

Submission to the Workers'  
Compensation Act  
Committee of Review

December 2021

**SUBMISSION**

**SGEU**

## Introduction

This document presents SGEU's recommendations to the 2021 Workers' Compensation Act Committee of Review. The following recommendations draw on the expertise of SGEU's members employed at the Workers' Compensation Board, as well as its labour relations and research staff.

In the following, the *Workers' Compensation Act, 2013* is referred to simply as the Act; the *Workers' Compensation Miscellaneous Regulations* are referred to as the Regulations; the Workers' Compensation Board is referred to as the WCB; and the Committee of Review is referred to as the Committee.

## Recommendations

### 1. Increase the presumed retirement age

Under Sections 68 (2) and 71 of the Act, compensation either ceases to be payable, or becomes limited to a two-year period, after a worker reaches the age of 65. This effectively defines age 65 as the expected retirement age for purposes of the Act. However, changing circumstances in our society mean this age parameter is no longer a fair or valid one. We ask that the Committee consider the following:

- As lifespans lengthen, medical technologies advance, and our understanding of human health increases, workers are able to carry on productive careers longer than in the past.
- Mandatory retirement is no longer permissible in Saskatchewan, following [amendments made to the Saskatchewan Human Rights Code](#) in 2007.
- Retirement ages for Canadian workers have been steadily increasing in recent years. In 2011, the median age of retirement for Canadian workers was 62.3. By 2020, it had climbed to 64.6, an increase of 2.3 years in the workforce.<sup>1</sup> While these are nationwide statistics, there is no reason to suspect the pattern trends in Saskatchewan are significantly different. Given this trend, the median age of retirement is likely to exceed age 65 in the near future – likely before the next WCB review period.
- The Canadian government will soon increase its presumed age of retirement from 65 to 67 for the purposes of the Old Age Security (OAS) program. Beginning in April 2023, the age of eligibility for OAS (as well as for the Guaranteed Income Supplement paid to low-income OAS recipients) will gradually increase, with the date of eligibility set at age 67 for all recipients by January 2029.<sup>2</sup>

Given these factors, **we recommend that Section 68(2) be amended to increase the presumed age of retirement to age 67 or higher, and that the reference to age 63 in Section 71 be increased accordingly.** This change would accommodate the longer careers and later retirements that are becoming increasingly common for workers, and would avoid creating a gap between termination of WCB benefits and eligibility for OAS.

---

<sup>1</sup> Statistics Canada. (2021). *Retirement age by class of worker, annual*. <https://doi.org/10.25318/1410006001-eng>

<sup>2</sup> Government of Canada. (2012). *Chapter 4: Sustainable social programs and a secure retirement*. <https://www.budget.gc.ca/2012/plan/chap4-eng.html#a10>

We note that changes to the presumed retirement age would also affect Recommendations 2 and 3 below, as those recommendations are based on the Act's current references to ages 63 and 65. **We recommend that an increase in the presumed retirement age be reflected by making corresponding revisions to all references to age 65 in Sections 73 and 74 of the Act, in addition to the revisions required in Sections 68 and 71.**

## **2. Provide a continuation of benefits pending completion of an FCE**

Injured workers may not necessarily be in a financial position to retire at the point when their WCB benefits are terminated. However, in order to seek employment after the end of their benefits, they may require an up-to-date Functional Capabilities Evaluation (FCE). At present, WCB benefits are terminated at age 65, or after two years for workers over age 63, whether or not an FCE has been completed. This has the potential to leave workers who wish to continue their employment without a source of income. (The risk of this will become more pronounced once the eligibility age for federal Old Age Security benefits is increased, as discussed in Recommendation 1.)

To protect workers in this situation, **we recommend that Sections 68 (2) and 71 of the Act be amended to include provisions stating that upon a request from a worker for an FCE, that worker shall continue to receive full WCB benefits until the completion of the FCE, so long as the request was made at least two months prior to the worker reaching the age at which their benefits would normally terminate.**

## **3. Increase the amount set aside for annuities**

The amount set aside for workers' annuities under Section 73(3) of the Act has not been increased since the annuity program was implemented. Given the lack of an increase, this provision no longer effectively serves its intended purpose, which is to replace the loss of pension contributions and/or retirement savings by workers who receive WCB benefits for an extended period. The current 10% amount provided by WCB is below the 11.4% contribution rate for the Canada Pension Plan, and well below the 18% maximum contribution allowable for retirement savings.

Given that the current 10% amount is below what is needed to provide WCB benefit recipients with a secure retirement, **we recommend that the percentage set aside for annuities under Section 73(3) of the Act be increased to 12%. We further recommend that this percentage be adjusted annually to match the increase in the consumer price index in Saskatchewan, to a maximum value of 18%.**

#### **4. End the termination of benefits for dependent spouses at age 65**

As per Sections 81(4) and 81(6) of the Act, compensation to the eligible surviving dependent spouse of a deceased worker is terminated when the spouse reaches age 65, at which time any amount set aside during the period of compensation is used to provide an annuity. The intent of the compensation paid to a dependent spouse is to offset the loss of income that a deceased worker would have provided to their spouse. However, for the reasons laid out in Recommendation 1, the assumption that a worker would have retired at age 65 is no longer a fair or accurate one.

To address this, **we recommend that references to age be removed entirely from Sections 81(4) and 81(6) of the Act, and all dependent spouses be allowed to collect benefits for the full five years permitted under Section 81(1).**

#### **5. Allow appeals of PFI decisions to bypass the appeal tribunal**

Under the present system, when injured workers appeal the degree of compensation awarded as a result of a Permanent Functional Impairment (PFI) they have incurred, their request is directed to the board appeal tribunal. The time and money spent on this step is effectively wasted, as members of the tribunal are not medical experts and do not have the authority to overturn the medical assessments underlying the award decision. The involvement of the tribunal is an unnecessary intermediary step before an appeal of a PFI award is inevitably passed on to a medical review panel, which consists of medical professionals who have the authority to effectively re-assess the underlying decisions.

In order to reduce the delays and expenses involved for the worker and the WCB, **we recommend that Section 59 of the Act be amended such that appeals of PFI awards will be immediately considered as a request for the provision of a medical review board, without requiring a worker or their dependent to first exhaust other appeals.**

#### **6. Provide workers' medical information only to practicing physicians**

Under the current provisions of the Act as set out in Section 174(2), there is potential for a worker's medical information to be released to their employer. This is especially problematic in the case of claims resulting from psychological injuries, as information may be released to persons responsible for causing the injury. SGEU's position is that only practicing physicians are qualified and entitled to review a worker's medical information on behalf of an employer, as they are medical experts and are bound by the provisions of the *Health Information Protection Act*.

Therefore, **we recommend that Section 174(2) be amended to state that any medical information requested may only be provided directly to a practicing physician on behalf of the employer, not to the employer or to any other representative of the employer.**

## 7. Require mandatory disclosure of industry and occupational exemptions to workers

While Sections 3 and 4 of the Regulations list the industries and occupations that are excluded from the provisions of the Act, there is presently no mechanism to ensure that workers in these occupations or industries are made aware of their uninsured status. The WCB routinely finds itself in the position of fielding inquiries and claims from injured workers who are unaware that they belong to an excluded occupation, or that their employers belong to an excluded industry and have not enrolled in WCB coverage. It is only once they suffer an injury that these workers discover they are not insured by WCB, leaving them financially unprepared for the consequences of an impairing or disabling injury. Of particular note at present is the fact that the effects of the COVID-19 pandemic have considerably increased the mental and emotional strain on a broad range of workers. While SGEU commends the WCB's policy of providing presumptive coverage for psychological injuries suffered by all insured workers, this pandemic has underscored that it is vitally important for workers to be able to prepare properly for psychological as well as physical injuries.

To address this shortcoming, **we recommend that the Regulations and/or the Act be amended to require that all employers who employ workers in excluded industries or occupations, and have not elected to contribute to the WCB, inform those workers at the commencement of their employment that they are not insured under the WCB. Our recommendation is that this notice be given in writing, and that it advise workers of their options to enrol in WCB coverage themselves as per Section 3(3) of the Act or to seek disability insurance through another provider.** This mandatory disclosure will empower workers to seek personal disability coverage; to request that their employer enrol in WCB coverage; or to otherwise prepare financially for the possibility of a workplace injury.

## 8. Review the validity of all exclusions of industries and occupations

The list of industries and occupations excluded from the provisions of the Act has not been amended since 2015, and has not seen any excluded categories brought under the Act since 2014. Given the changing nature of the modern workforce, as well as the ongoing transition in sectors such as agriculture to a larger-scale industrial business model, routine review of the excluded industries and occupations is necessary to ensure that WCB coverage is extended to workers wherever practical. Many of the occupations and industries that are excluded from the provisions of the Act involve a significant risk to workers, and there is no clear justification for why these workers do not receive the protection of being automatically insured under the WCB. In addition, the emerging "gig economy" of contract work means growing numbers of workers – whose jobs, notably, often require them to drive at all hours and in all conditions – are not insured under the WCB.

**We recommend that the Committee review all excluded industries and occupations, with added attention paid to workers in the gig economy, to determine whether these exclusions from the Act remain valid and necessary.**

## 9. Ensure the interval between reviews is five years at maximum

Given the technological changes and shifting business models affecting the modern workforce, as well as the impacts of unpredictable major events such as the COVID-19 pandemic, SGEU is no longer certain that the legislated intervals between reviews of Saskatchewan's workers' compensation process are of an appropriate length. The pace of change has increased in the modern work environment, and it is appropriate that the pace of the review of relevant legislation should increase as well, to ensure that emerging issues with the worker's compensation system to be identified and addressed in a timely manner.

To ensure that the review process is not unduly delayed, **we recommend that Section 162(1.1) of the Act be amended such that each Committee of Review be appointed within a window of three to five years of the appointment of the previous Committee, rather than within five years of the receipt of the previous Committee's report.**

## Conclusion

SGEU believes that the preceding recommendations are practical measures with the potential to increase the well-being of injured workers, provide greater security for workers currently excluded from the Act, enhance workers' privacy, and allow for a more efficient and less costly appeals process regarding Permanent Functional Impairment decisions. We trust that the Committee will give these recommendations careful review. We are more than willing to field any questions that may arise from this submission. Inquiries can be directed to:

Tracey Sauer  
SGEU President  
1-800-667-5221 ext. 230  
[tsauer@sgeu.org](mailto:tsauer@sgeu.org)