



UFCW Local 832
Submission to the WCB Act Review

JANUARY 2017

January 30, 2017

Michael Werier
Chairperson
WCA Legislative Review Committee 2016
PO Box 1296, Winnipeg Main PO
Winnipeg MB R3C 2Z1

Dear Mr. Werier:

On behalf of the 19,000 plus Union members represented by the United Food and Commercial Workers Union Local 832 (UFCW), we are pleased to provide you the following submission for the upcoming review of The Workers Compensation Act (WCA). UFCW is Manitoba's largest private sector Union representing a very diverse membership in virtually every working sector.

UFCW has participated in many initiatives involving workplace Safety and Health and Workers Compensation. Although there has been some success in advancement of worker protection, there are still far too many injuries and fatalities in Manitoba.

During the last WCA review over 10 years ago, working Manitobans have seen many advancements and changes that have proven to have a positive impact on workers and their families providing they are administered properly. Since the 2005 review there have been a number of additional amendments to the WCA, most notably and recently Bill 35, which saw PTSD presumption for all workers in all occupations.

With the many positive changes, it must be noted that working Manitobans still continue to have challenges with the Workers Compensation Board (WCB). The very principals that the WCA was built on seem to have been forgotten. We no longer have a no fault, no liability system where workers are compensated fairly and their injuries are given fair adjudication. We have a system where employer interference is accepted and denying workers claims is consider a fair resolution. Workers continue to report that their claims are being adjudicated with the goal of denying a claim rather than accepting the claim. There is no time spent educating workers on the process and outcomes. There is little onus put on the WCB to educate these injured workers on a system that is very difficult to navigate and understand. As a result of this, a worker, during their most vulnerable stage is being left without compensation, without access to resources and is unable to live their life the way they did pre-injury. There are significant advancements that need to be made in order to overcome these challenges constantly reported by workers. Some of these challenges are as follows:

- **Interference** of claims by a 3rd party, meaning, claims management companies whose sole purpose is to save employers money on premiums.
- **Communication** lacking, there is no explanation to workers on the WCB system, how to navigate it, what are the steps, what to expect and most importantly emphasis put on communication in the workers preferred language and in plain language.
- A complete **lack of understanding** and a lack of resources regarding mental health and compensation for psychological injuries.
- Return to work (RTW) and a **lack of intervention** by WCB when there are disputes between worker and employer.
- **Medical opinions** from internal WCB medical advisors carrying more weight than external advisors and specialists and a complete lack of resolution method with the appropriate medical professionals included in the decision making.
- Aggressive attempts by employers to **block claims** and employers that have overly aggressive RTW programs, which takes away the workers ability to heal and safely return to work.
- Adjudication of claims and in particular **musculoskeletal injuries** being properly understood.

Given the staggering numbers released by the WCB every year of occupational injuries, illnesses and fatalities, it is imperative that change happens to reduce these numbers. Workers do not ask to be hurt at work and workers do not go to work expecting to get hurt. When a worker is hurt in the workplace they are left in a vulnerable position and without compensation, their lives are permanently altered and the negative secondary results of their injuries are endless.

Although there are clear difficulties with the current WCB system there have also been many positives. There have been some very good ground-breaking changes to the WCA and the WCB staff have on numerous occasions been extremely helpful with many injured workers.

Attached you will find UFCW's submission and comments in response to the Ministers questions and call for review of the WCA.

We thank you for the opportunity to provide our comments on this review and we hope that together our recommendations on the WCA and WCB practices and Policies help improve our current Workers Compensation System.

Yours Truly,



Phil Kraychuk
Health and Safety Coordinator
UFCW Local 832

UFCW Local 832

2017 Workers Compensation Act Review Submission

Issue 1) - Alignment of the Act with the Meredith Principals

The Meredith Principals were the foundation of our WCA that resulted in what is known as the historical compromise. Workers forfeited their rights to sue their employers in exchange for no fault compensation by employers through an independently administered body.

Our current experience rating model has moved us away from these very principals. Employers have begun to develop sophisticated compensation management systems that see claim suppression and aggressive, invasive RTW programs as a much cheaper alternative to paying WCB premiums.

Although cases of Claim Suppression and faulty RTW practices have been well documented over the years it was not until 2015 that the workers compensation board administered the first claim suppression penalty in the history of Manitoba.

Our current experience rating model is flawed. This has been well documented in a number of reviews conducted most notably in the Paul Petrie report released in 2013. Mr. Petrie outlined clear examples of claim suppression and reasons as to why this happened. One of the most important findings outlined the flaws in the experience rating system and how it promotes claim suppression. The WCB has responded to the Petrie report by conducting a number of other reports on the rate model. All these reports have painted a clear picture of claim suppression, faulty RTW programs and employer abuse. These abusive behaviors are directly linked to employer premiums and experience rating. As a result the WCB made a number of commitments with the upcoming changes to the rate model standing at the forefront.

If the Meredith Principals hold true we would not receive the countless complaints from workers about employers interfering with their right to compensation for workplace injury/illness. Without proper enforcement and administration our rate setting model has turned into one that has proven to have employers doing the following:

- Develop RTW systems that are in direct violation of medical restrictions, frustrate the RTW process and force workers to make errors during the RTW to lose WCB benefits.
- Hire 3rd party claims management firms to actively fight **ALL** WCB claims and not just those that raise questions.
- Provide incentives for groups with no workplaces injuries resulting in pressure to not report injuries, specifically pressure being put on the individual to not be the person whose actions results in the loss of the incentive for the entire group.
- Access employee's medical information to use in future appeals or accommodations as a way of discrediting a claim or an accommodation.
- Falsifying worker incident reports and reporting incorrect worker compliance with a RTW programs to WCB.
- Flat out lying to workers about compensation benefits and entitlements.
- Using intimidation methods such as being disciplined or threats of appeals as a way to instill fear of reporting.
- Punishment for reporting injuries by creating RTW programs that result in the worker further suffering hardship or doing work that is not at all meaningful.

This list can continue but it is widely known and documented that there are major problems with experience rating. The result of this is that employer claim suppression has largely moved our current system away from the very principals the system was built on.

Recommendations:

- Penalties for claim suppression and frivolous RTW programs be increased and more strictly monitored and enforced by WCB.
- Employers guilty of claim suppression have their names released to the public.
- Prevention incentives offered as a result of the new Certification Standard are not based on claims experience, paper reports and employer involvement but rather effective health and safety practices, committees and worker involvement.
- Decisions on claims and employee participation in RTW programs that are not based solely on the employers' word.
- The WCA be amended to have RTW programs approved by WCB with the involvement of the injured worker.
- The WCA be amended to require RTW programs be developed by the injured worker, Doctor, Employer, WCB and Union, if in a unionized workplace, to ensure there is no abuse of the system and RTW can be done safely and appropriately.
- Public campaigns on Claim Suppression and abuse of RTW programs become a higher priority and are more aggressively promoted by WCB/ SAFE work.
- The WCA be amended to require an independent audit/investigation of the new WCB rate model two years after implementation. Should the new rate model continue to show the same issues as the old then experience rating should be abolished altogether.

Issue 2) - Coverage

Currently our WCB covers roughly 75% of Manitoba workplaces. In comparison to all other Canadian jurisdictions that ranks us amongst the lowest in the country. It has always been UFCW's position that coverage be expanded to cover all Manitoba workplaces.

Every working Manitoban should be entitled to compensation benefits for injuries that happen in the workplace. Workplaces change and evolve and so should compensation systems.

With a greater number of employers contributing to WCB the system would become even more efficient. This would create a truer collective liability and should, in the end, have employers seeing lower premium costs.

Recommendation:

- The WCA be amended to include all Manitoba Workplaces.

Issue 3) - Prevention Incentive

With the new SAFE Work Certified program coming into place, one of the benefits of this certification is a reduction of employer premiums or a so called credit.

The incentive given back to employers is based on having established effective health and safety practices. Our fear is that certain employers may see this as another way to gain relief from assessment rates by way of claim suppression and aggressive RTW programs.

In effort to eliminate these practices programs like this should begin with the worker's input. More often than not these programs start the employer's input with very little focus being given to worker's knowledge

of health and safety in their own workplace. Often workers, when their input is requested, have been coached as to what to say and how to answer questions.

Employers who attempt to navigate their way through the certification program by using these methods should become a focus of the WCB and premiums should be increased based on the abuse of the program.

Although this program is new, just like other behavior based safety programs in workplaces, this type of incentive can often leave workers in a very vulnerable position.

We acknowledge that there has been a commitment by the WCB to ensure that workers are more involved in this program however we believe this must be closely monitored on a regular basis.

Recommendation:

- WCB be constantly involved in the certification program and employers who abuse the certification or revert back to poor practice be penalized with even greater assessment rates.

Issue 4) - Communication

WCB does offer translation services for injured workers, however, when there is no verbal communication with the injured worker it is assumed they speak English and any correspondence sent to the worker will be in English.

Especially in larger operations a worker may not call the WCB directly to report an injury. They see their employer who assists them with filling out a report which in turn is sent to WCB on the employee's behalf. Many of these employees do not have English as their primary language and in many cases only have a rudimentary ability to communicate in English. When conversations do eventually occur between the worker and WCB the resulting correspondence is still sent out in English.

UFCW represents a very diverse work force. In some workplaces English is not the dominant language. For example UFCW represents roughly 5000 workers in 5 different meat packing operations. Of those five operations the amount of employees whom have a different first language from English range from 75-90%. Many of these workers are newcomers and are not only unfamiliar with WCB, they are also unfamiliar with all aspects of work in their new country. Things are much different in Canada than many of the places these new Canadians are coming from. These workers rely on the employer and trust the employer. Some employers have abused this trust and have taken advantage of this population of workers. Workplace injuries are not reported out of fear and repercussion. They do not want to upset the employer. These employers spend no time educating these workers or take the extra steps necessary to ensure they understand their rights and understand they must report injuries. Many of these employers motto seems to be "the less the worker knows the less they can hurt us".

When communication is sent to the injured worker it is important that they are able to read and understand exactly what the communication is. WCB is a very difficult system to navigate, especially for a worker whom has never experienced a workplace injury. It becomes even more difficult when the process is not explained by the WCB or the worker is unable to understand any communication.

Often because a worker cannot properly read any communication they fail to comply with WCB requests thus having their benefits terminated. These situations leave a vulnerable worker in a position where they are forced to RTW still injured or stay off work with no income and no access to WCB resources. These situations come up often and generally when they eventually come to light the worker's injury has become worse as they were unaware of the WCB or the status of their claim.

It must be acknowledged that Manitoba is a very diverse province and programs and systems designed to assist injured workers must adapt to that change.

Recommendation:

- The WCA be amended to make it compulsory for all worker and employer reports submitted to WCB provide a preferred language of communication to the worker.
- WCB policy be amended and created to ensure that the WCB process and communication is explained to the worker properly in a language the worker can understand
- WCB correspondence sent to an injured worker be sent in their preferred language.
- WCB launch a campaign directed at newcomers informing them of their rights
- The WCA be amended to include language making it the employer's responsibility for any additional training required so that all employees, including new Canadians, understand their rights.

Issue 5) - Return to Work Programs (RTW)

If done properly RTW is an excellent plan for an injured worker and the employer. RTW helps recovery, allows the worker to stay engaged in the work process, the employer maintains a skilled worker and WCB premiums do not increase as drastically.

Unfortunately, these programs are all too often abused. Workers are rushed back to work in jobs that continue to cause them harm. Workers are left out of the RTW planning and are provided with a job they had absolutely no input in. Doctors restrictions are often ignored and injured workers are forced into a job that if not accepted, result in the employee's benefits being terminated.

Employers will knowingly put workers into jobs where the worker must work outside their restrictions. If the worker refuses the employer reports to the WCB that the employee is noncompliant with the RTW program. It becomes a "he said she said" issue that almost always ends up in a loss of benefits for the worker.

A RTW program cannot solely be developed by the employer, the worker should be the first person involved and WCB should oversee the process so as to ensure employers are not abusing the program. The reality of the situation is that if an employer reports noncompliance that may not be the whole truth. Likely there is a reason for noncompliance and a fair opportunity must be given to the worker to have input prior to any decision on benefits being made. All too often the worker is not even given the opportunity to give their feedback on the accommodation to the employer or WCB.

Recommendation:

- WCB establish a RTW department that oversees RTW and deals directly with decisions that could impact worker benefits.
- The WCA be amended to require WCB approval of RTW programs.
- WCB establish a policy where RTW programs that do not involve the worker are not accepted and the worker receives WCB benefits until a RTW program is properly developed.

Issue 6) - Establishment of Maximum Earnings Level (or a cap) for Workers

In the past Manitoba had a cap on worker earnings. It was removed as it was recognized that capping workers insurable earnings was unfair. Some may even argue discriminatory.

Workers do not ask to be hurt at work. Injured workers have already suffered and lost by way of a workplace injury. No matter how drastic the injury, it was something unwanted and something that has an immediate impact on their life. In some cases this could affect them for the rest of their life.

Capping workers' wages only further damages a worker. Not only do you have to recover from an injury but your wages are capped and you suffer even more of a financial burden.

There is no doubt high worker wages create more of a liability to the system but that is not a worker problem that is an employer problem. Employers pay premiums based on experience and payroll. These wages are covered by the employer premiums.

Capping worker wages may help eliminate some financial burden on the system but this results in punishing the injured worker and not the employer who is responsible for the unsafe workplace. Furthermore some high wage earners may not even report an injury or file a claim as they cannot afford the cut in pay if they go on WCB.

If WCB puts a cap on worker earnings the WCB is in effect promoting claim suppression. WCB would be penalizing the very workers they are compensating by not providing them with the compensation every other worker below that cap is entitled to. By penalizing high wage earners with a cap the WCB is creating a system where workers are at risk when reporting injuries. WCB promotes injury reporting and is very public about it, why would it then make sense to penalize a worker for reporting?

Recommendation:

- WCB continues to insure all worker earnings and does not discriminate against any worker for their income level.

Issue 7) - Manitoba's 5 Year Plan

Released in 2013, a number of priorities were put forward and a commitment from government was given to make Manitoba a leader in health and safety. SAFE Work Manitoba was created as a separate entity from Workplace Safety and Health and the WCB. A commitment was made to provide meaningful incentives for employers whom practice positive health and safety practices and a commitment to better resources for prevention and enforcement. There have been some very positive steps forward with prevention, however, there is more work to do.

The development of the SAFE Work Certified is currently being developed by SAFE Work Manitoba. This is a new program and only time will tell on its effectiveness, however, there still remain some concerns.

In order to have proper input in these types of programs every industry must be represented. At this point not every industry sector has a safety association and even with the ones that do there is no worker representation in the association. Currently there are only five industry safety associations and of those five the working population is heavily male dominated. Health care, which is mostly female, does not have a safety association therefore there is no representation for these workers. We understand the goal is to have safety associations in every industry but we are just not there yet.

The five year plan was an excellent initiative that had specific targets and goals. By creating the five year plan the government has acknowledged areas in need of improvement. It also held the government to very specific commitments. This has created a lot of positives but only so much can be done at once.

Recommendation:

- The WCA be amended to require five year plans including all prevention, enforcement and compensation bodies.
- WCB and SAFE Work continue to promote prevention.
- Representation on any newly created industry based safety associations include workers.

Issue 8) - Psychological Health

Psychological Health and Safety is the fastest growing concern across our country. It is something that was on the backburner for many years and a topic and area of treatment that is extremely under resourced.

New reports and studies, which are being released on an almost weekly basis, show that mental illness is increasing drastically. Many of these reports and studies identify work as a causation of mental illness. Statistics show that 1 in every 5 Canadians will experience some form of mental illness.

Our current WCA does not compensate for occupational stress or occupational disease as a result of workplace stress. The WCA has no definition of workplace stress and there are no clear outlined stressors that would result in mental illness.

Manitoba has made some significant movement forward with the amendments made to the WCA in bill 35 on PTSD, however, PTSD is a very small portion of what constitutes mental illness. There are many different types of mental illness and many different causations. To believe that psychological injuries/illness do not happen as a result of some employment situations is an error in the adjudication process and may even be considered unconstitutional.

With our current system, other than PTSD, compensation for psychological injuries/illness is non-existent. This leaves Manitoba lagging behind other Canadian jurisdictions. Given some of the recent precedent setting cases across Canada several jurisdictions have already made changes which have resulted in a broadening acceptance of psychological injuries/illness. With all this new information and considering the time that has elapsed since our last WCA review, Manitoba has a great deal of work to do in this area.

By not compensating a major health and safety hazard subjected on workers in all occupations and acknowledging psychological injuries/illness as a compensable workplace injury/illness the government would be turning their back on a problem they know exists. In fact SAFE Work Manitoba has been a leader in the Province advocating for better workplace standards for psychological health. In the five year report released in 2013, the government set a goal of "Making Manitoba a Nationally Recognized Health and Safety Leader". We cannot be leaders if we fail to acknowledge the issues right in front of us.

In 2013 a CSA standard for Psychological Health and Safety in the Workplace was released. This standard identifies a number of factors in the workplace that could lead to a psychological illness/injury. Every area identified in the standard is an area controlled by the employer which will point towards an illness/injury that should be compensable but currently is not. This is a standard backed by facts and should be considered not only in compensation but also prevention and enforcement.

Recommendation:

- The WCA be amended to compensate injured workers for psychological injuries just as the WCB would any other compensable injury.
- The WCA be amended to include compensation for any psychological injury that is in relation to a workplace stressor.
- The WCB be amended to compensate workers for psychological injuries that's are the secondary result of a workplace incident.
- The WCA reference the 2013 national CSA standard for claims adjudication and identifying workplace stressors causing psychological injuries/illness.

Issue 9) - Employer Advocate's Office

There is absolutely no reason or justification for an Employer Advocates Office. This is simply an employer driven initiative to further themselves with resources to suppress WCB claims. In essence this is just another way of taking away workers' rights to guaranteed benefits.

Employers who have questions about any of the WCB processes can already get those answer the same way a worker can by simply talking to customer service. If an employer has a bona fide reason to appeal a WCB claim supported by evidence then they can appeal the claim just as a worker would.

Employers have much more resources than workers, they have more control of the WCB process and they have all the power in the workplace. Some employers even have sophisticated claim management systems that already appeal nearly every WCB claim just because they can. Employers do this knowing that they likely will not win, but when they do win an appeal it's a huge cost savings due to the flaws in our rate setting model.

The development of an Employer Advocates Office will do nothing but give employers a tool to further suppress claims. This goes against the principals our system is built on. This creates an adversarial system which is the exact opposite of the purpose of our inquiry model.

The Worker Advisor Office is a much different resource. When a worker is hurt at work and denied benefits, there is no help in terms of financial aid. Workers do not have the resources that employers do. For an employer when a worker is hurt, work continues, jobs get completed and money keeps coming through the door. For a worker when they are hurt at work everything stops. If their claim is denied their only recourse is to navigate a very difficult, lengthy and convoluted WCB appeal system that is not easy for anyone. In light of the difficulties involved in appealing a claim, worker financial hardship and lack of worker resources, the Worker Advisor Office is a resource for workers that must be maintained. Without a Worker advisor office, employers have an unfair advantage over workers in every area.

The Worker Advisor Office is currently understaffed and under-resourced with direct funding being pushed aside and used in other areas of government. This is not acceptable as funding given to specific areas should remain in those areas. The wait for workers to have their appeals processed and the workload on the current worker advisors is not manageable. The thought and idea of an employer advocates office while the current worker advisors office is in such distress, is shameful.

The WCB and the Government of Manitoba should not be providing tools for employers to suppress WCB claims. They should not be giving employers yet another incentive or tool to defeat the rate model and infringe on worker rights and benefits.

UFCW Local 832 will never support an Employers Advisor Office.

Recommendation:

- The Worker Advisor Office be properly staffed and resourced with government funding being used at the Worker Advisor Office and not moved to other areas.
- The Employer Advocate Office not be established and the idea of the Employer Advocates Office never be entertained by the WCB and the Government of Manitoba again.
- WCB and the Government of Manitoba stop entertaining ideas that further provides resources to employers with tools to suppress WCB claims and work against the WCB system itself.

Issue 10) - 3rd Party Claims Management for Employers

Claims management companies have become more and more common. Employers are using these as a way of controlling WCB costs. Rather than focusing on prevention, employers have found a cheaper alternative to safe work places. Fighting WCB claims or interfering with WCB claims especially before primary adjudication is the ugly alternative to prevention.

Employers have the right to appeal claims that they believe are not work related. Just as a worker has the right to appeal claims that have been denied that they believe were the result of work. When an employer appeals, nearly every claim that becomes unreasonable and unfair. The practice of appealing every claim is the result of the experience rating system.

When employees file WCB claims generally the first step, if medically possible, is to notify the employer. From there the employer is in complete control of the report and accommodation and the worker has virtually no say. From experience we know that many WCB claims are sent to WCB with letters of appeal, letters notifying of an appeal to file, statements from managers or other employees and information to mislead an adjudicator. All this information is sent to the WCB without the employee knowing, and more often than not before a decision on the claim is even made.

When files are plugged full of information as to why the claim should not be accepted it makes the claim even more difficult to adjudicate. Often biases are developed and decisions are made based on the information at hand. When WCB claims are piled with information against the worker, it is easy to make a decision to deny the claim and it is easy to lose sight of the actual facts. This creates a bias in the adjudication process in favor of the employer. This is not done on accident, this is a strategy used by these claims management companies.

When claims are denied because of frivolous information provided by the employer or the employers advocate, the appeal process becomes even more difficult. Not only is a worker stuck justifying their injury but they also have to discredit all the misleading information that was used as a basis for the decision. This results in a much longer appeal process.

There are cases of employers whom have even been on record as using the ability of the claims management companies to persuade workers not to file a WCB claim (CS #100029). In some workplaces employees don't even file claims and when you ask them why they say that the claims management company will appeal their claim and they don't want to deal with the frustration. Employers are using this method as a way to create cultures in workplaces where if you file a claim you have to fight it. At that point workers don't even want to deal with the hassle and the long unnecessary appeal that goes along with it.

At the end of the day, if WCB requires more information to make a decision they can ask either party to provide it. A claim should start with an incident report from the worker and employer and medical professional, if the employee has seen a medical professional. Right now the process is the employer provides the reports with a pile of "junk" in an effort to frustrate the process. There is a reason we have the inquiry model as a basis to make decisions. If WCB requires more information they will ask. It is quite simple.

Recommendation:

- The WCA be amended to include a section on claims interference outlining exactly what can be sent to the WCB prior to initial decision making on a claim and anything outside of those guidelines be thrown out.

- WCB create a policy on dealing with 3rd party claims management companies and outline specific areas of abuse and the control measures.
- The WCA be amended so as to allow appeals of notification of appeals on claims only after the initial decision of acceptance of claim on the file has been made.

Issue 11) - CPP Contributions

With the way wages are currently calculated, an injured workers wage-loss benefits use a calculation that includes a deduction for their Canada Pension Plan (CPP) Contributions. These deductions are never remitted on behalf of the worker as federal law does not allow remittance for a worker collecting compensation benefits. This has a drastic impact on the overall wage-loss benefits an employee would receive. As this money cannot be remitted to CPP the worker will never see these deductions in retirement.

In a perfect world the federal laws would change to allow remittance but unfortunately we are not there. Injured workers should not have a benefit calculated on money they will never receive.

WCB should put in an effort to encourage workers to use the contribution amounts for personal investments while they are on WCB benefits.

Recommendation:

- The WCA be amended so as workers CPP contributions are not included in wage-loss calculations.

Issue 12) - WCB Funding Model

The current funding model is sufficient. The annual target is set at 130%, this accounts for the risk against market changes and unfunded liabilities. The last five years have seen an average of over 130% leaving a nice surplus in the event unexpected changes happen such as the 2008 market collapse.

It is important WCB carries funding much higher than 100% in order to keep a healthy functioning WCB and account for unexpected risk. The current 130% is sufficient and has proven to work.

Over the last number of years employers have seen reductions in assessment rates. Even with the new prevention incentive the funding ratio is projected back to 130% within a few short years.

Recommendation:

- The WCB Funding Model remain as is.

Issue 13) - Health and Welfare Benefits while on WCB

Many employees have benefits provided by their employers. Currently there is no mandate for employers to continue benefit payments while on WCB. Some benefits are fully funded by the employer and some are shared between the employer and employee.

Generally when a workplace injury occurs that is the time employee benefits are the most needed. Without benefits this leaves the worker in an even more vulnerable position. The more negative factors that can be removed from the rehabilitation process the more likely the worker is to RTW.

Recommendation:

- The WCA be amended to make it a requirement that employers continue Health and Welfare contributions if the employee is on a fully employer funded benefit plan and contributions continue if on a shared benefit plan providing the employee continues to make their contributions.

- WCB establish a health and welfare benefit plan for workers suffering long-term injuries unable to return to their original employment.

Issue 14) - WCB Medical Advisors

It isn't unreasonable for WCB to request a medical opinion on a claim where the existing medical information is not abundantly clear. It is, however unreasonable, to discredit the view and opinion of an external medical advisor or group of external medical advisors based on one internal opinion. This becomes exceedingly unreasonable when the external advisor is a specialist in that field of injury or illness and the internal advisor is a general practitioner (GP). Not to discredit the education and practice of that GP but a specialist deals with specific areas of the human body. The specialist has devoted their practice to that field; they deal with the nature of that injury everyday on a hands-on basis; they are current and up to date on studies; current on new medical literature and have a greater understanding of the injury. A GP in most case is formulating their opinion based solely on academic learning.

All too often decisions on claims are made solely based on the opinion of the WCB medical advisor. Even when all the other medical information involved speaks to a different condition or diagnosis. When the medical is clear what is the purpose of a second opinion? It would appear that the only reason for this practice is to find a way to deny the claim.

We are not sure why the WCB puts more weight on their internal advisors medical opinions but it is not fair and not ethical. Why would a WCB GP's opinion carry more weight than an external medical advisor?

A practice that seems to have become standard is for internal medical advisors to diagnose the workers injury as a result of a pre-existing condition completely ignoring the worker's provider. Pre-existing injuries are used as a way for WCB to control claims cost by not accepting the claim or ending benefits because the injury has "healed". This is even when the external provider has given a clear explanation and a diagnosis related to employment.

When there are differences between medical opinions there is supposed to be a process that involves all the parties to resolve the issue. From what is known WCB advisors are not contacting external medical providers and this process is not utilized at all. This results in a worker questioning the legitimacy of WCB, their own physician. Again only the worker suffers!

Currently there is a growing concern in the medical field about WCB discounting medical opinions in favor of their internal providers. Medical providers are also becoming frustrated with navigating the compensation system when opinions and advice to workers hold no weight. Workers are being returned to work too early causing further injury and making it even more difficult for providers to treat patients. On top of that injured workers are having healing periods cut down for early and "safe" RTW programs without taking into account each individual injured workers needs and without giving the provider enough time to properly treat the injured area. The term "safe" seems to be getting lost in early and safely RTW. Right now employers practice RTW at any cost and the system is supporting that.

Recommendation:

- The WCA be amended to include a section on medical information and that any medical information required be provided by the injured worker's health care provider.
- WCB internal medical advisors only be used at the request of the injured worker.
- When WCB is seeking advice from an internal provider both the internal and external provider are given the same questions with the same opportunity to answer and those responses are provided to the injured worker.
- WCB develop and follow a clear policy for resolving differences in medical opinions.
- An external audit be commissioned to review the internal medical provider's practices.
- An external audit be commissioned to review the effectiveness of a medical review panel.

- WCB medical providers that are not specialists in specific areas of medicine or the human body not be called on for opinions on injuries, conditions or illnesses outside their scope of expertise.
- WCB create more diverse policy around specific pre-existing conditions in consultation with external medical providers.
- The WCA be amended to include a medical advisory committee with representation of external medical providers to oversee any WCB policy or Guidelines and advise the WCB on any medical matters related to the WCA.

Issue 15) - Expenses Related to Mental/Physical Incapacity Due to a Workplace Injury or Illness

Unfortunately some workplace injuries are so severe they leave the worker incapable of making their own personal decisions such as health or financial decisions. In these situations a committee may be appointed by the courts. Over time the committee is required to show that the workers affairs are well managed and decisions being made are in the best interest of the worker. These situations often require legal representation and other expenses. These create a financial burden on the injured worker and are the direct result of a workplace injury. WCB has covered these expenses in the past but now takes the position that they have no legislative authority to do so.

Recommendation:

- The WCA be amended to require WCB to cover the costs related to expenses, as a result of a workplace injury that leaves the worker incapable of making personal decisions or in "committee ship".

Issue 16) Worker Compensation Act review

The last review of the WCA was done in 2004-05. It has been nearly 12 years since the WCA was opened up for review and many things have changed. This is especially evident in the field of Psychological Health and Safety and Mental Health.

As workplaces evolve, research evolves, therefore we need to make sure our systems evolve as well so that we can insure workers are getting the best possible compensation they can for work related injuries or illness. This requires constant review and change.

The Workplace Safety and Health Act has a provision in it ensuring that it be reviewed every five years. That is a reasonable amount of time and allows our laws to be current and updated without losing important pieces that create a safer Manitoba.

There is no reason why the WCA cannot be reviewed every five years. With the ever changing medical world and workplaces evolving it is important that the WCB is current and update. This not only benefits workers but also employers and the WCB system.

Recommendation:

- The WCA be amended to include a requirement to be opened for review every five years.