

Question 2

How can the WCA be amended to fulfill the Five-Year Plan for Workplace Injury and Illness Prevention and reinforce its prevention mandate?

It is important that the WCB continue public education of workplace health and safety prevention through broad public campaigns. Additionally, the SAFE Workers of Tomorrow program should be expanded to ensure that *all* high school students in the province have access to workplace safety and health presentations and outreach.

The existing Minister's Five-Year Workplace Injury and Illness Prevention Plan should be continued. The WCA should be amended to require future five-year plans which ensure that prevention, enforcement, and legislation/regulation are integrated.

The new 'SAFE Work Certified standard' and 'prevention incentive' programs should be completed and implemented. Workers' experiences with health and safety in the workplace must be integral to any certification process. Employer incentives should be based on adoption of recognized health and safety programs, and must be completely de-linked from claim history in order to remove incentives for claim suppression. Once implemented, these programs must be monitored to evaluate their effectiveness.

The 'SAFE Work Certified standard' should be introduced into all sectors, but the first priority for implementation should be health care where injury rates remain high, and the workforce is predominately women. As a union that represents over 8,500 front-line health care workers, we know all too well that our members are at great risk for workplace injury, and are also aware that most injuries are preventable. At present the program is only available in male-dominated sectors, and this must be addressed.

Question 3

What do you see as the main challenges of compensating for injuries to mental health in the workplace, and how do you think they should be addressed?

With an estimated 1 in 5 Canadians experiencing some form of mental illness over their lifetime, there is growing recognition of the importance of mental health in Canadian society, and the impact it has on the workplace. Mental illness is the leading cause of disability in Canada, with 500,000 Canadians staying home from work each week due to a mental illness.

The WCA currently treats physical and psychological injuries/illness very differently, and it's time this discriminatory practice come to an end. Physical and psychological injuries must be treated equally, and be fully compensable. For example, at present occupational diseases stemming from workplace stress are explicitly excluded from coverage. This needs to change. The WCA should recognize psychological disorders related to workplace stress, and provide a clear definition of what constitutes stressors in the workplace (for example: bullying, harassment, conflict).

Further, we urge the WCB adopt as a benchmark the 2013 *National Standard of Canada for Psychological Health and Safety in the Workplace* for measuring and assessing psychological injury and illness claims.

Question 4

Are there changes required to WCB's funding model? What model best protects against risk while also providing value for employers and retains benefits to workers?

We are aware that the WCB has heard from some employers calling for reserves to be drained in order to subsidize lower assessment rate. We oppose this suggestion, as the current funding ratio (143%) is already forecasting to return to the targeted funding ratio (130%) over the next few years following the introduction of a new prevention incentive rebate program.

It should be noted that Manitoba's assessment rates are already the second lowest in Canada, and draining of reserves could expose the WCB to risk due to market fluctuation and unfunded liabilities. In our opinion the existing target should be maintained, and dramatic adjustments to assessment rates should be avoided.

Question 5

Should Manitoba adopt a cap on the maximum insurable earnings within the workers' compensation system?

There should not be a cap on insurable earnings. All workers' earnings should be insured.

The cap on insurable earnings was eliminated in 2006 after the last WCA review. This was adopted with unanimous support of the legislature.

Returning to a cap system would discourage higher income-earning workers from filing WCB claims when hurt or made sick at work. This discriminatory practice should not be reintroduced.

Question 6

The WCA currently provides for a Worker Advisor Office to assist workers with WCB matters. Should the WCA also provide for an Employers Advisor Office (EAO)?

We do not support the introduction of an Employers Advisor Office (EAO). We believe that the creation of this office would encourage claim suppression as some employers would file frivolous claims in an attempt to minimize employer premiums. The introduction of an EAO would turn a non-adversarial, inquiry model system into an adversarial process.

The use of experience ratings encourages employers to file appeals in the hopes of suppressing their own claims rate, and therefore their WCB premiums. Amendments to the WCA should reinforce the Meredith principles - while the creation of an EAO would do the opposite, encouraging and resourcing employer claim suppression practices.

The Workers Advisors Office (WAO) exists because of a recognition that workers inherently have less power, and fewer resources, than their employer. The WAO is intended to assist workers in ensuring they are being treated fairly in a complex system. Manitoba's WAO system should be better resourced to ensure workers receive the benefits for which they are rightfully entitled.

Question 7

What legislative changes do you think are required to ensure that the WCB remains a modern, responsive administrative tribunal?

1. *Mandate the continuation of workplace benefits*

Many workers, both union and non-union, receive extended health and dental insurance benefits as part of their overall compensation package. In the case of unionized workplaces, through collective bargaining employees have often foregone wage increases in order to obtain these benefits. However, in some cases benefits cease to be available to workers when they're receiving WCB benefits. The WCA should be amended to require employers to continue their premium contributions for workplace health benefit programs while a worker is receiving WCB benefits.

2. *Expand WCB coverage to all sectors*

At 75%, Manitoba has the third lowest coverage rate in Canada. This is unacceptable - the workers' compensation system was designed to support all workers who are injured or made sick at work. WCB coverage should be expanded to cover all sectors. Doing so would add resources to the system, improve efficiency, likely lower premiums for employers and, most importantly, make the system fair for all workers.

3. *Medical Advisory Committee*

We feel that it is important that the WCB, and Manitoba workers, would be well served by the creation of a 'Medical Advisory Committee' to advise the Board on all medical matters related to the administration of the WCA. Such a committee should play a critical role in ensuring WCB policies and practices are consistent with current best practices of the medical profession.

4. *Recognize education and training in future earning potential*

At present the WCA severely restricts the ability of the WCB to recognize the probable future earning potential of workers - only where the worker is in a registered apprenticeship program, or when the worker is under 28 years old. We feel this is far too restrictive. The WCA should be amended so that the WCB can increase compensation to a worker who is injured while enrolled in any recognized education or training program in order to recognize what the worker would have earned had they been able to complete their program.

We feel it is important to note that this practice may have a discriminatory impact on women in Manitoba. We note that at the University of Manitoba 59% of students age 28 and older are women.¹ By comparison women make up just over 11% of active apprentices in Manitoba.² Whether intended or not, the current practice of the WCB is designed to compensate workers who choose education/training that is male dominated (apprenticeship programs), while failing to compensate workers who choose education/training that is predominately female (university education). For the sake of basic fairness, and gender equity, this should be addressed.

5. *Eliminate the 'dominant cause' test*

Presently for a worker to receive benefits they must prove that workplace exposure was the 'dominant cause' of their occupational disease. This can prove very difficult for workers, given long latency periods and complications related to the reality that many workers may be potentially exposed in many different workplaces over a career. The result is that occupational diseases are underreported by workers, and even when it is, the bar is set so high that many workers with legitimate occupational diseases end up without compensation. As such, the 'dominant cause' test should be replaced with a 'balance of probabilities test' in order to ensure more workers with occupational diseases receive the benefits they rightfully deserve.

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¹ University of Manitoba, Office of Institutional Analysis, 2014-2015 IS Book p 64 & 65, http://umanitoba.ca/admin/oia/media/2014-2015_IS_BOOK_Final_Mar_30_2016.pdf

² http://www.gov.mb.ca/wd/apprenticeship/pdfpubs/pubs/general/stats/stats_active_apprentices.pdf