

November 19, 2021

Occupational Health and Safety Review
Corporate Services Division
Ministry of Labour Relations and Workplace Safety
300 - 1870 Albert Street
REGINA SK S4P 4W1

To Whom It May Concern:

Re: *The Workers' Compensation Act, 2013*

Please find attached a side by side document that captures the notes/comments and recommendations for improvement of the *The Workers' Compensation Act, 2013*. This is a collective collaboration from the SASWH team and reflects SASWH'S desire for change and improvement.

Thank you for the opportunity to share our thoughts with the Committee of Review. On behalf of the SASWH organization, I would like to thank you for your time and attention to this important work. In addition, SASWH extends to your team all the best in your consideration of all the submissions.

It is our collective desire to make workplace health and safety; a priority for all.

Thank you. Stay safe and healthy.



Sandra Cripps
Chief Executive Officer

Attachment

GENERAL COMMENTS:

- ❖ Some consideration to the reference of she/he to be changed to a more suitable reference, such as the ‘individual’. This is in consideration of a move away from the historical set of gender specific pronouns. These pronouns are not a reflection of an individual’s sexual orientation.
- ❖ In review of the recommendations from previous committee of reviews, in particular the 2016 report, there might be some value to provide stakeholders rationale for why some of those 2016 report recommendations have not be acted upon.
 - Customer service and culture
 - Senior leadership be held more accountable to objectives- *“how best to serve the injured worker”*

MAIN RECOMMENDATION:

- **More modernized board structure that is representative of those it serves.**

RATIONALE:

- ❖ Enhances the skill set of the Board and allows for a full oversight of claims management/appeals function, as well as supporting the other commitments of WCB to its stakeholders.
- ❖ In review of the legislation and noting the significant powers to the Board; a more robust Board would support the potential for the effective division of labor and responsibilities assigned under the Act to WCB Board members.
- ❖ Brings forward diversity and enhance communication that supports broader discussion of issues and informed decision making.

Original Language <i>The Workers Compensation Act, 2013</i>	Recommended Edit for Consideration	Rationale
<p>Pg 10. Other municipalities and non-profit organizations 5(1) In this section, “non-profit organization” means a corporation, organization or association that is established for the benefit of the public and not for any private profit.</p>	<p>Add a reference to the Corporations Act</p>	<p>There is clear alignment with the principles of non-profits.</p>
<p>Pg 12 Board continued 9(1) The Workers’ Compensation Board is continued. (2) The board is a corporation. (3) The board is to consist of a maximum of five members appointed by the Lieutenant Governor in Council as follows: (a) a full-time chairperson; and (b) an even number of full-time members, half of whom represent employers and half of whom represent workers.</p>	<p>3) The board is to consist of a maximum of five members appointed by the Lieutenant Governor in Council as follows: (a) a full-time chairperson; and (b) an even number of full-time members, half of whom represent employers and half of whom represent workers (c) Failure to ensure a five member Board will require supportive rationale as to why a full five member Board is not possible. In addition, there is to be evidence of intent to host a 5 member WCB Board.</p>	<p>This amendment would ensure that the Board has the desired structure to support its full purpose and functionality.</p> <p>In addition, there would be the opportunity for stakeholders to understand why a 5 member board is only a 3 member board.</p>

<p>Pg. 28 Offence for failure to report injury 54 Unless excused by the board, an employer who contravenes section 52 or 53: (a) is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000; and (b) if the board so orders, shall pay to the board any part of the amount of compensation and medical aid that the board awards for that injury, whether or not the employer has been convicted of an offence.</p>	<p>54 Unless excused by the board, an employer who contravenes section 52 or 53:</p> <p>Duty of employer to notify board of injury 52 Within five days after the date on which an employer becomes aware of an injury that prevents a worker from earning full wages or that necessitates medical aid, the employer shall notify the board in writing of: (a) the nature, cause and circumstances of the injury; (b) the time of the injury; (c) the name and address of the injured worker; (d) the place where the injury happened; (e) the name and address of any physician who attends the worker for his or her injury; and (f) any further particulars of the injury or claim for compensation that the board may require. 2013, c.W-17.11, s.52.</p> <p>Duty of employer to co-operate to achieve worker's return to employment 53 An employer shall co-operate with the board and the worker to achieve the early and safe return of an injured worker to his or her employment.</p>	<p>It is difficult to understand why the Board would want to have the ability to 'excuse any contravention of section 52-53?</p> <p>Perhaps there is sufficient rationale for this to be present and it's possible that better language or parameters for such power could be identified/listed.</p> <p>Would there be any limitations on what not could be excused by the Board?</p> <p>Would the board excuse an employer to cooperate?</p>
<p>Pg. 32 Certificate re decision of panel 63(1) As soon as possible after the examination of the worker or the examination of the medical information respecting a deceased worker, the chairperson of the medical review panel shall certify in writing the decision of the panel and send that certified decision to the board. (2) In the case of the examination of a worker, the certificate mentioned in subsection (1) must state: (a) the condition of the worker; (b) the fitness of the worker for employment; (c) if the worker is found unfit to work, the cause of that inability to work; (d) the nature and degree of any limitation in the worker's capacity to work caused by the injury with respect to which the worker claims compensation; (e) the extent of any permanent functional impairment of the worker caused by the injury with respect to which the worker claims compensation; and</p>	<p>Edit 2(d) (d) the nature and degree of any limitation in the worker's capacity to work caused by the injury with respect to which the worker claims compensation; a review of the job safety analysis for the position held by the worker is an element in the assessment of the worker's functional capacity against the expectations of the position held within the organization.</p>	<p>The job safety analysis (JSA) is a process that provides additional details as to the tasks associated with each position within an organization.</p> <p>If the JSA was an element in determining the functionality of the worker based on the position and functional limitations, there is greater support for a successful return to work for that worker.</p>

<p>77(1) Notwithstanding any provision of any former Workers' Compensation Act or any other provision of this Act, an injured worker entitled to compensation for permanent disability pursuant to a former <i>Workers' Compensation Act</i> must receive a minimum monthly amount equal to the amount MMA calculated in accordance with the following formula: MMA = FI x A where: FI is the degree of the worker's functional impairment, expressed as a percentage as the board may from time to time determine; and A is: (a) \$580 in the case of a worker under 65 years of age; or (b) \$530 in the case of a worker 65 years of age or over.</p>	<p>Amount of compensation for loss of earnings 68(1) If an injury to a worker results in a loss of earnings beyond the day of the injury, the board shall determine the loss of earnings resulting from the injury and shall ensure compensation to the worker: (a) in the case of a worker who sustained an injury before September 1, 1985, in an amount equal to 75% of that loss of earnings; or (b) in the case of a worker who sustained an injury on or after September 1, 1985, in an amount equal to 90% of that loss of earnings. (2) Compensation pursuant to subsection (1) is payable for as long as the loss of earnings continues, but the compensation is no longer payable when the worker reaches the age of 65.</p>	<p>Unclear language - would all compensation for loss of earning end once the injured worker reaches the age of 65 or are there other extenuating circumstances that would allow an injured worker to receive compensation after the age of 65 as noted in the last section under section 77.</p>
<p>If person entitled to compensation re death of two workers 91 If a person is being paid or is entitled to be paid compensation with respect to the death of a worker and subsequently becomes entitled to be paid compensation with respect to the death of another worker, that person shall be paid only the greater of the compensation payments that the person is entitled to be paid.</p>	<p>Interested to know if this practice is similar in other jurisdictions.</p>	<p>This appears to be punitive to the impact of survivor benefits language.</p>
<p>Payroll statements to be furnished by employers 122(1) Every employer shall annually prepare and transmit to the board a payroll statement setting out: (a) the amount of the earnings of all workers in the employer's employ during the preceding year, or any part of the preceding year that the board may specify; (b) an estimate of the amount the employer will expend for wages during the current year, or any part of the current year that the board may specify; and (c) any additional information that the board may require.</p>	<p>Payroll statements to be furnished by employers 122(1) Every employer shall annually prepare and transmit to the board three months in advance of rate setting, a payroll statement setting out:</p>	<p>It is unclear if the employers submit the payroll into the WCB board in a timely manner. When the rate setting is applied it appears to be based on an estimate of payroll for that industry/classes. Considering this, the estimate can be off considerably - is there potential for this 'estimated approach' to impact the actuarial science of setting the rate for that industry? Note: the note of 3 months is a suggestion and not based on any solid acceptable window of time.</p>