

# Workers Compensation in Manitoba

## *The 2013 MFL Workplace Health & Safety Report Card*

### Introduction

2013 marks the 100<sup>th</sup> anniversary of the historic Meredith Report that established the core principles on which all Canadian workers compensation systems continue to operate. It was Justice Meredith who worked out the “historic compromise” by which workers gave up their right to sue employers for workplace injuries in exchange for a right to prompt, no-fault compensation.

That compromise remains at the heart of Manitoba’s Workers Compensation Board (WCB) but there have been major changes in that system in recent decades. In light of these changes and the 100<sup>th</sup> anniversary, the Manitoba Federation of Labour has dedicated its annual health and safety report card in 2013 to an evaluation of Workers Compensation in Manitoba.

### Grading Criteria

This report card evaluates Manitoba’s workers compensation system in terms of the following dimensions of workers compensation:

**Protection** – The proportion of Manitoba workers who have WCB protection.

**Claims Reporting/Suppression** – Preventing the illegal and unethical practice whereby employers prevent or discourage injured workers from reporting workplace injuries to WCB.

**Services for Injured Workers** – Improving the ability of injured workers to access WCB benefits and services.

**Benefits** – The adequacy and timeliness of benefits for injured workers.

**Workplace Illness/Injury Prevention** – The effectiveness of WCB workplace illness/injury prevention programs.

**Return to Work Programs** – The effectiveness of WCB programs that help injured workers return to work safely.

**Financial Stability** – The ability of the WCB to provide a stable financial footing for Manitoba’s workers compensation system.

**Governance/Accountability** – The effectiveness of the WCB governance structure in providing sound leadership, representing stakeholder interests, and being accountable to stakeholders and the public.

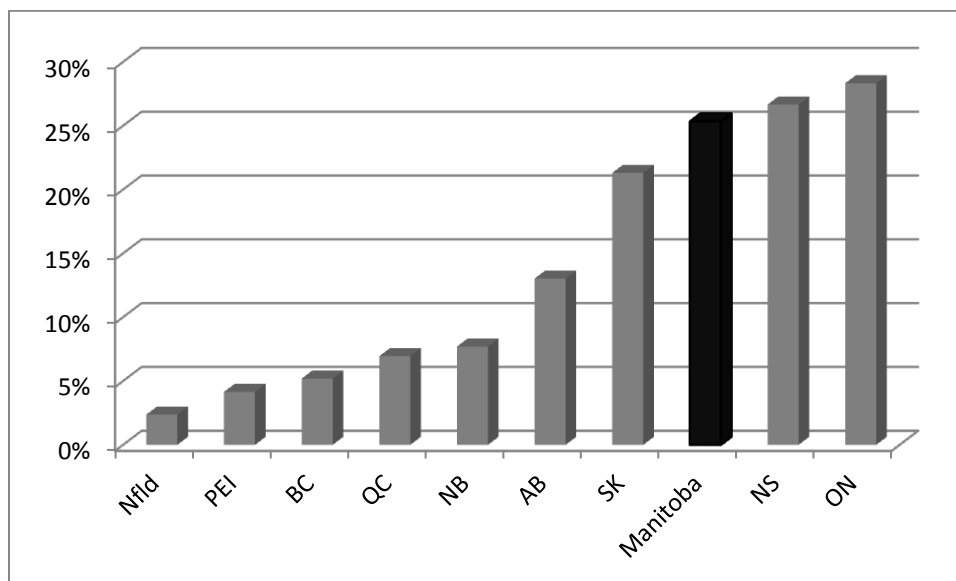
## WCB Protection

### Issue:

Not all workplaces are protected by workers compensation. Large sectors have been exempted by government regulation, leaving thousands of workers without WCB protection. The Manitoba government should make WCB coverage compulsory for all workplaces.

### The Record:

#### Percentage of workers without WCB protection



Source: Association of Workers Compensation Boards of Canada, Annual KSM Standard Report 2011

Manitoba has traditionally had among lowest protection rates in Canada. Manitoba extended coverage to more sectors in 2007 and 2009. Some new high risk sectors were added, but many of the added sectors, such as agriculture, already had relatively high levels of voluntary coverage. Although this progress is valuable, it is modest:

- 2/3 of the 37,000 workers added to WCB coverage in 2006 and 2009 had already been covered in a voluntary basis (Source: Province of Manitoba).
- Compared to 2006, there are now 65,000 more workers protected by WCB, but almost half of that increase is attributable to economic growth rather than coverage of additional sectors (Source: Province of Manitoba).
- Even with these additions, one in four Manitoba workers does not have WCB protection. Manitoba's protection rate is just 75%, the 3rd lowest in Canada – the national average is 83% (Source: Association of Workers Compensation Boards of Canada, Annual KSM Standard Report 2011).
- There has been no progress on adding additional sectors in the past four years.

**Grade:** D

**Comments:**

One in four Manitoba workers do not qualify for WCB benefits if they get hurt at work; it is time for the Manitoba government to make WCB protection compulsory for all workplaces:

- It is difficult for the WCB to fully discharge its illness/injury prevention mandate when one quarter of workplaces are not even part of the WCB system. As the WCB's prevention mandate expands, it is critical that all workplaces are covered by WCB.
- Self-insured sectors are, in effect, fully "experience rated" creating huge incentives for claims suppression and overly aggressive return to work practices.
- Compulsory WCB coverage is a fairness issue for employers. Collective liability is only truly meaningful when all employers are paying into the system.
- Even where workers may have access to private insurance benefits, WCB benefits are generally much better. It is unjust that so many injured workers in sectors excluded from the WCB system are denied adequate benefits, and in many cases, any benefits at all.

### **WCB Claims Suppression**

**Issue:**

- WCB rate model creates big financial incentives for employers to suppress claims and deny fair compensation to injured workers, and to force injured workers back to work before their doctors say they are ready. The WCB needs to enforce the rules against claims suppression and reduce the financial incentive for employers to engage in claims suppression.

**The Record:**

- An independent report prepared for the Labour Minister affirmed that claims suppression is happening in Manitoba. It also notes that internal WCB documents acknowledge the role of the WCB's experience rating rate model in encouraging claims suppression (*Fair Compensation Review*, a Report to the Minister of Family Services and Labour, page 5).
- Despite these realities, not a single Manitoba employer has ever been penalized for this illegal behaviour (*Fair Compensation Review*, a Report to the Minister of Family Services and Labour, page 11; and FIPPA response from WCB, dated May 22, 2013).
- The WCB has run an advertising campaign about the importance of injury reporting, but the problem is not that Manitobans do not know about workers compensation; the problem is the rate model that makes it financially lucrative to suppress claims.
- In 2013, the WCB funded a limited research project to examine the extent to which some forms of claims suppression are happening in Manitoba workplaces (though it is worth noting the study does not attempt to examine claims suppressed before any contact with WCB).

- The financial incentives that encourage claims suppression remain in place.
- Recommendations from an independent external review to address claims suppression have yet to be implemented.

**Grade:** F

**Comments:**

Despite evidence of claims suppression and recommendations from a January, 2013 independent report on claims suppression in Manitoba, no effective action has yet been taken by the WCB to crack down on claims suppression or to reform the experience rating rate model that encourages it. Even with the modest rate model change proposals sent for review on September 13, 2013, claims suppression would continue to be profitable for employers.

### **Services for Injured Workers**

**Issue:**

What is being done to improve services to injured workers, particularly those in the regions and those who face barriers in accessing services?

**The Record:**

The Good:

- Brandon WCB office opened to better serve injured workers in western Manitoba; and
- WCB services offered in more languages, in recognition of the growing number of newcomers in Manitoba's workforce;
- On September 13, 2013, the Province announced its intention to hire an additional staff person for the Worker Advisor Office to assist workers who have suffered serious injuries and families who have fallen victim to a workplace tragedy.

The Bad:

- The Worker Advisor Office, established by the WCB Act, funded by WCB, and managed by the Manitoba government, has reduced its capacity to help injured workers negotiate the workers compensation system:

(1) staff resources have been cut – staff have been reduced from 11 positions in 2006/07 (p38, Labour Department Annual Report) to 6 positions in 2012 (FIPPA response from Family Service and Labour, dated April 27, 2012);

(2) resources for worker advisor services in Manitoba are less than in other jurisdictions (\$0.53/capita in MB vs \$2.01 in NS, \$0.82 in ON, \$0.70 in NB, \$0.69 in SK, data not available in

other provinces). Manitoba has fewer Worker Advisor Office sites than other provinces (6 offices in NB, 8 offices in BC, 2 offices in NS, 1 in MB);

(3) the northern worker advisor office in The Pas has been closed;

(4) Manitoba worker advisors do not have access to independent legal/medical advice, as in some other provinces.

- Even when the recently announced additional staff person is hired, staffing at the Worker Advisor Office will remain well below levels seen just six years ago.

**Grade:** C

**Comments:**

The record in some areas has been undercut by backwards steps in a core, legislatively mandated service (Worker Advisor Office) managed by the Manitoba government.

### WCB Benefits

**Issue:**

Are benefits for injured workers adequate? How long does it take for injured workers to access benefits?

**The Record:**

- Benefit cuts of the 1990s have been reversed, and Manitoba's benefit formula is now in the mainstream of Canadian workers compensation systems.
- Permanent impairment awards in Manitoba have not been fully restored since the cuts of the early 1990s.
- Manitoba has the second fastest turnaround time in Canada from injury to first benefit payment: 26.9 days, second only to Alberta's 22.95 day turnaround time (Source: Association of Workers Compensation Boards of Canada, Annual KSM Standard Report 2011). The MFL believes injured workers should receive compensation benefits within two weeks of reporting an injury to the WCB and that any necessary adjustments be made to future payments.

**Grade:** B

**Comments:**

Good progress, but permanent impairment awards should be improved.

## Workplace Illness/Injury Prevention

Manitoba's WCB has a legislated mandate to promote workplace illness/injury prevention.

### The Record:

#### The Good:

- WCB has expanded funding for SAFE Work information campaigns to \$1.5 million/year (Source: WCB of Manitoba).
- The Partners in Prevention program has been established, though its effectiveness has been limited by major financial incentives to focus resources on managing/suppressing claims costs.

#### The Bad:

- Manitoba has no financial incentives for prevention activities outside the construction sector.
- The current WCB rate model encourages employers to find savings through claims suppression rather than prevention.

**Grade:** C

### Comments:

Modest, incremental progress

Much of the WCB's prevention efforts are focused on information campaigns, and we applaud the commitment to these campaigns as a way of establishing a culture of workplace safety and health in Manitoba.

The Partners in Prevention program does some good work, but is overwhelmed by the financial incentives to reduce claims costs. Many employers find it more profitable to invest in claims suppression and forcing people back to work than engaging in real prevention.

Real prevention incentives need to be implemented, as recommended in the *Fair Compensation Review* report. These incentives should be funded by a transfer of resources from experience rating discounts (that encourage employers to focus on claims cost reduction/suppression rather than prevention) towards financial incentives tied to documented prevention activities.

## WCB Return to Work Programs

### Issue:

The WCB Act includes as a core principle facilitating a timely and safe return to health and work for injured workers. The WCB has a responsibility to ensure return to work placements are safe and durable, and based solely on the welfare of the injured worker.

### **The Record:**

- Although the WCB has adopted a mostly sound return to work policy, and return to work is effectively managed in many workplaces, the financial incentives created by the Experience Rating rate model encourage too many employers to be overly aggressive in pressuring injured workers back to work. An independent report prepared for the Labour Minister found the WCB does not consistently apply/enforce those policies:  
“WCB’s oversight in determining suitable employment is not fully utilized. I heard evidence, which I found significant, that in some workplaces the alternative duties are sometimes harmful to the worker’s recovery, are sometimes non-productive, and sometimes are demeaning.” (*Fair Compensation Review*, a Report to the Minister of Family Services and Labour, page 9)
- Too often, when injured workers question the appropriateness of a return to work arrangement, often on the basis of their doctor’s advice, the WCB threatens to terminate their benefits unless they accept the arrangement. The WCB does not make sufficient effort evaluate the concerns raised and intervene when necessary to uphold its return to work policy. This arises in part because that policy makes more active intervention optional for WCB; section C3 of that policy (policy 43.20.25) states that the WCB “may” take more active steps. This policy should be amended to say that the WCB “will” take more active steps to ensure the policy is upheld and an acceptable resolution is found.
- Although the external review made concrete and practical recommendations to improve return to work programs, the WCB has not implemented them. Instead, the WCB announced yet another review on September 13, 2013.

**Grade:** C

### **Comments:**

Although the WCB’s written policies on return to work are mostly sound, the WCB must be graded on its actual practices. Too many workers report that these WCB return to work policies have not been enforced. The return to work policy should be amended to require more active WCB intervention to uphold the integrity of the policy.

## **Financial Stability**

### **Issue:**

Injured workers bear the full cost of workplace injuries. Workers compensation partially compensates them for these costs, and it is the WCB’s responsibility to ensure a stable financial framework with the capacity to fund the current and future costs of compensating injured workers, as well as the cost of prevention programs and services to injured workers.

### **The Record:**

By almost any objective standard, Manitoba's WCB is financially sound:

- Manitoba's workers compensation system boasts a 127% funding ratio (2012 WCB of Manitoba Annual Report). In 2011, the last year for which comparable data is available, Manitoba's WCB was the fourth best funded WCB in Canada at 121%, well above the national average of 82% (Association of Workers Compensation Boards of Canada, Annual KSM Standard Report 2011).
- Premium rates for employers are second lowest in Canada, and have remained within a stable range for more than a decade. Current average rates are the lowest since 2000. (Association of Workers Compensation Boards of Canada, Annual KSM Standard Report 2011; and WCB Annual Reports, 2000-2012)
- Administrative costs are slightly below the national average - \$0.31/\$100 of assessable payroll in Manitoba, compared with \$0.32 nationally (Association of Workers Compensation Boards of Canada, Annual KSM Standard Report 2011).

**Grade:** A

### **Governance/Accountability**

**Issue:**

The effectiveness of the WCB governance structure in providing sound leadership, representing stakeholder interests, and being accountable to stakeholders and the public.

**The Record:**

- Manitoba's WCB governance structure was renewed with the WCB Act of 2005.
- Manitoba's WCB has subjected itself to several independent reviews and consultations in recent years.

**Grade:** A

**Comments:**

The WCB has subjected itself to several comprehensive reviews. The board governance structure has been renewed and is healthy.

**Overall Grade: C**

**There is much room for improvement, but the good news is that recent reviews provide a useful blueprint for reform/change. It's time to implement their recommendations.**

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