



Manitoba Federation of
Labour Submission
to the “Maintaining Fair and
Equitable Compensation”
External Review of
Manitoba’s WCB Rate
Assessment Model

January, 2013

Manitoba Federation of Labour Submission to the “Maintaining Fair and Equitable Compensation” External Review of Manitoba’s WCB Rate Assessment Model, January, 2013

Thank you for this opportunity to provide input into the “Maintaining Fair and Equitable Compensation” External Review of Manitoba’s Workers Compensation Board (WCB) Rate Assessment Model.

The Manitoba Federation of Labour (MFL) represents 95,000 unionized workers across the province. The MFL is the leading voice for Manitoba workers in promoting safe and healthy workplaces. Workplace health and safety is the issue area about which our members are most passionate and active. To support this concern, the MFL:

- holds an annual Health and Safety Conference providing training workshops from a worker perspective;
- nominates labour representatives for the Minister’s Advisory Council on Workplace Safety and Health (WSH), the WCB, and the WCB Appeals Commission;
- works closely with the MFL Occupational Health Centre and SAFE Workers of Tomorrow to promote awareness of workers’ health and safety rights;
- has active committees where health and safety activists work together to promote safe and healthy workplaces and to promote workers’ interests at the WCB; and
- lobbies the provincial government and WCB for stronger workplace safety and health measures.

The MFL’s interest in the subject of this review can be traced back several years. With increasing reports of claims suppression and aggressive return to work practices in Manitoba’s WCB system after the introduction of experience rating to the assessment rate model in 2001, the MFL began raising concerns about experience rating with the WCB and the provincial government. When these authorities questioned the basis for these concerns, the MFL undertook a study to formally document claims suppression and aggressive return to work practices. This exercise resulted in a 2010 report, *An Investigation into the Incidence of WCB Claims Suppression*. In its 2011 report card on workplace health and safety, the MFL called for action on WCB claims suppression, and in its 2012 report card called for an independent review of the WCB assessment rate model. The MFL welcomes this review and is

hopeful that its recommendations will provide a road map to address the serious negative consequences of Experience Rating.

Experience Rating: Theory vs Practice

The introduction of experience rating to the WCB assessment rate model meant that an employer's WCB premiums would be tied to that employer's claims record. Employers with higher claims costs are assessed higher premiums.

The theory behind experience rating is that by creating financial incentives to keep claims costs down, employers will be encouraged to create safer and healthier workplaces and reduce workplace injuries/illnesses. In short, experience rating attempts to improve workplace health and safety through financial incentives. Creating safer workplaces is a worthwhile objective, and there is nothing in principle wrong with financial incentives to good behaviour.

However, the way in which experience rating incentives actually operate runs in direct opposition to the very foundations and principles of workers compensation in Canada. As this submission will make clear (see "Experience Rating vs. The Historic Compromise"), these incentives threaten to undermine the very legitimacy of our workers compensation system.

The theory behind experience rating also breaks down in practice because the metric required to implement the theory does not accurately measure what it is supposed to measure. Under experience rating, WCB premiums are determined by claims costs. Lower claims costs are treated as an accurate proxy for safer and healthier workplaces. This assumes all workplace injuries/illnesses are reported and that injured workers are not returned to work before they are sufficiently healthy and ready to work. It assumes that the only way for an employer to reduce its claims costs is to create a safer and healthier workplace. It ignores the fact that, in practice, employers can reduce their claims costs by suppressing claims or by aggressively pressuring injured workers to return to their jobs before they are ready. In short, experience rating in practice can induce employers to "game" the system through claims suppression and overly aggressive return to work practices rather than by creating safer workplaces. This submission will

examine the extent to which these unintended consequences of experience rating are happening in Manitoba (see “Claims Suppression – The Reality”).

Unintended Consequences: Claims Suppression & Aggressive Return to Work Practices

Before examining the unintended consequences of experience rating, it is important to define the terms used to describe these consequences.

Generally these unintended consequences of experience rating fall into two general categories, claims suppression and overly aggressive return to work practices. However, both of these practices are often simply summarized as “claims suppression.”

The term “suppression” also implies that direct employer interference with a claim is necessarily involved, but the reality is that there are numerous ways that an employer can suppress claims without direct interference in a claim.

When this submission uses the term “claims suppression,” it is intended to capture all of the various strategies, direct and indirect, that employers can use to reduce their claims costs, and by extension, their premiums under experience rating. These include:

- Discouraging injured workers from reporting injuries or filing compensation claims;
- Preventing injured workers from reporting injuries or filing compensation claims;
- Encouraging injured workers to accept alternative, private insurance benefits instead of filing a WCB claim;
- Aggressively fighting against almost every WCB claim filed by their employees, thereby creating a climate that discourages injured workers from going through the claims process;
- Establishing incentives for injured workers not to report injuries or file claims;
- Punishing workers for reporting injuries or filing WCB claims; and/or
- Pressuring injured workers to return to work before they are ready and healthy enough to work.

In some cases, these strategies are employed with the guidance of “loss prevention” or “disability management” consultants hired by employers to reduce their WCB premiums. These employers obviously find the cost of

hiring such consulting firms is outweighed by the savings in their WCB premiums.

All of these strategies have two things in common. First, they work to reduce an employer's WCB premiums in an experience rating system. Second, they do not contribute to making safer and healthier workplaces.

It should also be noted that most of these strategies are illegal under section 19.1 of Manitoba's WCB Act:

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).

The current penalty for breaches of section 19.1 is \$450. The WCB of Manitoba has never imposed this penalty on an employer.

Experience Rating vs. The Historic Compromise

Canadian workers compensation systems have their roots in the Meredith Report of 1913. With employers facing escalating private insurance costs, and injured workers facing lengthy and uncertain court battles to receive compensation, Ontario Chief Justice William Meredith recommended a system of workers compensation based on five fundamental principles: no fault; collective liability; guaranteed benefits; independent administration; and exclusive jurisdiction. At the heart of the workers' compensation framework established by these principles was what has come to be known as "the historic compromise"; in exchange for giving up the right to sue employers for workplace injuries/illnesses, workers were guaranteed compensation benefits

for workplace injuries/illnesses. The result was a workers' compensation system that served workers and employers well through to the end of the 20th century. Indeed, the WCB of Manitoba continues to celebrate the importance of the "historic compromise" as the fundamental foundation of our WCB system, asserting it has been "maintained to this day."ⁱ

However, the reality is that the Experience Rating system marks a departure from the historic compromise by introducing incentives that are in direct conflict with the fundamental principles outlined by Meredith.

Most significant, Experience Rating reintroduces fault to a system that was intended to be no-fault. As a recent review of research on experience rating in workers compensation systems put it: "Experience rating is seen as introducing an adversarial and judicialised process in which employers are penalised for high-injury reports and, in turn, are motivated to challenge claims. In this way, experience rating can be seen as bringing back the adversarial process of the tort system that no-fault was designed to eliminate. With experience rating, the focus is once again on the interrogation and investigation of the injured worker."ⁱⁱ

The second Meredith principle, collective liability, proposed that the total cost of workers' compensation be shared by all employers. Experience Rating erodes this aspect of our workers compensation system by tying individual employer costs with individual employer claims records.

The third Meredith principle, guaranteed benefits, was the critical trade-off for workers who gave up the right to sue employers for workplace injuries/illnesses. Yet, experience rating introduces powerful incentives for employers to oppose, appeal and generally delay compensation claims. Injured workers are increasingly forced to fight for compensation through an adversarial process rather than apply for benefits through an inquisitorial process. The inquisitorial process was designed, in accordance with the Meredith principles, to deliver on the promise of guaranteed benefits for injured workers. As the inquisitorial process is undermined by experience rating, the incentive for workers to give up the right to sue employers is diminished. Many MFL members have observed the obvious injustice in a situation where employers continue to aggressively fight claims while workers

are stripped of their right to sue those same employers. This asymmetry brought about by experience rating threatens the very legitimacy of our workers compensation system.

While the principle of independent administration remains largely intact, the WCB's failure to address the negative consequences of experience rating is jeopardizing the perception, from a worker perspective, of that independence. This is evident in the fact that the WCB of Manitoba devotes significant resources and creative investigative techniques to investigate and prosecute fraud on the part of worker claimants, but fails to do the same in investigations of employer claims suppression or in holding employers accountable for responsible return to work practices. For workers, this sharp contrast breeds suspicion that the WCB is acting on behalf of employers rather than acting impartially on behalf of both workers and employers. The longer that experience rating continues to induce claims suppression and aggressive return to work practices while the WCB refuses to crack down on such (illegal) behaviours, the more the independence of the WCB comes into question.

Even the final Meredith principle, exclusive jurisdiction, is undermined by the experience rating system. By creating financial incentives to keep WCB claims costs down, experience rating is inducing more and more employers to pressure workers into accepting private insurance benefits instead of filing WCB claims. This pressure is reinforced when workers see their claims will be aggressively opposed by employers. Accepting lesser, private insurance benefits often becomes the path of least resistance. In the process, the exclusive jurisdiction of the WCB is eroded.

In sum, it is our view that experience rating is incompatible in principle with the workers compensation system that we have known for nearly a century in Manitoba and to which the WCB of Manitoba remains formally committed. Continuation of the experience rating model only serves to further undermine the legitimacy of our workers compensation system and the historic compromise on which it was built.

Claims Suppression – The Reality

Conducting robust empirical research on the extent to which experience rating induces claims suppression is very challenging for a variety of reasons.

Employer actions that directly or indirectly suppress claims involve various levels of intimidation. Intimidated workers are less likely to be forthcoming about instances of claims suppression that they have experienced. If a culture of not reporting injuries has been cultivated in a workplace, claims suppression may become normalized to an extent that workers do not even recognize it as a problem or aberration. Similarly, given that claims suppression is technically illegal under the WCB Act, employers are unlikely to be forthcoming about any claims suppression activities.

Research on claims suppression is also difficult because, unlike the incidence and cost of claims, it cannot easily be quantified. Unless an injury has been reported and compensated, it is difficult to evaluate its severity or estimate an associated compensation cost.

For these reasons, the MFL has focused on documenting instances of claims suppression experienced by its members. We understand that several Manitoba unions from a variety of industries and sectors will be presenting these experiences in meetings with the External Review.

The MFL also documented worker experiences of claims suppression in our 2010 report, *An Investigation into the Incidence of WCB Claims Suppression*.ⁱⁱⁱ This investigation invited workers to answer questions about their experiences with claims reporting/suppression, workplace incentive programs, and return to work practices. It also provided some case examples to illustrate in greater detail the various forms that claims suppression can take. Key findings included:

- Many workers reported their employers had attempted to dissuade them from reporting injuries and filing claims by asserting injuries were not work related, by urging injured workers to accept private insurance benefits instead of filing a WCB claim, by threatening discipline/punishment, by suggested that filing a WCB claim could jeopardize worker's potential promotion prospects, by promising light duties while the injury healed, by immediately initiating a disciplinary investigation for potential safety violations as soon as an injury is

reported, or by making it very clear that WCB claims will be aggressively challenged by the employer.

- A number of workplaces, particularly in the private sector, have incentive programs that provide rewards for periods without reported injuries. Workers in these workplaces believe such programs have been responsible for workers deciding not to report injuries.
- Return to work programs in many workplaces involve returning injured workers to jobs that do not involve useful work or pressuring workers to perform work incompatible with medical advice about their injuries. Some employers imposed subtle and not-so-subtle forms of punishment for workers in return to work programs.

MFL members and labour's WCB advocates continue to report regular, and in many cases increasing, incidents of these types in Manitoba workplaces.

In particular, Manitoba unions are seeing increasing implementation of workplace incentive programs based on the "blame the worker" behaviour-based safety model. These programs offer prizes and incentives to groups of workers when they manage to go a certain period of time without lost time injuries. Some programs even offer rewards to individual workers for going certain periods without reporting time loss injuries. The obvious effect of such programs is to place enormous pressure on workers not to report injuries. They are essentially a form of organized claims suppression.

In addition to the claims suppression documented in our 2010 report, Manitoba unions are also reporting an increasing number of employers hiring external "loss prevention" or "disability management" consultants to guide claims cost reduction strategies. Where these firms have been brought in, the climate for claims reporting becomes increasingly hostile and the pressure on injured workers to return to work before they are ready intensifies.

The tendency for experience rating to induce claims suppression has also been reinforced by survey data:

- An Oct. 28, 2008 report prepared by Morneau Sobeco for the Workplace Safety and Insurance Board of Ontario (which also determines employer premiums by experience rating) found:

“One of the potential unintended consequences of the Experience Rating program is that some employers may achieve improved performance by not reporting injuries. Even though the actual numbers are difficult to accurately assess, it is clear that this behavior occurs. The following indicators give us a reasonable sense that it is not uncommon:

1. 7% of workers felt that they were discouraged from reporting injuries (IWH Study in June 2005)
2. 8% of employers surveyed agreed with the statement that ‘my organization does not always report injuries’ (Ipsos Reid Survey – February 2008)

Although the percentages are relatively small, they could represent a large number of claims (up to 25,000 claims in 2007). In addition, Harry S. Shannon reported (June 2002), based on a survey of 2,500 workers of which only 143 had an eligible injury, that 57 (or 40%) of the Canadian employees eligible for worker’s compensation did not submit a claim.” (p9)

The report further found that time loss injury rates are underreported as a result of the employer practice of self insuring some worker claims rather than filing a claim for a lost-time-injury, “which makes it difficult to accurately assess real advances in workplace health and safety.” (p12)

The report also noted that 55% of employers surveyed by Ipsos-Reid in 2008 agreed with the statement that “some employers are not fully reporting their WSIB claims.” (p16)

- SAFE Workers of Tomorrow surveys the many thousands of high school students it presents to each year. The survey data is analyzed by a WCB statistician to render a valid sample. Over the past three years, these surveys have found:

2009: Of those who had worked, 27% had been injured at work and 1/4 of those injured had lost time from work. Only 8% had reported their injury to

the WCB.

2010: Of those who had worked, 37% had been injured at work and 1/3 of those injured had lost time from work. Only one in five had reported their injury to the WCB.

2011: Of those who had worked, 37% had been injured at work and 16% of those injured had lost time from work. Only one in ten (11%) had reported their injury to the WCB.

These surveys are consistent with the abuses documented in the 2010 MFL report, and underscore the fact that claims data is a very poor measure of workplace injuries.

Another important aspect of reality of claims suppression in Manitoba is that the WCB has not taken any meaningful action to enforce the law against it. Despite receiving reports of claims suppression, the WCB has never once imposed the penalty on employers for claims suppression. As noted in our 2010 report, Manitoba's WCB admits that more than 90% of its enforcement investigation work is focused on fraud by workers rather than employers. And even if the \$450 financial penalty were imposed, it is so low that is unlikely to create a meaningful disincentive for employers to engage in claims suppression; the savings from claims suppression far exceed the potential financial penalty. Clearly, Manitoba's WCB is currently unwilling to take the necessary steps to detect, investigate and penalize employers engaging in claims suppression.

The Manitoba WCB's inaction on claims suppression stands in contrast with Ontario's WSIB which has significantly higher financial penalties and has a record of applying them to some employers. One employer was fined \$600,000 for various claims suppression offences.^{iv} Although an independent report recently criticized the WSIB's enforcement efforts as weak^v, they appear very aggressive when compared with those of the Manitoba WCB.

They also provide a useful counterpoint to claims by the WCB that claims suppression is almost impossible to prove and prosecute. In fact, a legal analysis of the aforementioned \$600,000 fine stated that “employer violations are by nature easier to identify.”^{vi}

Finally, it is worth examining academic research on the impact of experience rating. Two recent literature reviews of this research are useful in this regard.^{vii} The only area where any sort of consensus might be found is on the proposition that experience rating tends to promote more aggressive claims cost reduction on the part of employers.^{viii} The problem however with this research is “that few studies attempt, or are able, to distinguish between reduced claims rates based on fewer reported injuries and the true underlying injury rate. Most simply comment on the inability to distinguish between the two.”^{ix} Even if this fundamental problem is set aside, the findings of these studies have not been very congruent, and have fundamental methodological problems:

“Academic approaches that attempted to measure the influence of experience rated premium systems upon workplace health and safety emerged from the mid-1970s, and particularly the 1980s. Even in terms of their own methodology, these studies have shown variable results, ranging from a significant impact, through to no effect and even to an adverse impact upon workplace health and safety. However, more fundamentally, there are some significant methodological issues concerning the nature of data and of variables that are controlled for in the regression analysis undertaken which have the effect of rendering quite problematical the purported conclusions of these studies.”^x

In short, this research does not provide evidence that experience rating promotes workplace health and safety, and is consistent with the proposition that experience rating may induce claims suppression. These issues left one reviewer to conclude: “Starkly stated, the issue is that if the goal of accident prevention is to be a serious objective of workers’ compensation schemes, then experience-rated premiums are a very blunt and problematic instrument to achieving this end and may result in other, undesirable, effects.”^{xi}

Beyond Experience Rating - Recommendations for Change

1. Experience rating should not be part of Manitoba's WCB rate assessment model

When experience rating was introduced to Manitoba's assessment rate model, its stated objective was to incent safer and healthier workplaces. In reality, it has encouraged employers to reduce claims costs. While some reduction in claims costs may be the result of safer and healthier workplaces, it is clear that much of the reduction has been achieved through unethical and in many cases illegal behaviour, behaviour that Manitoba's WCB has been unwilling to address. The negative impact on workers has been significant, with far too much employer attention and resources going to claims cost reduction rather than genuine safety improvements and with far too many injured workers being denied compensation benefits they deserve. In the process, the legitimacy of the WCB among workers has been significantly eroded. And as unethical employers shirk their fair share of workers compensation costs, experience rating places an unfair burden on employers that are genuinely committed to workplace safety and health and refuse to engage in claims suppression.

It is the view of the MFL that continued inclusion of experience rating in the assessment rate model cannot be justified. A robust effort by the WCB to enforce the rules against claims suppression is both unlikely to happen, and unlikely to be effective. Despite its stated opposition to claims suppression, the WCB has failed to penalize a single employer for breaking the law against this practice. And even if enforcement efforts were to be stepped up, the financial gains from claims suppression are simply too great for many employers to resist.

It is worth noting that the most recent independent review in Ontario described the continued use of experience rating in the face of mounting evidence that it is inducing some employers to engage in claims suppression as a "moral crisis." The review goes on to conclude that, "unless the WSIB ... is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them."^{xii}

Creating incentives for effective workplace injury/illness prevention is a worthy role for the assessment rate model. Experience rating fails to create effective incentives in this regard because it is based on a metric that is not a

measure of workplace safety and health. We are not aware of an available, quantifiable metric that could be substituted into a reformed experience rating model.

2. Any new incentives must be pegged to genuine injury/illness prevention

If the assessment rate model is to incorporate financial incentives along with collective liability, it should reward authentic workplace illness/injury prevention efforts, and penalize behaviours that put the health and safety of workers at risk. Such incentives would work over time to keep WCB premiums low by reducing injuries and illnesses rather than by suppressing claims or forcing injured workers back to work before they are healthy and ready enough.

Such an approach is not new to workers compensation and insurance pricing. Schedule rating is a longstanding and accepted insurance pricing approach that focuses on risk factors. In workers compensation, schedule rating identifies measures that are key to preventing injuries/illnesses, and provides premium discounts for employers that invest in these measures. Premium surcharges may be added for employers that engage in activities that increase health and safety risks for workers. Such an approach is employed with respect to home insurance where premium discounts are provided for safety measures, such as smoke detectors, and premium surcharges are charged for risk factors, such as old electrical wiring.

It is worth noting that recent independent reports in Ontario have similarly called for reform of Ontario's experience rating assessment rate model to create incentives or genuine workplace injury/illness prevention activities. The December 16, 2010 report of Ontario's Expert Advisory Panel on Occupational Health and Safety (OHS), chaired by Professor Tony Dean, stated: "The Panel strongly believes that financial incentives should not simply be tied to claims experience. An ideal incentive program should reduce emphasis on measures such as lost time injuries by taking into account evidence of OHS practice improvements in the workplace, and reward employers for those improvements."^{xiii} The report's recommendations were accepted and embraced in full by the Minister of Labour.^{xiv}

3. Prevention Incentives should mirror prevention requirements in the WSH Act

Incorporating prevention incentives into the rate model requires that the elements of a robust illness and injury prevention program are prescribed by the WCB. The essential elements of such program are already prescribed by section 7.4(5) of Manitoba's WSH Act. The WCB rate model should provide premium discounts for employers that establish prevention programs in compliance with these prescribed requirements. By mirroring the legislated requirements, the WCB would not be requiring employers to comply with a new or conflicting regulatory standard, thus making it easier for employers to comply and qualify for premium discounts.

Within the framework of the section 7.4(5) requirements, the WCB should develop industry and sector specific schedules that prescribe in greater detail the elements of a compliant prevention program, and the premium discounts associated with each element.

4. Prevention efforts must be audited

In order to qualify for premium discounts, senior officers or managers of an employer should be required to attest to the accuracy of their compliance statement, and agree to subject their workplaces to periodic audits to verify compliance. If an audit revealed areas of non-compliance, premium discounts would be revoked and premium surcharges imposed.

These audits need to assess more than physical aspects of the workplace. They would also need to assess staffing, systems and process issues, such as training and the functioning of joint committees. This will necessarily involve confidential interviews with workers as well as supervisors/managers.

Given how detailed and involved such audits need to be in order to be meaningful, these audits should be done on a sample of employers that is large enough for employers to believe an audit is a real possibility.

5. Premium surcharges should be levied for violations of the WSH Act

Another useful indicator of workplace safety and health is compliance with the WSH Act. Violations of the Act are an indicator that an employer is

deficient in discharging their legal responsibility to ensure a safe and healthy workplace. We therefore recommend that when employers have been levied with stop work orders, improvement orders, administrative penalties, or fines for breaches of the WSH Act, the WCB should impose corresponding premium surcharges. This would create a real incentive for employers to comply with the WSH Act. As with our recommendation above, this approach has the advantage of not imposing additional or conflicting regulatory compliance responsibilities on employers. This would be a significant improvement over the current regime in which it remains possible for an employer that successfully keeps claims costs down to simultaneously be in violation of important provisions of the WSH Act.

6. Ban Workplace Incentive Programs

The workplace incentive programs discussed above are in themselves a form of claims suppression. Although such programs are arguably already a violation of section 19.1 of the WCB Act, the legal prohibition of claims suppression should be amended to make it explicitly clear that workplace incentive programs are illegal.

7. Enforce the ban on claims suppression

Manitoba's WCB should take aggressive action to enforce the law against claims suppression:

- Establish a dedicated unit to enforce the ban on claims suppression. The existing investigations unit is almost single-mindedly focused on investigating workers, and ill-equipped to investigate employers;
- Dedicate sufficient resources to thoroughly investigate complaints against employers;
- Make any necessary legal amendments to give investigators the powers they need to gather evidence of claims suppression; and
- Analyze claims records and investigate suspicious claims records (eg. investigate an employer with a suspiciously low claims record relative to other employers in the same industry/sector).

The current \$450 penalty is grossly insufficient, even if the WCB were to enforce it. The new penalty should be large enough that claims suppression

cannot be seen as a cost of doing business. This means it should be proportional to the size of the business. This could be done most easily by building such penalties into the rate model (a penalty based on payroll).

8. A New Approach to Return to Work

The WCB's current return to work policy is excellent on paper, but is not applied/enforced in practice. The WCB's current approach of effectively delegating implementation of that policy to employers needs to be completely overhauled. That approach has resulted in return to work practices that are inconsistent with the WCB Act and formal WCB policy. In a reformed return to work program,

- The WCB needs to have a more active role in the return of claimants to work;
- WCB's main role should be to ensure that when injured workers are returned to the workplace, it is done in a manner consistent with WCB policy and to verify that formal protocols/plans for those workers are actually being followed by employers;
- Medical assessments need to be a meaningful part of the return to work decision-making process;
- Each return to work plan needs to be formally documented (return to work protocols) so that employers can be held to them;
- WCB need to be prepared to go into the workplace to assess the situation, and to investigate complaints that its return to work policy is not being followed;
- The WCB should conduct proactive, random audits of return to work practices;
- Employers that break the WCB's return to work policy should face penalties in the form of premium surcharges;
- Injury re-prevention should be built into return to work protocols.

9. The Green Card reporting system should be retained and legislated

Green cards provide an easy way for workers to document injuries when they occur, without necessarily generating a claim. They facilitate the normalization of documenting and reporting injuries.

The WCB or WSH Act should be amended to require that employers make green cards readily available in all workplaces.

10. A percentage of assessment revenue should be dedicated to injury/illness prevention programming

The single best way to keep WCB premiums down is to reduce workplace injuries/illnesses. Unfortunately not enough resources are going into prevention programming in Manitoba (other than advertising). Even if current prevention activities were consolidated and better coordinated, more resources would be needed for prevention. A minimum percentage of assessment revenue should be dedicated to prevention in order to ensure low premiums into the future. This percentage should ensure an increase in resources for prevention programming.

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ⁱ Workers Compensation Board of Manitoba, “Overview of the Workers Compensation System,” <http://www.wcb.mb.ca/overview> (accessed January 2, 2013).

ⁱⁱ Liz Mansfield, Ellen MacEachen, Emile Tompa, Christina Kalcevich, Marion Endicott and Natalie Yeung, “A critical review of literature on experience rating in workers’ compensation systems,” *Policy and Practice in Health and Safety* 2012; 10 (1): 9.

ⁱⁱⁱ Manitoba Federation of Labour, “An Investigation into the Incidence of WCB Claims Suppression,” <http://mfl.ca/content/investigation-incidence-wcb-claims-suppression> (accessed January 3, 2013).

^{iv} Emond Harnden, “Six hundred thousand dollar fine levied on employer pleading guilty to WSIB fraud charges,” <http://www.ehlaw.ca/publications/apr00/wsib.shtml> (accessed January 18, 2013).

^v “The WSIB has failed to take adequate steps to forestall or punish illegal claims suppression practices,” WSIB Funding Review, “Funding Fairness: A Report on Ontario’s Workplace Safety and Insurance System,” <http://www.wsibfundingreview.ca/finalreportpdfs/Funding%20Fairness%20-%20A%20Report%20on%20Ontario's%20Workplace%20Safety%20and%20Insurance%20System.pdf> (accessed January 18, 2013), p81.

^{vi} Emond Harnden, “Six hundred thousand dollar fine levied on employer pleading guilty to WSIB fraud charges,” <http://www.ehlaw.ca/publications/apr00/wsib.shtml> (accessed January 18, 2013).

^{vii} Liz Mansfield, Ellen MacEachen, Emile Tompa, Christina Kalcevich, Marion Endicott and Natalie Yeung, “A critical review of literature on experience rating in workers’ compensation systems,” *Policy and Practice in Health and Safety* (10:1); and Alan Clayton, “Economic incentives in the prevention and compensation of work, injury and illness,” *Policy and Practice in Health and Safety* (10:1). The Clayton review builds on an earlier review: “The Prevention of Occupational Injuries and Illness: The Role of Economic Incentives,” Working Paper 5, National Centre for OHS Regulation, The Australian National University, August 2002.

^{viii} “This is not to say that experience rating is without behavioural effects. There is now a body of evidence which shows that it does affect the manner in which claims management is conducted. The question is whether, and to what extent, this behavioural impact goes beyond controlling claims to that of producing safer workplaces,” Clayton, “Economic incentives in the prevention and compensation of work, injury and illness,” p38.

^{ix} Mansfield et al, “A critical review of literature on experience rating in workers’ compensation systems,” p14.

^x Clayton, “The Prevention of Occupational Injuries and Illness: The Role of Economic Incentives,” p4.

^{xi} Clayton, “Economic incentives in the prevention and compensation of work, injury and illness,” pp40-41.

^{xii} WSIB Funding Review, “Funding Fairness: A Report on Ontario’s Workplace Safety and Insurance System,”

<http://www.wsibfundingreview.ca/finalreportpdfs/Funding%20Fairness%20-%20A%20Report%20on%20Ontario's%20Workplace%20Safety%20and%20Insurance%20System.pdf> (accessed January 18, 2013), p81.

^{xiii} Expert Advisory Panel on Occupational Health and Safety, “Report and Recommendations to The Minister of Labour,” http://www.labour.gov.on.ca/english/hs/pdf/eap_report.pdf (accessed January 15, 2013), pp 40-41.

^{xiv} When the Panel’s report and recommendations were released, Ontario Labour Minister Peter Fonseca responded by indicating, “I wholeheartedly embrace these recommendations that will help ensure that Ontario workers return home safely at the end of each day”: News Release (December 16, 2010), <http://news.ontario.ca/mol/en/2010/12/new-chief-prevention-officer-to-oversee-workplace-safety.html> (accessed January 15, 2013).