an investigation into the incidence of WCB claims suppression

June 2010

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Introduction

The Manitoba Federation of Labour (MFL) is the province's principle central labour body representing the interests of some 95 thousand working women, men who are members of affiliated unions. Our policies have been determined by General Convention, held every three years and attended by elected delegates. We also partner with many other community groups that share many of our beliefs and goals.

Last fall, the MFL began a review of the practice known as Workers' Compensation claim suppression which has been adopted by some employers in order to reduce their WCB premium costs or to avoid increases.

This project tried to examine the scope of the practice and assess its impact on injured workers and their ability to receive the Workers Compensation Board (WCB) benefits they are or may be entitled to. We examined the legislation that is applicable to these workers along with evidence from across the province. The purpose of this report is to convince the provincial government and the WCB to take steps to end the practice. It is hoped that the end result will be a system that is fair and equitable for everyone.

The research has been compiled from labour leaders, union representatives, medical professionals, WCB employees, compensation advocates, and from those most affected, injured workers themselves. This is a compilation of evidence that details the pervasiveness of the practice in Manitoba. Segments of society already marginalized are often those most greatly affected by claim suppression.

This project was undertaken in response to many concerns expressed by our affiliated unions. All too often we hear stories from injured workers about their difficulties with their employers and with the WCB itself. What has become apparent, and what we will show in our research, is that these are far from being simply isolated incidents of denial of rightful benefits to workers. These acts of claim suppression are apparently an accepted business practice that seems to be increasingly.

WCB Overview

The system of benefits and remittance for workplace injury and illness that we recognize today as the Workers Compensation Board actually had its start in the ancient world with historians detailing these systems to the beginning of written history;
"The Nippur Tablet No. 3191 from ancient Sumeria in the fertile crescent outlines the law of Ur-Nammu, king of the city-state of Ur. It dates to approximately 2050 B.C. The law of Ur provided monetary compensation for specific injury to workers' body parts, including fractures. The code of Hammurabi from 1750 B.C. provided a similar set of rewards for specific injuries and their implied permanent impairments. Ancient Greek, Roman, Arab, and Chinese law provided sets of compensation schedules, with precise payments for the loss of a body part."[1]

[1] http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1888620/

Eventually we have the development of English Common law in the late middle ages and the renaissance. This legal framework lasted into the period of Industrial Revolution in Europe during the mid 19th century. At this time people where pushed from rural agricultural based communities into cities with hazardous factories.[2] This work was much more dangerous than the previous agrarian and guild based systems that had existed because the equipment that was being utilized for production was much more powerful and workers had far less control over how it was done. A concentration in ownership and capital changed the relationship of employers and employees from one in which the employer had an assumed long term responsibility to the health and welfare of workers, to one in which companies took no responsibility for those injured on the job. As such, those that experienced injury at work had no other option but to sue the employer in a court of law.

Trying to exact compensation and benefits through the court system had varying degrees of success. When workers won, they could literally bankrupt companies. But when they lost, which was far more often, it was often a sentence of impoverishment for workers and their families. When workers tried to sue their employers, employers had three common arguments or defences. Even under a circumstance in which they were very clearly guilty of negligence, employers were allowed to use the arguments of:

1) Contributory negligence. In that an employer could show that the injured person had contributed to the incident through there own negligence.

2) Negligence of another person. That a co-worker or other person had contributed to the incident.

3) Assumption of risk. Believed that when someone took a job or signed a contract that they knew of the danger present.

Because of this adverse system that was obviously stacked against workers, many professions and workplaces with more affluent workers started their own insurance plans and systems for injured workers or there families. Virtually all trade unions and craft guilds membership contributed to a war chest that could be accessed by the workers should they be injured and not able to work.[3] When Prussia and England enshrined the first modern Workers Compensations Acts in the late 1800's, trade unions where adamantly opposed.[4] This was because their war chests were added to the coffers of the government to administer the compensation system.

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[2] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time*. 1944. xiii + 305.

[3] The disabling backache. An international perspective. Hadler NM. Department of Medicine, School of Medicine, University of North Carolina at Chapel Hill, USA.PMID: 7604338 [PubMed - indexed for MEDLINE]

[4] Interview with Robert Sass. February 22nd 2010.

When these first modern compensation systems emerged under Prussian Chancellor, Otto von Bismarck and the British Parliament, workers where opposed for another reason other than the government appropriation of the coffers and funds that had taken generations to accumulate. Workers had the legitimate concern of introducing doctors to the workplace. For all intents and purposes doctors represent the employing class and therefore do not have much practical knowledge or understanding of workplaces. Now occupational injury was to be judged and adjudicated by medical professionals as opposed to the workers own collective experience.

When Manitoba became a Province these common law defences and arguments where widely used and greatly accepted by judges to deny compensation to injured workers. But over time, these common defences grew unpopular and became disregarded by juries who would award to the plaintiffs. Because of this tendency of juries to have sympathy for the injured worker, government introduced the Workmen's Compensation for Injury Act in 1894. This was definitely not the rise of the modern compensation system that we have today. In fact it limited the amount that a claimant could be awarded while still requiring the worker to prove the employer negligent beyond what was to be considered the 'normal' course of events. It should also be noted that employers did not find support this system since many became bankrupt or were forced to leave the province to avoid the payment award. That is when companies started taking out there own private insurance. The private insurance companies would fight the claim through all different levels of appeal, but the cost and premiums where often quite costly.

The true modern system that we have in place today arose after an inquiry by Ontario Chief Justice William Meredith between 1910 and 1914. The main principles of Meredith's report included the following:

No fault - Workplace injuries are compensated regardless of fault. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury. Fault becomes irrelevant, and providing compensation becomes the focus.

Collective liability - The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.

Guaranteed benefits - A fund is established to guarantee that compensation monies will be available. Injured workers are assured of prompt compensation and future benefits.

Independent administration - The governing board is both autonomous and non-political. The board is financially independent of government or any special interest group. The administration of the system is focused on the needs of its employer and worker clients, providing service with efficiency and impartiality.

Exclusive jurisdiction - All compensation claims are directed solely to the compensation board. The board is the decision-maker and final authority for all claims. The board is not

bound by legal precedent; it has the power and authority to judge each case on its individual merits.

His report stated that workers should be entitled and given guaranteed compensation benefits for workplace injury if they give up the right to legal prosecution. This has since become known and referred to as the 'historic compromise'. As stated by the WCB of Manitoba: "The program is the result of a Canadian compromise struck in the early twentieth century and maintained to this day – injured workers gave up the right to sue their employers in exchange for guaranteed no-fault benefits in the event of a work related injury or illness, and employers agreed to pay for the system, in exchange for protection against lawsuits."[5]

Manitoba adopted and enshrined Justice Meredith's findings and principle recommendations in our own legislation, The Manitoba Workmen's Compensation Act of 1916. Initially, employers were still required to have their own private insurance coverage until 1920 when it was decided that the employers would all contribute to a collective fund administer by the Compensation Board itself. Companies were then separated into different categories based on the rate of accident that the firm experienced overtime. These different categories and grouping were charged different rates of premiums based on how much they drew from the collective contributions. This was of course the precursor to the modern experience based rating model that we have today. The idea here is that the less accidents that a company has, the less the costs of premiums that they will have to pay to the Compensation Board.

By The Numbers

It is important to examine the trends in injury statistics reported by the WCB of Manitoba. It provides a context and for aggregate movements in lost time injuries and the industries that have been most greatly affected. It is important to remember that Manitoba has the lowest WCB coverage of any Canadian jurisdiction at 75%.

All together, the time loss injury rate on accepted claims has fallen by 32% since 2000. The biggest factor in this decline has come from the manufacturing sector of the economy that has seen time loss injuries fall by a staggering 60% since 2000. The key question now is, has the manufacturing sector really gotten 60% safer than it was a decade ago? Is Manitoba 32% safer than it was in 2000? If time loss injury rate is the measurement of a safe workplace, then campaigns of claim suppression would show the same results as

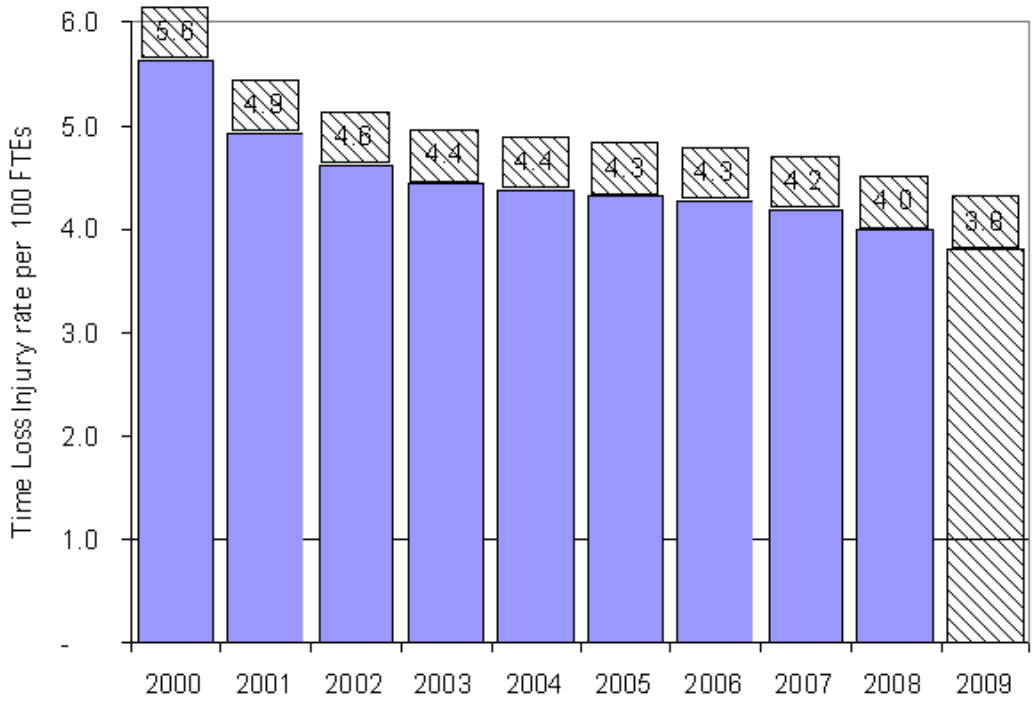
[5] http://www.wcb.mb.ca/about_wcb/overview.html

actual incident reduction.

1.0 INJURY RATES

1.1 Time loss injury rate

Figure 1 - Manitoba Time Loss Injury Rate, 2000 to 2009



Summary: Manitoba Workplace Injury and Illness Statistics 2000 – 2009

1.2 All Injury Rate

Figure 2 – Manitoba All Injury Rates for 2000 to 2009

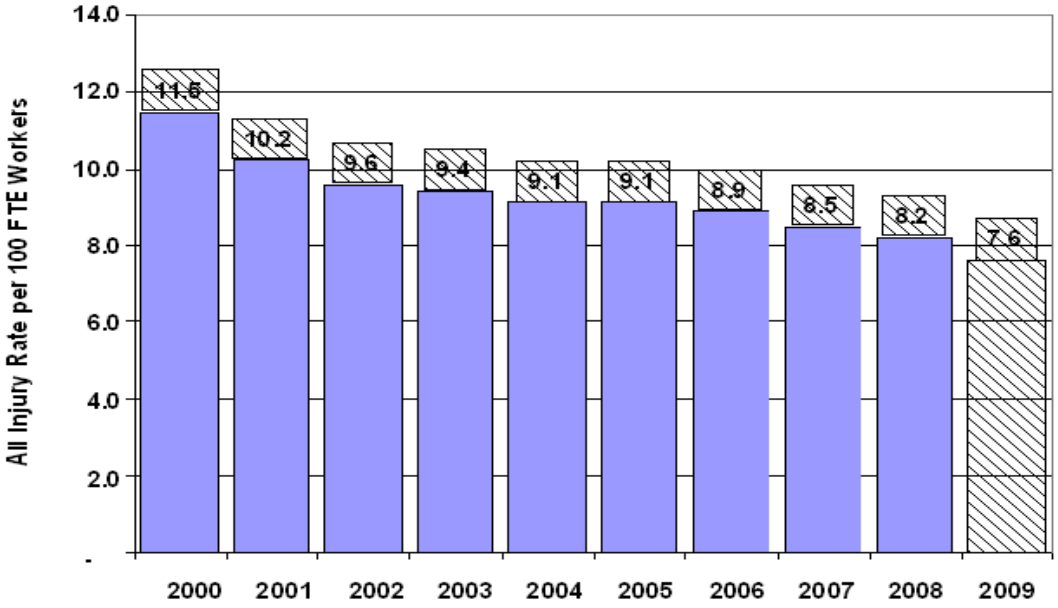


Table 9 – All Injuries by Major Industry Sectors and Selected Sub-Sectors, 2000 to 2009

WCB Industry Sectors and Selected Sub-	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Agriculture & Forestry	42	64	74	49	44	49	35	41	32	549
• Agriculture[10]	177	208	210	241	274	214	235	212	215	526
Mining, Quarrying & Oil Wells	940	876	683	697	690	689	786	912	962	672
• Mining	822	740	588	574	605	585	648	735	771	561
Manufacturing	15,478	13,807	12,263	11,771	10,416	10,435	10,073	9,323	8,631	6,673
• Meat Processing	1,469	1,396	1,463	1,403	1,090	1,149	990	840	782	751
• Metal Works	2,205	1,830	1,713	1,795	1,676	1,829	1,904	1,876	1,767	1,225
• Vehicle Manufacturing	1,816	1,485	934	812	557	554	501	535	443	395
• Agricultural Implement Manufacturing	1,703	1,297	1,266	1,320	1,350	1,256	1,258	1,189	1,254	941
• Wood Manufacturing	2,609	2,509	2,292	2,296	1,756	1,743	1,674	1,436	1,134	674
• Printing	466	378	433	442	383	361	335	295	295	277
• Clothing Manufacturing	339	294	274	244	192	155	128	100	92	43
• Aircraft Manufacturing and Repair	419	422	341	226	228	212	257	254	252	195
Construction	3,306	2,757	2,736	2,978	3,045	3,363	3,688	4,066	4,428	4,046
• Building Construction	2,789	2,324	2,242	2,482	2,546	2,807	3,052	3,378	3,717	3,312
• Heavy Construction	517	433	494	496	499	556	636	688	711	734
Transportation, Communication & Storage	2,355	2,112	1,942	2,103	2,170	2,120	2,178	2,415	2,328	2,250
• Trucking	1,364	1,255	1,131	1,232	1,355	1,281	1,317	1,415	1,258	1,191
Trade	5,366	5,210	4,975	5,329	5,307	5,443	5,700	5,437	5,227	4,844
• Supermarket and Department Stores	2,568	2,643	2,532	2,701	2,784	2,928	3,015	2,837	2,824	2,513
Service	6,639	6,415	6,276	6,552	7,014	6,882	7,146	7,095	7,336	8,476
• Accommodation and Restaurants	1,968	1,863	1,632	1,606	1,645	1,580	1,639	1,528	1,601	1,567
• Healthcare	3,795	3,922	4,014	4,244	4,575	4,464	4,616	4,528	4,723	4,705
Public Administration	318	292	310	311	295	325	348	364	351	385
Voluntary	1,798	1,868	1,672	1,757	1,847	1,799	2,005	1,772	1,790	347
• Educational Institutions	758	652	709	729	744	769	855	866	854	851
Self Insurers	3,911	3,734	3,439	3,651	3,826	3,867	3,784	3,817	3,712	3,480
Sector Missing & Rate Code Missing	86	59	20	22	15	15	7	10	11	8
Overall[11]	39,969	36,792	34,390	35,220	34,669	34,987	35,750	35,252	34,908	31,730

Source: WCB Claim and Employer Databases

[10] The WCB covers only a small proportion of the agriculture and education sectors so that most work-related injuries are not reported to the WCB.
[11] Totals may not add as a few injuries or illnesses do not have their sector coded.

3.0 WORKPLACE INJURY AND ILLNESS ANALYSIS

3.1 Time Loss and No time Loss injuries

Table 5 – Notified and Accepted Time Loss[7] and No Time Loss Injuries, 2000 to 2009

Reported to WCB and Accepted										
Type of Injury	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Time Loss Injuries	19,640	17,797	16,575	16,699	16,634	16,697	17,142	17,265	17,109	15,508
No Time Loss Injuries	20,329	18,995	17,815	18,521	18,035	18,290	18,608	17,987	17,799	16,222
Total All Injuries	39,969	36,792	34,390	35,220	34,669	34,987	35,750	35,252	34,908	31,730

3.4 Injuries by Industry Sector

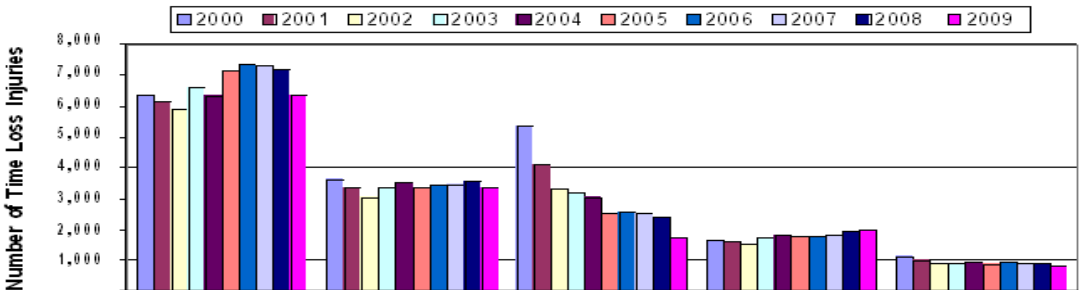
Table 8 - Time Loss Injuries by Major Industry Sectors and Selected Sub-Sectors, 2000 to 2009

WCB Industry Sectors and Selected	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Agriculture & Forestry	20	29	26	29	25	19	15	27	16	296
• Agriculture[8]	89	115	111	122	144	114	112	114	119	284
Mining, Quarrying & Oil Wells	152	104	95	97	97	94	118	158	179	104
• Mining	113	69	64	60	62	54	73	115	123	78
Manufacturing	7,603	6,322	5,528	5,202	4,571	4,494	4,461	4,205	3,887	3,020
• Meat Processing	507	426	423	404	333	275	286	253	173	183
• Metal Works	987	791	762	829	686	799	871	885	872	565
• Vehicle Manufacturing	1,119	914	501	425	286	273	236	240	206	221
• Agricultural Implement Manufacturing	822	610	600	566	547	496	578	530	578	450
• Wood Manufacturing	1,316	1,109	986	880	764	717	645	567	447	268
• Printing	239	204	245	205	198	195	177	149	155	146
• Clothing Manufacturing	214	172	167	155	130	77	68	59	55	24
• Aircraft Manufacturing and Repair	225	224	182	124	116	104	123	141	149	104
Construction	1,645	1,384	1,416	1,510	1,561	1,770	1,892	2,035	2,115	1,940
• Building Construction	1,389	1,161	1,174	1,251	1,313	1,492	1,589	1,689	1,817	1,629
• Heavy Construction	256	223	242	259	248	278	303	346	298	311
Transportation, Communication & Storage	1,349	1,208	1,156	1,213	1,297	1,275	1,317	1,495	1,382	1,271
• Trucking	852	779	747	786	870	843	862	914	796	738
Trade	2,659	2,626	2,455	2,508	2,585	2,606	2,719	2,677	2,645	2,367
• Supermarket and Department Stores	1,262	1,354	1,264	1,303	1,329	1,413	1,433	1,376	1,355	1,181
Service	3,389	3,470	3,460	3,516	3,647	3,588	3,692	3,814	4,023	4,437
• Accommodation and Restaurants	814	841	706	709	725	680	703	709	736	714
• Healthcare	2,205	2,249	2,358	2,398	2,484	2,439	2,498	2,531	2,712	2,613
Public Administration	137	133	146	126	142	147	143	151	141	165
Voluntary	916	868	803	823	910	855	959	833	812	148
• Educational Institutions	395	340	343	353	388	387	468	402	382	417
Self Insurers	1,770	1,648	1,490	1,674	1,797	1,849	1,826	1,870	1,908	1,760
Sector Missing & Rate Code Missing	0	5	0	1	2	0	0	0	1	0
Overall[9]	19,640	17,797	16,575	16,699	16,634	16,697	17,142	17,265	17,109	15,508

Source: WCB Claim and Employer Databases

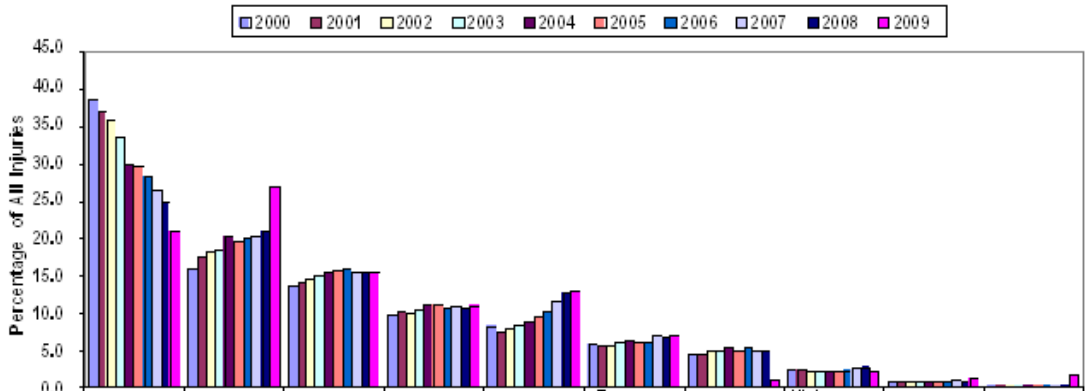
[8] The WCB covered only a small proportion of the agriculture sector voluntarily until 2009, when coverage was extended to all paid workers.
[9] Totals may not add as a few injuries or illnesses do not have their sector coded.

Figure 11 - Time Loss Injury Trends in Major Occupational Groupings, 2000 to 2009



	Trades, Transport & Equipment Operators	Sales and Service	Processing, Manufacturing	Health Occupations	Business, Finance & Administration Occupations
2000	6,373	3,613	5,329	1,626	1,116
2001	6,144	3,352	4,088	1,611	998
2002	5,893	3,065	3,290	1,520	882
2003	6,638	3,312	3,175	1,728	890
2004	6,340	3,516	3,042	1,808	919
2005	7,149	3,378	2,498	1,766	865
2006	7,336	3,437	2,592	1,791	917
2007	7,328	3,468	2,529	1,838	899
2008	7,195	3,541	2,395	1,936	884
2009	6,382	3,379	1,751	1,971	790

Figure 12 - Percent Distribution of All Injuries by Major Industry Sectors, 2000 to 2009



	Manufacturing	Service	Trade	Self Insured	Construction	Trans., Comm. & Storage	Voluntary	Mining, Quarrying & Oil Wells	Public Admin.	Forestry and Agriculture
2000	38.7	15.9	13.4	9.8	8.3	5.9	4.5	2.4	0.8	0.1
2001	37.0	17.4	14.2	10.1	7.5	5.7	4.5	2.4	0.8	0.2
2002	35.7	18.2	14.5	10.0	8.0	5.6	4.9	2.0	0.9	0.2
2003	33.4	18.6	15.1	10.4	8.5	6.0	5.0	2.0	0.9	0.1
2004	30.0	20.2	15.3	11.0	8.8	6.3	5.3	2.0	0.9	0.1
2005	29.8	19.7	15.6	11.1	9.6	6.1	5.1	2.0	0.9	0.1
2006	28.2	20.0	15.9	10.6	10.3	6.1	5.6	2.2	1.0	0.1
2007	26.4	20.1	15.4	10.8	11.5	6.9	5.0	2.6	1.0	0.1
2008	24.7	21.0	15.3	10.6	12.7	6.7	5.1	2.8	1.0	0.1
2009	21.0	26.7	15.3	11.0	12.8	7.1	1.1	2.1	1.2	1.7

NUMBER OF ACCEPTED TIME-LOSS INJURIES BY PROVINCE

Number of Time-Loss Injuries, by Jurisdiction, 1995 - 2010

Year	Total	NL	PE	NS	NB	QC	ON	MB	SK	AB	BC	NT/ NU	YT	Total	Year
1993	424848	6116	2009	13332	5647	135411	125118	15327	12277	29602	78495	1058	456	424848	1993
1994	430756	6646	2094	13223	4784	135482	125638	17740	13337	30801	79428	1120	463	430756	1994
1995	410646	6150	2443	10463	4310	129926	118812	17405	14206	30285	74881	1049	534	410646	1995
1996	377885	5272	2436	7940	3906	119633	103071	17255	13465	31835	71602	975	495	377885	1996
1997	379851	5295	1794	8199	4212	117407	101806	17738	14345	35234	72428	873	520	379851	1997
1998	375360	5879	2034	8159	4729	116060	97190	18658	13872	36104	71502	780	393	375360	1998
1999	379450	6640	2099	8547	5170	116797	100727	18979	13720	35393	70090	871	417	379450	1999
2000	392502	6609	2066	9232	5354	119135	104154	19721	14945	39393	70661	835	397	392502	2000
2001	373216	6173	1779	9082	5162	112887	98359	18544	15065	38755	66076	889	445	373216	2001
2002	359046	5517	1347*	8724	4685	110244	95568	17919	15623	38426	59530	968	495	359046	2002
2003	348715	5247	1241*	8849	4604	107160	93234	17586	15135	37335	56946	936	442	348715	2003
2004	340502	4834	1037	9173	4185	104209	90397	17260	13880	35969	58289	817	452	340502	2004
2005	337930	4821	876	8998	4439	99067	89734	17785	14170	36305	60340	950	445	337930	2005
2006	329357	4577	812	8339	4261	93886	83179	18134	14148	37577	63042	908	494	329357	2006
2007	317524	4365	870	8280	4480	87186	80863	17318	13856	35083	63718	927	578	317524	2007
2008	307802	4239	877	8120	4686	83900	78256	17091	13731	32248	63159	936**	559	307802	2008

*2002 & 2003 PE: Number restated
**2008: NT/NU number restated from hard copy publication
Source: Association of Workers' Compensation Boards of Canada

Experience Rating System

The experience rating system adjusts the rates and the premiums that an individual employer pays to the WCB. Premiums paid to the WCB are based on the firm's claims history. The more draw on the system by having medical costs and lost time days for injured workers, the higher the premiums the firm will have to pay.

On the surface, it would seem like this is an institutional arrangement that benefits those employers who are dedicated to injury reduction and worker health, safety and welfare. But inherent in this arrangement is the issue that we examine in this report. Namely, are some Manitoba employers obstructing employees from reporting workplace injuries and receiving WCB benefits? We believe that campaigns of benefit denial are carried out by some employers because the experience rating system results in higher premium payments. The premiums companies pay to WCB are based on the number of lost time day and medical expenses that the company experiences. Many consultant groups and 'loss prevention agencies' exist here in the province that help firms reduce their WCB premiums. Often this is done at a cost to the workers.

This has not always been the way.

Before 2001, the premiums that employers paid were based much more on the idea of collective liability. Companies were sorted into different categories based on their particular industry. For example: a mining company would pay exactly the same WCB premiums that were charged to other mining companies because at the time it was impossible to change categories.

In a December 2000 press release, former President and CEO of the WCB of Manitoba Pat Jacobson states:

"The old rate model made it possible for employers with poor experience to receive rate reductions. This sent the wrong message to employers with worsening experience by implying that their experience was improving. We believe the new rate model will be a wake up call to those employers and will help them and us to work on improving their accident experience."[6]

So at the start of 2001 the WCB implemented a revised system of setting rates that employers pay into in return for legal protection from injured workers. In responding to the question of what exactly is the basis for this system, WCB states that:

Experience rating means that all employers share in the costs needed to pay the claims of injured workers and the cost of running the WCB system but firms will pay more or less depending on their own claims record (experience) and the claims record (experience) of their industry. The goal of the Rate Setting Model (RSM) is to assign rates that are based fairly upon claims experience, encourage employers to prevent accidents from happening in the first place and promote efficient and appropriate return to work programs.[7]

To state the obvious; it is in employers best interest to not have workers file for WCB benefits because the employer will have to pay more premiums. But what does the WCB

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6 http://www.wcb.mb.ca/app/wcbpublicweb/news_releases/archive/holds_assessment_rate_third_consecutive_year.html

7 http://www.wcb.mb.ca/employers/services/8_steps_to_employers_assessment_rates_2009.html

Act say about employers who develop systems and methods aimed at making workers not report injuries or file compensation claims.

Inducing worker not to claim compensation

19.1(1) No employer or person acting on behalf of an employer shall attempt to compel or induce a worker by intimidation, coercion, promise, the imposition of a pecuniary or other penalty, threat, including a threat of dismissal, or by any other means, not to apply for or pursue an application that has been made for or receive compensation under this Part.

No discriminatory action

19.1(2) No employer or person acting on behalf of an employer shall take or threaten to take discriminatory action against a person for reporting or attempting to report an alleged violation of this section to the board.

Offence and administrative penalty

19.1(3) Every person who contravenes this section commits an offence and is subject to an administrative penalty under subsection 109.7(1).[8]

This leads to the ultimate question of what exactly is the administrative penalty that would be levied against an employer who is found to be contravening the aforementioned section of the Workers Compensation Act:

"The penalty under section 109.7 (1) is $450 charged to an employer for claims suppression.

The regulation for this penalty is regulation number 65-2006".[9]

The amount of the financial penalty does not encourage an employer to avoid claim suppression practices. The current experience rating model system seems to encourage the practice since it makes 'rational' economic sense. If a firm or company is indeed found to be guilty of claim suppression and then assessed the administrative penalty of $450, the company will still be making the 'rational economic decision' because their experience rating will drop because of fewer time-loss claims. For larger companies, this could represent hundreds of thousands of dollars saved in premium costs to the WCB. In fact it has spawned an industry that can be described as 'loss-prevention' specialists.

Inherent in any large scale system that takes in and distributes money, such as Workers Compensation, people will try to take advantage of it for their own gain. A reasonable person may apply the term fraud to such activities. But fraud is a term that itself has a

[8] http://web2.gov.mb.ca/laws/statutes/ccsm/w200e.php
[9] email received from Kim Keating 03/09/2009 10:44 am

legal definition and criteria that must be met. When most people think of fraud they imagine a supposedly injured worker being caught on video tape engaging in activities that should be physically prohibitive because of the extent of their injuries. These instances are often blown up out of proportion in the popular media because of the sensationalism that accompany them. The WCB of Manitoba is very diligent in detecting these issues of what they term 'moral hazard'; in fact they have an entire Special Investigations Unit that does almost exclusively this task. George Anderson was in charge of this unit until the start of 2010 with a staff of two other people that helped him conduct his investigations. This Special Investigations Unit is the branch of the WCB that is charged with pursuing allegations of fraud with in the system. By his own admittance, George Anderson says that 90% to 95% of his work is investigating allegations of injured workers defrauding the system. Presumably, the remainder is spent dealing with employers who have taken advantage of the system. As previously stated though, no charges or administrative penalties have ever been assessed against an employer in Manitoba for suppressing claims.

But why do we have this imbalance in the administration of the WCB act, regulations and policies? The main problem or obstacle in pursuing a charge of claim suppression is that you need a claimant that is willing to testify that their employer has tried to persuade them to not file a WCB claim. The claimant may be subjected to intimidation, discrimination, and possible termination of employment – clearly an incentive to not offer that testimony. Many times, the victims of claim suppression are the already marginalized segments of our community - recent immigrants, women, aboriginals, younger workers and those already disabled.

It would appear that there is very little will and motivation for the WCB to do anything about claim suppression. As opposed to administering the penalties as prescribed by the Act, the WCB Special Investigations Unit has a historical practice of having a talk with the employer and asking them to play by the rules. This is said to work until the WCB representatives leave the parking lot of the offending employer, then it is back to business as usual of denying workers their proper benefits for getting injured at work.

But it is all Manitobans who are affected by the practice of WCB claims suppression. When claim suppression occurs, statistics of rate of injury in the province are artificially lowered. This in turn gives an inaccurate picture of our health and safety climate. Employers are even disadvantaged because claim suppression undermines the equity that is built into the WCB system. If a firm or enterprise is lowering its experience rating through the practice of claim suppression, then other more honest employers are being unfairly disadvantaged because WCB is a balanced or revenue neutral system.

Central to all of this is a common understanding of what is meant by claims suppression. It can take many forms and differs from workplace to workplace. In our research three common themes have emerged.

1) Behavior Based Safety Programs: these programs give prizes and incentives for achieving a certain amount of time with out a reportable lost time injury occurring in the workplace. Food, jackets, money, hats

are all common 'carrots' used to motivate workers into pressuring their coworkers not to report an injury.

2) Abuse of Return to Work Programs: since 2006 WCB has enshrined as one of its principles a quick and speedy return to the workplace after injury. The problem arises that employers do not engage workers with meaningful work, intimidate them to return before they are ready and often just put them back into the positions that injured them in the first place.
3) Fear and Intimidation: this is perpetrated by the employer on workers to make examples to others of what will happen if they try to pursue a WCB claim.

Behaviour Based Safety Programs (BBS)

The phrase "Behavior Based Safety" is commonly used to describe and explain a wide range of schemes and programs that directly focus on workers behavior as the cause of virtually all workplace accidents. These programs assert that 80% to 100% of workplace injuries are caused by workers' unsafe acts. These BBS programs are often sold to an employer as a package from a 'loss prevention' consultant.

This blame the worker type of safety program was initially developed in the 1930's by H.W. Heinrich who worked for the Travelers Insurance Company.[10]Heinrich traveled throughout the United States researching and investigating supervisor accident reports which nearly all blamed the accident on the behavior of the injured worker. Thus these blame the worker programs are primarily concerned with cost savings for management. Often management bonuses and incentives are tied to reducing lost time claims in the workplace.

These behavior based safety programs come in many forms. Some programs implemented in Manitoba include: Behavioral Science Technology, DuPont "STOP" program, 'Courageous Leadership', 'SAFE Start', Structured Safety Process, Move Smart, Safety Pays, and 'SLAM'. Most of these programs involve prizes and incentives for not reporting injuries. The idea is if the workplace or a specific work group can go a certain amount of hours or days without a lost time injury then everyone gets a prize. This in turn creates a workplace climate of peer pressure to not report accidents and to blame the workers that do report injuries as opposed to asking the fundamental question of why the hazard is present in the first place.

From mid September 2009 to late December 2009 the Manitoba Federation of Labour conducted a survey that was open to all Manitobans to participate in. We believe that a majority of the respondents became aware of the survey through their respective trade unions. Letters where mailed out to affiliate unions, the survey was presented at the MFL convention of 2009 and it was also available online on the MFL Website: http://www.mfl.mb.ca/index.html

[10] http://www.aflcio.org/issues/safety/issues/upload/BBS501.pdf

Upon conclusion over 150 people had participated and shared their own insights and testimonials about the issue of claim suppression.

The first question proposed on the survey dealt directly with the issue of behavior based safety programs in their respective workplaces:

1) Does your workplace have a rewards program for not having any lost time accidents? If so, what does it look like (prizes, bonus pay etc…)? Do you think the program influences workers decision to report injuries?

Here are some responses;

- Yes, they give out cash and prizes, the program does influence workers not to report injuries.

- Yes. We have a yearly incentive bonus based on various areas of our work. Example 1) Sick time below company average. 2) WCB lost time injuries – the less lost time we have the greater percentage we get individually as well as a group as a whole. 3) Error rate below company average.

- Yes, prizes, free meal, it influences people not to report.

- Safety bingo, safety bags – workers safe days sign.

- We have a program that is called SAFE Production. It has some elements of a behaviour based program. We don't have a program that I would call a rewards based program, but occasionally they run a contest for a flat screen T.V or buy the different crews lunch. There is a lot of pressure put on workers that should be on compensation to not miss anytime.

- We used to. It was in the form of milestone awards. 10, 15, 20, 25 years for safe working and safe driving. The last few years the company's gone from that to disciplinary action for infractions of safety rules. It has become so ridiculous that we have even had a member disciplined for rule infractions after having saved a brothers life!

- Yes, there is an incentive plan that specifies directly to safety (STOP) audits to a percentage on your pay. As far as lost time there is a celebration with a BBQ meal to the employees at the workplace. As far as decision of workers not to report injuries, there have been accounts of that in the past.

- Yes, every so many accident/injury free days workers in the area achieving "levels" would receive a meal, catered and severed by the management and yes this is for sure effects workers decision to report.

- I work at xxxxxxx – Yes! We have attendance bonus. Absolutely the program influences workers to not report injuries or take time off of work.

Indeed the results from our survey revealed two major points. First, these behaviour based safety programs are much more prominent in what is to be considered the private sector (i.e. jobs that are not linked to the government). Secondly, in every response that the indicated that they did have behaviour based safety program, they all said that it lead to people not reporting injuries.

Return to Work Program Abuse

In 2007, new laws requiring the reemployment of injured workers were implemented by the WCB. Along with a mandated role in safety and prevention, timely and safe return to work was enshrined as one of the now seven historic principles (these newly added two along with the previously mentioned five set out in the Meredith Report).

The Manitoba Federation of Labour strongly supports the principle of returning injured workers to pre-accident employers with the duty to accommodate. Our apprehension lies in situations that seem to be becoming more prevalent in which employers abuse the return to work programs that are imposed by law, just to reduce the number of lost time days on their particular firms experience rating. Employers sometime intimidate workers into returning to the workplace before they are truly ready because they have learnt how to manipulate the program into a cost saving and claim suppressing exercise. Managerial and peer pressure is often fostered by the employer as a means to dissuade potential claimants from reporting because the return to work programs is used as a punishment. Unfortunately, some employers are using return to work programs as a way to lower their experience rating and reduce the premiums they pay for to WCB coverage. In some instances, return to work programs have become another facet of claim suppression that needs to be addressed.

It is essential to review the legislative amendments that where implemented January 1st, 2007 to give context to this discussion.

Obligation to Re-employ

Obligation to re-employ

49.3(1) In accordance with this section, an employer within the scope of this Part must offer to re-employ a worker

(a) who has been unable to work as a result of an accident; and

(b) who, on the day of the accident, had been employed by the employer for at least 12 continuous months on a full-time or regular part-time basis.

Exception

49.3(2) This section does not apply to

(a) casual emergency workers, learners, persons deemed to be workers under section 75.1 (volunteer coverage) and persons declared to be workers under section 77 (declared workers) or section 77.1 (work experience program);

(b) an employer who employs fewer than 25 full-time or regular part-time workers, as determined by the board; or
(c) an employer, worker or industry excluded by regulation.

Duration of obligation
49.3(3) The employer is obligated under this section until the earliest of the following dates:
(a) the second anniversary of the day of the accident;
(b) six months after the worker is medically able to perform the essential duties of the worker's pre-accident employment or other suitable work, as determined by the board;
(c) the date on which the worker would have retired from that employment, as determined by the board.

Duty to accommodate
49.3(4) The employer must accommodate the work or the workplace to the needs of the worker to the extent that the accommodation does not cause the employer undue hardship.

Able to perform the essential duties
49.3(5) When the worker is medically able to perform the essential duties of the worker's pre-accident employment, the employer must

(a) offer to re-employ the worker in the position the worker held on the day of the accident; or

(b) offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on the day of the accident.

Able to perform suitable work
49.3(6) When the worker is medically able to perform suitable work but is unable to perform the essential duties of the worker's pre-accident employment, the employer must offer the worker the first opportunity to accept suitable employment that becomes available with the employer.

Determinations re return to work
49.3(7) If the worker and the employer disagree about the worker's fitness to return to work, the board must determine
(a) if the worker has not returned to work with the employer, whether the worker is medically able to perform the essential duties of the worker's pre-accident employment or to perform suitable work; or
(b) if the board has previously determined that the worker is medically able to perform suitable work, whether the worker is medically able to perform the essential duties of the worker's pre-accident employment.

Effect of termination
49.3(8) If an employer re-employs a worker in accordance with this section and then terminates the employment within six months, the employer is presumed not to have fulfilled the employer's obligations under this section. The employer may rebut the presumption by showing that the termination was not related to the accident.

Layoff or termination
49.3(9) Nothing in this section prevents an employer from
(a) refusing to offer to re-employ a worker;
(b) refusing to continue to employ a worker;
(c) discharging, laying off or suspending a worker; or
(d) altering the status of or transferring a worker; if the employer satisfies the board that the employer's decision to do so was for a business reason made in good faith and that the decision was not affected by the worker being or having been unable to work as a result of the accident.

Notice of dispute
49.3(10) The employer or the worker must notify the board of disputes concerning whether the employer has fulfilled the employer's obligations to the worker under this section.

Resolution of dispute
49.3(11) Upon receiving a notice under subsection (10), the board must, within 60 days or within any longer period that the board allows, determine whether the employer has fulfilled the employer's obligations to the worker under this section.

Mediation
49.3(12) The board may attempt to resolve the dispute under subsection (10) through mediation.

Limitation
49.3(13) The board is not required to make a determination under subsection (11) where
(a) a re-employed worker's employment is terminated within six months; and
(b) the worker's notice under subsection (10) is provided to the board more than three months after the date of termination.

Board may determine whether employer fulfills obligation
49.3(14) The board may, on its own initiative, determine whether the employer has fulfilled the employer's obligations to the worker under this section.

Failure to comply
49.3(15) If the board determines that the employer has not complied with an obligation under this section, the employer is subject to an administrative penalty under subsection 109.7(1) in an amount not exceeding the amount of the worker's net average earnings for the year before the accident.

Conflict with collective agreement
49.3(16) If the employer's obligations under this section afford the worker greater re-employment terms than does a collective agreement that is binding on the employer, this section prevails over the collective agreement.[11]

This appears to be a very well thought out and constructed piece of legislation. Unfortunately, what looks good on paper does not necessarily translate into reality. The second question in our aforementioned survey asked participants directly about their experiences with return to work programs in their respective workplaces.

2) Does your employer *Return to Work* program result in useful work?

Here are some of the responses that we received to this question:

- Not Always, Some jobs are made up placements. Ex. Counting entrance visitors.

- I don't believe so. I have witnessed workers doing ridiculous duties just so they are present at work. I have seen strain on the persons good limbs, having to do a job one sided. Scrubbing shower stalls, painting, and mopping with one arm.

- No, if anything the Return to Work program results in a type of punishment, by getting put into boring repetitious and not meaningful work.

- Our return to work program is kind of a joke. You get to come back to work and work as a janitor until you are able to do your old job.

- No, demeaning, stressful xxxxx makes everything personal, depends if you are like by them or not.

- No! One of our staff recently returned to work after having been treated for an eye injury. He was forced to sit at a desk for six months before being assigned a single task. The task was ridiculous.

- No not useful work, yes we have (rtw) program but it doesn't work. You're interviewed on the day that you return and left to fend for yourself and find whatever you can do.

- No, the tasks that the member is expected to perform may have nothing to do with the job description. The goal is to have them in the workplace.

- Often is nothing more than data entry of managers files or doing housekeeping chores.

- Shredding paper all day for a 30 – 50 thousand a year employee is silly.

[11] http://www.wcb.mb.ca/download/new_wcb_laws/Section493Legislation.pdf

- Sometimes they sort paperclips or count electrical outlets.

- No, they usually give you a job that is not adequate to your injuries.

- Our return to work program is shit! Company picks and chooses who, when, how most of the time and it is bullshit work.
- Sometimes it is doing unrelated clerical work.

- No – Workers come back unable to work but are told there is no work. They give them some activities. The work that they used to do, the rest of the workers must now do.

- At times with return to work you can find yourself doing a job that has no relevance to your chosen career.

- No! I know by my own experiences and that of my coworkers.

- Employer stated privately that they would put me guarding a broom closet until I'm either going to work or leave.

- `No – I was off with injury for 2 years. The return to work offered by my employer was simply to come to work, be counted as a warm body, be there for the full day with no responsibility, no tasks, and in an area that I am not trained or interested in. This was continued for months with the employer encouraging me to apply elsewhere. I was eventually hired by another employer who respected my injury, provided the ergonomic improvements and I am now a very productive worker, free from pain and disability. Previous employer tried multiple times to send me back to work contrary to what the doctor had said. Heavy use of peer pressure, management pressure. This is why I am a union activist!

This is just a small sampling of the over 150 responses to the survey that the MFL received from participants. What is of particular interest to note is that over 50% of respondents indicated that they believed that their respective employers did not offer useful work in the return to work programs.

Another aspect of return to work program abuse is that some employers have designed the programs to act as a punishment, as attested to in some of the responses to our survey questions. Many workers are made example of, and by this we mean that other workers definitely take notice of the treatment that injured workers receive from their employers in return to work programs. Employers will sometimes change shifts on a worker who is participating in return to work programs so that child care arrangements and family routines are compromised. Employers will sometimes spread divisive gossip about injured workers and their injury in the workplace so that those who do report injuries are perceived as 'whiners' or that they are faking their injuries. The question must be asked. If you get hurt in the workplace, do you want to go through the same trials and tribulations that you

have seen other coworkers subjected to? Or would you tough out the pain and not report the injury in the first place because you know the ordeal that you will have to go through?

We have very good legislative protection from return to work program abuse. But, as with the claim suppression section of the Workers Compensation Act, the administrative penalty that failing to meet reemployment obligations can result in has never been levied. We must also keep in mind that a mere $450.00 would not make most of these companies blink, let alone cause them to change unacceptable actions. Our recommendation is to dramatically increase penalties for Return to Work program abuse.

Fear and Intimidation

Although Behaviour Based Safety programs and abuse of Return to Work programs are very effective forms of claim suppression, the tactics of fear and intimidation are still the most utilized. The most vulnerable segments of our labour force are often the ones who are most directly affected by this practice. Recent immigrants, young workers, Aboriginal workers, women and those with a pre existing disabilities are particularly at risk because of lack of information and education about rights and responsibilities regarding WCB law and policies.

Many workers believe that employers only have the workers best interests in mind when they tell the injured worker to take the rest of the day off and to not worry about dealing with reporting the injury to the WCB. Too often, workers who have followed this advice later find out that there is no recourse if the injury gets worse.

Many employers use bully tactics in try to persuade injured workers not to report injuries to the WCB. The third and final question in our claim suppression survey asked the very general question of:

3) Has your employer ever tried to stop a WCB claim? How?

Here is a sample of the responses that we collected and that speak directly to instances of employer fear and intimidation tactic to stop WCB claims.

- Yes. Claiming that the injury was not work related – was instead aging wear and tear.

- Yes. Have been encouraged to file weekly indemnity claim vs. going with WCB.

- Yes. Employer making unnecessary comments to the injured employee in an attempt to make the worker feel guilty for filing WCB.

- Yes, by threats to lose promotions or positions.

- Yes, alternate work arrangements and reviewing job performance as a means to coerce workers to avoid making claims.

- Yes. By having no orientation or education about the rights that you have with the WCB.

- The employer will threaten discipline if you file a claim.

- Yes, the employer believes that they are smarter than doctors.

- Every employer tries to stop WCB claims. Threats, pay offs etc.. have all become part of the game.

- Employer says "just come in tomorrow and we will accommodate you for a few days till it gets better".

- Yes, by misrepresenting the nature of the job to the WCB so that they are allowed to call the injured worker back to the workplace before they are healed.

- Yes, many times, but I think that it had more to do with the managers' bonus pay than anything. Their pay is affected by the amount of lost time hours that the workplace has.

- Yes, try to get you to take private insurance or not bother and just keep working.

- Our employer has discouraged claims and tried to dictate when the worker is to come back, against the doctors and physiotherapists wishes.

- Yes, I was younger and dumber and was talked into not reporting the claim.

- Yes, worker asked not to report.

- Yes, they challenged (appealed) twice and lost. Their challenges were baseless and seemed to be attempts to gain access to my medical records rather than honest effort to overturn my claim.

- Yes, via subtle suggestions, complicated forms, and department competitions. These are all claim suppression.

Other aspects of claim suppression have come to our attention during our research and analysis. The forms that injured workers are required to fill out are often a long and arduous process. Some companies have developed lengthy and detailed "notice of injury" forms that must be completed in order to have the injury recognized. Manitoba welcomes many new Canadians to its workforce every year and for someone who does not read and write English fluently, reporting an accident by filling out this foam can be nearly impossible to complete.

Another area of concern is the practice of companies hiring WCB employees as Human Resource specialists to appeal and challenge claims. Because adjudicators and case managers are assigned work duties to particular industries and firms, they often have regular contact with the corporate HR person who oversees WCB issues. This is can be a disadvantage for the injured worker who is questioned about the legitimacy of their injury. Perhaps there should be a policy establishing a "cooling off" period of one year or so before former WCB employees can have business contact with their former co-workers at the Board.

It is truly society and the province of Manitoba as a whole that are among the victims created by claim suppression. In some instances, injured workers who have not reported accidents and are not collecting WCB benefits have resorted to selling their pain medication in order to eat and have shelter for themselves and their families. Several permanently disabled workers interviewed throughout the course of this project confessed to resorting to this practice.

"If you have a prescription for 100 Percocet's, but you have no food for your family – then the situation seems obvious to me" confessed one injured worker who felt great remorse for such actions. Now this injured worker has to deal with a lot more pain and suffering due to reduced dosages of prescribed pain medication.

Other injured workers are left with no other options than begging or stealing. Respondents told us that when questioned, some of Winnipeg's downtown homeless people recount stories that begin with being hurt on the job and then not receiving benefits. Often these injured workers descend into cycles of addiction, violence and homelessness.

The tools and legislation to stop the horrific act of claim suppression are already in place. Yes, the administrative fines need to be increased significantly ($45,000 as opposed to $450) but the legislation is useless unless it is enforced.

Case Study #1

As soon as a worker gets hurt and reports an injury the company will conduct a disciplinary investigation. A disciplinary investigation usually always happens before an accident investigation is conducted. In the disciplinary investigation they will bring up the whole work/injury history of the worker. Workers have often disciplined for breaking safety violations and some have even been terminated. The company works on a merit system and therefore if it assess 'brownies' or demerits for safety infractions. The logic here is that if a worker got hurt then there must have been some sort of safety violation.

Going back to the time of privatization (95/96) there has been a very pronounced change and shift in the culture and attitude at this particular company. It seems as thou they have brought in U.S consultant firms to guide and advise in the suppression of WCB claims.

Company has an officer of risk management based in Edmonton. Their BBS program is referred to as ABC's, which stands for Antecedent Behavioural Consequences.

In 1998 there was a major round of lay-offs at the company and this, in turn, helped to promote a culture of fear and intimidation through out the workforce.

Part of the BBS program of the company is that after 100 days 'injury free' they all get a steak supper bought by the company. Different work areas and departments compete as groups, internally these are referred to as work gangs. The individual members of these work gangs are often under great internal pressure by their fellow workers not to get injured or to report any injuries for fear of losing the steak supper.

The union has been very diligent in their efforts to bring these instances of claim suppression to the WCB's attention. They even set up a special Saturday meeting (WCB is closed on weekends) with George Anderson, Dave Scott and the special investigation unit. The union representing these workers brought in twelve current and retired workers to give testimonial information about the ongoing instances of claim suppression. This group was told that in order to proceed with charges against the company that one of them would have to be a 'star witness' and therefore be subjected to cross examination. This obviously deterred the workers from pursuing the matter any further and they were also assured that Dave Scott would go have a meeting with the company and have a strong conversation about their practices. This seems to not have had very much, if any impact with the company's practices concerning injured workers.

Return to work program used to work great because they had a disability management group that had strong worker and union input. After privatization and the ensuing cultural shift all worker and union input into the program was stopped. It is now directed and seen to be much less efficient in providing meaningful work.

Case Study #2

The major issue at hand seems to be instances in which workers who get injured will initiate a WCB claim and then retract it before it gets processed. The rational for this retraction by the workers is commonly cited to be that they know that having to deal with WCB is going to be a gruelling ordeal in which they will probably have to go without any income replacement for a long time. So as a result the injured workers often just take there own accumulated sick time and 'suck it up'.

This lengthy time delay in receiving benefits can be attributed to several factors. First and foremost there is a 5 business day waiting period once the claim is accepted by WCB adjudication. This is coupled with a pay schedule that is 2 weeks behind, in that the worker must have worked the previous 2 weeks to ensure that they will receive a pay check. This, coupled with the 5 day waiting period, results in the worker not receiving any income for nearly a month.

Another factor attributable to this prolonged and punitive time delay is the fact that the employer appeals nearly all claims that are accepted. This in turn leads to absolutely

horrifying stories of workers lives and families being destroyed because they have to go years with out any financial assistance.

What would alleviate this situation is if the employer paid a wage continuance until the compensation for the injury started to be paid out. Unfortunately the employer has no interest in doing such a thing because right now they have very few workers who even apply for WCB benefits. If access to these benefits were to revert to how they are properly supposed to be administered then there would be more workers applying for them and WCB premium costs to the employer would also increase. Therefore it seems to make 'rational economic sense' to the employer to keep the system as it is.

Another area of concern amongst this particular group of workers is the interpretation of 'workplace' and furthermore if an 'accident' is deemed to have happened. Although directed and mandated by the employer that these workers routinely walk around on city property, sidewalks and private property and parking lots, should they become injured while on these areas, they will not be entitled to any WCB benefits as the historical practice is that they do not satisfy the definition of workplace.

The criteria used by WCB adjudicators are another area of concern that needs to be looked at and amended if necessary. Currently, if a worker is operating a piece of equipment and traveling hundreds of kilometres in each shift, they must know the exact time and place where the injury occurred. It can be difficult for these workers to provide this information to satisfy WCB's processes. A majority of the injuries in this workplace and industry are repetitive strain or musculoskeletal in nature. Repetitive Strain injuries are accumulative by nature, and pinning down an exact time and location isn't possible.

Because of the nature of a vast portion of the injuries coming out of this workplace are repetitive strain, sometimes WCB will try to attribute the injury to some other non-work related factor. In a few instances, WCB adjudicators or case managers have encouraged the injured worker to say that they engaged in a non-work related activity that could have caused the injury. When this happens, the worker gets denied benefits because of the 'balance of probability'.

It seems to us that sometimes a friendly relationship has developed between the WCB adjudicators or case managers and the human resource staff of the company. This leads to the perception by workers that a bias has developed against the injured workers because they are deemed to be the problem. WCB and corporate staff see and communicate with each other a lot more than they do with any one injured worker and some workers feelings are that the injured worker becomes an interloper in that friendly relationship and not a client. We fear that Human Resources staff may successfully use the relationship to discredit a claim being made by an injured worker. This perception by workers is a serious and growing problem that needs to be addressed.

Case Study #3

At this particular workplace, if you experience an injury then you must report to the internal Health Unit which is staffed by nurses who work for the company and as such

only have the company's interests in mind. Once you arrive at the Health Unit then they decide whether or not an accident investigation is going to be preformed. Usually only acute and severe injuries result in an accident investigation being conducted. If it is a repetitive strain injury then they will immediately move the worker to light duties. There is great stigma and peer pressure surrounding those who go onto the light duties program.

After 5 days on the light duty program with no improvement to the injury as deemed by the Health Unit then they suggest that you go seek outside medical attention. But this is not allowed to happen on company time. Other injured workers must go to the Health Unit 5 times consecutively before they are provided with the appropriate form that the company demands you have to have in order to describe your functional limitations or any time off of the job if needed, although no place on the form is provided for the doctor to recommend the latter.

If a worker seeks outside medical attention before going to the Health Unit a minimum of 5 times, then they are given safety infractions on their employee record for not reporting injuries.

Should the worker require time off the job to recover properly from the injury as prescribed by the doctor, then Health Unit staff will phone the doctor and literally harass the doctor until they are convinced to change their opinion. The Health Unit makes these phone calls without the injured worker present. The Health Unit then states to the injured worker that they have talked to the doctor and they must now return to work. If a worker is off with any sort of lost time injury then they must phone into the workplace everyday. The reason for this is unclear but they are still required to do it everyday with no exceptions.

The return to work program and what is to be considered 'light duties' is of particular concern at this workplace. Injured workers are told that there is always a light duty job for them to report for. Many times injured workers are put into positions such as hallway monitors, in which they simply sit in a chair in a hallway. In other instances injured workers are assigned to the lunch room to cheer people up. Another example of meaningful work in this particular work place is to remind coworkers to wash their hands. This is what we mean by abuse of return to work programs.

The employee bonus program in this particular workplace is based on how many visits to the Health Unit the worker has. Therefore, there is a direct monetary benefit for the workers not to report injuries. At the end of the year, the safety manager for the company constructs a 'top 10 list' of those employees who have visited the Health Unit the most times. They will then have a meeting with these workers in which the workers must promise not to get hurt for the rest of the year.

This particular workplace recruits many of its labourers from outside of Canada on the Foreign Temporary Worker Program. These workers are have to wait 6 to 8 months before management sends in letters to Service Canada that effectively allow the workers to stay in the country. If there are any complaints about being sore or hurt, it is suggested to them

that they may not be suitable for this kind of work. This is enough to effectively silence them during this period of time. If you want to complain that you are hurt then you are going to leave this country is a common belief among these workers.

The linguistic barriers that face these workers when they try to obtain WCB benefits are significant enough that it discourages workers from reporting injuries in the first place. When the injured worker's needs to see a doctor, they are sometimes accompanied by a management interpreter who provides the doctor with the pertinent information. The purpose of these accompaniments is to prevent a WCB claim from being established or to "assist" with an immediate return to work, without restrictions if at all possible.

WCB has investigated this employer because of dozens of complaints of claim suppression and abuse of the employees. But nothing has happened as a result. If anything, it has only convinced the company that they can get away with claim suppression because WCB investigations have not resulted in consequences.

Recommendations

The Manitoba Federation of Labour is pleased to offer corrective measures and recommendations to try and insure that the grossly detrimental effects of claim suppression are stopped once and for all.

What can the WCB do itself?

1) Standardized injury reporting forms (Green Cards) and make them available in all significant languages in Manitoba.

2) Provide public education courses on what workers rights are in regard to the WCB system. Require posters and materials about filing for injury to be present and posted in all Manitoba workplaces.

3) Increase the administrative penalties for claim suppression and abuse of return to work programs significantly. We suggest a substantial increase for the first offence and increasing exponentially for further offences.

4) Enforce the Act. To have never levied the inadequate administrative penalty that is now in place for claim suppression and return to work program abuse is a disgrace. Strong conversations don't work. These companies only respond to substantial financial penalties. Offenders don't seem to respond to "moral obligation" arguments.

5) Clear language should be used in decision letters and face to face meetings with adjudicators when language barriers or confusion about decisions exists. This puts a much needed human factor into the WCB and leads to greater understanding.

6) The Special Investigations Unit of the WCB should substantially increase its efforts investigating and prosecuting claim suppression and return to work program abuse.

What can our Provincial government do?

1) Ban Behaviour Based Safety programs. Only safety programs that address the source of the hazards present should be considered legitimate.

2) Legislate that Return to Work programs will be under the jurisdiction of joint health and safety committee's so that workers have some say in the development and assignment of modified or light duties.

3) Increase the administrative penalties for claim suppression and abuse of return to work programs significantly. We suggest a substantial increase for the first offence and increasing exponentially for further offences.

4) WCA (W200) should be amended to prohibit experience rating because it encourages claim suppression.

5) Employers should be denied the right to appeal workers compensation claims without any grounds. Often the employer will only tell the WCB that they are intending to file an appeal as a way to obtain the injured workers file. They then 'go fishing' for something to refute the claim. Administrative controls should be put in place to stem the abuse of 'data mining'.

Alternative to 'Experience Rating Model'

The experience rating model that is the basis for determining the premium rate for employers is flawed. It needs to be replaced.

We recommend that the provincial government should hold a broad based consultation to get the views of the stakeholders on how to design a replacement model and implement it.

One option that should be part of the review is the implementation of a penalty assessment model.

Employers will pay these assessments to the Workers Compensation Board when the employer does not comply with the Workplace Safety and Health Act or Regulations. These assessments are levied when a health and safety officer observes or is made aware of infractions to the Act and Regulations, as opposed to being the result of an increase in claims.

Assessment rates would be a part of the initial rate setting, based on presented risk of industry, number of workers at risk and steps that have been taken to address the hazards present in the workplace. Subsequent penalty assessments would be levied against the companies that do not obey the provisions of the Act or Regulations. Because these penalties would be assessed by Workplace Safety and Health

officers, they would be entirely focused on prevention. This is proactive approach to the issue and not reactive.

Appendix A

A Brief Chronological History of the Manitoba WCB

1917: The Workers Compensation Board was created to administer a compensation system for injured workers.
1919: Act passed by Canada providing for payment of compensation to workers of the federal government, to be administered by the provinces or another body approved by the Governor General in Council.

1920: Accident Fund funded by an assessment of all classified employers to compensate injured workers.

1921: Wage-loss benefits increased to 66⅔% of gross average earnings.

1951: Second Injury Fund established by an assessment against all classes to be used to cover the claims costs of claims of workers suffering enhanced disabilities that, in the opinion of the WCB, are due to previous disabilities.

1953: Vocational Rehabilitation offered to injured workers. Before 1953, the WCB could not spend any of the general funds on retraining. Funds for retraining were deducted from the funds set aside for the injured workers pension. Also, an assistance officer was appointed by the Minister of Labour to aid workers in preparing and presenting their cases before the WCB. This position was later renamed the Worker Advisor. Wage-loss benefits were increased to 70% of gross average earnings.

1956: Wage-loss benefits were increased to 75% of gross earnings.

1957: The Turgeon Commission was established to inquire into and investigate every aspect of *The Workmen's Compensation Act*.

1959: The recommendations of the Turgeon Commission were implemented:
• Created first medical appeal board
• Coverage expanded to include the Crown, retail, hospitals/nursing homes, hotels and restaurants, radio stations, municipalities, and clerical workers in industries covered by the *Act*.

1965: Proclamation of *The Employment Safety Act* transferred responsibility for industrial accident prevention from the Department of Labour to the WCB.
• First merit/demerit rating system put in place for employer assessments.

1971: WCB designated to act on behalf of the Attorney General's Department to administer *The Criminal Injuries Compensation Act*.

1972: Further general amendments to the *Act* included an expansion of coverage to new classes of workers and an increase in pensions and benefits.

1974: *The Workmen's Compensation Act* was renamed *The Workers Compensation Act* to reflect the participation of women in the workplace.

1977: Responsibility for industrial accident prevention was transferred from the WCB to the Department of Labour. This occurred when *The Employment Safety Act* was repealed and *The Workplace Safety and Health Act* was proclaimed.

1980: The Lampe report was submitted. The tripartite committee, commissioned by the Lyon government in the late 1970s, made recommendations on how to tighten up Board policy and procedures.

1982: In response to a Board employee's public allegations of mismanagement and unfair treatment of claimants at the WCB, a report on the entire field of workers compensation by Inspector D.C. Cooper of the RCMP Commercial Crime Section was released. As a result:

- the Commissioners and senior management of the WCB were replaced
- a private consultant firm was employed (CERECO Inc.) to aid the new Board and to conduct a management review
- the rehabilitation program and procedures of the Board were reviewed and
- worker advisors were hired and mandated to assist claimants in pursuing their claims through the system.

1983: The CERECO report was released, criticizing the Board's management practices.

1985: A Legislative Review Committee led by Brian King was formed with the broad mandate to review the *WCA*, policies and directives of the WCB and to recommend improvements to the *WCA*.

1987: The King Report was submitted. Its recommendations dealt with benefits, the adjudicative process, administrative framework, and financing the program.

1990: Bill 56 altered the administrative framework of the compensation system. The Bill separated the appeal function from administration by creating a separate Appeal Commission. Other changes included:

- establishing a policy committee of the Board of Directors
- stipulating that government must consult with employer and labour communities before making appointments to the Board of Directors and Appeal Commission
- stiffer penalties for fraud and late payment of assessments. Payroll underestimation or non reporting by employers became subject to a fine.

1991: Bill 59 changed the compensation system from one based on disability to one based on loss of earning capacity and/or permanent impairment.

1992: Bill 59 came into effect on January 1, 1992.

1999: Special payments were made to certain dependant spouses of deceased workers

2001: Rights to benefits and services were extended to same-sex couples.

2002: The *WCA* was amended to include a rebuttable presumption of compensation for full-time firefighters who are regularly exposed to fire scene hazards (other than forest fire scenes) for a prescribed minimum period and who contract primary-site brain, bladder or kidney cancer, primary-site non-Hodgkin's lymphoma or primary-site leukemia. The minimum period of employment for each type of cancer is set out in regulation.

2004: A Legislative Review Committee (LRC) was established with a mandate to conduct a complete review of the *WCA* and recommend legislative changes based on broad principles that encompass a vision for the future of workers compensation in Manitoba.

2005: The LRC completed its review and presented a report comprising 100 recommendations for changes to the *WCA* and WCB policy. Changes to the *WCA* were tabled at the Legislature *via* Bill 25, which was adopted unanimously on June 9, 2005.

2006: Bill 25, *The Workers Compensation Amendment Act,* became effective on January 1, 2006, for all injuries or illnesses occurring on or after this date. Bill 25 introduced numerous enhancements to benefits such as 90 % of wage replacement regardless of claim duration (eliminating the 90% to 80% step-down for wage replacement after 24 months), as well as higher rates for impairment and fatalities. The Bill also legislated mandatory coverage for all employers and workers in industries in Manitoba, except those excluded by regulation. In addition, the Bill incorporates prevention and return-to-work into workers compensation principles, and expands the rebuttable presumption for firefighters to include ureter, colorectal and lung cancers as well as heart injury within 24 hours of attending an emergency response. These presumptions, except the heart injury presumption, are retroactive to 1992 for full-time firefighters. The heart injury presumption for all firefighters, and the cancer presumptions for part-time firefighters, took effect on June 9, 2005. The Bill also strengthened the governance structure of the WCB.[12]

[12] http://www.wcb.mb.ca/download/about_wcb/WCBBackgrounder2009.pdf

Appendix B

WCB Structure

The Workers Compensation Board of Manitoba is a creation of the provincial government of Manitoba. The enabling act is called the Workers Compensation Act. The Workers Compensation Act, or W200 as it is sometimes referred to, outlines the WCB's responsibilities and duties under the legislation. The WCB is not a line department of the government, but instead operates at an "arm's length". The provincial government appoints people to the board and can change the Act itself, but the government cannot overrule a WCB decision or adjudication.

The WCB of Manitoba operates under what is considered a tripartite interest structure. This means that employers, workers and the publics' interests are all equally represented throughout the WCB structure and system.

Board of Directors is in charged with the overseeing the WCB. The provincial government appoints eleven people to serve on its Board of Directors. These positions include: one chairperson, three positions that have been recommended by organized labour, three positions that have been recommended by employers groups, three positions appointed by government that represent the public interest, one Chief Executive Officer that does not have voting rights. The Board of Directors hires the CEO who is responsible for the management of the Board. Much of the direction of the Board decisions and policies come from its different committees. These include the Audit Committee, Investment and Finance Committee, and the Policy, Planning, Governance and Service Committee.

The Appeal Commission determines WCB appeals that are brought forward because an interested party did not agree with the previous decisions made by the WCB. To avoid conflicts of interest, the Appeal Commission is separate from the WCB itself. Once again the positions on the Appeal commission are appointed through recommendation by the provincial government. Just like the Board, the Appeal Commission also contains the tripartite interests of workers, employers and the public. Every appeal is reviewed and examined by a panel of commissioners, each representing one of the tripartite interests. The appeal commission must follow the WCA, regulations and policies. Although this is to be considered the final level of appeal, the Board of Directors can overrule an appeal commission decision if they deem necessary.

The Fair Practices Advocate is a person employed by the Board who oversees and investigates complaints about the WCB's policies and practices. This Fair Practices Advocate makes recommendations to the Board of Directors but does not have the power to overturn decisions.

Medical Advisors are medical professionals who are employed by the WCB health unit to give opinions to adjudicators and case managers on specific questions, conduct examinations on claimants, and review medical files for the WCB.

Adjudicators make initial claim acceptance and entitlement decisions. They are aligned to specific industries and workplaces. They often manage claims for up to eight weeks.

Case Managers are responsible for the administration of all aspect of an injured workers file including ongoing entitlements, treatment programs and return to work programs. The Case Managers are also industry aligned and handle more serious claims and those lasting longer than eight week duration.

Review Office Adjudicators are considered to be senior level adjudicators who hear and review internal appeals on WCB decisions. They are commonly referred to as the first level of appeal.

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