



March 21, 2017

WCB Legislative Review Committee  
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Winnipeg, MB  
R3C 2Z1

Dear Committee Members,

Further to our submission of February 13, 2017, we are requesting that you consider this additional submission and apologize for our tardiness.

In addition to the request that Employers submit comments on several key areas, there is another key area that we believe needs to be reviewed. That being, the Re-Employment Obligation, Section 49.3 of the Act.

As noted in our first submission, the 2005 review of the Act, the WCB has "a duty to act fairly and impartially and in a non-adversarial manner when making decisions. The duty to act fairly and openly is referred to as a natural justice. Natural justice underlies every principle of workers' compensation."

We believe this statement contravenes Section 49.3 of the Act whereby the Board has a responsibility to ensure Employers of Manitoba "make a safe and healthy return to work. The Re-employment Obligations sets out a clear direction to ensure that everyone involved understands their roles and responsibilities." Manitoba Employers have a moral and legal responsibility to make every effort to accommodate an injured and/or ill employee. However, in recognizing our responsibilities, the current application of Policy 43.20.25, we believe, is not reflective of the Act.

The policy states, "The WCB will only become involved in two situations. The first is when either the worker or the employers requires financial or technical support to help the worker return to work. The second is when the worker and the employer disagree about whether the modified work placement is appropriate."

The Compliance Services Department of the WCB states in their email communication to Employers,

*"The Compliance Services Department of the Workers Compensation Board of Manitoba (WCB) is responsible for detecting and preventing non-compliance in the Manitoba worker's compensation system."*

How did the statement about involvement as noted above now cover non-compliance?

This statement doesn't support either of the policy above. In fact, the communication further requests the employers' policy regarding disciplinary practices, a complete written history of all verbal and written

warnings, complete details regarding any suspensions, copies of all written evidence (verbal, written warnings and suspension letters) including any evidence where the worker has signed off on any warnings or suspension and any other information that you (Employer) deem relevant that would justify the workers' termination." "After a review of all relevant information and interview with the workers, I (CSD) will determine if there is enough "prima facie" evidence suggestive of employer program abuse. Should "prima facie" evidence be present, the file will be referred for a formal investigation."

The role of the WCB is not to implement Legislation from other Government bodies such as the Manitoba Human Rights Code or the Manitoba Labour Board. These two governing bodies have the legislation to review, investigate etc. if a worker feels they have been discriminated against. What would happen if the WCB rendered a decision that the Employer was at fault for not accommodating an employee, yet, the Employer is successful at a Human Rights tribunal? Is the WCB going to ignore that potential outcome?

Why is the WCB of Manitoba involving themselves and potentially making decisions on Human Rights issues? Why is the WCB determining if there is a "prima facie" case? How is this impartial and a non-adversarial approach when adjudicating disability claims?

#### Re- Employment Obligations

The Policy states, "An employer's obligation to offer re-employment to an injured or ill worker end on the second anniversary of the accident date, or six months after the worker becomes medically able to perform the essential duties of the pre-accident employment or suitable work." This application of policy would allow for an employee to perform or attend their place of employment with no accountability for unsatisfactory performance or attendance. The Board would become involved and make a decision as noted above, if the Employer is compliant. Once again, the Board is involving themselves in Labour Relations matters for which is not their scope and responsibility nor within their training to make this determination.

"If an employer terminates the employment of an injured or ill worker within six months of re-employment, the employer is presumed not to have fulfilled the obligation. However, the employer may rebut the presumption by showing that the termination was not related to the accident." This application of policy presumes the Employer is wrong in their actions and must defend their position to an Adjudicator to determine if the termination is warranted. The Employer must have the "freedom" to manage their business and all employee relation matters without fear the WCB of Manitoba would act in a manner on behalf of other legislative acts to determine if their actions were appropriate.

I request that the Committee consider this submission and if nothing else, put forth what is the role of the WCB and why are they adjudicating other bodies of law on their behalf. The Worker has every right to submit a concern/complaint to the Manitoba Labour Board or the Manitoba Human Rights Commission if they view the actions of the Employer violate their rights, not the Workers Compensation Board of Manitoba.

Sincerely,

A handwritten signature in black ink, appearing to read "Sherri Swaney". The signature is written in a cursive style with a large initial "S".

Sherri Swaney  
Health & Safety manager  
Maple Leaf Foods Inc.

CC: Michael Werier, Chair Person, Board of Directors, WCB  
Chris Lorenc, Employer Representative, Board of Directors, WCB

