



# Health & Safety REPORT CARD

June, 2022

# 2022 MFL HEALTH AND SAFETY REPORT CARD

## INTRODUCTION

The Manitoba Federation of Labour (MFL) is the province's central labour body, made up of forty (40) affiliated unions and representing 125,000 unionized workers from the public sector, private sector, and building trades. Workplace health and safety is a key priority for the MFL and our affiliated unions. The MFL conducts health and safety research, provides health and safety education and training to our members, and lobbies and advocates for stronger laws, stricter enforcement, and greater investment in injury and illness prevention to keep all workers safe and healthy.

Every worker has the right to a safe and healthy workplace, and every family has the right to expect that their loved ones will return home safely at the end of every workday. All workplace injuries and illnesses are preventable. When we have the right laws, enforcement strategies, and prevention programs, we can ensure that all workers stay safe and healthy on the job.

While employers have the legal duty to ensure safe and healthy workplaces, it is also true that the laws that governments pass, the policies they implement, and the investments they make have a major influence on our workplace health and safety system. That's why it's so important to have a government that's committed to ensuring safe and healthy workplaces for all workers. Good workplace health and safety systems don't happen by accident – they need to be built and sustained.

While many improvements to workplace health and safety have been won by workers and unions over the course of many decades of fighting for worker safety, the fact that Manitoba still experiences some 28,000 reported workplace injuries and twenty-five (25)

fatalities annually<sup>1</sup> is a sobering reminder of the need to remain vigilant and redouble our efforts to make workplaces safe and healthy for all Manitobans. And all the more so after lessons learned from two and half years of dealing with the pain and loss associated with global spread of the coronavirus. The COVID-19 pandemic has shone a spotlight on the value of essential workers and the services they provide on behalf of all Manitobans. It also highlighted the importance of proper Personal Protective Equipment (PPE), paid sick leave and other workplace health and safety measures needed to keep workers safe and avoid germ and virus transmission in the workplace.

This report card is part of the MFL's efforts to raise awareness about the importance of workplace health and safety and encourage government to give it the priority and focus it deserves. The report card evaluates the Pallister/Stefanson government's track record on workplace health and safety in contrast to recommendations made by labour to keep workers safe and healthy on the job and ensure proper care and rehabilitation for injured workers.

**This Report Card examines four (4) main areas:**

1. Manitoba's workplace health and safety legislation and regulations.
2. Enforcement.
3. Prevention.
4. Manitoba's workers compensation system for injured/ill workers.

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<sup>1</sup> It's important to keep in mind that these statistics reflect only those injuries and fatalities that are reported to and accepted by the WCB and are, therefore, under-estimations. We know that owing to the WCB's experience rate model, claim suppression means that many injuries are not reported. WCB statistics also only reflect injuries/illnesses in industries with WCB coverage, and only those injuries/illnesses eligible for coverage (many psychological injuries are not eligible for coverage, for example).

# WORKPLACE HEALTH AND SAFETY LAWS AND REGULATIONS: D

*Government has taken steps backward and has not provided leadership on pressing workplace hazards*

With respect to Manitoba's workplace health and safety laws and regulations, which provide the overall framework for workplace health and safety in our province, the Pallister/Stefanson government's approach 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, as seen so clearly during the COVID-19 pandemic. For the steps the Pallister/Stefanson government has taken to weaken our system, and for the steps they have failed to take to strengthen it, the MFL is downgrading our assessment of the government's performance in this area from a grade of C- to a grade of D. See rationale below:

- The very first action taken on workplace health and safety by the Pallister/Stefanson government shortly after being elected was the **elimination of the Minister's Advisory Council on Workplace Safety and 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 advice on changes and updates to workplace safety and health laws and regulations. Since the elimination of this Advisory Council, there has been almost no consultation with labour and employers on workplace health and safety issues, and no forum for meaningful engagement on emerging priorities, such as mental health in the workplace and COVID-19.
- In 2021, the Pallister government amended *The Workplace Safety & Health Act* to give heavy-handed **powers to government to dismiss workers' health and safety appeals without proper due process or a fair hearing** at the Manitoba Labour Board. The same amending *Act* **eliminated the important position of**

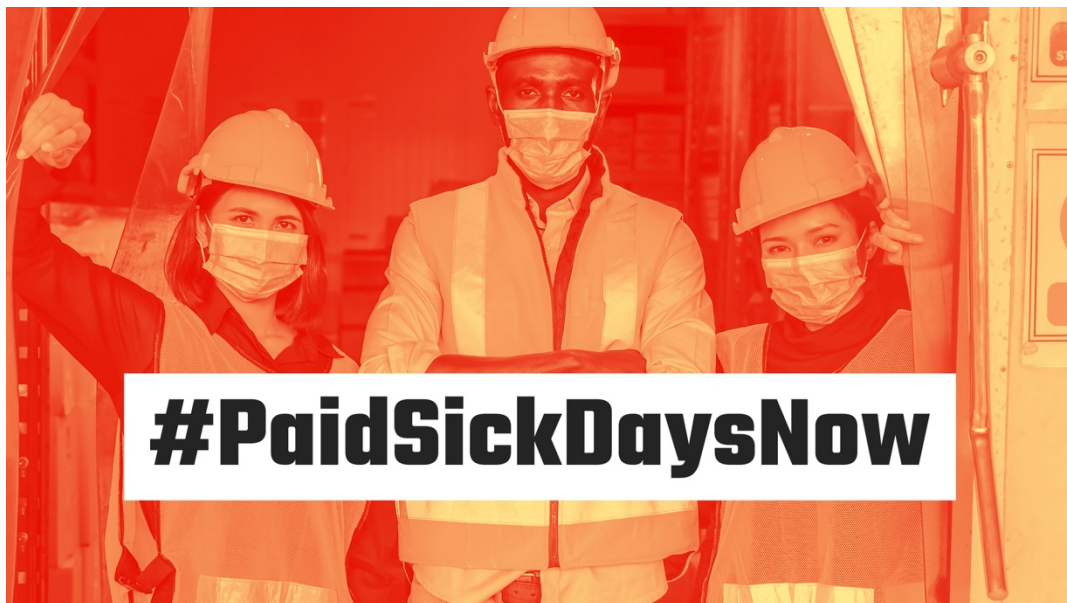
**Chief Prevention Officer**, which was established to be an independent watchdog to ensure continuous progress and accountability on workplace injury/illness prevention. We note that the amending *Act* also raised the level of maximum fines for health and safety infractions, which should have been a positive thing, but **no maximum penalty has been levied toward a guilty employer** since its passing (nor has this government issued a maximum fine at any time during its two terms in office).

- Government ignored consensus advice it received from labour and business provided through the Labour Management Review Committee in 2018 to set the **minimum working age for young Manitobans** at 14, choosing instead to **set it at 13, meaning kids can get permits to work in Manitoba a full-year younger than kids in Ontario and Saskatchewan.**
- In 2019, government watered down Manitoba's standards for protecting workers from harmful chemicals, **moving away from automatic adoption of acceptable exposure limits** established by the American Conference of Governmental Industrial Hygienists (ACGIH). The long-standing former practice of automatic adoption meant that 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 that workers will be exposed to dangerous levels of chemicals for a prolonged period even after the scientific community has determined that such exposure is unsafe. What's more, at the present time, government has yet to announce plans for a first consultation.
- Government has **made the provincial apprenticeship program more dangerous** by eliminating the long-standing one-to-one apprentice to journeyman ratio, weakening the regulation to allow for two apprentices to be supervised by one journeyman, and even allowing fourth-year apprentices to work without supervision at all as long as they have access to a cell phone. These

changes were made against strong stakeholder advice provided in response to a government survey.

- Throughout the pandemic, the Pallister/Stefanson government's **COVID-19 public health measures were regularly at odds with recommendations from the medical community, workers, and unions**: restrictions were implemented too late and ineffectively then relaxed too quickly. On numerous occasions, government refused to answer questions about whether or not their public orders contradicted advice from their own internal public health officials, leaving Manitobans with the sense that politics, not science, was driving the pandemic response. The government's lax approach to public health orders also created a high level of uncertainty and unnecessary risk for workers and destabilized workplace health and safety systems with constant changes. The government's decision to eliminate public health orders, contact tracing and daily reporting as of April 1 has left many workers without the necessary protections and information to track and understand the virus' spread.
- Following in the shoes of Brian Pallister, Premier Stefanson is continuing to refuse **broad-based calls to legislate paid sick days for all workers** in order to keep workplaces safer not only from COVID-19, but also from a host of other infectious germs and viruses that result in workplace transmission, making workers sick and reducing workplace productivity. For part of the pandemic, the Pallister/Stefanson government established the Manitoba Pandemic Sick Day program that was voluntary, temporary, and fell short of covering workers' full income while sick. Recognizing the dangers of COVID-19, its contagion and impact on health, the MFL is calling on the Manitoba government to legislate ten (10) paid sick days for workers. Too many Manitobans have to choose whether to go to work sick or pay the bills. In Manitoba, less than half of workers have access to paid sick time meaning that when workers are sick, they either need to go to work or lose out on their paycheck.

- Despite asbestos being the number one occupational killer in Manitoba and throughout Canada, **the Pallister/Stefanson government has still not developed mandatory training standard regulations for the safe handling of asbestos**. The labour movement has been calling for training standards for workers who do the dangerous work of asbestos remediation or abatement for years. In 2021, four (4) Manitobans died of workplace asbestos-related diseases.
- The Pallister/Stefanson government has also **failed to act in response to growing awareness and concern for psychological health by amending *The Workplace Health and Safety Act (WSHA)***. Understanding of psychological health and of workplace triggers has grown immensely in recent years and it has become clear that greater attention needs to be placed on workers' psychological well-being in the workplace. Current WSHA regulations recognize the importance of preventing workplace harassment and violence, but neither WSHA nor regulations explicitly address other forms of workplace psychological hazards.



## ENFORCEMENT: D

*Fewer resources invested to keep workers safe.*

Workplace health and safety laws, when they're done right, are meant to protect workers, and effective enforcement should hold up those laws and ensure that everyone is playing by the same rules. This year, the MFL is maintaining its low grade of a D for government's under-investment in Safety and Health Officers (SHOs) and the resources they need to properly enforce Manitoba workplace health and safety laws.

Enforcement plays **three (3) vitally important roles** in our health and safety system:

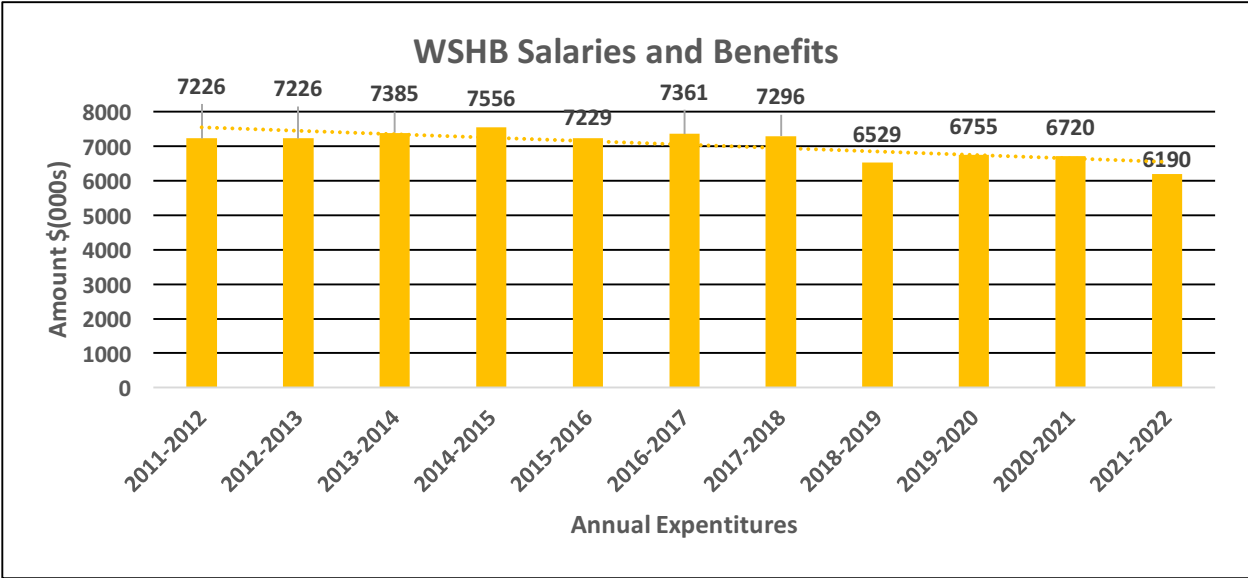
1. Supporting prevention by acting as a deterrent to breaking the rules by employers.
2. Identifying and putting a stop to dangerous health and safety practices that put workers in harm's way.
3. Holding to account those employers who act irresponsibly in regard to the health and safety of their workers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

This important work requires dedicated resources to support a consistent and inclusive approach to enforcement. With responsibility for over 28,000 workplaces in Manitoba, the Workplace Safety and Health Branch (WSHB) is the province's health and safety enforcement arm, staffed by dedicated Safety & Health Officers (SHOs). Their job is to inspect workplaces and respond to tips to ensure that workplace health and safety legislation and regulations are being followed. From a high of more than 14,000 inspections carried out in 2013-14, inspections have been reduced by more than 50% to just over 6,000 in 2020-21.

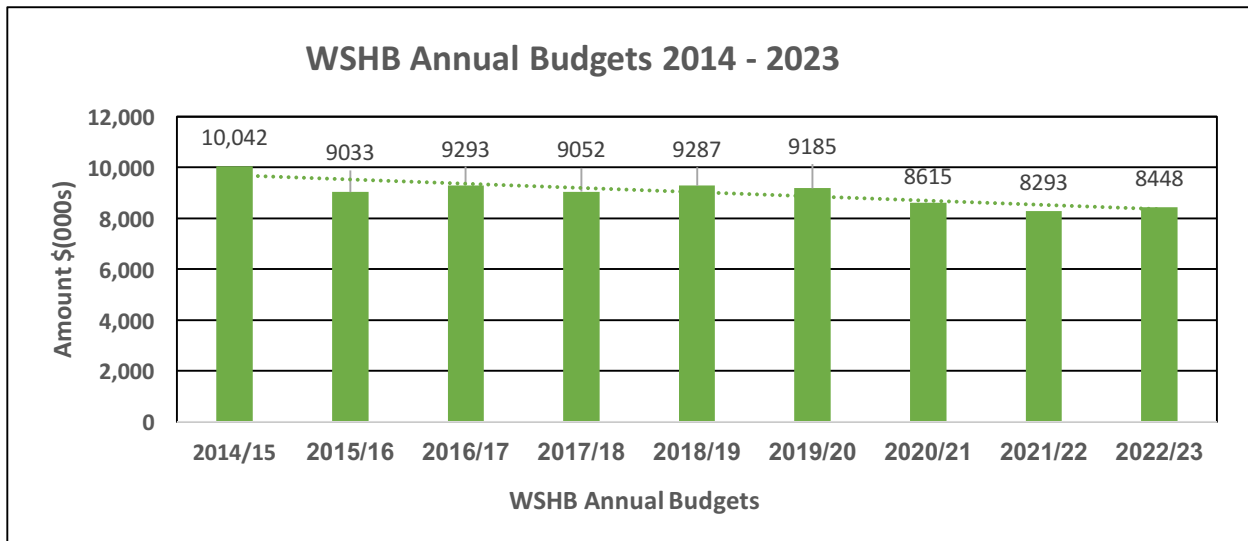




Running a strong enforcement program means having the proper resources and staffing available to do inspections. Unfortunately, the WSHB, like much of the public service, has sustained significant cuts to its staffing levels that only illustrates this government's overall neglect of workplace enforcement over the last term.



We do note that the government’s most recent budget provided a modest increase of \$150,000 to the Branch (see graph below), but we believe that a much larger investment is needed to strengthen the WSHB and that re-invested funds should be directed to hire more SHOs, who are committed to creating safe workplaces.



## Westray

This year marks thirty (30) years since the tragic explosion at the Westray mines that took the lives of twenty-six (26) workers. This disaster highlighted Canada’s legal gaps in holding employers to account when they’re responsible for workplace fatalities. In 2004, the *Westray Act* amended the criminal code of Canada to allow for the criminal prosecution of negligent employers who are guilty of causing worker fatalities. Since that time, however, there have been **no Westray prosecutions levied in Manitoba**. While we acknowledge the 2011 establishment of a dedicated “Director of Investigations” position, we are concerned that a lack of resources has meant that investigations have been delayed and no charges have been brought forward.

## PREVENTION: C+

*Progress isn't happening fast enough*

Preventing workplace injuries and illness should be the number one priority of any workplace health and safety system. Manitoba continues to make progress in the area of prevention, with strong leadership from SAFE Work Manitoba (SWMB), the prevention arm of the Workers Compensation Board, established in 2015. This public agency provides safety training and other workplace resources, runs public awareness campaigns, and takes the lead in developing provincial strategies on specific workplace health and safety prevention priorities.

SWMB is also the administrator of the Safe Work Certified program, which audits and certifies workplace health and safety programs, and the Prevention Rebate Program, which rewards Safety Certified companies by rebating a portion of their annual WCB fees. Labour continues to be supportive of this model of encouraging injury and illness prevention through the implementation of strong health and safety programs, rather than basing an employer's WCB costs on the number of reported injury claims (the 'experience rating' system), which is susceptible to manipulation through claim suppression.

### **The Good:**

In 2019, SWMB released Manitoba's second **Five-Year Prevention Plan** that provides a broad strategy to champion a culture of safety and health in all Manitoba's workplaces.<sup>2</sup>

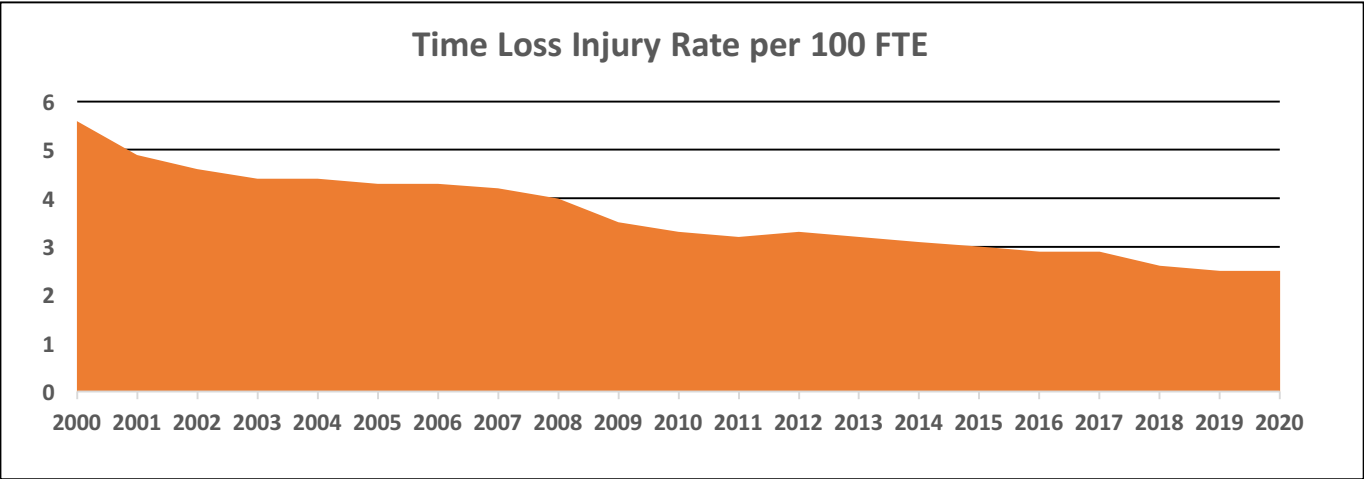
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<sup>2</sup>Manitoba's Five-Year Prevention Plan (2019)

[https://www.safemanitoba.com/Page%20Related%20Documents/resources/FiveYearPreventionPlan\\_21SWMB.pdf](https://www.safemanitoba.com/Page%20Related%20Documents/resources/FiveYearPreventionPlan_21SWMB.pdf)

SWMB launched a series of online workshops focusing on **Safe Return to Work During COVID-19** (Preparing Workers, Guidance for Temporary Foreign Workers, and Re-Opening Planning).

**Manitoba’s reported time loss injury rate has continued to decline slowly but steadily**, reaching 2.5 days per 100 FTEs in 2019 and 2020.<sup>3</sup> However, we need to caution against putting too much weight on this measure as we know that injuries/illnesses are under-reported in the current WCB system due to claim suppression. Moreover, workers without WCB coverage are not counted (e.g., teachers), and injuries/illnesses excluded from coverage (such as stress-based psychological injuries) are also not included.



The **number of Safety Certified companies in Manitoba grew by 111 workplaces** for a total of 1,261 in 2020, and the Rebate program paid out \$6 million to certified employers.<sup>4</sup>

<sup>3</sup> WCB 2020 annual report p. 5  
<sup>4</sup> WCB 2020 annual report pp. 27-28

## **The Bad:**

**The Pallister/Stefanson government failed to provide proper PPE** for public sector workers during the early phases of the pandemic and has **fought workers and unions on providing proper workplace protections throughout the pandemic**, forcing unnecessary stress, hazards, and the need to file grievances. These battles included, for example, getting personal care home workers access to and fitted for N95 masks, home care workers having to fight for access to rapid tests even though they see multiple vulnerable and different clients every day, and nurses fighting and winning an arbitrated decision against the government to expand their access to N95s and face shields for those working in COVID-19 units.

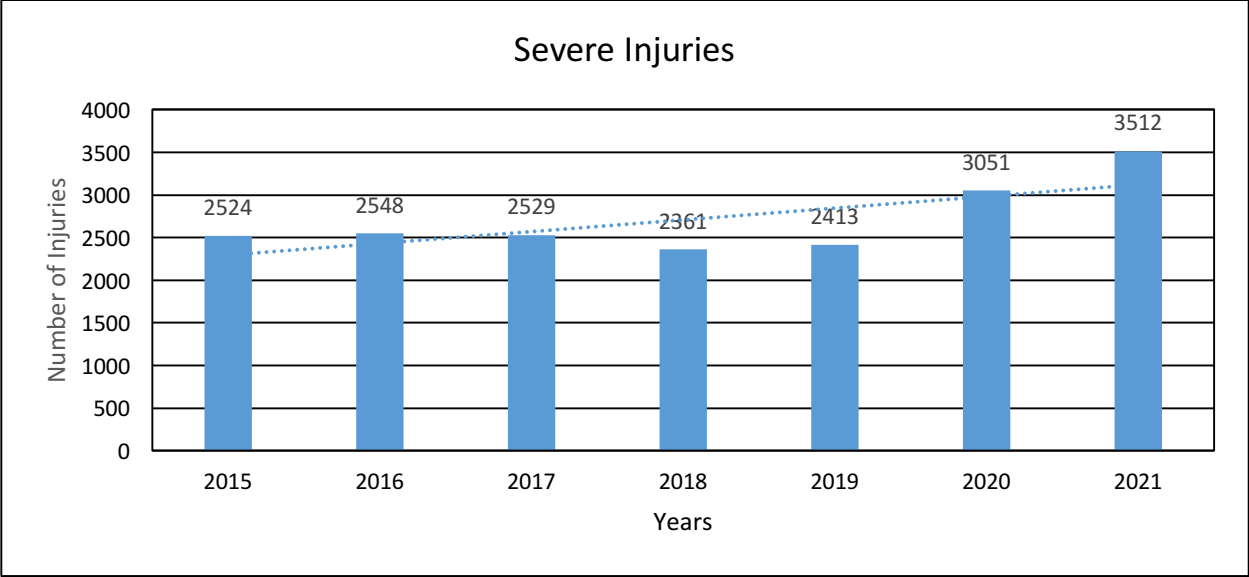
The Pallister/Stefanson also created **unsafe and unsustainable conditions throughout the public sector by cutting public service jobs and creating serious staffing shortages in critical areas that continue to this day.**

While the **SAFE Work Certified program** has continued to expand, it has **yet to be extended to many industries that desperately need quality prevention programs, like healthcare, wholesaling, and hospitality, where injury rates are stubbornly high.** In fact, the percentage of payroll covered by SAFE Work Certified programs has remained static at 42% over 2020 and 2021. This stalled progress may be the result of COVID-19 having slowed training and other components of the program.

- While total reported injuries have gone down, the **number of severe workplace injuries continues to rise** in Manitoba. In fact, there were 500 more severe injuries in 2020 as compared to 2019, and another 500 more in 2021 (during a period when COVID-19 slowed injuries overall).<sup>5</sup>

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<sup>5</sup> 2021 WCB Annual Report p.31



## WORKERS COMPENSATION BOARD: C–

*Much more work to be done*

The workers compensation system exists to help workers recover and return safely to work after an injury or illness. To do this, the compensation system must meet workers where they are at and recognize injuries and illnesses that are happening in today’s workplaces. Over the past two years, there has been some movement to modernize Manitoba’s workers compensation system, better address injuries and ensure the financial sustainability of the system. That said, the WCB still has a lot of work to do to ensure that the compensation system treats all injuries and illnesses fairly. This year the MFL is providing a slightly improved grade of C– for workers compensation, up from a grade of D. We believe that with a faster follow through on a number of priorities, workers compensation has the potential to be significantly improved in the future.

### Governance

Manitoba’s Workers Compensation Board is governed by a **tri-partite Board of Directors**, consisting of representatives of workers, employers, and the public interest.

As a result of recent legislative changes, the Manitoba Federation of Labour and the Manitoba Employers Council now formally play the role of nominating bodies in this process. This model has worked well, encouraging the WCB's primary stakeholders to work together and build consensus. Assessment rates are affordable, and the **system is funded at 150%**, making now the right time to ramp up prevention efforts further and expand coverage to all injuries, including the full gambit of work-related psychological injuries.<sup>6</sup>

### **Occupational COVID-19 Claims**

In the face of an unprecedented global pandemic, which has included significant workplace transmission, it has been labour's observation that **WCB personnel made a significant and consistent effort to be responsive and flexible in the adjudication process for workplace COVID-19 claims**, and to promptly distribute compensation benefits when workers were eligible. We also appreciated that in December 2021, as the Omicron variant hit Manitoba and the government scaled back PCR testing, the WCB acknowledged this challenge by changing its testing policy to allow for rapid test results to confirm COVID-19. As of March 2022, the WCB had accepted over 2,200 claims out of 3,600 applications. (While it appears that a large percentage of claims were not accepted, the majority of non-accepted claims were withdrawn by workers who initially submitted claims after being exposed to COVID-19 at work, but were fortunate to not get sick and, therefore, chose not to proceed with their claim).

We are concerned, however, about challenges on the horizon related to how the WCB processes COVID-19 claims going forward. The government's abandonment of contact tracing makes sourcing COVID-19 exposure more difficult. Additionally, there are early indications that the WCB may be ill-prepared to fairly assess **Post COVID Syndrome** (known as long haul COVID). While international organizations such as the World Health Organization and the Centre for Disease Control have begun to give definition to Post-COVID Syndrome and recognize its common symptoms, the WCB has not adopted a

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<sup>6</sup> 2021 WCB Annual Report pp.26-27

specific long haul COVID policy, and unions are hearing concerns from workers about claims being ended prematurely while still struggling with the effects of their illness. We will be closely monitoring how the WCB, and the WCB Appeal Commission, handle these claims as they arise.

### ***The Workers Compensation Board Amendment Act***

*The Workers Compensation Board Amendment Act*, passed in May 2021, has the potential to reduce a number of barriers in the adjudication of claims and strengthen protections for workers. Many of the amendments can help modernize Manitoba's compensation system. However, while the new *Act* enables the WCB to be more progressive in a number of areas, follow-up actions on the amendments to give them effect have been slow or non-existent so far.

#### **The Good:**

**The Removal of Psychological Injuries and Illness from the Category of Occupational Disease.** The application of the “dominant cause” test makes proving the occupational nature of psychological injuries or illness needlessly difficult for workers. Psychological injuries and illness are not specific to certain occupations, like occupational diseases are – they do not originate in the same manner or in the same workplace circumstances, and psychological injuries are not brought on necessarily by traditional hazards or exposures. Ending the practice of categorizing psychological injuries as occupational diseases and assessing claims under a dominant cause framework is a crucial step in improving coverage for workers. (The MFL continues to maintain that the use of the ‘dominant cause’ standard of causation for occupational disease is unfair – occupational disease should be treated the same as other injuries/illnesses.)

**The Inclusion of Privacy Restrictions on Workers’ files.** The *Act* also imposes needed restrictions on how and why employers can access private health information contained within workers’ WCB claim files, limiting employer access to cases of

reconsideration or appeal. The *Act* now establishes a clear obligation on employers to destroy any such documentation once a reconsideration or appeal is dropped or completed. This amendment addresses the very real risk of a breach of privacy that can occur – deliberately or unintentionally – when employers use file information inappropriately or hold on to files unnecessarily.

**The Ability for WCB to Pay Workers Directly.** The *Act* now allows the WCB to repay workers directly (and promptly) in cases where employers improperly apply deductions to their wages, rather than forcing workers to “fight it out” with their employer.

**Expanded the Definition of Medical Aid.** The *Act* now allows payment for any medical aid which cures and/or provides relief for injured workers. This helps fix an unnecessary restriction in the old *Act* which has sometimes led to WCB disallowing coverage in incredibly sad and difficult situations when only relief is possible, but no cure.

#### **The Bad:**

**Reinstating a cap on maximum insurable earnings.** After becoming the first province in Canada to remove a cap on maximum insurable earnings in 2006, the *Act* now re-establishes a cap on the amount of worker income that is covered by WCB, such that only income up to \$150,000 annually will be insured (and subject to replacement in the case of an injury requiring time away from work). Wage loss replacement benefits should be based on a worker’s earning capacity, not an arbitrary cap. The MFL has always opposed the idea of a cap on insurable earnings on principle: simply put, it’s unfair and discriminatory against higher income earners.

**Claim Suppression, Dangerous Return to Work Practices, Defying Doctors’ Orders.** Claim suppression is inherently built into the structure of the WCB’s current rate model because of the way in which WCB directly ties employer premiums to the number and duration of injury claims that are filed. Claim suppression activities, such as pressuring workers to not report their injuries or forcing workers back to work too soon

or with insufficient accommodations, reduce employer premiums but work against true injury prevention. The MFL has always maintained that the rate model should be changed to break the connection between employer premiums and worker claims to prevent any manipulation. We continue to raise this issue with the WCB, and even though independent reviews have confirmed the widespread use of claim suppression in the compensation system, far more needs to be done to combat it.

In addition to traditional employer claim suppression, Labour is increasingly concerned about the role being played by the WCB itself in artificially shortening claims and sending injured workers back to work prematurely or without adequate accommodation safeguards. While injured workers have the right to seek medical advice from health care providers of their choosing, it is also commonplace for the WCB to involve their own WCB medical advisors to review and re-assess an injured worker's injury or illness claim (sometimes on the basis of only a "paper review" of the worker's file only, without even an in-person medical examination). Workers are finding that the opinions of their doctors are being overruled or disregarded by WCB medical advisors, and workers are receiving new and conflicting medical orders from the WCB, leaving them confused and anxious about the best path forward to recovery and return to work safely. The MFL has called on the WCB to develop a formal process and procedures for dealing with conflicting medical opinions, including making public data on how often conflicting medical opinions occur and how they can be resolved fairly and transparently, always with the goal of safe return to work.

### **The Unfinished:**

**Establishing a Presumptive Schedule of Occupational Disease.** One of the changes in the new *Act* permits the WCB to develop a schedule of occupational diseases for presumptive coverage, without workers needing to prove that work is the "dominant cause." This was a major advancement to the *Act*, but the WCB has yet to move forward with its new powers and establish a schedule, leaving workers suffering from

established occupational diseases waiting for fairness. We urge the WCB to move forward with the establishment of a schedule, based on current science, without delay.

**Fair Coverage for All Workplace Psychological Injuries.** The WCB continues to retain major discriminatory restrictions on what kinds of work-related psychological injuries are compensable, limiting coverage to only certain injuries. Currently, psychological injuries caused by workplace stressors are explicitly excluded from coverage, unless stemming from an acute reaction to a traumatic event. Across Canada, other provinces (BC, Ontario, Saskatchewan, Alberta, Quebec) have expanded coverage. We urge the WCB and government to amend the *Workers Compensation Act* to cover all work-related psychological illnesses and injuries.

**Expansion of Use of Probable Future Earnings.** Currently, the WCB has the ability to recognize an injured worker's probable (higher) future earnings in the calculation of long-term wage loss benefits, but only in certain limited circumstances: namely, for young workers (currently defined as twenty-eight (28) or younger) and workers engaged in an apprenticeship program. This policy is discriminatory as it focuses on male-dominated industries and jobs. The last Legislative Review Committee recommended that the WCB develop a more inclusive policy. We urge the WCB to move forward with this recommendation without further delay.

**PTSD Adjudication Timelines.** The timeline for adjudication of PTSD claims, despite the availability of presumptive coverage for all workers, continues to be unacceptably long, **averaging 90 days before workers get a decision.** While the WCB has taken some positive steps to provide temporary emergency support to workers suffering from occupational PTSD while they wait for their claims to be adjudicated, 90 days is far too long for workers to have to wait for answers and proper benefits. We urge the WCB to work cooperatively with the medical community to ensure that workers' claims can proceed more expeditiously.

**Claim Processing Time.** The MFL continues to advocate with the WCB to allocate sufficient resources to ensure that injured workers' claims can be processed quickly, so

they can get the help they need to recover without unnecessary delay and the added stress that goes with it. We continue to advocate for a two-week standard for claims processing and, although we noted significant progress in our 2019 Report Card (we reported 72% of claims were processed in 14 days in 2018), we are concerned that processing times have stagnated at that level for the past three years. We hope that once COVID-19 subsides that the WCB will once again make this a priority.

**Coverage.** WCB's coverage rate for the provincial workforce over the last two (2) years has slipped to 73%, from a high of 79% in 2019<sup>7</sup>. This may be an unanticipated impact of COVID-19, but it is concerning that Manitoba's coverage rate ranks 9<sup>th</sup> in Canada overall<sup>8</sup>. Labour continues to advocate that WCB undertake new consultations with uncovered industries to opt into a mandatory coverage scheme. As COVID-19 begins to recede, this is the perfect time for WCB to renew this discussion with uncovered Manitoba Industries.

## CONCLUSION: D

Manitoba's health and safety system is being neglected and eroded by the Pallister/Stefanson government. Over their two (2) terms in government, they have actively weakened legislation, removed safety protections, cut workplace health and safety enforcement, and undermined prevention efforts. All of this has been done while they made cuts to the public sector and fought labour on health and safety protections for workers during a global pandemic.

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

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<sup>7</sup> WCB 2021 Annual Report p.29

<sup>8</sup> The WCB Act Legislative Review Committee Report to Government p.14