



July 19, 2019

## **Submission to the Workers' Compensation System Review**

**Prepared for:**

Janet Patterson, Reviewer

### **Background**

This Employer submission is in response to the undertaking of a formal review of its workers' compensation system "to increase the confidence of workers and employers". We understand that the focus of the review is a "worker centered" review of the following aspects of the workers' compensation system:

1. The system's policies and practices that support injured workers' return to work;
2. WorkSafeBC's current policies and practices through a gender- and diversity-based analysis (commonly referred to as GBA+);
3. Modernization of WorkSafeBC's culture to reflect a worker-centric service delivery model;
4. The case management of injured workers; and
5. Any potential amendments to the Workers Compensation Act arising from this focused review.

The review will consider any steps that may be required to increase the confidence of workers and employers in the system, and whether there are any other improvements that could be made.

### **Employer Background**

Compass Group Canada is a large national foodservice and support services provider with over 2,000 locations and over 32,000 employees throughout Canada. Our core sectors include executive dining rooms and cafes, schools, universities, seniors' residences and hospitals as well as remote camps. As we are a national organization, we have experience with all workers' compensation schemes across all jurisdictions in Canada.

Noting our unique perspective as a large employer with familiarity with the various compensation regimes, we are in the position to offer our insight into the specific policies and practices, which we believe are successful and warrant in-depth

consideration for this review. For this review, we have chosen to focus on the policies and practices that support return and case management to work for injured workers.

### **Return to Work Support and Case Management**

Compass Group Canada supports the implementation of best practices and policies, which support injured workers' return to safe, suitable and sustainable work. Best practices should include the following key points: inclusion of all key stakeholders, early intervention and support, effective communication and effective case management.

We note the following WSBC current practices that we have observed, based on our experience, which we believe are barriers that are hindering effective return to work and disability management for many injured workers:

- 1) Delays in claims adjudication and delays in communication to key stakeholders, resulting in delays in the worker receiving early access to health care treatment, such as physiotherapy. Noting that strains and sprains represent the highest percentage of injury types for the majority of employers, delays in early access to treatment impact a large percentage of injured workers.

In our opinion, the current WSBC adjudication practice of ruling on "Section 6" cases (ASTD claims) results in significant decision-making delays. These cases often require setting up a "job site visit" with a WSBC Case Manager to review and observe the worker's job tasks in order to make a determination regarding the work-relatedness of the injury. WSBC is the only jurisdiction in Canada that employs this practice, and in our experience, it results in significant delays. Due to decision and treatment delays, the worker is negatively impacted.

This review may wish to consider reviewing the Physical Demands Analysis of the worker's job and/or detailed information provided by the worker and employer. The current "ASTD Questionnaire", which is used to determine eligibility for benefits should be reviewed, as it contains several irrelevant questions. If warranted, a WSBC Medical Review may be referred to assist in the decision-making for ASTD claims.

The review may also wish to consider implementing practices to support *immediate or early access* to physiotherapy for assessment and treatment within 24-48hrs. Delays in adjudication, in our opinion, are one of the significant barriers to workers gaining access to early treatment. WSBC and other boards across Canada are currently providing a Direct Access to Physiotherapy (DAP) program in conjunction with the return to work program, which falls under the costs of the claim by the board and not the employer. WSBC would be best suited to expand this program to all employers to facilitate early safe return to work, faster recovery and timely return to full duties while mitigating lost time. In the majority of cases, workers are capable of returning to modified duties with the employer and attending therapy in combination with a return to work plan rather than requiring a lengthy Occupational

Rehabilitation Program, which completely removes the worker from performing modified duties.

- 2) Written decisions provided by WSBC often do not include a thoroughly documented rationale in regards to the allowance or denial of the various entitlements to benefits, such as initial entitlement, allowance for wage loss benefits or allowance for any additional areas of injury as the claim progresses. This lack of detail may result in the Employer or Worker initiating an appeal, which may not have been necessary with effective and timely communication. The appeals process results in further delays, and may pose additional barriers for return to work, noting the adversarial nature of the appeals process.
- 3) WSBC practices currently exclude the Employer in important aspects of the return to work process. For example, there is currently no method endorsed by the WSBC system to provide Employers with functional abilities information – crucial information required for employers to provide suitable and sustainable modified duties to injured workers. The current “Physician’s Report” includes confidential medical diagnosis information, which is only available following an appeal and receipt of claim file disclosure.

In order for employers to obtain functional abilities information, the current process requires that employers request completion of a Treatment Memorandum or Functional Abilities form (created by the employer). Health Care providers charge workers directly for its completion. Although the workers are eventually reimbursed the cost, it poses a barrier for many workers.

There are examples of other worker’s compensation system regimes in Canada, which endorse providing functional abilities information to Employers. In our experience, these practices are effective in supporting return to work. This Review may wish to consider the implementation of a Physical Abilities Form (provided to the *Employer*) – a key stakeholder in the return to work process.

The following forms are currently in use in other jurisdictions:

- a) WSIB in Ontario: Form 8, Functional Abilities Form – required for completion by the initiating physician and the cost is covered under the cost of the claim;
  - b) The WorkSafe Nova Scotia Physical Abilities Report - Form E provides the employer with the details of the worker’s functional abilities.
- 4) The WSBC staff involved in return to work decision-making should be trained and competent in their roles. Training should include information pertaining to disability duration guidelines and how to identify which complex files should be referred to a WSBC Medical Consultant review.

They should have the necessary training and expertise to be able to make a determination whether a return to work plan or initial offer of modified duties is

safe and suitable for the worker. There should be direct contact with the worker's physician early in the process to clarify the objective rationale for their medical findings and opinion regarding whether the worker is fit for modified duties or not.

For example, this Employer's experience with return to work cases involving Nurse Case Management has been more effective in comparison to files managed by Case Managers. Relationship building with WSBC case management teams help to enhance this employer's timeliness regarding case management and RTW options. A dedicated WSBC "team" (ie. CM's RTW Nurses, EO's etc) assigned to larger employers would be of great benefit while helping build familiarity regarding RTW outcomes and ongoing disability management.

The Review may want to consider recommendations that improve the referral and timeliness of Return to Work Support Services (RTWSS) support; their role would include providing support for workers and employers to provide *early* intervention and to help facilitate safe and suitable work, which includes progression to regular duties. It is essential that the return to work plan is supported by all key stakeholders and that the intervention is early (within the first 2 weeks) of the claim.

In our experience, Return to Work Support Services (RTWSS) often needs to be specifically requested by the Employer. However, there have been many cases where the case managers have referred the file to RTWSS before the employer requests it. Timely referral helps to facilitate a timely and progressive return to full duties. This referral by WSBC case managers to RTWSS would not have been possible in such a timely fashion if not for the already present relationship, familiarity and "team" development the employer and WSBC already had in place. Thus, WSBC should adopt and create an assigned "team" to large employers.

- 5) The claim decision-making goals should follow set criteria and expected timelines as the claim progresses. The process for return to work should include ongoing communication (verbal and written), to ensure all parties understand the expectations and objectives of the plan. Any barriers regarding the plan should be identified and addressed early in the process.

In our experience, there is often a lack of communication and there are delays in communication from WSBC decision-makers in regards to the plan progress, case plan, barriers and changes to claim entitlement and so on.

For longer duration complex claims where the worker remains off work (greater than 4 weeks), there is often a complete lack of communication (verbal or written) provided to the employer. In particular, if the claim is being managed by a Case Manager instead of a Nurse Case Manager, there is often a lack of ongoing case management. These delays may result in the worker's condition becoming chronic, or psychological conditions may arise, which complicate and delay the return to work process.

The Review should consider implementing practices to ensure that WSBC decision-makers provide regular on-going communication outlining the status and expectations throughout the various key stages of the claim. Decision-makers should be accountable (audited) to ensure that the claim decision is provided to the employer and worker in a timely manner. The claim should be managed appropriately throughout all phases. Further, expectations should include customer-service requirements to reply to phone calls and communication within a standard timeframe (1 – 2 days).

- 6) We submit that workers' wage replacement benefit costs (90% of net earnings) should remain unchanged. This percentage of benefits is currently consistent with 5 other Canadian jurisdictions and is set at a higher percentage in comparison to 5 other jurisdictions. Any proposed increase to this amount would significantly hinder support for return to work.

### **Duty to Accommodate**

The Employer submits that the duty to accommodate concept should continue to fall within the human rights regime.

Due to the complex nature of the disputes that arise from the duty to accommodate legislation regarding whether "undue hardship" has been met, it may result in an overlap of these appeals systems and confusion over which appeals system has the jurisdiction to decide on the dispute.

The human rights regime has developed the specialization to adjudicate disputes, which is why the accommodation duty should remain with human rights.

### **Summary**

Thank you for the opportunity to provide our feedback regarding the review of the Workers' Compensation System.

Should you have any further questions regarding this submission, I may be reached at 1-800-507-9394 X3266.

Regards,



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