

Submission to the WCB Review 2019 from Canadian Union of Postal Workers (CUPW) Columbia River Local

My name is Cynthia McCallum Miller. I am making this submission on behalf of the Columbia River Local of the Canadian Union of Postal Workers, of which I am a retired Lifetime Member and former Local officer. The arguments and conclusions are mine and may or may not mirror any other submissions from other Locals or levels of my Union.

The regulations, policies and operating principles of the provincial workers' compensation (Worksafe) need to be reviewed from the perspective of those who were supposed to benefit from its creation. Too many compensatory injuries are denied because case managers and corporate physicians try to save money for employers rather than respect the workers' health and safety or their doctor's advice.

In the call for submissions, you indicate that you want to find ways to increase the confidence of workers and employers in the system. I can tell you that there is a great deal of skepticism among workers about the kind of support they receive when injured and a perception of bias by WCB management towards the interest of employers. That will only be addressed when WCB demonstrates a change in attitude towards injured workers and their physicians.

Worksafe representatives repeat their mantra time and time again to publicly justify their approach. They believe that workers recover more quickly when they are quickly returned to the workplace. They quote statistics that they rely on, indicating that the longer a worker is off work, the less likely they are to return to work. Perhaps that would be true in cases where injuries are non severe, where workers have a supportive employer with enough flexibility to give them the time and considerations they need to recover fully. However, that is hypothesis and reality can be much different for the working class who have to cope with unreasonable demands, unsupportive work environments and healings that don't fit within the standard medical time frames. We aren't machines and our body systems don't fit into pre-defined charts, no matter how hard we try.

Most workers want to return to work but they also need the realistic time to heal without fear and intimidation. WCB can have a very heavy hand when they push a worker back to work, just because they believe it is better. Better for whom? I contend that WCB looks to the interests of employers instead of workers. A worker knows their body and the work expectations. Their doctor knows the progress or complications the injured worker has. They are the ones to best decide when it is advantageous to the worker's well being to re-enter the workplace, not based on WCB theories.

I have a great deal of concern for workers in non-unionized workplaces because they have fewer resources or protections and seldom have access to advocates. I understand that MLA constituency assistants across the province often try to assist injured workers but that is a difficult and time-consuming task that is added on to their workload. Worksafe used to have advocacy offices in rural areas to provide personal support to injured workers, but they seem to be vanishing. If WCB is to be a real support to workers and employers who care about their staff, re-opening or reintroducing those advocate offices would be an important step.

I appreciate the opportunity to share my concerns and perspectives as a former Union representative who spent many hours defending injured postal workers from Worksafe BC's harmful and prejudicial behaviours that often led to detrimental decisions. Even though many of these decisions were

overtaken by appeal, the damage and unnecessary stress caused to vulnerable workers who were forced to challenge case manager's positions, exacerbated the pain and suffering they already endured due to their injuries.

My observations were gained both through personal experience as an injured worker at Canada Post, and from working with injured workers in my local union and their health care professionals, to ensure that the primary injury did not become worse, nor result in secondary injury complications.

Canada Post has a very high injury rate due to the nature of the work. In particular, Letter Carriers (external workers) get repetitive strain in arms, wrists, suffer injuries to backs and knees from carrying increasingly excessive weights, suffer slips and falls due to inclement weather or treacherous walking surfaces. Clerks (inside workers) are injured with repetitive strains from manual sortation, strain/sprain from consistently lifting heavy parcels and tubs of oversize mail in and out of equipment, lack of proper rotation of duties and chronic short staffing, which leads to systemic breakdown and soft tissue injuries. The workplace is not exempt from worker to worker harassment, causing increased stress and psychological injuries.

My comments and recommendations fall under the following themes:

1. Refusal by case managers to allow workers the time off work as required by their own doctors
2. "Modified Duties" collusion between employers and WCB
3. The lack of consideration for prevention of secondary injury due to overuse of other body parts means WCB prioritizes productivity over return to health
4. Employers who discourage or underreport injuries do not get penalized, so they are free to continue detrimental habits
5. Contractor Health Services that WCB uses for "work hardening" rather than recovery/strengthening
6. Stress related illnesses due to harassment, unchecked worker to worker conflict or abusive employers
7. Treatments should be allowed during working hours, not impacting personal/family time
8. Gradual Return to Work Protocols and PPD Employees
9. Mandatory workplace training for new employees in BC
10. Expand independent advocate services

Ignoring Doctor's Orders and Modified Duties:

- 1. Recommendation: When an injured worker seeks medical assistance and requests their injury be documented as a workplace incident, they should have the right to comply with their physician's orders without interference by either the employer or a Worksafe case manager.**

When doctors book workers off work to heal, Canada Post immediately drafts up a list of "modified duties" which may or may not be appropriate to the patient. Each manager has a list of either real or hypothetical jobs that they produce as a standard "offer", without regard to the nature of the injury. It is just a standard list that often includes unavailable work. In fact, locally we have seen supervisors bring their list to the local hospital emergency department where an injured worker is waiting to be examined, expecting that the doctor on call will take the time to review it and sign off.

Of course, Emergency physicians don't have time for that, but the employer takes the position that they have made a reasonable offer and if the worker does not return to work immediately, Worksafe is advised that the offer has been refused. Alternatively, if the worker obtains an appointment with their own physician and needs to be off work until that appointment, Canada Post demands that they return to work under the unapproved modified duties until they see their doctor. Regardless of whether or not those duties have been deemed reasonable or appropriate by medical personnel, if a worker delays returning to work, they are reported as refusing modified duties. Worksafe accepts the employer's assertions, both that the modified duties were appropriate, and that the worker refused them, so this creates the first conflict between the worker and the agency that is supposed to provide them support.

I believe that when an injured worker is examined by their doctor, and the doctor determines that it is necessary for them to stay off work and heal, that this decision should not be overridden by Worksafe. It is unreasonable for a case manager, working with the employer, to interfere.

- 2. Recommendation: Modified Duties must be appropriate to the worker's injury and be approved by the worker's physician before an injured employee is required to engage in them. The union has a role in reviewing modified duty offers and their input must be equal to the employer before a Case Manager determines the reasonability of the offer.**

I accept that in many cases, temporary modified duties can be appropriate. Our urban collective agreement (Article 54) provides for consultations with the union, the worker and the employer to ensure the duties are appropriate for the particular injury, and do not importune other workers or violate the contract. Jurisprudence establishes a tri-partite process to protect the interests of all parties in matters of accommodation when medical restrictions are authoritatively identified. Worksafe personnel have in some cases hesitated to include union representatives, and in one case refused to allow me to represent a member in a phone interview. Worksafe representatives need to respect the role of unions in unionized workplaces because we have a duty and a right to participate in accommodation matters.

However, my greater concern is for workers who have not been cleared to return to work and are forced to return prematurely or forced to do duties that are detrimental to them. There is too much unilateral reliance on the employer's description of appropriate duties available to an injured worker, and too little respect for the physician's analysis of the health of the individual employee. The definition of appropriate modified duties is subjective, based on the particular injury and the workplace and should not be used to create untenable situations for injured workers.

Productivity vs Recovery:

- 3. Recommendation: If the worker's physician recommends time off work to allow the injury to heal, and is being proactive in preventing a secondary injury, WCB must approve the time off work.**

If a worker has an injured arm, Worksafe takes the position that they can do one-handed duties. It has been my experience that when this happens, it inevitably leads to a secondary injury of the other arm due to overuse; not just in the workplace but because the worker only has one arm to use for all other personal practices as well. I saw this particularly with rotator cuff and tendonitis injuries. There is seldom a safe one-handed job to do in the post office and often, workers either have delayed healing in

their initial injury, or suffer a recurring or secondary injury as a result of being forced back to work too soon. It also leads to conflict between the worker and their physician when the recommendation is ignored due to Worksafe pressure.

I have been told by more than one Case Manager that if a worker injures their other limb due to overuse, they can file a new claim on that injury. We would prefer to avoid the injury altogether and this should be a prime consideration for Worksafe personnel. The prospect of significant wage loss creates anxiety and can lead to a worker disregarding their doctor's orders because of Worksafe pressure. That can lead to a lifetime of avoidable problems and or pain. We are more than the sum of our body parts and should be treated in whole, rather than in part.

I also noted that Canada Post has a different policy for compensable injuries than non compensable injuries when it comes to their Modified Duties offers. Workers who are injured in the workplace are immediately subjected to the "modified duty" demand but workers who are injured elsewhere and are not part of the accident at work statistics are not as quickly bombarded. I believe that Canada Post is simply trying to improve their local and national statistics regarding lost time due to injury and have no regard for their employees. In this, they have an ally in Worksafe. That alliance needs to be dismantled.

Reporting Injuries:

- 4. Recommendation: Employers who do not submit their reports within 2 weeks should be penalized for the delay. Employers should only submit reports based on Worksafe documents and those reports should not include subjective or slanted material but only the basic facts of the accident/illness. Any supplementary information provided by an employer should be submitted to the claimant by WCB, so workers are aware of what employers say behind their backs and can correct misinformation.**

There appears to be no penalty to an employer for either failing to report an injury (whether or not there is immediate time lost due to the accident or work-related illness). There also appears to be no penalty to an employer representative for actively discouraging an injured worker from reporting the incident.

For example, I was injured several years ago and dutifully reported my injury to my employer. That Superintendent promptly stashed my report into his desk drawer and did not submit it as required by statute. When his negligence was discovered, he claimed he did not have to report the accident as he categorized the accident as a "near miss" and no time was lost immediately following the incident. That injury eventually required surgery, and the employer negligence could have seriously impacted my claim had I not discovered and challenged his failure to report. There was no consequence to his action.

Although the corporation has changed procedures since that time, their accident investigation procedures are a deterrent to reporting an injury. They will force an injured worker who is booked off work to come into the workplace within 24 hours to participate in an accident investigation.

There is no need to drag that worker back into the workplace because once they filed their report, there is a procedure for the employer and a union member of the Local Joint Health and Safety Committee to review the incident location and circumstances. If clarification is required, the injured worker can be

contacted, but there is no need to disrupt their healing to participate in this investigation. Canada Post local management maintains this is required for their reporting to Worksafe. However, it discourages members from reporting an injury because of the inconvenience and hassle they are subjected to in the initial stage of their recovery.

Canada Post management has, in the past, submitted copies of their Supervisor Accident Investigation Report (SAIR) along with their required WCB documentation on an injury. This SAIR report has an anti-worker bias in the drop-down menus used by supervisors to indicate the nature of the injury, the cause of accident, the circumstances involved that led to the accident and the employer's corrective action. This issue has been raised numerous times by my Union but no adjustments to their report has happened to date. The available options for supervisors all blame the worker, regardless of the reality. This in turn can prejudice the understanding of the Case Manager reviewing the material, especially when they place more weight on employer information than the worker's report. No one comes to work hoping to be injured – more likely we hope to survive each day whole so we can enjoy our life outside the workplace.

Advocates recommend that workers go online to review the reports and conversations that are being provided to Worksafe and note that calls from management are logged, but the nature of the conversation is not necessarily recorded. If the WCB process is to have credibility with all parties, then perhaps more transparency is needed with regard to employer comments. I believe that the flow of information between employers and WCB is fairly fluid, but workers are the ones who suffered the injury and should have the right to access all information between the parties.

Recovery Program Contractor Services Need to Be Reviewed:

- 5. Recommendation: Local Physiotherapist, Acupuncturist, Chiropractor, Kinesiologist etc. who are providing therapy to help strengthen the injury should not be replaced by contractors whose main goal is an early return to work.**

Quite regularly a WCB claimant who has been referred to participate in therapies, is removed from their local provider and sent to a contractor, sometimes in another town. They are enrolled in a program that on the surface, seems designed to focus on recovery, but in reality, is mostly focussed on enabling the worker to just perform their pre-injury duties.

For example, a claimant recovering from rotator cuff surgery is sent to participate in an 8-week program and initially finds benefit from the concentrated exercise plan. However, within the first quarter, the beneficial strengthening exercises are replaced with simulations designed to replicate motions required for the job. Pretending to sort letters, they are assigned a deck of cards to flip into a case, over and over again. Instead of assisting, the repetitive motions cause aggravation and are not in line with the surgeon's recommendations to avoid repetition until the muscles and tendons have recovered. This is not helpful. As a "work hardening" program, again, it only focuses on one part of the body rather than the other parts that are needed to support an injury.

These centres can be beneficial if there is a more holistic approach to whole body strengthening, not just the specific injured portion. However, if a worker is forced to travel away from home, the benefit may not outweigh the stress created from being away from family. The injured worker should be provided options, rather than just ordered to attend something that may not be to their advantage.

Recognition of Psychological Traumas as Workplace Injuries:

6. Recommendation: WCB should accept claims related to Harassment, Worker to Worker Conflict or Abusive Employers and intervene to force corrections.

The stress related illnesses caused as a result of toxic workplaces need to be acknowledged and accepted for claim purposes. If an employer allows a workplace to become toxic because they do not fear retaliation, they have no real incentive to put effective measures in place to detoxify the environment. Workers and their families pay a real price if they are harassed, bullied or abused (verbally or physically) and that price can lead to debilitating illnesses. If a worker or workers become incapacitated due to workplace stressors and an employer makes little effort to rectify situations, WCB should intervene, just as they have the right to intervene in physically unsafe situations. If employers are penalized for failure to provide a safe and healthy workplace, they will turn their attention to solutions.

Treatments Should Be Considered Time At Work:

7. Recommendation: Workers who are either in a rehab program or in a series of therapy appointments should have all time related to such appointments be considered time at work and not on personal time.

Employers act as if an injured worker is an inconvenience to their operations. Yet it is the injured worker who may continue to be plagued by the injury's impact or side effects for years. We just come to work for wages, not be debilitated by the workplace.

If a worker is enrolled in a program out of town, all time participating and required travel to and from home should be contained within their normal work week. It is despicable to force a worker from Castlegar to travel to Kelowna on the day before their program (Sunday for Monday start) when they only got home late Friday night or during Saturday if they were too fatigued to travel after a full day of programs. If they work a 40-hour standard week, all travel should be included within a 40-hour/week program.

If they have returned to work but have been authorized to seek ongoing treatments or require follow up medical appointments, then those appointments should also be considered time at work and covered accordingly. In order to be made whole, a worker should not be forced to either lose pay or impede their family life with appointments resulting from a workplace injury. The burden needs to be removed from the worker. They have paid a high enough price.

Return to Work Protocols:

8. In unionized workplaces, WorkSafe must advise the bargaining unit in advance of any Gradual Return to Work Proposals. They must provide a copy of the plan prior to conducting any meetings or implementation to allow meaningful consultation. Permanently Partially Disabled (PPD) workers must not be forced to be redeployed outside their current geographical employment area (not more than 40 km) by Worksafe if their pre-injury employer claims undue hardship for permanent accommodation.

The gradual return to work of an individual with limitations or restrictions can impact other people and the goal must be to ensure the injured worker's limitations are respected without unduly affecting other co-workers. Ensuring the union has advance copy of the proposal allows them to work with the claimant to ensure the plan is appropriate, that their doctor is aware and supportive, and the collective agreement is respected. It is a transparent process that allows a successful reintegration of a worker back into the workplace, to build up to pre-injury capabilities if possible.

In some cases, a worker deemed to be permanently partially disabled as a result of workplace injuries will need permanent accommodation. This can create a whole number of issues. Even though an employer has a duty to accommodate, they may cry undue hardship and Worksafe will then try and force an injured worker to accept some other form of employment anywhere else in the province without regard for a worker's personal life. This threat may lead to a worker reintegrating back into their workplace out of desperation, despite the fact that they can no longer perform the work to their previous levels. That has to stop. Are they mandated to be a heartless private insurance company; or are they supposed to support injured workers to become whole?

When co-workers or employers feel that a permanently disabled worker is not producing to non-injured capabilities, there is enormous pressure on a worker. They face resentment from fellow employees and disdain from bosses, leading to anxiety and possibly termination of employment if no other protections are in place. Worksafe should be tasked to find appropriate solutions for workers who have been permanently impacted by their job, but coercion and threats of relocation need to be eliminated.

Mandatory WCB Training for New BC Employees

- 9. Recommendation: WCB should regularly schedule workplace training with employers to ensure new hires or transferred employees coming to work in BC are properly trained in the procedures and policies of Worksafe to improve reporting and informed decision making. Employers to receive compensation for time lost.**

Despite the fact that many workplaces have a poster about obligations in reporting injuries, they often go unnoticed or disregarded by workers and employers alike. Many employers have their own reporting procedures which they prioritize, and workers may get overwhelmed by conflicting advice or information about what is appropriate.

A standardized, short education module outlining the purpose of WCB, the ways to file a claim, the ways to report unsafe conditions, the obligations of employers and employees, what information is required to support a claim, how to appeal a decision and how to understand the website, would benefit workers who have never been injured, who are used to different rules from other jurisdictions, or who don't understand the difference between company policy and the legislation.

The module could be accessed online or in person, depending on the resources of Worksafe. Employers could request compensation if they could not afford to pay for the time required for training (Worksafe would be able to ask companies to justify their request of course) or a discount on their premiums could be provided as an incentive to make sure their employees know their legal rights.

Expand Independent Advocate Services:

10. Recommendation: Provide community support through municipalities, MLA offices or independent advocate offices to assist workers filing claims or appeals.

This is a budget item that may or may not be possible to achieve from this review, but it needs to be addressed. Worksafe is intimidating for many injured workers who fear retaliation from employers, who try to work while injured to their detriment, who feel bullied by case managers and have no one to lean on when they are most vulnerable.

Even in a unionized workplace, many times the locals are small, and the officers are volunteers who get overwhelmed by the battles they have to engage in to achieve justice for injured workers. Worksafe needs to be seen as supportive to workers needs, not just to employers' finances. Independent Advocates who work with claimants to help navigate the bureaucracy and speak for them as needed would be a large benefit and restore some confidence in the system for injured workers.

Thank you for the opportunity to submit our thoughts, concerns and perspectives on changes needed to defend workers' health, safety and wellbeing. This has been an area of high concern for those of us who try to assist injured workers, try to encourage employers to create safer workplaces and battle to restore rights for people who suffered at the hands of the workplace. I am pleased that this government has ordered a review. I look forward to seeing the recommendations you will make to the government and hope positive changes will be legislated in the near future

Sincerely

Cindy McCallum Miller

On behalf of CUPW Columbia River Local

CC: Luc Julien, Local President

CC: Karen DeFrancesco, CUPW Pacific Region Education & Organization Officer