

February 13, 2017

2016 WCB Legislative Review Committee
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Winnipeg, MB
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Dear Committee Members:

This submission is in response to the request for input from the Legislative Review Committee concerning improvements to the Workers Compensation Act. We appreciate the opportunity to provide comment and sincerely hope that a balanced and fair approach toward the needs of both the worker and the employer will be taken.

Maple Leaf Foods Inc. is a Canadian-based consumer protein company. We have over 4,000 employees in Manitoba, who are employed at our feed mills, hog barns, primary processing facility, and our prepared meats facility. As well, our western regional office is located in Winnipeg and we span all across Manitoba from Arborg to Winkler. Maple Leaf Foods Inc. has a financial contribution of approximately \$754 million in direct and indirect economic benefits to Manitoba. Maple Leaf Foods Inc. pays a total of \$1,529,635 in Manitoba WCB premiums for all of our Manitoba locations.

Maple Leaf Foods Inc. continues to focus on reducing our injuries before they happen with our key focus on prevention. Prevention is based on three key principles: people, equipment, and world class process. We drive to have the best people working for us and we achieve this through training and employee empowerment. We are continually upgrading and replacing equipment so that all equipment is safe for all employees to operate. World class process comes from being a leader by incorporating the best in class standards. In implementing our three key principles, we have reduced our recordable incidents in Maple Leaf Foods Inc. as an organization by 73.59% since 2013.

The Review Committee has invited comment about several key areas:

1. Alignment of the Act with the Meredith Principles

The Meredith Principles have been expanded to include broad categories of injury prevention and timely, safe return to work. We support these principles, as well as those enunciated in the "Past, Present and Future: Workers Compensation in Manitoban Discussion Paper". It states: "Enabling a worker to return to health and work safely and quickly has become a key goal of compensation boards across Canada."

Our goal has always been to maintain a safe, healthy, and productive workplace. We have comprehensive safety programs designed to prevent injury, well-defined, and well-

communicated injury reporting procedures and claims management, assistance for injured workers from our occupational health unit, and a stay-at-work accommodation program.

As stated in 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 natural justice. Natural justice underlies every principle of workers’ compensation.”

Unfortunately, many employers perceive the WCB to view employer claims management programs in a negative way. We would like to see more support from the WCB of our alternate work program in keeping with the stated emphasis on staying at work.

Since the last review of the Act, we have seen a shift in tone by the WCB and a more adversarial approach, likely as a result of the “Claim Suppression in the Manitoba Workers Compensation System Report.”

We certainly support greater compliance with injury reporting as outlined in “Manitoba’s Five-Year Plan for Workplace Injury and Illness Prevention”, as well as an open and transparent system. We understand that claims suppression likely occurs from time to time by employers who are not well-versed in the compensation system or workers who do not want to claim workers’ compensation benefits. However, we believe that the WCB has overstepped its role by interfering in employers’ disability management programs and labour relations issues. We would like to see the Act strengthened in reinforcing the need for impartiality.

At the same time that the WCB has placed resources into the Compliance Unit to investigate claims suppression, they have seemingly dropped investigation, including surveillance into potentially fraudulent claims made by workers.

Section 109.1(1) of the Act indicates that it is an offence when “a person who:

- (a) knowingly makes a false statement to the board affecting the person's entitlement to compensation;
- (b) deliberately fails to inform the board of a material change in circumstances affecting the person's entitlement to compensation, within 10 days of the commencement of the change;
- (c) knowingly makes a false statement to the board concerning an employer's report of payroll, or affecting the assessment of an employer;
- (d) knowingly makes a false statement to the board affecting a worker's entitlement to compensation; or
- (e) deliberately fails to inform the board about a matter affecting a worker's entitlement to compensation;
- (f) commits an offence.”

We understand that the WCB has cited privacy issues as the rationale for not investigating possible cases of fraud or misrepresentation. However, Section 116 of the Act states: “If a

provision of this Act is inconsistent or in conflict with a provision of *The Freedom of Information and Protection of Privacy Act*, the provision of this Act prevails.”

The Act should be strengthened to ensure that fraudulent claims are investigated as was done in the past.

One of the 100 recommendations made in the 2005 review of the Act in line with the revised Meredith Principles was that “the WCB, through its rate structure, should provide incentives to employers that have implemented successful prevention and return-to-work initiatives, including those developed through accreditation programs.” We agree with this recommendation.

2. Time Limits:

Claims reporting: The employer must submit a WCB claim within five working days of notice of injury, yet under Section 17(1), Notice of Accident, the worker has up to 30 days to file a claim with the employer. Our policy is that workers must immediately advise us of a workplace injury. We would like to see this reflected in the Act.

Section 19(2) of the Act indicates that claims must be filed within one year. Except in certain cases of occupational disease which have a long latency period, the time limit to file a claim to the WCB should be reduced to 30 days. This allows for better accident investigation by the employer and adjudication by the WCB.

Appeals: The Act should be amended to include appeal time limits at both the Review Office and at the Appeal Commission as is done in every province. A six-month time limit, which we consider reasonable, is proposed at both levels.

3. Maximum Assessable Earnings Cap:

As indicated in the Discussion Paper, Manitoba is the only province that does not have an earnings cap. The cap should be reinstated to be in line with other provinces.

4. Calculation of Average Earnings:

Section 45 of the Act states: “The board shall calculate a worker's average earnings before the accident on such income from employment and employment insurance benefits, and over such period of time, as the board considers fair and just, but the amount of average earnings shall not exceed the maximum annual earnings established under section 46.”

WCB policy 44.80.10.10 indicates that the method used to calculate wage loss benefits “will always be the one that best reflects the worker’s actual loss of earnings.” In our experience, that does not always occur when workers have an irregular earnings pattern or unusually high overtime earnings in the period prior to injury.

Under WCB policy, an average earnings review takes place at 13 weeks. Adjustments “are retroactive to the time of accident if they result in an increase and effective at 13 weeks if they result in a decrease in the worker's average earnings.” We believe that this is an arbitrary threshold often resulting in inflated wage loss benefits paid to workers and recommend that the 13-week review be removed.

Policies relating to average earnings should also be reviewed to reflect changing workplace environments and economic circumstances. When there is a downturn in the economy and a slowdown in work, injured workers may end up receiving higher wages than their colleagues.

The Act should be reviewed to consider payment of benefits as is provided for apprentices under Section 45(3) of the Act: “Where the board is satisfied that a worker's average earnings before the accident do not fairly represent his or her earning capacity because the worker was an apprentice in a trade or occupation, the board may adjust wage loss benefits from time to time by deeming the worker's average earnings to be an amount that, in its opinion, reflects the probable earning capacity of the worker in the trade or occupation.”

Thank you for the opportunity to provide comment on the legislative review of the Workers Compensation Act.

Yours Truly,

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