



# HEALTH & SAFETY REPORT CARD

August, 2019

The Manitoba Federation of Labour (MFL) is the province's central labour body, representing nearly 40 affiliated unions and more than 110,000 unionized workers from the public sector, private sector and the building trades. Workplace health and safety is a key priority for the MFL and our affiliated unions.

The MFL conducts health and safety research, we provide health and safety education and training to our members, and we lobby and advocate for stronger laws, stricter enforcement and greater investment in prevention to keep all workers safe and healthy.

This Report Card is part of our overall efforts to raise awareness about the importance of workplace health and safety and encourage government to give health and safety the priority and focus it deserves.

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# Introduction

Every worker has the right to a safe and healthy workplace, and every family has the right to expect that their loved ones will return home safely at the end of every work day.

Workplace injuries and illnesses don't have to happen – they are preventable. With the right laws, enforcement strategies and prevention efforts, we can ensure that all workers stay safe and healthy on the job.

And that's why it's so important to have a government that's truly committed to ensuring safe and healthy workplaces for all workers. Good workplace health and safety programs don't happen by accident – they need to be built and sustained.

Employers have the legal duty to ensure safe and healthy workplaces. But we know that the laws that government passes, the policies they implement and the investments they make can influence workplace health and safety culture and results.

And while many workplace health and safety improvements have been won by the labour movement over the course of many decades of fighting for worker safety, the fact that Manitoba still experiences some 28,000 reported workplace injuries and 25 fatalities<sup>1</sup> from work annually is a sobering reminder of the need to remain vigilant.

This Report Card is part of the MFL's overall efforts to raise awareness about the importance of workplace health and safety and encourage government to give workplace health and safety the priority and focus it deserves. It evaluates the Pallister government's overall efforts on workplace health and safety against recommendations made by Labour to keep workers safe and healthy on the job, and ensure proper care and rehabilitation for workers who are hurt, so they can stay healthy and safely return to work. Specifically, we will examine:

1. Manitoba's workplace health and safety legislation and regulations;
2. Enforcement practices;
3. Prevention efforts; and
4. The workers compensation system

**“Employers have the legal duty to ensure safe and healthy workplaces. But we know that the laws that government passes, the policies they implement and the investments they make can influence workplace health and safety culture and results.”**

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<sup>1</sup> It's important to keep in mind that these statistics reflect only those injuries and fatalities that are reported to the WCB and are, therefore, under-estimations. Injuries are under-reported due to claim suppression that is inherent in the WCB's current rate model, and fatalities are under-reported due to complications with identifying occupational disease deaths.

# 1. Workplace Health and Safety Laws: Grade: C -

## The Pallister government is weakening protections for workers

Legislation and Regulations provide the overarching framework for workplace health and safety, enshrining worker rights and defining employer responsibilities.

Over the course of many years, and with active engagement from both labour and employers, Manitoba's health and safety laws have been strengthened to become some of the best in the country.

Some improvements made prior to the Pallister government included new protections against workplace bullying and harassment, extending joint worker-management health & safety committees to more workplaces, and enshrining workers' health and safety rights in law, including the right to refuse unsafe work.

Fortunately, in their three years in office, the Pallister government has not made sweeping changes to Manitoba's health and safety laws. As a result, Manitoba's *Workplace Safety and Health Act* and Regulations remain relatively strong and effective.



### IMPROVEMENTS MADE TO WORKPLACE HEALTH AND SAFETY LAW UNDER THE FORMER NDP GOVERNMENT

- New administrative fines established for violations of the *Act*.
- Requirement for health and safety programs extended to smaller workplaces.
- New protections for pregnant and nursing workers.
- New measures to address violence in the workplace.
- Strengthened protections for high-risk hazardous work environments.
- Higher fines established for violations of the *Act*.
- New workplace harassment and bullying protections for workers.
- Amendments to strengthen worker participation in health and safety decision-making.
- Expansion of the requirement for worker health and safety representatives in more workplaces.
- Implementation of tougher penalties and sanctions on employers who violate the law.
- Creation of the Chief Prevention Officer.
- SAFE Work Manitoba created as a new, dedicated prevention arm.
- Amendments to *The Highway Traffic Act* to better protect road workers in construction sites.
- Workers' health and safety rights enshrined in law, including the right to refuse unsafe work.
- Stiffer rules to address discriminatory/retaliatory actions by employers.

Despite this fact, we have lowered the government's grade in this area for two main reasons. Firstly, the changes the government has made – though not numerous – have been almost exclusively negative, weakening protections for workers. Secondly, after directing that a comprehensive review of *The Workplace Safety & Health Act* be undertaken, and inviting stakeholder input into the process of updating Health and Safety laws, the Pallister Government has failed to act in response to calls to address important priorities.

Overall, there has been a clear and very disappointing shift in focus under the Pallister government to minimize the importance of keeping workers safe and healthy.

### Changes Made to Weaken Protections:

- The Pallister government **lowered the standards for hearing testing on the job<sup>2</sup>**, even though hearing loss is one of the most common workplace injuries. Their changes will delay baseline testing by six months and reduce testing frequency after that, increasing the potential for worker exposure to excessive noise that can cause hearing loss.
- They **eliminated the Minister's Advisory Council on Workplace Safety & Health**, a long-standing body of volunteers from labour, employers and technical experts, which previously served to review and build consensus for legislative and regulatory updates.
- They **ignored the consensus advice from labour and business to set the minimum working age at 14**, choosing instead to set it at 13, meaning kids can get permits to work in Manitoba a full-year younger than kids in Ontario and Saskatchewan can.
- They introduced Bill 12, which would give **heavy-handed powers to government to dismiss workers' health and safety appeals** without proper due process or a fair hearing at the Manitoba Labour Board.
- They continue to muse about **watering down Manitoba's standards** for protecting workers from harmful chemicals by moving away from automatic adoption of acceptable exposure limits established by the American Conference of Governmental Industrial Hygienists to protect workers from known hazards.
- They've also introduced an **arbitrary "2 for 1" rule that requires government to eliminate two protections every time a new one is introduced**. This means that as health and safety issues continue to evolve, the only way to achieve new protections will be to sacrifice others, even if they're still very much needed to keep workers safe.

It should be acknowledged that the one exception to the Pallister government's weakening of health and safety protections comes from their Bill 12 provision that, if passed, would double the maximum amount for penalties and offences. However, we feel highly skeptical toward this proposal because the government has consistently declined to apply the maximum penalties at their current levels, so we have no reason to believe they are committed to applying new, higher maximums<sup>3</sup>. We hope to be proven wrong.

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<sup>2</sup> In weakening hearing protections, the Pallister government cited a desire to be the first to "harmonize" with other jurisdictions. However, no other jurisdictions have followed in making these changes. The protections that government replaced had followed the latest Canadian Standards Association (CSA) standard for hearing protection. The Pallister government's new, weaker rules are based on an old 2010 CSA Standard that has been formally withdrawn by the CSA and replaced with more a modern standard. The Pallister government's decision to weaken from a current CSA standard, to an outdated one suggests a desire to "race to the bottom."

<sup>3</sup> The current maximum fine is \$187,000. In the last four years this government's highest fine upon conviction has been \$124,000 (December 17th, 2018)

## Failure to Address Calls for Action:

In 2017, the Pallister government directed that a comprehensive review of *The Workplace Safety and Health Act* be undertaken, but government has taken no substantive action in response to the recommendations they received, including:

- The MFL has been calling on government to follow the lead of Saskatchewan and Canada and **implement a comprehensive registry of buildings containing asbestos**, the number one occupational killer of workers in Canada. We're also calling for the development of mandatory training standards for workers doing the very dangerous work of asbestos remediation and removal – shockingly, there are currently NO such standards, resulting in widely varying degrees of training and safety within this dangerous industry. In discussions with government about this serious health and safety hazard, we have been told repeatedly that any new asbestos protections would trigger the government's arbitrary new "2 for 1" rule, requiring elimination of existing protections.
- As our understanding of psychological health and of workplace triggers has grown immensely in recent years, it has become clear that greater attention needs to be placed on workers' psychological well-being. The MFL has been calling for amendments to provincial legislation to **strengthen protections related to psychological health**. There are presently half a million Canadian workers off the job as a result of psychological injuries – urgent action is needed to address this crisis.
- Engineered labour standards (ELS's) are becoming more common in many different economic sectors, from meat processing to health care. Under ELS's, workers are being forced to complete tasks in unrealistically short timeframes (measured in minutes and even seconds) that do not allow for safe work practices<sup>4</sup>, resulting in high rates of worker injury. The MFL has been calling for a **review of ELS's and the development of regulatory protections to ensure tasks can be performed safely**.
- **Expanding training for members of workplace health and safety committees**. Whether it's adapting to changes in how work is done, ensuring proper investigations of health and safety issues, or staying up to date on new prevention strategies, it's essential that all committee members – worker and management members – receive regular training to help steer health and safety in their workplaces.

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<sup>4</sup> Efficiency standards are not safety standards. For example, in warehousing, workers are required to bend over and lift a 50 pound bag of onions from the ground, and then transfer it over to a pallet in just three seconds (and sometime in just two seconds). This time standard is fundamentally inconsistent with safe lifting techniques, which workers are often taught, but then prevented from using by the ELS. Workers who chose to lift safely cannot make the time standard and then face discipline, including, sometimes, termination.

## 2. Enforcement **Grade: D**



***The Pallister Government has cut resources from enforcement and reduced the number of workplace inspections***

Strong health and safety laws can only be effective with good education and stringent enforcement. Strong enforcement plays three vitally important roles in our health and safety system:

1. Supporting prevention by acting as a deterrent to breaking the rules by employers.
2. Identifying and putting a stop to dangerous health and safety practices that put workers in harm's way.
3. Holding to account those employers who act irresponsibly in regards to the health and safety of their workers with fines, penalties and convictions.

All of this important work requires dedicated resources to support a consistent and inclusive approach to enforcement. Unfortunately, the Pallister government has cut the budget for enforcement, resulting in fewer health and safety officers on the job.

- **Early in their mandate, the Pallister government slashed the budget for Manitoba Workplace Safety and Health**, the Branch charged with enforcement, by **\$800,000**.
- **The number of workplace inspections** carried out over the last three years has averaged 5,000 which is **down 50% over the three years prior**. The Branch informs that some of this reduction has resulted from a more targeted approach focussing on higher risk workplaces, but little supporting information has been made available and we are concerned that such a significant reduction is putting workers at greater risk.



Source: Workplace Safety and Health –quarterly report Q1 2019/20

- Fifteen years after the enactment of the Westray law<sup>5</sup>, which amended the Criminal Code of Canada to allow for the criminal prosecution of negligent employers who are guilty of causing worker fatalities, there have still been **no Westray prosecutions levied in Manitoba**. While we acknowledge the 2011 establishment of a dedicated “Director of Investigations” position with significant experience, we are concerned that a lack of resources has meant that investigations have been delayed and no charges have been brought forward.

### 3. Prevention **Grade: B**

#### *Two steps forward, one step back*

Preventing workplace injuries and illnesses from occurring in the first place is the number one goal of the work we do collectively to support workplace health and safety. The importance of prevention cannot be overstated – in keeping workers safe and healthy, and preventing needless tragedies and hardship to families, and colleagues.



Over the last number of years, Manitoba has made significant progress in its workplace injury and illness prevention strategy. Manitoba’s ground-breaking 2013 five-year prevention plan established the goal of “making Manitoba a nationally recognized health and safety leader”, and set a course for labour and employers to work together with government in developing a more focused and effective prevention system, anchored by a new dedicated prevention agency, SAFE Work Manitoba, the WCB’s new prevention arm.

In evaluating the Pallister government’s performance on prevention since 2016, it must be acknowledged that Manitoba’s prevention system has continued to develop positively in a number of respects. However, there have also been some very concerning developments as of late which have slowed progress, and make us worry we may be headed for a dead-end on prevention or, worse still, a U-turn.

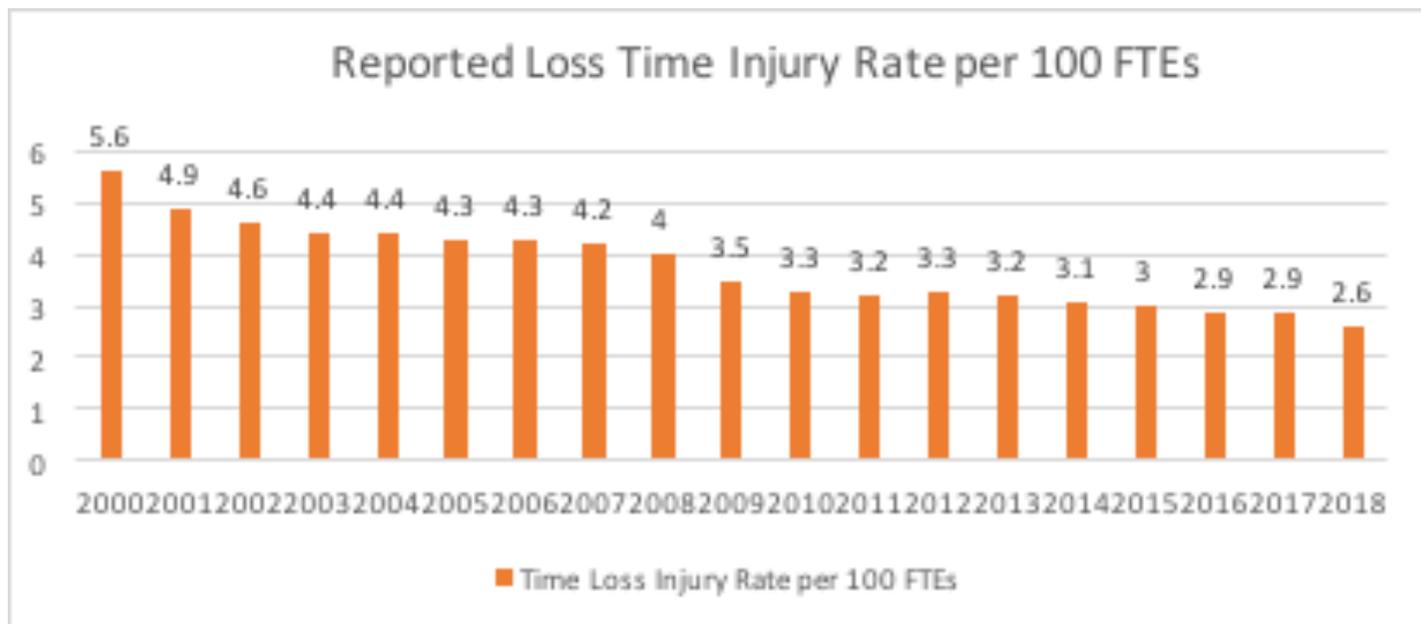
#### **Steps Forward:**

- Formally established in 2015, **SAFE Work Manitoba** (SWMB) has developed into a strong and mature organization dedicated to injury and illness prevention. Its core activities include:
  - Public awareness and education campaigns on the importance of prevention;
  - Health and safety strategies and training workshops, as well as worker and employers prevention resources; and
  - Outreach to labour, employers and industry-based safety associations through stakeholder advisory committees.

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<sup>5</sup> The Westray law was passed in response to the killing of 26 miners at the Westray mine in Nova Scotia (1992), which a public inquiry found to be caused by “a complex mosaic of actions, omissions, mistakes, incompetence, apathy, cynicism, stupidity and neglect.”

- In response to the Petrie Report (2013), SWMB has led the development of a new certification system, called **SAFE Work Certified**, to independently audit and accredit quality workplace health and safety prevention programs. In addition, the WCB has rolled-out a new companion “prevention incentive rebate” which provides a financial reward to workplaces that achieve SAFE Work Certification. Labour strongly prefers this kind of approach – one that rewards investments in good health and safety prevention programs – over the WCB’s experience rating model, which offers employers lower premiums for lower rates of reported injury/illness claims, thereby incenting claim suppression.
- Young and newcomer workers are especially vulnerable to workplace injuries, and labour has consistently maintained that dedicated strategies are required to protect these workers. SWMB has developed a **Young Worker Injury Prevention Strategy**, which prioritizes presentations to students (future workers) by Safe Workers of Tomorrow, as well as digital media campaigns (Worked Up) and virtual reality resources (Level Up) to reach more young workers. They have also prioritized the development of many **prevention resources available in 19 different languages** in order to reach more workers in their first languages.
- **Manitoba’s reported lost time injury rate has continued to decline slowly but steadily**, reaching 2.6 days per 100 FTEs in 2018. We caution, however, against putting too much weight on this statistic as we know that injuries are chronically under-reported due to claim suppression.



Source: Workers Compensation Board Annual Report, 2018

## Steps Back:

For many years, Manitoba's prevention efforts have been guided by the Minister responsible for Workplace Safety and Health presenting a five-year strategic plan. As noted above, Manitoba's last five-year plan, issued in 2013, laid out bold steps that have greatly strengthened our prevention system. Unfortunately, the current Minister has allowed Manitoba's last prevention plan to expire and has not yet replaced it with any commitment or roadmap of his own. As a result, the government's ongoing commitment to prevention is very unclear. We urge the Minister to immediately engage with stakeholders on the development of a new strategic plan to carry on the positive momentum that has been built on prevention.

The Pallister government's Bill 12 proposes to eliminate the important position of Chief Prevention Officer, which was established to be an independent watch dog to ensure continuous progress and accountability on prevention. This follows on the government's unwise decision to initially reduce the position to only part-time.

While labour is hopeful that the new SAFE Work Certified / WCB prevention rebate programs will provide a tangible results, we are disappointed that so far they are only being made available to employers in seven (7) sectors. We are concerned that high injury rate sectors, like health care, are not being provided with the same support framework for prevention.

## 4. Workers Compensation **Grade: D**

***Some progress being made, but there is more work to be done.  
Threats on the horizon.***



When workers are hurt on the job, the stakes can be extraordinarily high: their physical and psychological well-being can hang in the balance, their income and economic security may be put in jeopardy, and their families may be irreversibly hurt and burdened with impacts of an injury or illness.

It's imperative that our Workers Compensation system be readily accessible to support injured workers quickly, in a holistic way and help them to recover as soon as possible, so they can safely resume work and their lives outside of work.

Such is the expectation arising from the 'historic compromise' of workers compensation: workers relinquish their rights to sue an employer if they are hurt on the job, in exchange for no-fault, secure benefits for as long as they're needed, administered independently, and funded collectively by employers.

Overall, we find that while Manitoba's system has made some notable improvements, much more work remains to be done.

## WCB Governance:

Manitoba's Workers Compensation Board is governed by a tri-partite Board of Directors, consisting of representatives of Workers, Employers and the Public Interest. This model has worked well, encouraging the corporation's primary stakeholders to work together and build consensus on solutions. And unlike with other Crown Corporations<sup>7</sup> – notably Manitoba Hydro, Manitoba Public Insurance Corporation, and Manitoba Liquor and Lotteries – there have not been reports of blatant interference by the Pallister government into WCB governance.

## The Workers Compensation Act

The Pallister government has not made any changes to the *Workers Compensation Act*, despite a mandated comprehensive ten-year legislative review having been carried out in 2016-2017. We are concerned, however, that they have mused publicly about making a number of changes, which would be detrimental for injured workers, including:

- **Capping insurable earnings** so not all worker earnings would be insured and subject to replacement when a worker is off work due to injury – this would violate the principle that WCB income replacement should be based on a worker's earning capacity, not some arbitrary cap.
- **Setting-up an Employer Advocate Office** to support employers to reduce their claims costs – when reducing costs is set as the priority, rather than reducing injuries, the focus shifts to claim suppression, rather than injury prevention.
- **Lowering the WCB's funding ratio**, currently targeted to be 130% - we support the WCB's current target as a prudent level to ensure that injured workers are protected into the future and the system remains secure and stable.

The last major modernization of *The Workers Compensation Act* happened in 2005/2006, and included many positive changes, including:

- Strengthening prohibition against claim suppression;
- Ensuring a minimum level of wage loss replacement benefits for low-income workers at less than 100% of the Manitoba minimum wage;
- Removing the cap on insurable earnings;
- Maintaining the calculation of wage replacement benefits at 90% for the duration of the claim (eliminating the drop down to 80% after two years) ;
- Eliminating age-based reactions reductions to impairment awards;
- Expanding coverage to organizations using volunteers and work experience programs;
- Allowing benefit levels to be topped-up above 90% (up to 100%) from other sources, including provisions negotiated as part of collective agreements; and
- Strengthening the onus on workplaces to support injured workers to get back to work.

More recently, in 2015/16, the labour movement was able to press for an important amendment to the *Act* which established presumptive coverage of PTSD for all workers in Manitoba.

As part of the most recent *Act* review, labour had called for government to make legislative changes to address serious and long-standing problems with respect to the discriminatory treatment of certain kinds of work-related injuries / illnesses, including:

- **The *Act* currently discriminates against workers with mental health injuries<sup>8</sup> as compared to physical health injuries** – many work-based mental health injuries are not covered by the WCB, leaving workers with nowhere to turn when they experience these injuries from work. With mental health issues and injuries now representing the leading cause of disability in Canada<sup>9</sup>, and there being a growing body of science related to identifying workplace triggers to mental health injuries, there is an urgent need to act to ensure injured workers get the supports on this problem.
- **The *Act* also discriminates against occupational disease injuries relative to acute hazard injuries** – the WCB uses a much higher standard of causation<sup>10</sup> when assessing occupational disease claims, contributing to chronic under-reporting and a rejection rate of almost one half of all claims that are made. Proving that occupational diseases, such as mesothelioma from asbestos exposure, are in fact occupational in nature is already inherently difficult because there are often long latency periods between when workers are exposed and when they develop symptoms, and because workers may be exposed at multiple different worksites over the course of their career – the WCB should not make it even harder.

## Claims Processing Times

The MFL has long been advocating for the WCB to allocate sufficient resources to ensure that injured workers' claims can be processed quickly, so they can get the help they need to recover without unnecessary delay and the added stress that goes with it. We have advocated for a two week-standard for claims processing, and we are pleased to see the WCB making progress: in 2018, 72% of all payments made on claims were made within two weeks of reporting an injury compared to 65% in 2016<sup>11</sup>.

## Claim Suppression, Dangerous Return to Work Practices, Defying Doctors' Orders

Labour continues to have fundamental concerns with the persistence of **WCB claim suppression** – employers pressuring injured workers not to report their injuries to the WCB, in a fundamentally dishonest and dangerous effort to maintain low employer premiums. Independent reviews have confirmed what the MFL has been working to expose for many years: claim suppression is widespread and inherent to the system and far more needs to be done to combat it.

Claim suppression is inherently built into the structure of the WCB's rate model because of the way in which WCB directly ties employer premiums to the number and duration of injury claims that are filed. Rather than incenting a focus solely on preventing injuries, the WCB rate model incents a focus on reducing claims, through any means possible, including breaking the law and denying workers their legal right to obtain WCB supports when they're hurt on the job. The MFL has always maintained that the rate model should be changed to break the connection between employer premiums and worker claims to prevent any manipulation; instead, premiums should be tied to prevention programs.

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<sup>8</sup>The only types of mental health injuries covered by WCB are those caused by a chance event (e.g. an explosion), those stemming from a willful and intentional act of another person (e.g. harassment) or those arising from a traumatic event. Mental health injuries arising from chronic work-based mental stress are not compensable.

<sup>9</sup>Mental Health Commission of Canada.

<sup>10</sup>In cases where an occupational disease is found to be caused by both work and non-work factors, WCB requires that workers prove that work was the "dominant cause". Acute injuries are not required to meet this test to be compensable.

<sup>11</sup>According to data provided by the WCB.

The WCB rate model also causes **dangerous return to work practices** with an aim to reduce the cost of claims and keep employer premiums low. Workers are often pressured to come back prematurely and/or to ignore medical recommendations about how much and what kinds of work can be safely performed, and with what accommodation. The MFL continues to call for the WCB to play a strong interventionist role in ensuring that when workers return to work, they do so with a safe return to work plan that follows their doctor's orders, and that if employers start insisting on dangerous practices, the WCB be available to step in and insist that safety drive the return to work process.

Increasingly, however, we are hearing from workers that rather than being part of the solution to safe return to work, the WCB is actually part of the problem, **defying the orders that come from workers' own doctors**. While workers have the right to seek medical advice from health care providers of their choosing, it is also commonplace for the WCB to involve their own WCB medical advisors to review and re-assess an injured worker's injury or illness claim (sometime on the basis of only a "paper review" of the worker's file, without even an in-person medical examination). Workers are finding that the opinions of their doctors are being over-ruled or disregarded by WCB medical advisors, and workers are receiving new and conflicting medical orders from the WCB, leaving them confused and anxious about the best path forward to recovery and return to work. The MFL is continuing to call for a more transparent system to clearly explain:

Why are WCB medical advisors engaged to provide second opinions in the first place? What circumstances trigger their involvement?

- How do WCB medical advisors come to different conclusions than workers' own doctors? Under what circumstances does the WCB authorize its medical advisors to overrule a worker's own doctor?
- What steps are taken to reconcile conflicting medical opinions? How can workers be confident on the right path forward?

## **Worker WCB Services**

The Pallister government has significantly slashed resources to support workers needing assistance with accessing the WCB system, including workers filing appeals. Budget cuts to the Worker Advisor Office (based in Winnipeg) and the cancelling of funding for the Brandon District Worker Advocacy office present serious challenges to the accessibility of WCB claims and services. These services help injured workers navigate the WCB processes and paperwork, which can be cumbersome and overwhelming, and help to provide supports that workplaces either won't or can't provide.

The importance of these two organizations is supported in the 2018 Appeals Commission Annual Report<sup>12</sup> showing that there has been a 10% increase of successful appeals over the last three years, signaling that workers may not be getting all the benefits to which they are entitled, and that these organizations are sorely needed to keep fairness in our compensation process.

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<sup>12</sup> 2018 Appeal Commission and Medical Review Annual Report, page 13

## Conclusion Overall Grade: C -

Making sure all workers stay safe and healthy on the job is important. Safe and healthy workplaces don't happen by accident. They don't happen without ongoing commitment and effort.

Despite many improvements that we benefit from today, workplace health and safety is not something we can ever take for granted – as we have seen, protections can be weakened with the stroke of a pen.

This report card illustrates that since 2016 there has been a marked shift in focus toward de-prioritizing worker health and safety. The changes that have been made by the Pallister government have overwhelmingly been in the wrong direction and there are several indications that more will be in store if the government is re-elected. What's more, the Pallister government seems to have no interest in responding to new and emerging health and safety needs.

As we head toward a provincial election this September, we urge all parties to develop strong workplace health and safety platforms, because all workers deserve a safe and healthy workplace, and no family should have to worry about whether their loved one will make it home from work.

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