



DISABILITY MANAGEMENT
3 Place Ville-Marie, Suite 500
Montréal, QC H3B 2C9

GESTION DE L'INVALIDITÉ
3, Place Ville-Marie, Bureau 500
Montréal (QC) H3B 2C9

FAX **TÉLÉCOPIE**

DATE February 14, 2017

PAGES 6

(Including cover sheet / Incluant celle-ci)

| RECEIVER/DESTINATAIRE |
|---|
| Name/Nom: <u>WCB Legislative Review Committee</u> |
| Dept. / Service: _____ |
| Company / Compagnie: _____ |
| Tel. no./No de tél.: _____ |
| Fax No./No du télécopieur: _____ |

| SENDER/EXPÉDITEUR |
|---|
| Name/Nom: <u>Mélanie St-Jacques</u> |
| Dept./ Service: <u>Analyst, Disability Management</u> |
| Tel. no./No de tél.: _____ |
| Fax No./No du télécopieur: _____ |

- Urgent
 For review
 Please comment
 Please reply
 Please acknowledge

| |
|--------------------------|
| Comments / Commentaires: |
|--------------------------|

Copies to / Copies à envoyer à:

| | |
|----|--------------------------|
| 1. | <input type="checkbox"/> |
| 2. | <input type="checkbox"/> |
| 3. | <input type="checkbox"/> |

Confidentiality warning

The information contained in this transmission is confidential and intended for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, you are hereby notified that any distribution, copying, disclosure use or reliance on the contents of this transmission is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original transmission to us. Thank you.

Avis de confidentialité

Ce document contient de l'information confidentielle et est destiné à l'usage exclusif de la personne à qui il est adressé. Si vous n'êtes pas le destinataire visé, vous êtes avisé par la présente que toute divulgation, reproduction, distribution ou autre utilisation du contenu est strictement interdite. Si vous avez reçu ce document par erreur, veuillez nous avertir immédiatement par téléphone et nous retourner la copie originale. Merci.





February 1, 2017

2016 WCB Legislative Review Committee
PO Box 1296
Winnipeg Main PO
Winnipeg, Manitoba
R3C 2Z1

Dear Committee Members:

On behalf of VIA Rail Canada, the following are our recommendations for changes to the Workers Compensation Act and WCB policy we would like to see included in the Review Committee's report to the Manitoba Government.

Injury Reporting:

Section 17(1), Notice of Accident:

In every case of injury to a Worker by accident in any industry within the scope of this Part, the Worker, or in the case of his death, a dependant, shall, as soon as practicable, but in any case not later than 30 days after the happening of the accident, give notice thereof to the Employer.

Section 19(2), Must be filed within one year:

Subject to section 109, unless application for the compensation is filed (a) within one year after the day upon which the injury occurred; or (b) in case the applicant is a dependant, within one year after the death of the Worker; no compensation in respect of any injury is payable under this Part.

Time frames on reporting claims should be shortened and enforced by the Board. While the WCB has firm reporting procedures for employers, and understandably so, frequently the provisions of the Act noted above are passed over by the WCB. In many cases, the worker does not report an injury to the employer within 30 days or may file a claim months or years later yet the claim is accepted without proper investigation by the adjudicator.

As well, 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. When workers fail to report injuries promptly, investigation by both the employer and the adjudicator can be constricted. Opportunities to take steps to mitigate the effects of injury are also affected.

Appeals:

Time Limits:

The Act should be amended to include appeal time limits both internally at the Review Office level and externally at the Appeal Commission in keeping with other provinces. A six month time limit, which we consider reasonable, is proposed at both levels.

Employer Access to Information:

We would like the Act amended so that the employer is notified when a worker makes an appeal to the initial WCB decision maker. Currently, if a worker appeals to the adjudicator, in some cases years later, the employer is not informed and does not have the opportunity to rebut or participate in the request for reconsideration. We are also denied the opportunity to provide any pertinent information to the WCB so that an informed decision can be made. We believe it is fair and reasonable to be entitled to a copy of the claim file as is practiced at other levels of appeal.

As well, it is the Review Office practice to send a file back to the adjudicator for reconsideration if the worker provides new information. In these cases, the employer has already been informed of the appeal and has requested a copy of the file to respond to the appeal, but now does not have an opportunity to participate in the appeal. These situations are not in the spirit of the laws of natural justice and Section 101(1.2) of the Act, Employer's access to information:

Notwithstanding subsection (1) and section 20.1 (medical reports), an employer or the agent of the employer who is a party to a reconsideration of a decision by the board or an appeal to the appeal commission may examine and copy such documents in the board's possession as the board considers relevant to an issue in the reconsideration or appeal and the information shall not be used for any purpose other than a reconsideration or appeal under this Act, except with the approval of the board.

Mental Health in the Workplace:

This is a growing area of concern for employers. We would like to see expedited assessment and treatment from qualified medical professionals (psychiatrists and psychologists) trained in this area of expertise. In many cases, the worker is in limbo for months waiting for a decision from the WCB, not seeking treatment as a result. This delay prolongs and exacerbates the claim resulting in psycho-social and economic difficulties for the worker and burgeoning costs for the employer. The WCB should aim to expedite treatment while the claim is under investigation. If the claim is not accepted, costs should be shared amongst all employers as is the case for occupational disease.

Employer's Premises:

One of the 100 recommendations made in the 2005 review of the Act was that "the WCB Board of Directors should review and update the definition of employers' premises and related policies to ensure that they meet the challenge of changing workplaces." We understand this given the evolving dynamics of many workplaces, including working from home and traveling on the job.

However, the WCB's interpretation of employer's premises has been expanded to include circumstances well beyond the control of the employer. For instance, claims are being accepted in which a worker is on a layover in a different city on personal time and/or sustains injury on public property. These claims should not be accepted as they do not arise out of and in the course of employment. Employer's premises should be confined to areas under control of the employer or where injury is caused by a hazard of the workplace. We do not believe the intent of workers' compensation is to provide benefits when a worker sustains injury when not at work.

Maximum Assessable Earnings Cap:

As indicated in the Workers' Compensation in Manitoba Discussion Paper, Manitoba is the only province that doesn't have an earnings cap although that wasn't always the case. We believe the cap should be reinstated.

Calculation of Average Earnings:

45(1) *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.*

Average earnings includes all employment income

45(2) *In making a calculation under subsection (1), the board shall consider any employment income the worker has at the time of the accident from which the worker sustains a loss of earnings, whether or not the employment is in an industry to which this Part applies.*

Adjustment of earning capacity

45(3) *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.*

The WCB Board of Directors should review policies relating to average earnings. WCB policy 44.80.10.10, citing Sections 45 of the Act, states that the method used to calculate wage loss benefits "will always be the one that best reflects the worker's actual loss of earnings." Unfortunately, that does not happen when workers have an irregular earnings pattern in the period prior to injury. Under WCB policy, the board does an average earnings review 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 understand and don't want our workers waiting for payment of benefits. However, we believe that benefits should be adjusted quickly and retroactively if the worker is overpaid.

The average earnings policy may result in workers receiving inflated wage loss benefits compared to their co-workers, receiving more remuneration than their colleagues for the first 13 weeks of the claim.

As well, there are instances when a worker's average earnings before the accident do not fairly represent actual earning capacity in the period after due to changed economic or structural circumstances, such as reduced work availability, lay-offs, downsizing, less overtime, etc. We would like to see the Act amended to include a similar provision as is provided to apprentices under Section 45(3).

Cost Recovery for Self-insured Employers:

Under WCB Policy 35.40.50 – *Overpayment of Benefits*, "overpayments are included as a claims cost", and overpayment recoveries are credited to the claims costs of the applicable Employer.

Any overpayments which are not pursued for recovery are written off. These include adjudicative reversals or errors, reconsiderations by the Review Office and The Appeal Commission, overpayments except in cases of fraud, and are therefore still charged to the individual claims.

VIA Rail Canada, along with other self-insured employers in Manitoba, feel this practice is unfair, given that we are charged with claims costs that were improperly applied or reversed. Other provinces, including B.C. and Quebec, do remove overpayments from self-insured employer accounts.

Similarly, other jurisdictions provide cost relief to self-insured employers where a pre-existing condition significantly prolongs the claim.

WCB Funding Model/Transparency in Accounting and Administrative Costs:

As indicated in the Past, Present and future: Workers' Compensation in Manitoba Discussion Paper, Manitoba's current target is 130% with other provincial boards ranging from 110 to almost 140%. The WCB's *2016 Annual Report*, shows that in actuality the 2014 funded ratio was 136% and in 2015, 143.3%.

We are concerned too with escalating administration fees charged to self-insured employers due to dramatically increasing WCB operating costs.

Administration charges borne by all employers have risen from about \$66 million in 2011 to over \$100 million in 2016 – a 52% increase in five years. Self-insured employers have been informed by the WCB that these increases are due to inflation, rising salaries, employee benefits, communications, amortization of capital assets, prevention programs, investments in technology, training, etc.

However, during this five-year time period, employer transactions have decreased yet the average cost per transaction has risen dramatically without any apparent connection to the employer's actual experience. So while our efforts to prevent injury and manage claims have resulted in a reduction in our costs, our average cost per transaction continues to rise. We would like to see a review of the funding model and operating expenses as well as transparency in administrative costs.

Group Life Insurance:

Under Section 43(5) of the Act, *"The board shall by regulation establish a group life insurance plan for workers who receive wage loss benefits under this Part for more than 24 months, on such terms and conditions and in such amount as may be prescribed."*

Manitoba Regulation 187/2005 potentially allows for the stacking of group life insurance benefits which we believe is inconsistent with the board's stance on collateral benefits.

Most large organizations including self-insured employers provide group life insurance benefits to their workers. This regulation should not be applied when there is an employer-sponsored benefit program in place.

We can certainly understand the need to fill a void for workers who do not already have group life insurance through employment. However, where the deceased worker is a member of an employer-sponsored group life insurance plan, both this benefit and the

WCB benefit might be paid where the worker is eligible. Where the worker dies from the compensable condition, in addition to a possible employer-sponsored benefit, both the WCB group life benefit and WCB fatal/death benefits are payable. This provision also results in inconsistent and unequal benefits due to the arbitrary threshold requiring the worker to be in receipt of wage-loss benefits for 24 months prior to death.

Employer Advisor Office

While we acknowledge that some small employers may benefit from an employer advisor office, we do not feel that it would benefit from such a service and already feel burdened by escalating WCB operational costs.

We appreciate the opportunity to provide comment to make the Workers Compensation Act more responsive to the needs of both the worker and the employer. We are committed to injury prevention and the safety of our workers, accommodation in keeping with legislation and managing our workers' compensation claims. We hope that employer issues will be an integral part of the process.

Sincerely,



Mélanie St-Jacques
Analyst, Disability Management