

BC WCB System Review

July 17, 2019

Unifor welcomes the opportunity to submit comments concerning the Workers' Compensation System Review.

We represent approximately 28,300 workers in the province of British Columbia. Our members work in diverse industries and sectors such as pulp and paper, foundries, mining, hospitality, ground and air transportation, media and light and heavy industry. Our members are exposed to a variety of hazards such as musculoskeletal, infectious diseases, asbestos, hazardous chemicals, radiation, workplace violence, psychosocial hazards, working alone, and almost any other hazard that exists.

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 is 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 treat injured workers fairly and with the utmost respect.

Our membership translates to 306 bargaining units or at least 306 joint health and safety committees doing the best they can with the tools they have to ensure their members go home safe and healthy at the end of their shift.

When prevention fails, it is important to ensure that injured workers and their families are treated with fairness and justice. These priorities are entrenched in Unifor's principles and are echoed in the Meredith Principles, which are 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 Workers' 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.

Problems with the system started in 2002-03 when the BC Liberal government made sweeping changes to the laws and policies related to the workers' compensation system. Compensation for workers was reduced, appeals made more difficult, and WCB staff were required to adhere strictly to policy, rather than having the discretion to make decisions on the merits of each claim. Because of these legislative and policy decisions, the workers' compensation system has become skewed in favour of saving money for employers at the expense of workers. Today, many BC workers feel the system is failing to fully and fairly compensate injured workers. Injured workers are guilty until proven innocent.

According to the 2018 annual WorkSafeBC's report, the Board's legal responsibilities are:

- i) Preventing workplace injury and illness
- ii) Compensating and rehabilitating injured workers
- iii) Maintaining the system's financial sustainability
- iv) Ensuring that ethics and integrity are paramount

We provide the following foundational System recommendations for a more worker-centered approach to compensation:

1. Merits and Justice of the Case

The Board must make its decisions based upon the merits and justice of the case and consider the worker's individual circumstances. The worker's safe recovery must be paramount along with successful re-employment with the pre-injury employer.

The current binding policies have reduced the ability of the case managers to apply the merits and justice of the case to the decision-making process. A case management system guides the case manager without investigating all the facts and circumstances. The injured worker is but a case number that must fit the allowed criteria of the Board policies.

How are the thin-skull principles and significant contributing factor tests for causation applied? Transparency is vital to build confidence in a system that was developed to look after the most vulnerable in our society – injured workers.

For examples, since 2012, WCB created a new test solely for mental stress injuries.

- i. Traumatic exposure, significantly contributed, predominant cause
 - 1. This allows WCB to look into an injured worker's entire life. A worker with a work-related psychological condition can now be subject to the most invasive probing into their private life by the WCB's team of "special constables" hired for that purpose.
- ii. Workers with mental stress injuries should be covered by the thin-skill rule, just as if they had suffered a physical injury.

1. *“wrongdoer must take his victim as he finds him”*

In addition, the appeal process have become increasingly technical, legalistic, difficult to understand and inaccessible to injured workers. This includes the abolition of the Medical Review Panel.

- i) No medical appeal level and if you cannot afford a medical/legal opinion from an independent specialist, you have to rely on the opinion of the WCB doctor (a doctor who has never examined or even spoken to you.)
- ii) The vice-chairs of the Workers Compensation Appeal Tribunal are not medically trained. A Vice- chair can choose to seek an independent health professional opinion, but they are quite rare, you cannot make them do it, and they are not obliged to take the advice of the specialist when they get it.

Finally, the power of Appeal Tribunals is bound by board policy, which is not law, but guidelines written by WCB employees to help implement the Act. (There is one way to challenge the policy, but the process virtually guarantees that the policy will not be overturned.)

The balance of the power at the Workers’ Compensation Board is an illusion to injured workers as there is no discretion to deal with their individual circumstances.

2. Return to Work

A central mandate of the Board is to rehabilitate the injured worker. This can be successfully accomplished with a joint return to work process with the employer and the injured worker (and their representative where applicable). All parties recognize that an early and safe return to productive employment at the appropriate time assists workers with disabilities in achieving quicker rehabilitation and allow them to maintain their personal dignity and financial stability.

The objective of the collaborative effort is to ensure the injured worker is:

- Returning to own job
- Returning to own job with modifications
- Returning to alternate vacant job that is not posted, without or with modifications
- Filling an alternate job that is posted, without or with modifications
- Filling an alternate job with retraining, without or with modifications
- Finding other alternate work that accommodates the employee

As a result, the Board must give more weight to the opinion of the injured worker's treating physician or qualified medical practitioner than their own medical advisors. The employer only needs to provide a list of jobs that they say are appropriate. If the treating physician disagrees, the Board can override them, and usually does. Emphasis now is always on returning to "modified duties" even if the treating physician believes they are inappropriate. The worker is rarely the winner in the RTW sweepstake.

The system needs to change i) by adopting a statutory duty by the pre-injury employer to reinstate the injured worker after they have recovered and ii) by developing a medical evaluation tool that secures medical evidence which allows for fair and objective adjudication.

If a worker returns to work with a disability, the employer is required to accommodate them in order to help them perform the essential duties of their job. The Board must find suitable and available work with the pre-injury employer prior to exploring other options. Vocational rehabilitation should be considered the last resort.

For example, vocational rehabilitation is at the hands of consultants who have little vested interest in the success of the injured worker apart from being financially compensated by the Board for their services.

- a. If the injured worker is able to return to work but cannot do their pre-injury job, WCB must ask the employer for an accommodation, or a modification, that will help the injured worker return to work.
- b. An accommodation is anything that helps to remove barriers to working. Some examples include:
 - i. work station readjustments (such as providing a sit-stand stool)
 - ii. technical aids (such as voice-activated software, hands-free head-set)
 - iii. flexibility or changes in work schedules, or
 - iv. job redesign (such as changing your job description to remove/add certain tasks)

3. Audit

The Board needs to adopt a process to ensure the confidence of the stakeholders in the compensation system. The audit tool developed by the National Institute for Disability Management and Research (NIDMAR) is based on a global review of best practices in disability management, which revealed key elements that are essential when administering successful disability management programs. These elements build on an independently verified and validated process that defined occupational skills, competencies and abilities for disability management program development and implementation. Both have seen exhaustive scientific, reliable and evidence-based validation at a national and international level.

4. Professional Development

The case managers must have a professional designation to further drive confidence in the Workers' Compensation Board activities. The knowledge required to deal with claims is derived from policies however, to maintain the spirit of the Meredith Principles, the staff must be given the tools and skills to deal with cases that have far-reaching implications than a mere accepted or denied stamp.

The Certified Disability Management Professionals (CDMP) is designation that Unifor recommends as a foundation for all case managers to acquire.

The social and economic cost of injury, disability, and illness has a negative impact on workers, employers, and on society. International research has proven that having a workplace based disability management program together with properly trained disability management program managers, coordinators, and specialists is the most effective way to return workers who have been injured or ill to meaningful, productive work. It reduces the human and social costs to workers and financial costs of lost productivity and insurance to employers.

Conclusion

Unifor appreciates the opportunity to submit our comments and looks forward to working with WorkSafe BC to ensure the workers' compensation system adheres to its roots of dignity, respect and justice. We must not forget that the workers' compensation system is the only remedy that a worker has against an employer for job related injuries and diseases.

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