

Review of The Workers Compensation Act (The WCA)

February 14, 2017

Unifor welcomes the opportunity to provide our submission to the 2016/2017 Review of The Workers Compensation Act (The WCA). We are Canada's largest private sector union, with more than 310,000 members across the country, working in every major sector of the Canadian economy.

We represent approximately 13,000 workers in the province of Manitoba. Our members work in diverse industries and sectors such as light and heavy industry, transportation, services, resources and media. Our members in these sectors are exposed to a variety of hazards such as infectious diseases, asbestos, hazardous chemicals, workplace violence, working alone, and almost any other hazard that exists.

Meredith Principles

Workplace injuries and illnesses have been dealt with workers compensation schemes in North America since the beginning of the twentieth century. Manitoba enacted the initial Workers' Compensation Act in 1917.

The Workers' Compensation system is based on a historic trade off in which workers gave up the right to sue their employers for a guaranteed protection from loss of income regardless of fault. These five principles have then been the premise of the Worker's Compensation Systems across Canada:

1. No-fault compensation, in which workplace injuries are compensated regardless of fault, and the worker and employer waive the right to sue.
2. Collective liability, so that the total cost of the compensation system is shared by all employers.
3. Security of payment, with a fund established to guarantee that compensation will be available for injured workers when they need it.
4. Exclusive jurisdiction, with all compensation claims directed solely to the compensation board.
5. Independent board, that is autonomous and financially independent of government or any special interest group.

The primary purpose of compensation law is to help workers injured on the job. Workers gave up a very fundamental right – the right to sue – in exchange for a workers' compensation system founded on fairness, respect and equitable treatment of injured workers.

Workers not employers pay the heaviest price for workplace accidents and illnesses that often are the result of inadequate training, poor employer safety practices, hazardous equipment, infrequent workplace inspections and weak or poorly enforced safety laws. For workers injured on the job, the pain, suffering and financial loss is all too real. For many employers, it's a little more than a book entry. It is imperative therefore that our health, safety and compensation laws, programs and services do in fact effectively protect workers and their families and also treat injured workers fairly and with the utmost respect.

Unfortunately, over the years the spirit of the system has changed - injured workers are guilty and must prove their innocence – in order to receive compensation for their workplace injury.

- i) *"I have seen Doctor – Patient relationships compromised. WCB is constantly giving their diagnosis and opinion of where/ what stage of recovery they think the patient should be at. Although the paperwork clearly states timeframes for return to work, they still push for sooner. We have examples of members going to Physiotherapists regularly and working with them to get more accurate updates on the healing and*

WCB will say that they need a doctor's opinion not one from a therapist. I have found that when the patients push the doctors to fill out more papers or re-examine them for WCB purposes the doctors get frustrated."

- ii) *"As far as WCB goes, I am hearing more stories about the claims officers who are talking with the workers are getting more aggressive on the phones. They raise their voices in a tone that is making the worker take a different tone in return and turning the conversation confrontational. This leads to breakdowns and making the worker want to give up."*

Experience Rating and Claim Suppression

Experience Rating adjusts premium rates based on an individual employer's claims history. In theory, this provides incentives for safety and injury prevention in the workplace and employers receive rebates on their premiums for good claims records and are penalized for poor claims records.

As such, Experience Rating is touted as a major incentive to improve workplace health and safety by its employer advocates. However, we have observed many negative effects:

- i) Many injured workers do not report their injuries as they are encouraged to accept alternative benefits instead of filing a WCB claim
- ii) Harassed at time of injury
- iii) Pushed to return to work too soon
- iv) Subject to employer intervention in claim
- v) Doctor-patient relationship is compromised

Relying on claims experience has created a system which encourages claim suppression and ineffective and artificial safety records. There is little evidence in Manitoba and anywhere in the world that experience rating provides little or no incentive for employers to improve safety. That is to say, the evidence that experience rating leads to better prevention and therefore fewer injuries.

Experience rating only creates perverse incentives to distort claims reporting and retrospectively rewards employers for managing claims at the expense of genuine efforts to prevent accidents.

"We had one employer create workplace teams that combined workers and management. This was a concern because if team members helped a fellow employee they got points, if they cleaned something up without being told they got points, if the team had no lost time they'd get points. However, the team would lose points if a member acted unsafe or was not following a certain policy or if there were lost times. It even went as far as to give a team points if they caught someone doing something they shouldn't and it got reported. The reporting team would get points. The rewards would be either gift cards or even get extra sick days into their bank."

"If an employee was hurt at work, they would ask you to use your sick days and vacation days if you had any to stay home and heal (not uncommon) but they would also pay to have you stay home or pay you your normal pay, instead of filing a claim because the cost to the employer was cheaper that way."

“Some employers still stall on filing out their part of the papers or fill them out incorrectly. I had one employee fill out papers and was asked were you offered light duties. He answered no because there was nothing that fell within his restrictions. Then, the company was asked do you have or offer light duties/accommodations? They answered yes. This put up red flags at WCB and cut the employee off from their benefits. When the company was questioned, they replied ‘well, we do offer light duties to injured workers based on their restriction and we accommodate when we can.’ The injured worker feels games are being played by employers. If they can make it hard for employees they will try and hope the employee gets frustrated and gives up.”

Our position is unwavering. Experience rating must be eliminated completely in order to address claims suppression. It is then important to have mechanisms to support prevention and occupational health and safety knowledge and return to work programs which optimize recovery, facilitate safe and timely return to work, and prevent further injuries.

Health and Safety Prevention and Enforcement

A strong workplace health and safety foundation is vital to address the needs and issues of all workers. As a result, we believe a consistent promotion of workplace health and safety prevention through broad public awareness and marketing campaigns is needed. The Five-Year Plan for Workplace Injury and Illness Prevention establishes the vision through the 10 action areas for a safer Manitoba. What has the five-year plan accomplished?

The WCA must also adopt a five-year plan which integrates prevention, enforcement and legislation/regulation. On the continuum of injury, Prevention and Compensation must complete the circle to ensure a genuine culture of workplace safety and prevention in Manitoba’s boardrooms and workplace frontlines.

The work has started with the new SAFE Work Certified standard and prevention incentive initiatives but they must be finalized and rolled out along with a comprehensive evaluation component to assess their effectiveness. A core component of the certification is worker participation and perspectives and employer incentives should be based on health and safety programs with no links to claims experience.

We also urge the expansion of the SAFE Work Certified standard to be expanded into all sectors with priority given to extension into health care where injury rates are high and gender specific. In addition, we must not forget the next generation of workers. As a result, the SAFE Workers of Tomorrow program needs increased resources to reach youth-focused workplaces and high school students throughout the province.

Mental Health in the Workplace

Mental health disorders cost Canada fifty-one billion dollars per year and take a personal toll on workers through lower job satisfaction, absenteeism, and debilitating medical conditions. Funding and staffing deficiencies in today’s workplaces cause high workloads; in effect, workers are required to do more with less. Such high-pressured and lean work environments produce new psychosocial hazards which contribute to mental illness conditions, musculoskeletal disorders, and cardiovascular events.

Manitoba ought to follow Europe's lead and mandate prevention of psychosocial hazards in the workplace and compensate mental illness caused by work through employer-paid compensation systems. Doing so is not only critical to keeping Manitoba's citizens and workers healthy at work and at home, but is also how a government elicits support and participation from its constituents that enable all in society to manage and overcome future challenges. Injured workers are constituents of each electoral place in Manitoba, their voices and concerns must be heard by the elected government, a government that has a fiduciary, legal and moral responsibility for all people of Manitoba.

The WCA treats physical and psychological injuries/illnesses differently which needs to change. In fact, whether the injury is physical or psychological, it should be treated equally and be fully compensable. An injury is an injury, if it takes place "in the course of employment and out of the course of employment" then benefits should be granted.

Currently, an occupational disease stemming from workplace stress is explicitly excluded from coverage. To recognize the changing world of work, the WCA needs to recognize psychological disorders related to workplace stress and provide a clear definition what constitutes workplace stressors. The good news is that much of the work has been done with the publication of the National Standard on Psychological Health and Safety in the Workplace (Z1003) which describes thirteen workplace psychosocial factors that contribute to workplace wellbeing.

Funding Model

We are opposed to lowering the current funding target of 130 percent.

The WCB is funded through two sources 1) employer premiums and 2) investment returns. The only consistent in the equation is employer premiums. Consequently, it would not be prudent to even consider reducing the employer assessment rates despite the funding ratio being above the 130% target. The volatility of market fluctuations should not be borne by injured workers.

In addition, Manitoba workers are still being injured, diseased and killed on the job. The WCB needs its funding to be robust to carry out its commitments to introduce a new prevention incentive rebate program and planned rate model changes.

Cap on Maximum Insurable Earnings

We oppose a cap on insurable earnings.

Fairness dictates that all worker earnings should be insured/compensable. Wage loss benefits should reflect earning potential, not an arbitrary cap on this potential. There is no justification for re-instating a discriminatory restriction that discourages higher earning workers from filing WCB claims when they are hurt or made sick at work.

Employer Advisor Office (EAO)

We oppose the establishment of an employer advisor office which would contribute significantly to an adversarial process. In addition, we believe the EAO would also increase claim suppression by employers, especially in the form of filing frivolous appeals of legitimate worker claims with the aim of minimizing their premiums. Employers should not be subsidized to file appeals which are tied to their

claims records and ultimately their premiums. This is a practice that should be shut-down, not encouraged and resourced to take place in a more organized fashion.

On the other hand, workers who have less power in the workplace than employers and far fewer resources to navigate the complexities of the WCB system should receive the support of the Worker Advisor Office. We recommend additional resources, including staff to assist workers in obtaining the benefits they are entitled to receive according to the Meredith Principles.

Evolution of the Workers' Compensation Act

- i) Mandatory coverage must be adopted in Manitoba. Currently, only 75% of workers are covered which is the third lowest in the country. Expanding coverage will make the compensation system fairer for all workers and add resources to the system and even lower premiums for employers.
- ii) Medical Advisory Committee (MAC) would be a positive adoption by the WCB to assist and advise the Board on all medical matters relevant to the administration of the WCA including adoption of guidelines and policies, to ensure they are consistent with current best practices and the general held opinion of the medical profession. For example, how the Board deals with concussion injuries is out of synch with the wider medical community.
- iii) Eliminate the Dominant Cause test and adopt Balance of Probabilities when dealing with occupational diseases. If the worker's employment or an employment-related activity was a significant contributing factor in the injury or disease, then the worker is entitled to WCB benefits.
- iv) The continuation of workplace benefits must be added to the WCA. All injured workers should have their employers continue their premium contributions for workplace health benefit programs while receiving WCB benefits. Due to no fault of their own, injured workers should not be penalized and lose their workplace health insurance benefits while receiving WCB benefits.
- v) Recognize future earning potential is essential to fairly represent what the worker would have been entitled to had s/he completed their education and/or apprenticeship program. Currently, the WCA permits the WCB to increase wage loss benefit rate in consideration of probable future earning capacity when a worker is registered in an apprenticeship program or when a worker is injured at such a young age that his or her current earnings do not reflect future earning potential as its capped at 28years. The WCA should be amended to allow the WCB to increase the compensation payable to fairly represent what the worker would have otherwise been entitled to had s/he completed their program.
- vi) The Governance of WCB needs to continue and follow the model of tripartite representation with worker representatives drawn from the Federation of Labour. We recommend providing all members of the Board, including the chairperson, appointments for three-year terms and eligible for re-appointments for one additional term without break in service. After a three-year break in service each member should be eligible for re-appointment for a further two terms. The chairperson should be a person acceptable to the board of directors. We recommend that

the Act better capture the unique tripartite composition of the Board of Directors and the necessity for regular liaison between board members and stakeholder organizations.

SS:amvcope343