

2022 Review of the Manitoba Workplace Safety and Health Act

November, 2022



PREAMBLE

Why is it Important for Manitoba's Unions to Participate in the Review of the Workplace Safety & Health Act?

Workplace health and safety is core to union work. Unions have always fought for the right of every worker to be safe and healthy on the job. We know that workplace injuries and illnesses are preventable with the right investments in prevention, tough laws, and strong enforcement of the rules.

That's why the MFL is asking all unions to participate in the government's current review of the *Workplace Safety and Health Act* (the WSH Act). This is our chance, as a labour movement, to strengthen the WSH Act by putting forward our recommendations and advice for keeping working people safe and healthy on the job.

In order for unions to have their voices heard, they must make written submissions to the government by **November 30, 2022** via email to WSHActReview@gov.mb.ca.

On the following two pages, you will find a brief Summary of the MFL's recommendations for improving the WSH Act, followed by our full submission, which includes a more detailed explanation of each recommendation.

We're asking all unions to prepare a submission to government so we can be sure that labour voices are heard loud and clear on workplace health and safety.

Unions are welcome to refer to the MFL's recommendations and/or add their own, based on the specific needs of their members.

While a lot of progress has been made on health and safety, far too many Manitoba workers continue to deal with unsafe and unhealthy working conditions:

- Manitoba has approximately 28,000 reported workplace injuries every year;
- Some twenty-five (25) workers are killed annually at work in Manitoba;
- Manitoba's reported time loss injury rate^[1] increased last year (after having declined for a number of years in a row); and
- The number of severe workplace injuries also increased last year.

Manitoba workers need unions to keep fighting for stronger workplace safety and health laws. If you have any questions about the MFL's recommendations to strengthen the Workplace Safety & Health Act, or would like more information or advice about how to prepare your own, please feel free to contact us:

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^[1] The time loss injury rate chronically underestimates the true number of injuries because it is based solely on reported injury claims from covered industries – it does not include injuries from non-covered sectors or those that go unreported due to claim suppression.

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Summary of Recommendations:

Recommendation 1: Reestablish the Minister's Advisory Council on Workplace Health & Safety that was eliminated by Pallister

Bring together labour, employers, and technical experts to give regular advice to government about how to make Manitoba's health & safety system stronger.

Recommendation 2: Address Psychological Health & Safety as a Workplace Issue

Create a new, dedicated Regulation to address psychological health & safety hazards in the workplace, based on the well-established & respected CSA National Standard.

Recommendation 3: Mandatory Training for Dangerous Asbestos Work

Legislate a mandatory provincial training standard to protect all workers who do the hazardous work of asbestos remediation and abatement – asbestos remains Manitoba's #1 occupational killer.

Recommendation 4: Emergency Round Table on Workplace Violence

Task a reestablished Minister's Advisory Council with leading a cross-sector Emergency Round Table on Workplace Violence Prevention to hear from unions, workers and employers about their experiences and recommendations for change, and develop an action plan to put an end to workplace violence.

Recommendation 5: Reestablish Safe Apprenticeship Ratios in Law

Restore and enshrine in law safe 1:1 journey person-apprentice ratios.

Recommendation 6: Ban Unsafe Engineered Labour Standards

Prohibit employers from imposing dangerous Engineered Labour Standards that do not give workers sufficient time to perform tasks in a safe way.

Recommendation 7: Investigate All Workplace Fatalities & Critical Incidents to Prevent Further Injuries & Death

Require mandatory prevention-focused investigations of all workplace fatalities and serious injuries to prevent further injuries and deaths.

Recommendation 8: Prosecute Negligent Employers under the Westray Law

Establish dedicated investigation and prosecution resources to ensure that any employer that kills a worker is held criminally responsible.

Recommendation 9: Recognize Domestic Violence as a Workplace Hazard

Include domestic violence in Workplace Health and Safety Regulations, requiring employers to take precautions to protect workers against domestic violence.

Recommendation 10: Timely Enforcement of Current Science-Based Chemical Exposure Limits

When scientific updates are made to safe chemical exposure limits, employers should be required to adjust their work processes immediately to protect workers from known chemical exposure dangers.

Recommendation 11: Better Protections from Extreme Weather

Recognize the impacts of climate change and strengthen Manitoba's existing thermal heat regulation to better protect workers from extreme temperatures and climate by adding mandatory controls.

Recommendation 12: Ensure Safe PPE for All Genders & Bodies

Amend Manitoba's Personal Protective Equipment regulation to require employers to provide proper fitting PPE for all genders and all body shapes and sizes.

Recommendation 13: Ban Excessive Work Hours / Ensure Adequate Staffing

Add a new general regulation requiring employers to provide workers with sufficient rest periods between shifts and prohibit excessive work hours to protect against fatigue and dangerous work.

Recommendation 14: Guarantee Due Process for Workers Standing Up for their Health & Safety Rights

Restore workers' right to appeal decisions they don't agree with under the Workplace Safety & Health Act (eliminated by Pallister).

Recommendation 15: Properly Define "Regularly Employed"

Properly define "regularly employed" in the WSH Act as "on average, the total number of workers present each working day (24-hour period)."

Recommendation 16: Stronger Joint Health & Safety Committees

- a) More training for worker and employer joint committee members
- b) Full access to all workplace health & safety information / more involvement of unions
- c) Annual Committee evaluations to improve performance

Recommendation 17: Stronger Administrative Penalties

Apply administration penalties on the basis of employer payroll, rather than on the basis of a flat sum for higher administrative penalties, so that large employers feel a real consequence for failing to provide safe and healthy workplaces.

Recommendation 18: Mandatory Clean Air Standards – Improve Workplace Ventilation

Add and enforce new mandatory standards on ventilation to ensure clean and healthy air in workplaces to curb the spread of COVID-19 and other airborne infectious diseases.

MFL SUBMISSION

Introduction

The Manitoba Federation of Labour (MFL) is comprised of more than 30 affiliated unions, representing more than 125,000 unionized workers from the public sector, private sector and building trades. Workplace health and safety is a major concern and priority for all unions, and the MFL has long been a leading voice for Manitoba workers in promoting safer and healthier workplaces.

We fight for workplace health and safety because every worker has the right to go to work and be safe, and every family has the right to expect that their loved ones will return home safely at the end of each shift. Workplace injuries and tragedies don't have to happen. With the right laws and policies in place, the right enforcement strategies at work, and the right investments in prevention, we can ensure that all workers stay safe on the job.

To advance our workplace health and safety efforts, the MFL:

- Runs an active cross-union health and safety committee to channel the strength, experience, and expertise of all unions toward advancing health & safety priorities;
- Organizes an annual Health and Safety Conference to educate workers about important health and safety topics, including training for joint health and safety committee members;
- Nominates labour representatives to health and safety legislative reviews, the Workers Compensation Board, and the WCB Appeals Commission and various ad hoc health and safety groups;
- Conducts research into important health and safety topics;
- Prepares 'Health & Safety Report Cards' to track and report on government's progress on health & safety; and
- Lobbies and campaigns for stronger workplace health and safety rules, practices, and better support and compensation for workers who are injured on the jobs.

Despite health and safety advances made in several areas over many years, Manitoba workers continue to deal with unaddressed and dangerous workplace health and safety hazards. The fact that Manitoba still experiences some 28,000 reported workplace injuries and twenty-five (25) fatalities every year is a sobering reminder of the unaddressed dangers of work. In fact, according to the latest WCB statistics, Manitoba's

reported time loss injury rate¹ is up (after a period of steady decline), as are the number of severe workplace injuries.

The present government's approach to workplace health and safety has been characterized by a series of measures that have weakened legal protections for workers, and by a complete failure to respond to emerging health and safety priorities, such as the COVID-19 pandemic, growing awareness of psychological health and safety needs, and the rise of violence in many workplaces in our province, to name just a few.

While not specifically a matter of legislation, we would be remiss if we didn't raise alarm with government's significant under-funding of the Workplace Safety & Health Branch in recent years and, by virtue of this, government's under-supported enforcement activities. Enforcement plays three vitally important roles in our health & safety system:

- Supporting prevention by acting as a deterrent to breaking the rules that are intended to keep workers safe;
- Identifying and putting a stop to dangerous health and safety practices that expose workers to harm; and
- Holding to account employers that act irresponsibly regarding the health and safety of their workers with fines, penalties, and convictions.

Rather than strengthening enforcement activities, government has reduced the number of Safety & Health Officers (SHOs) from 45 ten years ago to 35 today, and workplace inspections have been cut by more than 50%, from a high of 14,000 in 2013-14 to just over 6,000 in 2020-21.

A lack of clarity continues to exist with respect to responsibilities for enforcing Public Health Orders. Since the pandemic began, workers have too often been left to enforce Public Health Orders, and been subjected to harassment and violence from clients, customers, and the public as a result. Public Health Orders should be clear, properly communicated and strictly enforced by government.

The under-resourcing of the WSH Branch mirrors under-resourcing that has become a chronic state of affairs throughout the public sector under the present government. Short staffing is creating dangerous working conditions in many parts of the public sector today – putting both workers and patients/clients/the public at significant risk.

We would also be remiss if we did not take this opportunity to point out the serious problems (highlighted during, but not limited to the pandemic) with respect to inadequate quality and supplies of necessary Personal Protective Equipment (PPE). As

¹ It should be understood that the time loss injury rate chronically underestimates the true number of injuries because it is based solely on reported claims from covered industries – it does not include injuries from non-covered sectors or those that go unreported due to claim suppression.

a central lesson from the pandemic, Government must prioritize the provision of PPE for all workers.

Finally, while related to the Manitoba Employment Standards Code, rather than the WSH Act, we would like to reiterate our call for a minimum of 10 paid sick days for all Manitoba workers, as such a measure is of critical importance for workplace health and safety. It is completely unfair to ask workers to choose between paying the bills or staying home sick to protect public health and keep workplaces safe. Paid sick days are an essential element of a strong health and safety system.

The MFL is pleased to share the following recommendations to strengthen the *Workplace Safety & Health Act (the WSH Act)*.

RECOMMENDATION 1: REESTABLISH THE MINISTER’S ADVISORY COUNCIL ON WORKPLACE HEALTH & SAFETY

One of the very first actions taken by the current government on health and safety was to eliminate the Minister’s Advisory Council on Workplace Safety & Health. This long-standing body of volunteers included representatives from labour and employers, as well as technical experts, who worked together to assess and provide good advice on changes and updates to workplace health & safety law and regulations. Since the Advisory Council was eliminated by former Premier Pallister, there has been almost no government consultation with labour and employers on existing or proposed workplace health and safety rules, and no meaningful engagement on emerging priorities, like psychological health in the workplace or the pandemic.

The MFL recommends:

- That a Minister’s Advisory Council on Workplace Safety & Health be reestablished to advise on Act and Regulation changes, and emerging and urgent health and safety priorities.

RECOMMENDATION 2: ADDRESS PSYCHOLOGICAL HEALTH & SAFETY AS A WORKPLACE ISSUE

As per Section 2(2)(e) of the WSH Act, every worker in Manitoba has the right “to know about the safety and health hazards in their workplaces.” Current research clearly demonstrates that workplace psychological hazards can be identified and that they can cause significant harm (psychological and physical) to workers. Across Canada, thirteen (13) factors, as laid out in the CSA National Standard on Psychological Health and Safety in the Workplace, are well-known to promote or inhibit these hazards.

The WSH Act currently recognizes the importance of preventing workplace harassment and violence through Regulation [Part 10 – Harassment and Part 11 – Violence in the

Workplace]. But there is no explicit language in the WSH Act that acknowledges the broad range of detrimental psychological hazards that can exist in workplaces and should be controlled for.

The MFL recommends:

- That a new section be added respecting the establishment of a standardized regulatory framework, such as the CSA National Standard on Psychological Health and Safety in the Workplace, which will assist in identifying workplace psychological hazards and implementing evidence-based approaches to prevent work-related illness and injury. Development should be led by a re-established Minister Advisory Council (or an alternative group of labour and employer representatives, with additional input from mental health experts).

RECOMMENDATION 3: ESTABLISH A MANDATORY TRAINING STANDARD FOR ASBESTOS REMEDIATION AND ABATEMENT WORK

Approximately 2,000 people die every year in Canada from diseases caused by exposure to asbestos, like mesothelioma, lung cancer and asbestosis. Asbestos is the number one cause of occupational death in Canada, including in Manitoba.

Despite the hazards posed by asbestos, Manitoba (and we're unfortunately not alone in this) currently has no mandatory standard for training workers to safely perform the hazardous work of asbestos remediation and abatement. WSH Regulation 37.6(2) requires that workers be provided with "information, instruction and training," and WSH Regulation 37.7 requires that abatement or removal work be "done in a manner that does not create a risk to safety and health of any person," but these provisions provide no guidance on what proper, effective training should include. Workers in this field are often young and inexperienced, and work with little supervision, which aggravates the inherent risks of asbestos-related work.

We are aware that SAFE Work Manitoba has recently developed a series of training standards related to asbestos, but as of the writing of this submission, these standards still have no "teeth" as they are purely voluntary and not required as a prerequisite to working with asbestos.

The MFL recommends:

- That the Province legislate new mandatory training standards for safely working with asbestos for all workers/employers.

RECOMMENDATION 4: EMERGENCY ROUND TABLE ON WORKPLACE VIOLENCE PREVENTION

Manitoba's Workplace Violence regulation (WSH Regulation – Part 11) has been in place for some time now, but violence in the workplace has not gotten any better, only worse, in part due to a complex web of unaddressed socio-economic factors and mental health and addictions challenges, as well as employer inaction. Workplace violence has become commonplace and, in some cases, has become chronic in many different kinds of workplaces. In just the last few years alone, there have been extreme and sometimes fatal violent attacks against workers in health care, in liquor stores, and on transit buses, to name just a few examples. Manitoba workers need urgent intervention and new measures to put a stop to violence in their workplaces.

The MFL recommends:

- That a reestablished Minister's Advisory Council on Workplace Health & Safety (or alternative group of labour, employer, and technical experts) be tasked with leading a cross-sector Emergency Round Table on Violence Prevention to hear from unions, workers and employers about their experiences and recommendations for change and develop an action plan to put an end to workplace violence.

RECOMMENDATION 5: REESTABLISH SAFE APPRENTICE RATIOS

A cornerstone of a safe and effective apprenticeship system is one-to-one mentorship and supervision between journeyperson and apprentice. Against the strong advice of the stakeholders who took part in the government's own survey, the current government made the reckless decision to make the provincial apprenticeship system more dangerous by eliminating one-to-one apprentice to journeyperson ratios, weakening the regulation to allow for two apprentices to be supervised by one journeyperson, and even allowing fourth year apprentices to work without supervision at all, as long as they have access to a cell phone.

While apprenticeship ratios are often viewed solely through the lens of training and mentorship, they also are vitally important from an occupational health and safety perspective. This is all the truer since many apprentices are vulnerable workers, often including young workers and racialized workers.

The MFL recommends:

- That legislation be amended to enshrine 1:1 journeyperson-apprentice ratios in recognition of the strong dual imperatives of health and safety and training integrity.

RECOMMENDATION 6: BAN UNSAFE ENGINEERED LABOUR STANDARDS

Engineered Labour Standards (ELS) are becoming more common in many different sectors, from health care to meat processing. Such standards are driven by employer efforts to increase production/speed-up service delivery while holding the line on unit labour costs. These standards are becoming increasingly problematic as they do not give workers sufficient time to do their work safely (and often compromise the quality of work/service/care). Workers are being forced to work in dangerous systems which do not allow for sufficient time to safely perform the assigned tasks in the time allotted.

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 sometimes 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.

In home care, as another example, workers are given strict time limits to perform discrete tasks with insufficient attention to both worker safety and patient care. Tasks such as giving a patient a bath, assisting with dressing, food preparation and service, laundry and other tasks are assigned inflexible minute-by-minute time limits that do not consider unique patient needs that may require workers to perform tasks differently.

Employers with ELS systems are well aware of what they are forcing workers to do. However, they choose to increase time standards and injuries to workers in order to increase profit. Employers are in complete control of these ELS systems. This is not a question of whether an ELS can be controlled, it's a question of why the employer arbitrarily chooses to impose a system in which workers cannot exercise safe lifting techniques. These employers know they are hurting workers, and this can be easily fixed by increasing time to perform tasks properly and safely.

The MFL recommends:

- A new Regulation be created regarding ELS systems, with a focus on time to perform tasks safely. Development of this Regulation should be led by a reestablished Minister's Advisory Council;
- WSH Regulation 8 on Musculoskeletal Injuries be more strictly enforced for employers who have complete control over the prevention of MSIs, yet choose to develop systems where they knowingly put workers at risk of injury;
- Employers with ELS systems be required to provide risk assessments proving that time to safely perform tasks has been given;
- All forms and incidents of discipline issued to a worker in an ELS system that does not allow proper time to safely perform tasks be removed from the worker's file and be treated as discriminatory action; and

- Joint health and safety committees be involved in every aspect of an ELS system. This includes, development, implementation, assessment of equipment, interaction with the WSH Branch or a review committee and any other interaction with regards to the ELS system.

RECOMMENDATION 7: MANDATE TIMELY & PREVENTION-ORIENTED INVESTIGATIVE PROCESSES FOR FATALITIES & CRITICAL INCIDENTS

Last year, 13 Manitoba workers were killed by acute hazards in the workplace, and another 13 died from WCB-accepted occupational diseases. These were preventable tragedies, and our thoughts go out to the families, friends, co-workers, and fellow union members of these victims. All workers have the right to come home safe and healthy at the end of each shift – no one should have to worry about whether their spouse, child, parent, or friend will make it home from work in one piece.

The MFL recommends:

- That when a workplace fatality or serious injury occurs, the WSH Act should require a mandatory investigation to determine what happened, to identify how it could have been prevented, and to make recommendations to prevent similar fatalities/injuries in future.

This investigative process should be timely – timely in the sense of taking place as quickly as possible after the loss, and timely in the sense that it should aim to produce recommendations that could prevent future fatalities/injuries as soon as possible.

This investigative process should be prevention-oriented in that its focus should be on understanding what happened and identifying ways to prevent similar incidents. To borrow a saying used in the movement to reduce medical errors in health care, this process should be about “learning, not blaming.” To be sure, the enforcement arm of the WSH Branch and police should be enforcing penalties, fines and criminal sanctions that may be warranted, but this prevention-oriented investigative process should be separate and complementary, focusing in on what can be learned to prevent repeat tragedies.

This investigative process should also be structured to involve the families of victims of workplace tragedies. These families should have a right to participate in the process, to be kept abreast of its progress, and to have access to its final report and recommendations.

The reports and recommendations produced by this investigative process should be made public and submitted to a re-established Minister’s Advisory Council on Workplace Safety and Health:

- To prepare a plan, where appropriate, to disseminate the recommendations to workplaces across Manitoba; and
- Where legislative or regulatory changes are required, to make recommendations about these changes.

RECOMMENDATION 8: PROSECUTE NEGLIGENT EMPLOYERS UNDER THE WESTRAY LAW

On May 9, 1992, an explosion at the Westray Mine in Pictou County Nova Scotia killed all twenty-six (26) miners working underground. It was one of the deadliest mining disasters in Canadian history and led to new Criminal Code provisions – known as the Westray Law – that finally made it possible to prosecute corporate criminal negligence.

Justice K. Peter Richard, who led the public inquiry into the Westray disaster, uncovered what he called “a complex mosaic of actions, omissions, mistakes, incompetence, apathy, cynicism, stupidity, and neglect.” Despite years of police investigations and public inquiry, no one was ultimately held responsible for the miners’ deaths. The United Steelworkers lobbied for years and won changes to the Criminal Code so that employers could be convicted of criminal negligence.

But across the country, and even since the Westray law was enacted in 2004, many workplace fatalities are still never properly investigated, and only a handful have resulted in criminal charges – none in Manitoba. When criminal negligence results in a worker’s death, it is not an accident – it is a crime.

We acknowledge that Manitoba’s WSH Branch has taken some action to support enforcement of the Westray law, including in 2011, by hiring a dedicated (but now retired) Director of Investigations, with extensive experience in conducting criminal investigations to supervise, coordinate, and direct the activities of WSH’s Investigation Services Unit and interact with Manitoba’s Crown Prosecutor assigned to prosecute workplace injuries/fatalities incidents. Despite these efforts, however, investigations have been severely delayed, and no charges have been brought. Clearly, Manitoba’s existing efforts are not working, and more needs to be done.

The MFL recommends:

- Training and directing Crown prosecutors to apply the Westray provisions of the Criminal Code;
- Appointing more dedicated prosecutors for workplace health and safety fatalities;
- Training and directing police to apply the Westray provisions of the Criminal Code and consider the possibility of criminal negligence whenever a worker is killed or seriously injured on the job – other provinces have stronger and more formalized relationships in place for cooperation with police;

- Ensuring coordination among regulators, police, and Crown attorneys so health and safety regulators reach out to police when Westray charges may be warranted; and
- Training WSH officers to view every workplace fatality under Provincial jurisdiction as a potential crime scene, including coordinating with police in their investigations.

RECOMMENDATION 9: RECOGNIZE DOMESTIC VIOLENCE AS A WORKPLACE HAZARD

Although often overlooked as a workplace issue, domestic violence pervades a victim's life, and often follows them to their workplace. The effects of domestic violence in the workplace include everything from tardiness, absenteeism, and decreased productivity to serious injury or even death. In 2012, the Canadian Labour Congress (CLC) partnered with researchers at the University of Western Ontario to conduct the first ever pan-Canadian survey on domestic violence in the workplace. Among their findings, of those who reported experiencing domestic abuse, over half reported that it continued at the workplace. When domestic violence impacts the workplace, it becomes workplace violence, putting not only victims but their co-workers at risk.

The labour movement is proud that Manitoba was the first jurisdiction to follow-up on this research by establishing legislated paid domestic violence leave. We also acknowledge the present government for having expanded paid leave to victims of sexual violence and stalking.

However, current violence prevention regulations in Part 11 of the WSH Regulations do not specify domestic violence. As a result, workplace assessments tend to focus on the risk of violence to workers from clients and coworkers, but overlook the risks posed by domestic violence.

The MFL recommends:

- That Manitoba follow the lead of Ontario and include domestic violence in their Workplace Health and Safety Regulations, requiring employers to take precautions to protect workers against domestic violence.

RECOMMENDATION 10: TIMELY ENFORCEMENT OF CURRENT SCIENCE-BASED CHEMICAL EXPOSURE LIMITS

The MFL opposed government's 2019 move to abandon automatic adoption of Occupational Exposure Limits (OELs), which exist to protect workers against seriously harmful exposure to chemicals and other environmental occupational hazards. This issue was considered several times by the (former) Minister's Advisory Council and, each time, the professional / technical and worker representatives raised serious safety

and health objections with shifting away from automatic adoption, and yet the government proceeded against their objections.

Under the former automatic adoption regime, exposure limits were adjusted immediately when there was a change in the scientific understanding of how workers are affected by chemical exposure. Now, government says it will only consult on changing exposure limits every three (3) years, creating the potential for a prolonged period of exposure even after the scientific community has determined that such exposure is dangerous. What's more, as of the timing of writing this submission, government has yet to announce any plans for its first consultation.

The MFL recommends:

- That Manitoba task a reestablished Minister's Advisory Council with developing recommendations on a process for respecting the latest science and protecting workers from known unsafe chemical exposure. In the meantime, government should initiate a review of OELs immediately.

RECOMMENDATION 11: BETTER PROTECTIONS FROM EXTREME WEATHER

Climate change is resulting in more extreme and unpredictable weather and temperatures all the time. Manitoba's current Thermal Stress Regulation (4.12) is quite limited, and ill equipped to protect workers from the extremes of Manitoba's hot and cold climate.

The MFL recommends:

- That Manitoba's current Thermal Heat Regulation (4.12) be enhanced based on model language from BC by adding mandatory controls that employers must take to protect workers from extreme heat or cold, such as work-rest cycles, areas where workers can get out of the heat/sun or cold during rest periods, and provision of adequate water for hydration.

RECOMMENDATION 12: ENSURE SAFE PPE FOR ALL GENDERS & BODIES

All workers need to be assured that required PPE will fit them properly and keep them safe. One size PPE does not fit all. In many workplaces, PPE has been "one sized" for "standard" male bodies, and the health and safety needs of women and gender diverse workers (of all shapes and sizes) are not considered or prioritized. Providing gender inappropriate PPE:

- discourages women from certain types of work;
- makes women workers feel like they do not belong in the workplace;
- makes work uncomfortable and distracting; and
- can impede movement and efficiency of the work being done, creating a workplace hazard, and resulting in preventable injuries.

Union campaigns to address this problem have shown that women often face health and safety challenges with ill-fitted gloves, glasses, hats, and other PPE.

The MFL recommends:

- That the WSH Regulation (Part 6: Personal Protective Equipment) be amended to explicitly require employers to provide PPE that fits all individual workers properly, even when this means supplying different PPE for different genders, shapes, and sizes. PPE must provide effective protection, not create a hazard in and of itself, be compatible with other PPE and be maintained in good working order and in a sanitary condition at all times.

RECOMMENDATION 13: BAN EXCESSIVE WORK HOURS

The present government has caused a major staffing crisis in many parts of the public sector. In some areas – especially health care – government is trying to ‘band-aid over’ the staffing crisis by forcing large number of workers to work unsustainable amounts of forced overtime. Government-imposed forced overtime is resulting in workers being required to work absurdly long shifts with insufficient rest, resulting in fatigue and unsafe working conditions which, threatens the quality of care (to say nothing of the damaging effects on workers’ families and personal lives). For workers to be safe at work, they need to be sufficiently rested and alert. We know that fatigue resulting from continuous physical or mental activity is characterized by a diminished capacity to do work, such as slowed reaction time, lapses of attention to details, errors of omission, compromised problem solving, reduced motivation and decreases productivity. These characteristics clearly put workers and their patients/clients/customers at risk.

The MFL recommends:

- That the WSH Regulations Part 4 – General Workplace Requirements be amended to include a new section requiring employers to provide workers with sufficient rest periods between shifts and prohibit excessive work hours. We also recommend new language providing workers with the unequivocal right to refuse work as unsafe if excessive hours of work have compromised their ability to work safely. Government must adequately staff the public sector.

RECOMMENDATION 14: DUE PROCESS FOR WORKERS STANDING UP FOR THEIR HEALTH & SAFETY RIGHTS – RESTORE THE RIGHT TO APPEAL

Early in its mandate, the current government changed the WSH Act to give extraordinary new powers to senior management of the WSH Branch to refuse to hear worker appeals, without even so much as a hearing. This elimination of the right to due process was a major setback in fairness under the WSH Act. Under the previous rules, workers certainly weren’t guaranteed a specific outcome of an appeal, but they had the right to present their appeal and know that their case would be heard and judged on its merits – it’s a simple matter of fairness.

The MFL recommends:

- That the WSH Act be amended to restore workers’ right to an appeal and eliminate the extraordinary powers granted by this government to senior management to unilaterally decide that an appeal is not worthy of consideration and can be dismissed out of hand without a hearing.

RECOMMENDATION 15: PROPERLY DEFINE “REGULARLY EMPLOYED”

The WSH Act sets out a number of important requirements that take effect based on the number of workers who are “regularly employed,” such as the requirement for joint health and safety committees and documented health and safety programs. However, the term “regularly employed” is defined in several different and inconsistent ways though out the WSH Act – for example, it is sometimes defined as averaging over a 90-day period, a one-year period, and sometimes there is simply no reference to total, per shift, or timeline. Given the importance of the “regularly employed” threshold, this inconsistency should be corrected.

The MFL recommends:

- Addressing the current inconsistencies in the WSH Act by defining “regularly employed” as “on average, the total number of workers present each working day (24-hour period).”

RECOMMENDATION 16: MORE EFFECTIVE JOINT HEALTH & SAFETY COMMITTEES / WORKER REPRESENTATIVES

16. a) Better Training for Worker and Employer Committee Members

When the WSH Act was amended to provide health and safety committee members and representatives with the right to two (2) days of paid educational leave annually [Section 44(1)], the intent was for this training to be taken by all committee members (including worker and employer members) and representatives annually.

However, the language in the current provision is not strong enough and many health and safety committee members and representatives are not receiving the training contemplated when this provision was added. This applies not only to worker members and representatives, but also to employer members, whose lack of training can be a serious impediment to strong health and safety programs. All members need to be trained properly to ensure a properly functioning committee.

Section 44(1) also needs to be merged or better aligned with Section 40(13) of the WSH Act, which states that: “The employer or prime contractor must ensure that committee members are trained to competently fulfill their duties as committee members.” It is important to note that the WSH Act clearly recognizes the need for training to support competent fulfillment of duties, irrespective of the amount or type of training required. Therefore, it should be recognized that proper training may vary due to a variety of factors in today’s workplaces such as:

- The drive to increase efficiency and productivity means work processes are changing very rapidly, often without regard to the impact on workers' health and safety.
- The continual introduction to the workplace of a dizzying array of new chemical and biological agents, as well as nanotechnologies, are placing growing and complex demands on joint Health & Safety committees.
- The growing awareness of psychological health and safety hazards and growing threats, such as violence and harassment and the complexities of dealing with COVID-19.
- Committee members and representatives change over time and have different levels of health and safety training and experience coming in; and
- Workplace safety and health is a large and growing field of research, generating large amounts of potentially useful information for joint committees.

Section 40(13) and Section 44(1) need to be read together. Educational leave should not be read as being capped at two days; it should be read a minimum requirement of two days, and if more training is required to ensure competent fulfillment of duties, then employers should be required to provide it, as per Section 40(13).

The MFL recommends:

- That Sections 40(13) and 44(1) be merged and/or more clearly aligned;
- That Section 40 (13) be strengthened to acknowledge that training requirements for competent fulfillment of duties by committee members and representatives may vary by workplace and by committee member; and
- That Section 44(1.1) be clarified to describe the current two days of paid educational leave as being a minimum requirement for each committee member (worker and employer), which may need to be supplemented as per Section 40(13) to ensure competent fulfillment of committee member duties.

16. b) Full Access to Information for Joint Health & Safety Committee Members, and More Inclusive Involvement of Unions

All too often, employers fail to share important information with health and safety committee members, such as meeting minutes, logbooks, assessments, inspection reports and investigations. Similarly, committee members are supposed to be provided with copies of orders, such as improvement orders and stop work orders, but this often does not occur. Withholding such information undermines and compromises the ability of committees to perform their vital health and safety functions and should not be allowed under any circumstances. Much stricter enforcement is required to ensure that committees can function properly and unimpeded by employers withholding important and relevant information.

Unions should also be provided with all Committee materials. Unions are often formed due to the need for protection of workers' basic workplace rights, such as health and safety. Unions representing workers are often included in many health and safety related concerns and grievances. However, they do not have access to Committee information. Unions are also included in virtually every aspect of the workplaces they represent so there is no reason why the WSH Act should not include unions as "interested parties" and grant them access to information. This is especially important when it is the union that registers a concern or complaint on behalf of workers. Ensuring that unions are provided with all committee materials will also help unions better support worker committee members, especially when there is turnover in membership.

Another example of where unions should be recognized as "interested parties" relates to the complicated process of appeals: when a worker from a unionized workplace appeals a decision under Section 37 of the WSH Act, unions often support the appeal and make representation, but lack of formal recognition under the WSH Act can make effective representation more challenging.

Union should also be included in the list of "interested parties" that must be provided with copies of stop work and improvement orders. Given that unions play a central role in advocating for health and safety in the workplace, this omission should be corrected, and unions should receive copies of all improvement orders and stop work orders. Navigating The WSH Act and Regulations can be complex and challenging – it's only fair that unions be empowered to properly support workers in the workplace.

The MFL recommends:

- That unions be considered interested parties under section 36.1 (Communication of orders), 36.3(1) (Communication to workplace committees) and 37 (Appeals);
- That policy be changed to be stricter with administrative penalties for employers failing to provide required information under The WSH Act and Regulations; and
- That the department administer a zero-tolerance policy for employers withholding information from health and safety committees and interested parties.

16. c) Evaluation Framework for Joint Health & Safety Committees

An effective joint health and safety committee provides a way for the employer and workers to work together to identify and find solutions to safety and health concerns. An evaluation framework will provide guidance on how an effective committee will meet its legal requirements, as well as suggestions for continued improvement. The province of BC requires regular committee evaluations to be undertaken.

The MFL recommends:

- That, in the spirit of continuous improvement, the WSH Act be amended to require committees to conduct a written evaluation of their work and performance

on an annual basis, and that this evaluation be shared with all members of the committee and the union (where applicable).

RECOMMENDATION 17: STRONGER ADMINISTRATIVE PENALTIES

The administrative penalty is a compliance tool intended to encourage efforts to comply with the WSH Act to reduce the risk of workplace injuries and illness. As Manitoba continues to build-up its health and safety compliance structure, it is critical to apply penalties fairly across the province in the cases of non-compliance. The following proposed amendments would have no impact on employers who follow the workplace health and safety rules.

The MFL recommends:

- That Manitoba raise the higher maximum amount for administrative penalties through the adoption of applying administration penalties on the basis of employer payroll, rather than on the basis of a flat sum²; and
- That Manitoba automatically and immediately apply administration penalties following non-compliance with administrative tools (Improvement Orders, Stop Work Warnings, Stop Work Orders).

These two changes would allow for an equalization of weight and gravity and will streamline the process in terms of the enforcement, encouraging compliance in a manageable timeframe without overextending valuable enforcement resources.

RECOMMENDATION 18: MANDATORY CLEAN AIR STANDARDS – IMPROVE WORKPLACE VENTILATION

We have learned a great deal since the beginning of the pandemic about the COVID-19 virus: how it is transmitted, and how to prevent its transmission. The evidence is now clear and acknowledged that COVID-19 is airborne and can spread between people as a suspended aerosol. Mitigation strategies that protect against the transmission of larger droplets such as physical distancing, masks, and handwashing are not sufficient to provide the protection workers need against an airborne virus. While the Province of Manitoba has issued guidance around air quality, it does not consistently and uniformly compel workplaces to ensure the air quality is of sufficient quality to prevent the spread of viruses like COVID-19. We believe that the WSH Act should be amended to strengthen provisions on ventilation to help minimize the spread of COVID-19 and be better prepared to fight other airborne infectious diseases.

The MFL recommends:

² Other provincial jurisdictions calculate the basic amount of a penalty by multiplying the penalty payroll by 0.5%, with a minimum of \$1,250 and a maximum of half of the statutory maximum. Additionally, some jurisdictions set a maximum amount of an administrative penalty at \$10,000 for a contravention; and if the contravention continues for more than one day, a maximum of \$10,000 for each day.

- That Manitoba adopt and enforce strong mandatory standards on ventilation for all workplaces to ensure clean and healthy air in all workplaces and public spaces.

CONCLUSION: THE IMPORTANCE OF PREVENTION

Preventing workplace injuries and illnesses should be the number one priority of any workplace health and safety system. While Manitoba has made some notable progress in this area, including the establishment of SAFE Work Manitoba as an arms-length dedicated prevention organization, Manitoba's time loss injury rate has ticked up again (after a period of steady decline), and the number of severe injuries has also increased. In addition, while sectors like construction and manufacturing have seen steady declines in their injury rate, this progress has not been matched in the public sector. Much more work remains to be done to prevent injuries and illnesses from happening.

We see the development of SAFE Work Manitoba's SAFE Work Certified program and the accompanying WCB rebate for safety certified employers to be important steps forward. The more we recognize and incentivize true prevention through strong health and safety programs, and not reduced injury claims by way of claim suppression, the better. However, SAFE Work Certified has yet to be expanded to many industries in serious need of better prevention programs (e.g., wholesaling, hospitality, etc.). We're aware that a program is now under active development for health care – this is an urgent priority as health care has the single highest reported injury rate of any sector and has shown absolutely no improvement in recent years. This is the direct result of government neglect and under-investment.

The MFL recommends:

- That SAFE Work Manitoba continue to promote workplace health and safety prevention through broad public awareness and marketing campaigns;
- That a reestablished Minister's Advisory Council be engaged to input into Manitoba's Five-Year Workplace Injury and Illness Prevention Plans;
- That SAFE Work Manitoba see through to completion the new SAFE Work Certified standard and prevention incentive initiatives, including a comprehensive evaluation component to assess their effectiveness;
 - Worker views and experience with health & safety should remain integral components of the standard
 - Employer incentives should be based on recognized health and safety programs, with no links to WCB claims experience
- That SAFE Work Manitoba actively pursue expansion of the new SAFE Work Certified program into all sectors, with priority given to expansion into the health care sector, where government/regional health authorities are major employers and injury rates have been and remain persistently high;
- That SAFE Work Manitoba be directed to support targeted prevention efforts for vulnerable workers – these should be advanced in partnership with existing community safety organizations;
- That the groundbreaking SAFE Workers of Tomorrow program be adequately resourced to expand their youth-focused workplace health and safety

presentations and outreach to all high school (grade 9 – 12) students in the province.

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