

Who's enforcing the rules that keep us safe at work?

The 2012 Report Card on Workplace Safety and Health from Working Families Manitoba

Manitoba's working families expect their loved ones to return home from work each day, healthy and safe. Unfortunately, thousands of Manitobans continue to be injured and have their health compromised at work. Last year, there were 31,707 reported workplace injuries and 18 Manitobans died on the job.

Behind these statistics are real live working families. That's why the Working Families Manitoba campaign is releasing annual report cards on workplace health and safety.

This year's report card grades the provincial government on the job it's doing to ensure safe and health workplaces for Manitobans. The report card evaluates the job the province is doing in 4 areas of workplace safety and health:

- (1) Enforcing the Rules
- (2) Tough Health and Safety Rules
- (3) Injury Prevention
- (4) Workers Compensation

1. Enforcing the Rules

Over the past decade, Manitoba has modernized and strengthened the Workplace Safety and Health Act and regulations. Enforcement was enhanced with the addition of more workplace safety inspectors and the increased numbers of workplace inspections.

Fines and Administrative Penalties Not Imposed

However in 2011-12, Manitoba's enforcement efforts stumbled badly. Data obtained through Freedom of Information shows:

- Over the entire 2011-12 year, the Province imposed zero financial penalties on employers for failing to comply with workplace safety improvement orders. It failed to impose any financial penalties fines even though 965 employers refused to comply with safety improvement orders and should have been penalized.

This complete unwillingness to enforce the rules with financial penalties comes just 5 years after the Auditor General criticized the government for failing to impose financial penalties on hundreds of employers that had failed to comply with safety improvement orders. The Auditor said imposing these penalties "would encourage corrective actions to be taken by employers

who repeatedly fail to comply with Improvement Orders” (2007 *Audit of Workplace Safety and Health*).

Since the government gave itself the authority to impose financial penalties for non-compliance in 2003, just 33 penalties have been imposed on 16 employers even though 5,193 warning letters were sent to employers that had failed to obey safety improvement orders and should have been penalized. That means fewer than 1% of employers that flouted safety rules have been penalized since financial penalties were passed into law in 9 years ago.

Manitoba employers already get a free pass when a safety violation is identified by an inspector. The law requires the government to issue a safety improvement order first, giving the employer an opportunity to fix the safety problem to avoid financial penalty. After being given that second chance, employers that fail to comply can then be penalized. Surely employers that put the safety of workers at risk after having been warned should face financial penalties. That’s what the law says, and workers expect the law to be enforced.

- Over the entire 2011-12 year, the Province imposed just one fine on an employer for failing to live up to its legal responsibilities under the Workplace Safety and Health Act. This was a significant drop from the average of 14 fines imposed per year over the past decade.

This new information provided by the government itself on its enforcement record is unacceptable. Working families deserve better. We will be monitoring penalties and fines closely in 2012.

Workplace Inspections Increase

If there was a bright spot in the 2011 enforcement effort, it was the fact that the number of workplace safety inspections increased by 12%, with 1,433 more inspections than in 2010. This is a notable improvement, but even with that improvement 2/3 of Manitoba’s workplaces were not visited by a safety inspector last year. Further improvement will be difficult without hiring additional workplace safety and health inspectors. In 2011-12, the number of inspectors remained relatively stable at 73.3 Full Time Equivalents, down slightly from 74.5 the previous year.

Enforcing the Westray Law

More than eight years ago Parliament unanimously passed the “Westray law.” Under the Westray law, employers responsible for workplace deaths can face criminal charges, and if convicted, can be sentenced to time in prison. Unfortunately, that law has been largely unenforced. No charges have been laid in Manitoba.

The good news is that in May 2012, the Ministers of Labour and Justice announced steps to ensure the Westray law is enforced:

- Assigning the newly hired the Workplace Safety and Health Director of Investigations to bring police and the crown prosecutor dedicated to workplace safety and health together to determine what needs to be done to ensure every workplace fatality is reviewed/investigated through the lens of the Westray law.

- Reviewing workplace safety and health investigation and prosecution policies to ensure every fatality is reviewed/investigated through the lens of the Westray law.

We commend the Province for showing leadership on this issue and committing to facilitating the discussions and reviews needed to ensure the Westray law is enforced. We will monitor progress in this area closely.

Enforcement Grade:

D

Comments:

Only a significant increase in inspections and positive steps on Westray law enforcement saved the government from a failing grade on enforcement in 2011-12.

2. Tough Safety Rules

New Safety Regulations

While enforcement is a problem, Manitoba continues to have relatively strong laws and regulations to protect workplace safety and health. These safety rules were enhanced in 2011-12 in several ways:

- New regulations on workplace violence were enacted in August 2011, requiring employers in sectors with higher risk profiles (egs. health care, buses and taxis, police and corrections, licensed premises, etc) to take a series of additional steps to eliminate or control the risk of violence to workers.
- Safety regulations for mining were strengthened in key areas:
 - stronger limitations on tethering workers to remote-controlled equipment,
 - stricter safety procedures when workers use water or other potentially dangerous substances near molten material,
 - specific instruction for inspection and maintenance of raise climbers and the location of underground refuge stations,
 - stronger requirements to ventilate vehicle emissions from mobile equipment underground, and
 - updated technical standards for roll-over and falling-object protection on vehicles.

These were welcome improvements to Manitoba's workplace safety and health rules, and we give credit to the government for involving labour representatives in their development.

Rules Grade:

A-

Comments:

2011 safety rule changes were notable improvements and were developed with meaningful input from workers.

3. Injury Prevention

SAFE Work

Over the past year, support for the *SAFE Work* public information campaign was increased by 15% to \$1.5 million. This represents a significant and increasing investment in promoting a culture of workplace health and safety in Manitoba.

We commend this ongoing campaign, but continue to believe that the content of these communications could be improved. Too often, *SAFE Work* ads follow a “behaviour based safety” model that puts the onus of responsibility on the worker for ensuring a safe workplace. While we acknowledge a role for individual responsibility in an effective workplace health and safety system, the reality is that Manitoba’s legal framework for workplace health and safety places primary responsibility on employers to “ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his workers” (Section 4(1) of the Workplace Safety and Health Act).

Every *SAFE Work* ad plays a part in educating the public about Manitoba’s workplace safety and health system. We urge *SAFE Work* to ensure ad content reflects the primary responsibility of employers in ensuring a safe and healthy workplace.

Chief Prevention Officer

On April 27, the Minister of Labour announced the establishment of a new Chief Prevention Officer (CPO) position to provide leadership and coordination in workplace injury prevention activities. We welcome this initiative in principle and hope the Chief Prevention Officer will:

- have legislatively protected autonomy to conduct reviews and issue public reports/recommendations at his/her initiative; and
- have an adequately resourced office to ensure the he/she can properly discharge his/her responsibilities.

Prevention Grade:

B+

Comments:

The Province showed a great deal of effort in the prevention area. With some tweaks to the ad campaigns and good follow-through on the Chief Prevention Officer announcement, this grade could easily become an A by next year.

4. Workers’ Compensation

Claims Suppression

The workers compensation system is increasingly being undermined by claims suppression, the practice where employers discourage or prevent the reporting of injuries to the Workers Compensation Board (WCB). Although claims suppression is illegal under the WCB Act, the Experience Rating premium setting model creates a powerful incentive for employers to avoid reporting injuries. After all, employer premiums increase with the cost and time lost to injuries in their workplaces.

Since the Manitoba Federation of Labour documented widespread claims suppression in its 2010 report, “An Investigation into the Incidence of WCB Claims Suppression,” worker advocates who specialize in

WCB and workplace health and safety continue to report the increasing incidence of claims suppression in Manitoba workplaces. When injuries are not reported:

- injured workers are deprived of compensation and rehabilitation support;
- opportunities are missed to identify and address hazardous workplaces; and
- reported injury rates are becoming increasingly inaccurate. Although the WCB reports a 40% decrease in the time loss injury rate over the past decade, Manitoba workers find it very difficult to believe that their workplaces have become 40% safer. It is more likely that increasing awareness of the financial incentives created by Experience Rating is inducing more and more claims suppression.

Manitoba's WCB took a very small step forward on this issue in 2011 with the launch of an ad campaign promoting awareness of the importance of and legal responsibility to report workplace injuries. However, no amount of public awareness can overcome the tremendous financial incentives to suppress claims under the Experience Rating system. It is time, after more than a decade with Experience Rating, to conduct a thorough, independent and public review of the system, to evaluate its effectiveness in achieving its stated goal - promoting safer workplaces. Unfortunately, no such review was announced in 2011-12.

Brandon WCB Office

With the opening of a Brandon office in 2011, the WCB made a significant improvement in service to injured workers from Western Manitoba. We commend the WCB for listening to injured workers in this area of the province.

Workers Compensation Grade:

B-

Comments:

Until the Experience Rating system is reviewed and reformed, it will be difficult to get this grade up much further. Only the positive Brandon office opening raised this grade into the B range.

OVERALL GRADE:

B-

Comment:

Unfortunately, some very positive work in making workplaces safer was undermined this year by serious problems on the enforcement side. Manitoba continues to have strong rules to keep workplaces safe and healthy; it's too bad they are not being adequately enforced.