

July 18, 2019

TO: Ms. Janet Patterson
AT: Info@wcbreview.ca

RE: 2019 Workers' Compensation System Review

Thank you for meeting us on June 28, 2019, to discuss your review of the workers' compensation system in line with Minister Bains' Proposed Terms of Reference for Workers' Compensation System Review, dated March 4, 2019, (TOR) and allowing us the opportunity to provide further input in writing.

Please be advised that the comments expressed in this submission reflect only those of the Employers' Advisers Office (EAO) from the perspective of the administration of the workers' compensation system overall. We take no position on behalf of the employer community.

INTRODUCTION

During our meeting, you advised you are interested in hearing our thoughts with regard to two areas:

- the impact of policies, practices, and processes as they may impact disadvantaged groups through a Gender-based Analysis Plus (GBA+) lens; and
- any resource or services gaps we see impacting small- and medium-sized employers.

We have considered both these areas in the preparation of this submission.

When considering the second area you raised, managing worker return to work (RTW) immediately came to mind as a resource or service gap for small- and medium-sized employers. Fundamentally, safe return-to-work is the ultimate goal of any effective workers' compensation system. It is therefore not surprising that consideration of RTW policies and practices is the first of six items in the TOR. In reviewing this important issue, the EAO considered all elements and stages in the typical life of a claim as experienced by small- and medium-sized employers and, in so doing, generated ideas and recommendations for improvements that address not only the first item in the TOR, but items (c), (d) and (e) as well.¹

This submission is organized as follows:

1. GBA+ Considerations for Employers
2. Return to Work (RTW)

¹ As the EAO is a Branch of the Ministry of Labour, comments have been restricted to operational issues only. The EAO takes no position on any potential legislative amendments but would be pleased to provide any assistance in this regard at a future date if requested.

- a. Education
 - b. Reporting and Information Sharing
 - c. Accessing Health Care Services
 - d. Vocational Rehabilitation
 - e. Claim Decisions and Monitoring
 - f. Dispute Resolution
3. Fair Practices Office

DISCUSSION

1. GBA+ Considerations for Employers

The complexity of the workers' compensation system is better navigated by large employers with specialized internal resources, and therefore all small employers are at a disadvantage. Nearly half of our clients are employers with less than fifty workers. They do not have Human Resource departments to take care of claims or disability management. They are often unaware of their obligation to register with WorkSafeBC, let alone what to do if one of their workers is injured.

We often hear complaints from rural resource sector employers, such as fish farms and remote logging, that there is a lack of support and resources from WorkSafeBC in all areas: claims, assessments and prevention. For what support and resources are available, access is often an issue given their geographical location. These employers frequently have no internet connection or cell phone coverage during the regular business hours of 8:30 to 4:30.

Sole proprietors, such as independent loggers, are often challenged by the extensive requirements of a complex system, often misunderstanding the role of the prime contractor and taking on responsibilities they are not capable of fulfilling. In fact, there is a general lack of understanding among many employers, even the more sophisticated ones, of the roles various parties play in health and safety and how to handle complex worksites where there are multiple owners, for example. Our office has created a seminar specifically on this topic.

Added to the complexity of the system, and the lack of knowing what they need to know, are employers who do not speak English well or at all. When such employers are aware of our services and contact us, we use WorkSafeBC's translation services.

For indigenous communities, our advisers often provide seminars regarding claims and occupational health and safety issues, acknowledging and explaining the jurisdictional issues as to when the province's *Workers Compensation Act* and *Occupational Health and Safety Regulation* apply to their businesses.

Moving forward, our office will be considering these outreach initiatives:

- creating more Frequently Asked Questions on our website and having these, along with the answers, translated into several languages
- Implementing more targeted outreach for those indigenous communities who may not be aware of the services the EAO provides

- expanding EAO's webinars and format to reach employers who have difficulties with written text; to reach employers located in remote areas around the province; and to accommodate a higher number of employer participants in each webinar session
- recording webinars and having the information translated into other languages
- expanding e-learning topics and translating them into other languages
- reaching out to BC Government "OneStop" to have EAO's contact information and/or link added to their website and to ask about the availability of translation services for persons using their resources
- ensuring any modification or creation of office facilities include consideration of easy access for physically disabled persons

In our view, more can be done to assist all small employers with respect to service delivery, resources, and outreach. For our part, we will continue to have the conversation of how best to inform employers of our services.

2. Return to Work (RTW)

In our experience, when faced with a claim, employers are often unprepared and overwhelmed by the complexity of the process and the documentation they receive. We frequently hear complaints they are unable to get the assistance they need to help manage the claim to get their worker healthy and back to work.

Overall, there is a need for a culture-shift in current WorkSafeBC processes to take an inclusive, holistic approach regarding RTW services. Education initiatives about the benefits of timely RTW; comprehensive reporting and sharing of a worker's limitations and abilities; improved access to health care; access to a dedicated, front-end RTW services team; robust decisions and claim monitoring to provide the right information to the right people at the right time; and ongoing problem-solving and timely dispute resolution are some of our suggestions to improve the RTW system. In short, we believe robust information-sharing coordinated by a RTW team would go a long way to reflect a worker-centric delivery model that streamlines case management to ultimately improve confidence and satisfaction for all stakeholders.

In the discussion below, RTW includes consideration of stay-at-work programs, modified and light duties, and gradual return to work programs.

a. Education

Often, small- and medium-sized employers do not have the time or resources to create and implement a RTW or disability management program in their workplaces. Many do not turn their minds to the benefits of such a program until they are confronted by their first workplace injury.

Added to this difficulty is misunderstanding among workers and small employers regarding what an effective RTW process looks like and when it may be offered and implemented. Often, there is a misconception that workers need to be fully recovered prior to embarking on a RTW program. We understand workers believe there is a threat of potentially losing benefits or accepting a

position which may ultimately be considered permanent. They also have concerns of re-injury. Employers share these concerns, in addition to what impact a RTW process may have on other staff members at the workplace.

The EAO believes the first step in changing the culture to effect a front-end focus on RTW is to provide information as to its benefits and the roles and responsibilities of all parties in the process. We acknowledge that WorkSafeBC has information and several resources on this topic on their website. However, in our view, more can be done to educate and assist workers and employers.

On WorkSafeBC's website, RTW information is found on the worker and employer pages under "Recovery & Work", a title which perpetuates the misconception workers must be recovered prior to returning to work. On the worker and employer pages, RTW is noted as a "team approach" between workers, employers and health care providers. WorkSafeBC's role in the process is vague. On the "what employers need to know" page, employers are simply directed to call the Claims Call Centre if they have questions or concerns about a worker's recovery and RTW or encounter any roadblocks.

In contrast, from the "I Am a Health Care Provider" page, there is a link to "How recovery at work helps" which sets out how WorkSafeBC "partners and collaborates with workers, employers, and health care providers in a worker's recovery". It is further noted WorkSafeBC's "role is to coordinate and monitor the progress of the worker's recovery" and offers assistance to health care providers "at each step". This type of help is not offered on the worker or employer pages.

The EAO thinks improved assistance and coordination by WorkSafeBC will greatly encourage and increase successful early RTW planning and implementation.

Recommendations:

- At the time of registration and when sending out remittance notices, note the benefits of creating and implementing a RTW plan and how and where employers may access resources and assistance.
- Make a dedicated team of trained and competent RTW specialists available to help workers and employers create a RTW plan on the phone or in person, prior to completion of claim adjudication.
- Implement a special RTW outreach program to contact an employer the first time one of its workers is injured.
- Launch a RTW campaign to remind workplace parties of the benefits of RTW. Create and promote a robust RTW kit including templates, forms, info-flips and posters as "top of mind" reminders for workers and employers to help create a RTW culture in individual workplaces.
- Create/promote informational YouTube videos and easily-accessible e-learning for workers and employers.

- Clarify the role of WorkSafeBC in coordinating RTW and add this information to the website on the worker and employer pages.
- Amend "Recovery & Work" to "Recovery at Work" on the website.

b. Reporting and Sharing Information

Timeliness of information is critical to the development of a successful RTW plan. The EAO often hears employers complain they were unaware an injury had been sustained or a claim filed until WorkSafeBC requested their Employer's Report of Injury or Occupational Disease (Form 7). The completion of the Form 7 is then delayed by the employer having to investigate an incident that may have occurred days or weeks prior. A further cause for delay is the form going to the incorrect person at the organization (for example, the payroll department, or worse, a contracted accounting or payroll service external to the organization).

When Teleclaim is used, employers often believe that the worker's form has been completed by WorkSafeBC and the information shown accepted, with no opportunity for the employer to provide additional or contrary information which may be necessary for RTW consideration. Many employers do not understand the Form 7 is an opportunity to provide this further information.

In addition, auto-adjudication sometimes occurs without the need for a Form 7 and prior to the employer knowing about the claim or having an opportunity to provide RTW information in response.

On their respective forms, workers and employers are asked about whether the injury was reported. It is unclear what action a negative response generates. The parties are also asked if modified or transitional duties are available and were offered. Oftentimes, the employer has insufficient information as to the nature of the injury to turn its mind to modified duties; however, there is nowhere on the form to note this. If the employer answers the question in the negative, this appears to be the end of the matter for employer involvement. There is no follow-up or offer of assistance in the creation of modified or transitional duties.

The Physician's Report (Form 8/11) is also problematic. It asks only whether the worker is capable of returning to full duties and, if not, the estimated time required before the worker is able to do so. The physician is asked about the worker's restrictions, but not about the worker's capabilities. Unless the employer is aware of the injury and has a physical demands form for the worker to take to the health care provider, information as to the nature of the injury, its resulting restrictions, limitations, and worker capabilities is often not provided to the employer until much time has passed, if at all. Without this information, the opportunity for modified or light duties for a safe return to work is lost.

Recommendations:

To improve timely notification of the filing of a claim:

- At the time of registration with WorkSafeBC, ask the employer to provide contact information for the party responsible for handling claim information and RTW. On remittance forms, ask the employer if this information needs to be updated.
- For those employers with online accounts, consider creating an email alert system similar to clearance alerts (or an app with built-in notification) to notify the employer of:
 - a new claim
 - a new decision
 - updated medical information which may impact RTW
 - a new point of contact on the file
- For employers without an online account, consider sending the employer an email with instructions on how to create one and who to contact for assistance and information about the claim.
- For employers without internet access, consider phoning the employer and obtaining information in a similar method as Teleclaim for workers.
- For information mailed to employers, consider using colour-coded envelopes to signal whether the contents pertain to claims, assessments, or prevention.

To improve information-sharing:

- Train Teleclaim Operators to promote the benefits of RTW.
- Amend the Teleclaim form to explain:
 - the worker has completed the form and the employer has the ability to add or clarify information
 - the need for Form 7 completion and the risk of auto-adjudication if a Form 7 is not provided
 - the option of the use of the Form 6A to obtain timely information and assist with the employer's required investigation and RTW planning
- To assist with triaging and RTW, amend the pre-populated electronic Form 7 to allow the employer to check a box to either (i) accept the description of job duties and/or mechanism of injury as provided by the worker; or (ii) use their own language.
- Amend the Application for Compensation and Report of Injury or Occupational Disease (Form 6) to ask the worker if RTW was discussed with a health care professional.
- Require worker consent in the Form 6 to provide functional abilities information from the treating health care professional to the employer to facilitate RTW.

- Amend the Form 7 to ask employers if they have a RTW program and, if not, if they would like assistance to create one. Provide employers with a phone number for RTW Services. Implement a process, through RTW Services, to follow up with these employers.
- Update the Physician's Report (Form 8/11) to ask physicians if they have discussed RTW with their patient.
- Bifurcate the Form 8/11 into a clinical information section and a RTW section. In the RTW section, create checkboxes to have the physician indicate the worker's full functional abilities. Allow the RTW section to be shared with the worker and the employer (see Ontario's [Form 8](#) as an example).
- Include, in the shareable portion of the Form 8/11, a description of the mechanism of injury and job duties to allow the parties to raise, and a Board Officer to resolve, any misunderstandings or conflicting information in a timely fashion.
- Allow information from any follow up Form 8/11 which modifies the health care provider's RTW findings to be shared with both the worker and the employer.
- Create a robust Functional Abilities Form similar to that used in Ontario ([Functional Abilities Form](#)) which may be completed by a physician, chiropractor, physiotherapist, or registered nurse. Have the completion of the form be at the request of the worker or employer and paid for by WorkSafeBC.
- Create a Physical Demands Information Form employers can use to identify suitable RTW activities (see Ontario's [Physical Demands Information Form](#)).

c. Accessing Health Care and RTW Services

Difficulties arise when workers seek medical attention from physicians at walk-in clinics who may not have the worker's complete medical history. In addition, the EAO has learned many clinics refuse to see patients who are seeking compensation for an injury or illness that arose from work. Lack of access to a family physician leaves some workers without timely access to health care and may delay safe return to work.

Even when workers have access to a family physician, RTW planning is not always implemented at the outset of a claim. We understand the workload of Case Managers and other claim owners is such that they often do not have time to work with the parties to discuss, create, and implement a RTW plan.

In addition to improving information-sharing as noted above, having dedicated resources at WorkSafeBC who have a rehabilitation background and are available to provide RTW assistance to the parties may expedite this process. We envision a system whereby workers, unions, employers and health care providers are immediately referred to these individuals to begin RTW planning while the claim owner simultaneously works on collecting the necessary information to adjudicate the claim.

Recommendations:

- Expand resources in the RTW Services department to include staff with occupational rehabilitation training and expertise.
- Create a team approach to RTW based on industry and injury type. (For example, Ontario has a separate [RTW Regulation](#) for the Construction Industry which addresses both unionized and non-unionized environments.)
- Consider having RTW Services personnel be a direct point of contact for worker, union, employer, and/or health care professional as soon as the Functional Abilities Form and Physical Demands Information Form are complete. Ensure that the roles of the claim owner and the RTW Services staff member are clearly communicated to the parties.
- Have the expanded RTW Services department make referrals for third party treatment, such as occupational rehabilitation programs (OR1 and OR2).
- Emphasize a RTW focus with treatment providers, allowing them to initiate early intervention (fit to work, with limitations) earlier in the claim, and encouraging them to play a more active role in predicting RTW dates.
- Create RTW Multidisciplinary Programs designed for certain specific injury types, similar to that piloted by WorkSafeBC for musculoskeletal injuries in 2013 to 2015, which include faster access to physiotherapy and to a physician.²
- For suspected strain/sprain injuries, promote the use of WorkSafeBC-approved physiotherapists to manage a worker's health care, including an initial assessment, RTW planning, and maximum number of treatments pending claim adjudication.
- For more complex injuries, consider timely referral to physicians specializing in occupational medicine, such as those in the existing Medical and Return-to-Work Planning (MARP) network, in a similar fashion to what is done for psychiatric referrals in mental disorder claims.
- Consider following Alberta's [Occupational Injury Services](#) (OIS) model to allow employers to expedite their workers' access to health care services and RTW plans.
- For mental disorder claims arising from bullying and harassment, enable the internal sharing of a Prevention Officer's investigation with the RTW Services personnel (vetted, if necessary) to provide further context of issues at the workplace which may impact a RTW plan.

² In a report in June of 2015, the RTW rate arising from this program was noted to be higher than either the OR1 or OR2 programs with high satisfaction among workers, employers and claim owners alike.

d. Vocational Rehabilitation

Policy C11-88.00 of the *Rehabilitation Services and Claims Manual*, Volume II describes the four phases of the vocational rehabilitation process. Phases I and II apply to claims involving temporary partial disability and temporary total disability. The description of the services includes: counselling; work assessments; graduated return to work; work site/job modifications; mediation between worker and employer; and an advisory role regarding the worker's recovery or selective light duties with the injury employer.

These services appear consistent with those which would be offered at the outset of a claim. However, the policy also provides: "vocational rehabilitation assistance should be provided as soon as a worker is medically able to participate in his or her own vocational future". Participating in one's "vocational future" seems to contemplate the provision of services much later in the life of a claim, after RTW efforts have been unsuccessful, or when the disability is found permanent. Practice Directive C11-2 supports this interpretation in noting:

The initial discussion regarding vocational rehabilitation involvement should take place when it is determined that the worker requires return to work assistance and would benefit from the expertise of an officer in VRS. The discussion will occur in each case where the compensable condition, and other factors, necessitate vocational rehabilitation assistance. **In most instances, it will be anticipated that the worker will have a permanent partial disability that impacts the worker's ability to return to the pre-injury job.** The referring Officer completes the VR Referral where required. [Emphasis added.]

In practice, Vocational Rehabilitation (VR) services are most often provided after a worker's medical condition has "plateaued". At best, the activities set out in Phases I and II are too late; at worst, assessments are duplicated, to the frustration and confusion of the parties. Having VR assistance in the early days of a claim will make the services seem less of a "tag on" and more of an ongoing process, with RTW being the continued expectation, focus and goal. This is particularly the case for those with significant injuries who can participate in VR training concurrently with treatment, allowing more timely return to the workforce and improved mental health.

Recommendations:

- Include the services of Phases I and II of Vocational Rehabilitation in the RTW Services department where they may be provided at the front-end of the claim; save those services in Phases III and IV for claims where it is determined that the worker's impairment is permanent and accommodation by the accident employer is not possible.
- Emphasize the goal of VR is restorative, requiring consideration of each worker's unique traits, culture, abilities, and circumstances.
- Implement a process for 6 or 8 month follow up after the termination of the claim to ensure Vocational Rehabilitation planning was successful.

e. Claim Decisions and Monitoring

Frequent complaints heard from employers are the lack of meaningful information in decision letters; not knowing whom they may call should they have a question or concern; and when they do have a contact name, not having phone calls returned.

Claim acceptance decisions contain insufficient information for employers as to which conditions, injuries or illnesses have been accepted and which have not. Information as to the mechanism of injury is often incomplete or missing. Further, acceptance letters do not include the worker's restrictions and limitations or functional abilities to assist with RTW planning. This often leads to employers requesting a review of the decision simply to get disclosure of the file to learn the information needed to manage the claim.

Frequent change of claim owners leads to delays as the file is re-reviewed. It also leads to uncertainty as to whom to contact for assistance or to provide information. There is a lack of clarity as to who is managing the claim during transfers and/or in what department the claim resides. Voice messages and calls routed to the Call Centre when a claim owner is away are often not returned.

Recommendations:

- Ensure proper resourcing for meaningful and timely communication.
- Without providing confidential information such as diagnosis, send claim decisions to employers which specify:
 - what conditions, injuries or illnesses have been accepted for which part of the body and which have not
 - which conditions (and their consequential restrictions and limitations) have been accepted as permanent and which have not
 - the mechanism of injury accepted under the claim
 - worker's limitations and functional abilities to assist with RTW
 - comprehensive reasons for the decision made
- Improve communication process and timelines by:
 - using introduction letters when a claim moves to another owner
 - providing information as to the purpose of the move
 - providing contact information of the new owner
 - providing an estimated timeframe for review

f. Dispute Resolution

Disputes frequently arise when a worker's physician and a Board Medical Advisor (BMA) have different opinions regarding the facts or evidence of a worker's claim. If the Board prefers the opinion of the BMA, it is understandable from a worker's perspective that this may appear unreasonable, particularly given the fact that BMAs do not generally base their opinions on an in-

person examinations. The legislative and policy requirements pertaining to causation that govern the adjudicative process may not be understood by either the worker or the worker's physician.

Many conflicting medical opinions arise from one or more of the following scenarios:

- Inconsistent information or description as to the mechanism of injury
- Inconsistent questions put to each medical expert
- The worker's physician's lack of understanding of the adjudicative requirements of causation
- The decision-maker's lack of understanding as to the meaning of the experts' responses

In our view, the above difficulties could be resolved by the more comprehensive and collaborative front-end focus of information sharing discussed above. With such an approach, any areas of misunderstanding or disagreement will be quickly identified and addressed. For example, disputes as to the mechanism of injury may be resolved in a RTW site visit. A team approach to information sharing coordinated by RTW Services staff will help ensure the same questions are put to physicians and other health care professionals. RTW Services staff may also provide assistance to claim owners in understanding the medical evidence.

Recommendations:

- Implement a team approach to identify any inconsistencies and information gaps.
- Resolve any dispute regarding the mechanism of injury as evidenced in the worker, employer and physician forms prior to determining causation.
- To resolve conflicting medical opinions, have a MARP physician, who is not a Board Medical Advisor, examine the worker and provide an opinion paid for by WorkSafeBC.

3. Fair Practices Office

Item (e) in the TOR requires consideration of increasing the confidence of workers and employers in the workers' compensation system, including the Fair Practices Office (FPO).

In addition to the recommendations already cited, we believe being heard is what people need to have confidence in a bureaucratic system. We support a system whereby the FPO can look into individual complaints, track complaint trends (including complaints about law and policies), identify system-wide issues, and recommend improvements. We also support the FPO's ability to ensure complaints within their mandate are resolved. We further support the FPO's ability to keep the complainant updated and to advise what steps have been taken to resolve the issue, which should be more than simply referring a complainant to speak to the claim owner.

However, we have concerns in broadening the scope of the FPO's mandate to include dispute resolution between parties as this will result in added complexity and delay in the appeal process by creating an extra adjudicative layer.

CONCLUSION

The health benefits to workers for safe and expedient RTW is well-documented. Our understanding from discussions with persons at WorkSafeBC is workers in other jurisdictions do not have long-term problems such as chronic pain with the same prevalence as that experienced by BC workers. In our view, this is because other jurisdictions have more front-end focused RTW services and resources helping workers and employers develop a RTW program that is right for the worker.

WorkSafeBC claim owners are simply too overloaded to spend the time necessary to develop and implement RTW plans. Claims move from desk to desk with workers and employers not knowing who to call to provide or receive information. Current forms discourage robust information-sharing and the dialogue necessary to effect safe and timely RTW. Many employers, particularly small employers, with a keen intention to have the worker back at work give up in frustration because they cannot get the help they need.

In our view, any culture shift to a concerted effort for RTW starts with communication. Improving the emphasis in required reporting forms and exchanging pertinent information from the Board, worker, employer, and health care provider without violating worker privacy, will go a long way to instigating this needed change in the system. More robust claim owner decisions which confirm and summarize the information needed to implement RTW is also needed. Finally, expanding current resources to provide a front-end team of RTW specialists with occupational rehabilitation backgrounds will assist in early identification of missing or conflicting information, resolving disputes in medical opinions, and, most importantly, giving workers and employers a dedicated contact for assisting in the development of a RTW plan that fits the needs of all parties in a more expedient manner.

These recommended changes reflect a worker-centric delivery model that will simultaneously improve case management and increase worker and employer confidence in the worker's compensation system.

Thank you for the opportunity to participate in this very important review. Should you have any questions or concerns, please do not hesitate to contact the undersigned.

Yours sincerely,



David Haralds
Executive Director

cc: Kim Fournier, Manager, Law and Policy