

Workers Compensation Act Review Template for Union Submissions



BACKGROUND

The labour movement has always fought for safe and healthy workplaces, and for fair treatment and compensation when a worker is hurt on the job. That's why we're encouraging all unions to participate in the provincial review of The Workers Compensation Act (The WCA).

The provincial government has established a Review Committee to undertake a comprehensive review of The WCA. The Review Committee has launched a 90-day online public consultation, which will end on February 15, 2017.

The Review Committee is accepting advice on any part of The WCA, but has been given a *Review Mandate* by the Minister of Growth, Enterprise and Trade that includes seven main issues/questions to be considered – these are highlighted in an online *Consultation Discussion Paper*. Some of the Minister's issues/questions have the potential to improve compensation for injured workers, but others would make the system less fair and reduce benefits for workers. That's why it's important that all unions weigh-in and make our voices heard.

Please help us ensure a fair and accessible compensation system to support all workers in need by *sending a written submission to Review Committee*. Let's show our support for keeping workers safe and healthy, and taking care of those who are hurt on the job.

USING THIS TEMPLATE

This is the first WCA review of its kind in ten years and some of the issues/questions set out in the Minister's *Mandate Letter* could have major implications for workers and their families. Workers who are injured or made sick on the job deserve to be treated fairly, and that's why this review matters.

This detailed, but plain-language template is well-researched and will help your union prepare a written submission that reflects the realities that union members and other injured workers have encountered when dealing with WCB claims. The template outlines areas of The WCA that labour wants to see changed to help keep workers safe and healthy at work, and support those who are hurt on the job. It also highlights our concerns about some of issues/questions set out in the Minister's Review Mandate.

There is no need to use this content verbatim. Making these points in your own words will ensure it comes across sincerely. The Review Committee is asking for submissions no greater than 10 pages in length.

TEMPLATE

Introduction

Start by providing a brief background on your union (e.g. number of workers represented, the industries/ sectors they work in, and some of the most common workplace hazards and injuries / illnesses they face on the job).

Then, you can get right into the issues and recommendations we want to see implemented. Below are some key points we're encouraging unions to make. They're organized according to the seven issues/ questions outlined in the Minister's *Mandate Letter*.

For more information on these and other topics, you can review the MFL's full submission, available at *mfl.ca*.

Be sure to include any other topics/recommendations that are important to your members – our suggestions are intended as a guide, and not meant to be prescriptive or exhaustive.

Question 1:

Can The WCA be amended to better reflect the system's foundation (Meredith) principles in a modern context?

This question provides an opportunity for unions to talk about the serious and persistent problem of claim suppression, and how this problem results from a rate model based on experience rating, which is at odds with the Meredith principles. Some key points:

The Meredith principles (no fault compensation, collective liability, guaranteed benefits, independent administration and exclusive jurisdiction) are the backbone of modern-day workers compensation. They underscore the 'historic compromise', whereby workers relinquish their rights to sue their employers if they're hurt or made sick at work, in exchange for guaranteed, no-fault, secure workers compensation benefits. It's essential that the Meredith principles be honoured and remain the foundation of The WCA. The WCB's current rate model (experience rating) - in which employers' premiums are based heavily on their individual claims history - violates the Meredith principles by creating a strong financial incentive for employers to suppress claims in order to keep their premium costs low, thereby compromising the right of injured workers to guaranteed, no-fault, secure benefits. Manitoba's serious claim suppression problem has been extensively documented by the MFL and by external reviews of the rate model,

Insert stories from your union or workplace about claim suppression – how employers have interfered or stood in the way of filing claims, or required workers to return from an injury prematurely or without the proper accommodations in place, and how workers have suffered as a result.

The best way to fix the current rate model and restore respect for the Meredith principles is to abolish experience rating altogether. The rate model should reward genuine investment in recognized prevention programs, and not reward employers for blocking and interfering with injured workers' claims.

We need ongoing public awareness campaigns about workers' rights to report any injuries free from pressure and harassment from employers.

We need better 'Return to Work' processes, which involve workers, employers and workers' doctors in developing and implementing safe Return to Work plans. And the WCB needs to be ready to intervene to enforce doctors' orders if they're not being respected by employers.

We also need stiffer penalties and much stronger enforcement around claim suppression to stop employers that choose to flaunt the law, including the creation of a public registry of guilty employers.

Question 2:

How can The WCA be amended to fulfill the Five-Year Plan for Workplace Injury and Illness Prevention and reinforce its prevention mandate?

This question provides an opportunity for unions to stress the importance of strengthening prevention efforts, and ensuring that 'safety certification' programs that recognize and reward employers are based on genuine prevention practices. Some key points:

We need ongoing promotion of workplace health and safety prevention through broad public awareness and marketing campaigns.

We need follow-through on the existing Minister's Five Year Workplace Injury and Illness Prevention Plan. The WCA should be updated to require future five year plans, which integrate prevention, enforcement and legislation/regulation.

The new 'SAFE Work Certified standard' and 'prevention incentive' initiatives should be finalized and rolled out, including a comprehensive evaluation component to assess their effectiveness (worker perspectives and experience with health & safety in the workplace should remain integral components of the 'certification', and employer incentives should be based on recognized health and safety programs, with no links to claims experience).

The new 'SAFE Work Certified standard' should be expanded into all sectors, with priority given to expansion into health care, where injury rates have remained persistently high, and a large proportion of the workforce are women (the program is currently available only in male dominated sectors).

The groundbreaking SAFE Workers of Tomorrow program should be resourced to expand their youth-focused workplace health and safety presentations and outreach to *all* high school students in the province.

Question 3:

What do you see as the main challenges of compensating for injuries to mental health in the workplace, and how do you think they should be addressed?

This question provides an opportunity for unions to call for mental health injuries be treated on par with physical health injuries, and be fully compensable. Some key points:

Throughout Canada there is growing concern about the detrimental effects of mental health and disability on our modern society. It is estimated that 1 in 5 Canadians will experience some form of mental illness over the course of their lives. On any given week approximately 500,000 Canadians will stay home from work due to a mental illness. Mental illness is already the leading cause of disability nationwide.

The WCA currently treats physical and psychological injuries / illness very differently, and that's not right. Physical and psychological injuries and illness should be treated equally, and be fully compensable.

For example, occupational disease stemming from workplace stress is explicitly excluded from coverage. We recommend that The WCA recognize psychological disorders related to workplace stress, and provide a clear definition of what constitute workplace stressors (e.g. bullying/harassment/conflict).

We further propose that the WCB recognize the 2013 *National Standard of Canada for Psychological Health and Safety in the Workplace* as a benchmark for measuring and assessing psychological injury and illness claims. The National Standard describes thirteen workplace psychosocial factors that employers have a high degree of control over.

Question 4:

Are there changes required to WCB's funding model? What model best protects against risk while also providing value for employers and retains benefits to workers?

This question provides an opportunity for unions to oppose an active lobby by employers, who are asking for the WCB to lower its 'funded position' by lowering employer assessment rates. This would compromise the Board's financial health and put injured workers at risk. Some key points:

The WCB's current funding ratio target is 130%, a reserve amount above what is needed to fully fund the workers compensation system to protect against risk. Recent WCB surpluses have pushed the actual funding ratio above target, to approximately 143%. This has resulted in some employers calling for reserves to be drained to subsidize reduced assessment rates.

We don't believe this would be prudent. The WCB has already been gradually reducing employer assessment rates, and further large changes to the rate model are planned for the coming years, along with the introduction of a new prevention incentive rebate program. With these changes, the WCB is already forecasting for its funding ratio to return to 130% over the new few years.

Recklessly draining reserves to subsidize dramatic reductions in assessment rates (rates which are already second lowest in the country), would expose the WCB to undue market fluctuation risk and risk of unfunded liabilities. The WCB's current target should be maintained, and no dramatic adjustments should be made to assessment rates.

Question 5:

Should Manitoba adopt a cap on the maximum insurable earnings within the workers compensation system?

This question provides an opportunity for unions to oppose the re-instatement of a cap on maximum insurable earnings. Employers have been pressuring the Minister to reinstate a cap, which would put an arbitrary ceiling on wage loss benefits paid to workers, thereby reducing their compensation. Some key points:

No, there should not be a cap on insurable earnings. Fairness dictates that all worker earnings should be insured / compensable. Wage loss benefits should reflect earning potential, not an arbitrary cap on this potential.

The cap on insurable earnings that existed prior to 2006 was eliminated based on a consensus recommendation of the last WCA Review, and with the unanimous support of all members of the legislature.

There's no justification for re-instating a discriminatory restriction that discourages higher earning workers from filing WCB claims when they're hurt or made sick at work.

Question 6:

The WCA currently provides for a Worker Advisor Office to assist workers with WCB matters. Should The WCA also provide for an Employers Advisor Office (EAO)?

This question provides an opportunity for unions to oppose the establishment of an EAO, which many employers are currently lobbying for. While in opposition, Pallister's PCs introduced a bill to establish an EAO, which fortunately did not pass. Now, the Minister seems to be interested in the idea again. Labour has always been concerned that such an office would increase claim suppression by resourcing employers to file more frivolous appeals of workers' injury claims. Some key points:

No, an EAO should not be established. Doing so would contribute significantly to an adversarial process, in what's supposed to be a non-adversarial, inquiry model system.

It would also augment claim suppression by employers, especially in the form of filing frivolous appeals of legitimate worker claims with the aim of minimizing employer premiums.

Employers should not be subsidized to file appeals. Appeals are only being filed by employers because of the perverse incentives inherent in experience rating, which tie an individual employer's premiums to the claims record of his or her own individual employees. This is a practice that should be shut-down, not encouraged and resourced to take place in a more organized fashion.

Workers – because they have far less power in the workplace than employers, and far fewer resources to navigate the complexities of the WCB system – are the ones that need the support of a Worker Advisor Office (WAO). Manitoba's WAO should be better resourced (and fully staffed) to assist workers obtain the benefits they're entitled to – benefits which they are supposed to be guaranteed in exchange for giving up the right to sue employers when they're hurt at work.

Question 7:

What legislative changes do you think are required to ensure that the WCB remains a modern, responsive administrative tribunal?

This question provides a broad opportunity for unions to make recommendations that will strengthen protections and supports for injured workers and their families. Please use this section to raise issues of importance to your members. This template uses Question 7 as a bit of a 'catch all' section for a number of different labour priorities. Some ideas:

Make WCB coverage mandatory for all sectors – workers compensation was designed to support all workers who are hurt or made sick at work, but Manitoba's coverage rate of 75% is third lowest in the country. Expanding coverage will not only make the system fairer for workers, but it will also add resources to the system, improve efficiency and likely lower premiums for employers.

Establish a 'Medical Advisory Committee' – In order to better reflect the current wisdom and practice of the wider medical community, we recommend that a 'Medical Advisory Committee' be established to review and advise the Board on all medical matters relevant to the administration of The WCA, including adoption of guidelines and policies, to ensure they are consistent with current best practise and the generally held opinion of the medical profession. As a matter of priority, such a Committee should be tasked with examining the WCB's approach to dealing with concussion injuries, which is out of synch with the wider medical community.

Eliminate 'dominant cause' test – It is a well-established fact that occupational diseases are underreported by workers. This is a result of the many challenges workers face in proving that their disease is in fact workplace-based, like long latency periods (workers may not experience symptoms for decades after exposure) and complications related to workers being exposed at potentially many different workplaces over the course of a career. In order to qualify for WCB benefits, workers inflicted with an occupational disease must prove that workplace exposure was the 'dominant cause'. This very high bar is resulting in many workers with legitimate occupational diseases falling through the cracks and going without compensation. 'Dominant cause' should be removed as the burden of proof, in favour of a 'balance of probabilities' test. An Occupational Disease Panel should also be established to research and set out and regularly update a schedule of occupational diseases.

Mandate the continuation of workplace benefits – Through collective bargaining, many workers have achieved additional health insurance benefits through work, as part of overall compensation (e.g. dental or drug coverage). However, these benefits may not be available to workers when they're receiving WCB benefits and are most in need. The WCA should be amended to require employers to continue their premium contributions for workplace health benefit programs while a worker is receiving WCB benefits.

Recognizing education and training in future earning potential – Wage loss benefits are normally paid to an injured worker based on the earning capacity lost as a result of his or her injury. However, The WCA also permits the WCB to increase the wage loss benefit rate in consideration of probable future earning capacity in two instances: (1) where a worker is registered in an apprenticeship program, or (2) when a worker is injured at such a young age that his or her current earnings don't adequately reflect future earning potential (this age is presently set by policy at 28 years of age). We believe this places undue restriction on the WCB's ability to recognize exceptional but legitimate circumstances when a worker's pre-accident average earnings do not fairly represent future earning capacity. The WCA should be amended to allow the WCB, in the case of a worker suffering an injury while in any recognized education or training program, to increase the compensation payable to fairly represent what the worker would have otherwise been entitled to had he or she completed their program.