

# Submission to the Workers' Compensation Act Committee of Review 2021

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## Introduction

The Canadian Union of Public Employees – Saskatchewan Division (CUPE Saskatchewan) welcomes the opportunity to present our views and recommendations to the Saskatchewan Workers’ Compensation Committee of Review appointed on August 5, 2021.

The largest union in Saskatchewan, CUPE represents over 30,000 public sector workers in health care, school boards, municipalities, universities, libraries, community-based organizations and various boards and agencies.

CUPE is concerned with occupational health and safety, and specifically with the elimination of workplace hazards. We believe that the elimination of hazards and the prevention of injuries, illnesses and fatalities are the key components to improving the workplace and decreasing the rates of injury and disease.

Unfortunately, our members face preventable occupational health and safety hazards every day. Many members and their families experience the irreparable harm of work-related injuries and illnesses. They, more than anyone, are aware of the threats to their health and the obstacles in their way.

Working during the COVID-19 pandemic has highlighted the need for employers to take a greater responsibility and focus on preventing infection and preventing exposure to the virus – including conducting regular risk assessments, having adequate exposure control plans, and ensuring workers have access to necessary and adequate personal protective equipment (PPE). Workplaces have continued to be a consistent driver of outbreaks throughout the pandemic – including public facilities and services where outbreaks place workers at increased risk including, but not limited to, schools, child care settings, long-term care facilities and hospitals, and health-care related services. Many workers have become ill, and some, sadly, have died, as a result of contracting COVID-19 in their workplace and while doing their job in the community.

An employer’s obligation to protect workers’ health and safety goes beyond public health guidance – and demands greater workplace protections to be implemented and considerations for vulnerable workers at risk of more serious disease or outcomes from COVID-19. Moreover, employers and the workers’ compensation system must be prepared to consider and assist with the long-term physical and mental health effects of the COVID-19 pandemic, and other injuries related to the transition to working from home.

Since March of 2020, and as the pandemic continues to unfold and new variants pose new and greater risks, the ability for workers in Saskatchewan to access WCB benefits in a fair and timely manner is essential – along with increased support for workers suffering physical and psychological injuries.

Any assessment of the workers’ compensation system must begin with an acknowledgement that employers hold the balance of power in the workplace and that they must be legally responsible for workplace health and safety.

CUPE welcomes the opportunity to provide suggestions on how the workers compensation system in Saskatchewan can be improved for workers.

## Meredith Principles

Ever since the creation of the province's workers' compensation system in 1930, the principles set out by Justice Sir William Ralph Meredith have guided the protection and compensation provided to workers for work-related injuries and diseases.

CUPE supports the Meredith Principles for workers' compensation and maintains the system must remain a no-fault one based on the collective liability of employers as a group and should be governed by the benefit-of-the-doubt principle that favours workers.

While the Committee of Review knows the importance of the Meredith Principles, we believe that it is worthwhile to restate them for the record:

- **No Fault Compensation:** Workers are not required to prove blame for their injuries in order to receive compensation for those injuries;
- **Security of Benefits:** A dedicated fund with enough assets to provide compensation to the worker for all future costs caused by the injury;
- **Collective Liability:** Costs are shared by employers through compulsory mutual insurance wholly paid by employers;
- **Independent Board:** Autonomous from government control, the Board is composed of worker and employer representatives, with the Board deciding claims and collecting assessments;
- **Exclusive Jurisdiction:** Workers and employers are protected against the cost, delay and uncertainty of litigation, by making Board decisions final and conclusive.

**It is important for the Committee of Review to ensure the workers' compensation system strictly adheres to these principles.**

In keeping with the Meredith Principles, workers should not be viewed narrowly as insurance customers or clients, but as the very people who build and maintain society and to whom the WCB serves. Furthermore, any employer premium reductions must not compromise the security of benefits principle of ensuring adequate compensation to injured workers.

## **Board Structure and Governance**

In the 2016 Committee of Review Report, the following recommendation was made on Board structure and governance:

### **Recommendation 2**

**Modernize Board structure to reflect the diversity of skill sets required to guide the work of the WCB. This can be achieved through:**

**Investing time in improving performance by gauging the effectiveness of WCB against its performance metrics.**

**Developing a formal skill set matrix and recruitment process for choosing Board members.**

**Expanding the Board structure to include seven members – three full-time members and four part-time members with equal representation from both employer and employee groups.<sup>1</sup>**

While the Board currently has three members, the legislation provides for a five-member Board. The Committee of Review's unanimous recommendation in 2016 was that the Board be expanded from a three-member Board, with the addition of four part-time members.

The Committee of Review, in their report, indicated that the recommendation was made with considerable deliberation on the issue, stating: "The recommendation respecting governance and structure of the Board of Directors proved the most challenging".<sup>2</sup>

In making its recommendation, the Committee concluded that the expansion of the Board, along with maintaining an in-house appeals process, was important to the overall objective of how to best serve injured workers.

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<sup>1</sup> Workers' Compensation Act Committee of Review, 2016 Report, 30 June 2016, 17.

<sup>2</sup> Workers' Compensation Act Committee of Review, 2016 Report, 30 June 2016, 2.

“We feel meaningful improvements, including a shift in culture, can be made to the compensation system by implementing a modernized Board structure consisting of three full-time members and four part-time members. The three current full-time Board members would comprise the dedicated appeal tribunal.”<sup>3</sup>

In making their recommendation on Board structure, the Committee of Review was mindful of injured workers’ access to appeals, stating: “This recommendation also ensures injured workers are provided timely assistance by maintaining an internal appeals tribunal with worker and employer representation”.<sup>4</sup>

By Order in Council signed by the Minister Responsible for the Saskatchewan Workers’ Compensation Board on November 24, 2021, the WCB Board of Directors was finally expanded by the appointment of two (2) part-time members – which still falls short of the full recommendation.<sup>5</sup>

While CUPE is pleased to see that the Board has since expanded to five people with the addition of two part-time members beginning in 2022, it is disappointing that the recommendation to expand the Board to seven in the 2016 Committee of Review’s Report has not been entirely fulfilled. Furthermore, we encourage diversity to be a consideration in further appointments and the consideration of re-appointments.

**CUPE recommends that the recommendation from the previous 2016 Committee of Review of adding four part-time seats to the WCB Board of Directors with equal representation from employer and employee groups be fully implemented. These additional seats would be beneficial in a number of ways. More seats would provide the opportunity for a broader based level of expertise for the Board. The additional four part-time seats strengthen governance and oversight capacity of the WCB Board of Directors, and it allows the three full-time members of the Board to dedicate more time to appeals.**

**CUPE continues to be strongly opposed to the externalization of the appeals process and final level of appeals.**

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<sup>3</sup> Workers’ Compensation Act Committee of Review, 2016 Report, 30 June 2016, 2.

<sup>4</sup> Workers’ Compensation Act Committee of Review, 2016 Report, 30 June 2016, 2.

<sup>5</sup> Government of Saskatchewan, Order in Council, OC 576/2021, Available at: <https://publications.saskatchewan.ca/#/products/115397>.

## Psychological Injury

As the 2020 Annual Report of WCB notes: “Psychological injuries continue to rise in the province. The highest number of psychological injuries are among first responders, corrections workers and those working in health care. Over the past five years, the WCB has seen an increase in the number of psychological injury claims accepted.”<sup>6</sup>

While it is recognized that the WCB continues to improve resources, established a dedicated psychological injuries unit in 2019 to reduce claim decision times and initiatives are underway through WorkSafe to develop a long-term strategy for addressing psychological health issues in the workplace, much more must be done by WCB to update policies and expand psychological injury coverage.

The COVID-19 pandemic has introduced new health and safety hazards into our workplaces and has also impacted the severity of existing hazards, including those related to mental health. Many public sector workplaces poorly managed psychological health and safety even before the pandemic began. The additional stresses of workload, workplace organization issues, and the risks posed by COVID-19 have compounded and highlighted psychosocial hazards. Short-staffing, expanding client/patient to worker ratios, mandated overtime and over-work, increased workloads, time pressures, exposure to violence at work – all are work organizational factors that can cause, contribute to, or compound psychological injury of workers.

**CUPE recommends that the WCB update and expand policies specifically to address psychological health issues stemming from the COVID-19 pandemic, those arising from harassment, and psychosocial hazards from workplace organizational issues.**

The COVID-19 pandemic has had a major impact on the psychological health of workers, particularly those in the health care sector, as well as other frontline workers who have had to work directly with the public and put their health and safety at risk – especially before vaccines were widely available. Special consideration should be given to workers for claims regarding psychological injuries related to COVID-19 to ensure these claims are dealt with fairly and in a timely manner.

**WCB should also continue to ensure that mental health issues are assessed for all WCB claims to determine if additional resources may be required.**

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<sup>6</sup> Saskatchewan WCB, 2020 Annual Report, 54.

## Equity Analysis

Data indicates that racialized workers disproportionately require workers' compensation.<sup>7</sup> Research reveals that even when we account for factors like one's socio-economic status, racialized workers are more likely to experience dangerous and unhealthy work conditions, thereby making them more vulnerable to injury on the job.<sup>8</sup> Any efforts to weaken benefits disproportionately harm racialized workers – and cannot be understood outside of the larger socio-economic and political structures of colonialism and privilege.

**CUPE recommends that the WCB explore the impact of any future changes to ensure that racialized or equity-seeking groups are not disproportionately impacted or discriminated against because of those changes.**

## Prevention

Though improvements are being made to reduce overall total injury rates across Saskatchewan as highlighted in the 2020 Annual Report of the WCB<sup>9</sup>, the number of serious injuries and fatalities have seen little improvement.<sup>10</sup>

According to the 2020 Annual Report of the WCB, funding for prevention efforts has only minimally increased to the Occupational Health and Safety (OHS) budget, safety associations had no real increase from 2019, and WorkSafe expenditures decreased in 2020.<sup>11</sup>

While the 2020 Annual Report of the WCB notes a reduction in total injuries in health care compared to 2019, the total injury rate remains relatively high, at over 7% for the past five years, for Health Authority, Hospital, and Care Home workers (rate code G22) – 13,600 of whom are represented by CUPE. Moreover, the occupational category with the highest number of accepted WCB claims belongs to nurse aides (Continuing Care Assistants), orderlies, and patient service associates, who comprise a great many of CUPE's 13,600 health care workers.<sup>12</sup> CUPE health care workers continue to highlight the worsening

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<sup>7</sup> Caroline Kristine Smith, "Racial Disparities in a State Based Workers' Compensation System", (Portland State University: 2019), Dissertations and Theses, Paper 4831, Available at:

[https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=5903&context=open\\_access\\_etds](https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=5903&context=open_access_etds).

<sup>8</sup> Seth A. Seabury, Sophie Terp and Leslie Boden, "Racial and Ethnic Differences in the Frequency of Workplace Injuries and the Prevalence of Work-Related Disability", (Washington: Health Affairs, 2017, Vol. 36, No. 2), Available at:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6198680/>

<sup>9</sup> Saskatchewan WCB, 2020 Annual Report, 52

<sup>10</sup> Saskatchewan WCB, "WCB approves 2022 premium rates", 7 December 2021, Available at:

<https://www.wcbask.com/news/wcb-approves-2022-premium-rates>

<sup>11</sup> Saskatchewan WCB, 2020 Annual Report, 84.

<sup>12</sup> Saskatchewan WCB, 2020 Annual Report, 50.

short-staffing crisis and burnout, and psychological damage caused by work, as working conditions continue to erode during the pandemic.

**The WCB’s increased focus on health care workplaces has been important, but there is clearly much more that needs to be done to respond to the health and safety concerns of health care workers in Saskatchewan.**

**CUPE believes that resources and attention to prevention programming must not only expand but be improved.**

Moreover, the WorkSafe and Mission Zero programs have tended to target workers rather than to devote sufficient resources for monitoring employers to ensure they are adhering to regulations and best practices.

## Benefits

While there have been improvements since the 2011 and 2016 Committees of Review to the maximum benefit for injured workers, the maximum wage rate calculation still needs to be addressed and improved.

The current WCB policy on the maximum wage rates provides an annual adjustment to equal to 165% of the product of Saskatchewan’s average weekly wage (AWW).<sup>13</sup> By comparison, Ontario’s workers compensation board calculates the maximum wage rates at 175% of the average industrial wage (AIW) for Ontario.<sup>14</sup>

**CUPE recommends that the calculation for the maximum wage rate be annually indexed to 175% of Saskatchewan’s average weekly wage published by Statistics Canada. Moreover, that no reduction occurs when the average weekly wage decreases from the previous year.**

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<sup>13</sup> Saskatchewan WCB, “Maximum Wage Rates – 2021”; POL 07/2020 and PRO 07/2020, Policy & Procedure Manual, 1 November 2021, 197 – 206.

<sup>14</sup> WSIB Ontario, “Benefit Dollar Amounts - Accidents from 1998”, Doc. No. 18-01-02, Operational Policy Manual, 4 January 2021, Available at: <https://www.wsib.ca/en/operational-policy-manual/benefit-dollar-amounts-accidents-1998>

## Presumptive Coverage

The current Saskatchewan WCB policy for communicable diseases entitles a worker to benefits if there is a confirmed link between the worker's exposure and their employment, and they contract COVID-19.

Based on WCB policy: *Injuries – Communicable Disease* (POL 02/2010)<sup>15</sup>, the following conditions must be met:

- There is confirmed exposure to the disease in the workplace;
- The time period when the worker contracts the disease is in close proximity to the confirmed workplace exposure, and
- The nature of employment increases the exposure risk of contracting the disease as compared to the general population.

By comparison, WorkSafe BC has established presumptive coverage for workers affected by communicable diseases such as COVID-19.

As of August 20, 2020, claims registered for COVID-19 are first considered under Schedule 1 of the *Workers Compensation Act*. Schedule 1 provides a presumption that communicable viral pathogens, such as COVID-19, are caused from work, unless proven otherwise. In order for the presumption to apply, the worker must be at a significantly higher risk of exposure than the public at large and the evidence would still have to show that the worker has contracted COVID-19, based on tests or symptom cluster.

When claims for COVID-19 do not meet the requirements of Schedule 1, claims submitted for COVID-19 contracted through a work-related exposure are adjudicated on a case-by-case basis. WorkSafeBC will look at details such as whether the worker has a diagnosis of COVID-19, their symptoms, their exposure history, and whether there is

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<sup>15</sup> Saskatchewan WCB, "Communicable Diseases", POL 02/2010, Available at: <https://www.wcsask.com/policy-and-procedure/communicable-diseases-pol-022010>

sufficient evidence to establish that the risk in the workplace was significantly higher than the ordinary exposure risk.<sup>16</sup>

Since the provincial government first declared a State of Emergency on March 18, 2020<sup>17</sup>, and as variations in the virus occur changing the risk of exposure (transmissibility) and the severity of exposure, workers in Saskatchewan should have a presumption that COVID-19 transmission was caused by work, unless proven otherwise.

**CUPE recommends that Saskatchewan WCB and *The Worker's Compensation Act* be amended to adopt a presumptive coverage policy for COVID-19, similar to the BC model for claims registered as COVID-19 and similar to the legislative presumption of certain occupation diseases for firefighters provided under Section 28 of *the Act*.**

## **Stakeholder Advisory Committee**

**CUPE supports the Saskatchewan Federation of Labour's recommendation that the WCB Board be expanded to a full seven (7) members before consideration is given to establishing a Stakeholder Advisory Committee.**

## **Anti-Oppression and Anti-Discrimination Training**

**CUPE supports and furthers the Saskatchewan Federation of Labour's recommendation that the WCB Board and employees undergo anti-oppression and anti-discrimination training, to reflect an organizational culture devoted to recognizing oppression and inequalities that exist in our society.**

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<sup>16</sup> WorkSafe BC, COVID-19 Claims Data, 2021, Published at: <https://www.worksafebc.com/en/covid-19/claims/covid-19-claims-by-industry-sector>

<sup>17</sup> Government of Saskatchewan, Order in Council, OC 102/2020 - Declaration of a State of Emergency Throughout the Province of Saskatchewan to Address the COVID-19 Public Health Emergency (President of the Executive Council), Available at: <https://publications.saskatchewan.ca/#/products/104478>