

Past, Present and Future: Workers Compensation in Manitoba

Discussion Paper

The Workers Compensation Act Legislative Review Committee 2016

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PAST, PRESENT AND FUTURE

INTRODUCTION

Workers compensation is a system of compulsory no-fault insurance for workplace injuries. In Manitoba, the system is defined and administered by *The Workers Compensation Act*. As an important part of Manitoba's economic and social fabric, it is vital that the Act stay current and reflect the changing nature of work and society in this province.

The Act reflects this need for revision and reform by requiring a comprehensive review of the legislation every 10 years. The Act was last reviewed in 2005/2006.

In 2016, the government of Manitoba established a Review Committee to undertake a review of the Act, an important aspect of which is public consultation.

This discussion paper sets the stage for the current review and consultation by highlighting some of the important milestones in the development of Manitoba's workers compensation system and introducing some key areas for consideration as the system moves into the 21st century and beyond.

100 YEARS OF WORKERS COMPENSATION IN MANITOBA

2016 marks the 100th anniversary of the introduction of workers compensation legislation in Manitoba. Before 1916, Manitoba workers injured on the job had no guarantee of basic protection such as income replacement. While injured workers could sue their employer, this was an expensive, lengthy and uncertain process for everyone involved.

Along with all other Canadian jurisdictions, Manitoba's compensation system reflects an historic compromise: workers gave up their right to sue employers in exchange for guaranteed benefits, and employers agreed to collectively pay for the system in return for immunity from lawsuit.

The founding principles of the workers compensation are the "Meredith Principles", named after Sir William Meredith's 1913 report on workers compensation in Ontario. As workers compensation has evolved during the past century, additional principles have been added. Today in Manitoba the original Meredith Principles, along with two others emphasizing the importance of prevention and return to work, are in the preamble to the Act. They are:

- i. **Collective Liability.** In return for immunity from lawsuit, covered employers wholly fund the compensation system, regardless of an employer's ability to pay.
- ii. **No-Fault Compensation.** Compensation and benefits are payable regardless of who is at fault for an injury.
- iii. **Income Replacement.** Income replacement is a cornerstone of the system and is designed to compensate for loss of earning capacity due to work-related injuries.
- iv. **No Right of Action.** Workers gave up their right to sue employers in return for a guarantee of security of compensation.

- v. **Independent Administration.** An independent agency administers the system with exclusive jurisdiction over all matters (the courts' role is very limited).
- vi. **Prevention of Workplace Injuries and Diseases.** Workplace injuries are preventable and safe workplaces should be the expected norm.
- vii. **Timely and Safe Return to Health and Work.** Enabling a worker to return to health and work safely and quickly has become a key goal of compensation boards across Canada.

Although these core principles continue to underlie workers compensation in Manitoba, the Act has evolved significantly over the years. The following are just a few of the important developments in workers compensation that have been embodied in the Act:

- introducing principles concerning return to work;
- formulating the injury prevention mandate;
- establishing an employer assessment process;
- renaming the Act in 1974 to reflect the growing participation of women in the workforce; and
- creating a separate, independent Appeal Commission

In 1992, the Act was significantly amended to move from a disability model of compensation to the current dual-award system. The last comprehensive review of the Act in 2005 resulted in modernizing changes to the Act, affecting everything from benefits and coverage, to governance and appeal processes. The 2005 review also led to the first substantive recognition of prevention and return-to-work as fundamental principles in the system.

The most significant legislative changes since 2005 have been the expansion of presumptive coverage for cancers among firefighters, stronger compliance and enforcement provisions, strengthening of the prevention mandate and, most recently, the introduction of presumptive coverage for Post-Traumatic Stress Disorder (PTSD).

CONSULTATION ISSUES

The Review Committee invites stakeholders and members of the public to provide input on possible changes to the Act. The Review Committee has been asked to consider a few broad areas which are described in this section of the paper, along with some questions for discussion.

1. Alignment of the Act with the Meredith Principles

It is critical that the Act be reviewed to ensure that it continues to reflect the system's founding principles. Manitoba's economy, demographics and workplaces have evolved significantly since the Meredith Principles were first set out. This review will help modernize the Act while remaining true to the system's core principles.

Question for Discussion: Can the Act be amended to better reflect the system's foundation principles in a modern context?

2. Alignment of the Act with workplace illness and injury prevention initiatives outlined in *Manitoba's Five-Year-Plan for Workplace Injury and Illness Prevention*

Launched in 2013, Manitoba's Five Year Prevention Plan identified several areas for the WCB to promote prevention. The Act was subsequently amended to address several issues identified in the Plan, such as greater compliance with injury reporting. The creation of SAFE Work Manitoba as a dedicated arms-length agency to lead prevention efforts in Manitoba ultimately grew out of the Plan.

Question for discussion: How can the Act be amended further to fulfill the Plan and further reinforce its prevention mandate?

3. Provisions in the Act respecting the approach to addressing mental health in the workplace

The compensation of injuries to mental health in the workplace is one of the most pressing and challenging aspects of the workers compensation system today. The Review Committee invites your input on ways to address this challenge in the legislation.

Question for discussion: What do you see as the main challenges of compensating for injuries to mental health in the workplace, and how do you think they should be addressed?

4. Ensuring the WCB is current with emerging trends in injury and illness, the most up-to-date health and safety knowledge, and medical practices

The Act creates the WCB and authorizes it to administer the workers compensation system in Manitoba. It is essential that the WCB be provided with the tools to administer the Act effectively and respond to the needs of all stakeholders with an interest in the system.

Question for discussion: What legislative changes do you think are required to ensure that the WCB remains a modern, responsive administrative tribunal?

5. The WCB's existing funding model, in particular with respect to comparing the WCB's funded value with Boards in other Canadian jurisdictions

The workers compensation system is entirely funded by WCB-covered employers at rates set by the WCB. This forms the Accident Fund out of which benefits are paid to injured workers. Most workers compensation boards in Canada set a funding ratio target above the level at which it is fully-funded (i.e. above 100 per cent) in order to account for risk and uncertainty. Various

targets exist, ranging from 110 per cent to almost 140 per cent. Manitoba's current target is 130 per cent.

Question for discussion: Are changes required to the funding model established and administered by the WCB? What model best protects against risk while also providing value for employers, and retains benefits to workers?

6. Consideration of the establishment of maximum assessable earnings level (or a cap) for workers

Manitoba is the only Canadian jurisdiction without a limit or ceiling on workers' earnings covered by the WCB. All other Canadian jurisdictions have a cap on the maximum insurable or compensable earnings within the workers compensation system. Maximum insurable earnings levels in Canada vary from \$52,200 to \$98,700 (2016 levels).

Question for discussion: Should Manitoba have a cap on the maximum insurable earnings within the workers compensation system?

7. Consideration of the creation of an Employer Advocate Office

The Act provides for a worker advisor office to help workers make claims or understand the workings of the WCB. There is no comparable employer advisor office to assist employers, particularly smaller businesses. Employer advisor offices exist in most Canadian provinces.

Question for discussion: Should the Act provide for an employer advisor office?

The Review Committee has also been asked to examine the 100 recommendations of the 2005 review of the Act, *Working for Manitoba*, to consider which of the recommendations have been implemented and with what effect. The *Working for Manitoba* review and related materials are available for download on the Review Committee website.

The Review Committee welcomes your responses to these questions for discussion. You are also encouraged to provide input on any other legislative changes you think would improve the system overall.

PROCESS FOR PROVIDING INPUT

You are invited to comment on the matters before the Review Committee on or before **February 15, 2017**. The Review Committee encourages submissions to be limited to 10 pages in length. The Review Committee will use your input to formulate recommendations for amendments to the Act. The Review Committee will submit its recommendations to government for review and consideration.

You may file your submission electronically by following the links at the Review Committee website: www.wcbactreview.com. You may also fax your submission to: 204-954-4968 or mail to: PO Box 1296, Winnipeg Main PO, Winnipeg, Manitoba R3C 2Z1. You may contact the Review Committee Administrative Representative by telephone at: 204-954-6203 (Winnipeg) or Manitoba Toll Free at: 1-877-358-0495.

Submissions will be posted on the Review Committee website.