



SAFETY ASSOCIATION OF SASKATCHEWAN MANUFACTURERS

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Workers Compensation Act - Committee of Review

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The following pages outline the response from the members of the Safety Association of Saskatchewan Manufacturers (SASM) to the request for public involvement in reviewing the WCB Act (2013), the Regulations of the Act and the administration of the Act and Regulations.

SASM believes that the WCB Act (2013) and the WCB Act Exclusion Regulations (2014) need regular re-visiting and welcome this opportunity. In the case of the WCB Act (2013), the re-visiting must go beyond the Act and examine how the WCB Board and bureaucracy manage the principles of the Act. In the case of the WCB Act Exclusion Regulations (2014), SASM feels that the political expediencies that originally drove the development of the “Exclusions” are no longer relevant and that the Exclusions should be eliminated.

Our safety association exists with the intent to erase the necessity to even have Workers’ Compensation. Nothing would make us happier than to totally eradicate injuries in the workplace. However, we know that few, if any, of us will see that goal in our lifetime. In the interim we need the WCB to operate in a cost effective manner while protecting workers from the financial implications of a workplace injury and assisting with the injured workers’ healing to the greatest extent possible. It is SASM’s position that the WCB could be doing much better on each of those three (cost-effectiveness, financial protection for workers, better overall facilitation of healing) counts.

Workers Compensation Act - Committee of Review (2015)

Submission from

Safety Association of Saskatchewan Manufacturers

Who we are:

The Safety Association of Saskatchewan Manufacturers (SASM) is a non-profit corporation dedicated to injury prevention in Saskatchewan's manufacturing sector. SASM serves over 270 firms who collectively employ approximately 10,000 full time equivalent (FTE) workers. SASM member firms are in high risk industries with an average claim rate that is above the provincial WCB claims rate. Our Member firms also return injured workers back to full employment (and income) faster than the Saskatchewan average. SASM's members are generally reducing their injury rate at a pace that exceeds the balance of the workplaces in Saskatchewan and possibly Canada.

Summary:

SASM's Members feel strongly that our workers must be protected from the hazards at work and must be supported in the event that a workplace hazard causes injury. Most of our Member firms are investing significant amounts of money and time in the efforts to ensure our workplaces are safer. However it is our opinion that the medical practitioners and to some extent the WCB could and should show much more interest in reducing the financial aspects of workplace injury as those costs relate to both the injured worker and the employer. We feel that the WCB is certainly not managing the medical practitioner's services as well as is required. SASM additionally feels that the WCB's operations have evolved to become more about supporting the WCB itself.

SASM feels equally strongly that all workers need to be protected against the financial impacts of injury. To this end we feel that the WCB Act should cover all workers and volunteers in Saskatchewan. Barring that, a concerted effort and system of support that assists the uninsured workers to gain recompense should be developed and promoted. The uninsured workers need to be informed that they can sue the employer or organization for support and perhaps there even needs to be a system to assist them in that process.

Item: Primary Health Care Providers

There are a number of issues directly related to the primary health care providers. The WCB has a contractual agreement with the primary health care providers (PHCP) in Saskatchewan for providing care to individuals who are injured at work. The PHCP's are required to:

- a. ensure that the injury is in fact work related;
- b. provide medically sound restrictions to ensure the safe healing of the injured worker if the worker can't perform their regular duties. These restrictions are to be provided to the worker who in turn is required to provide them to the employer so that a safe manner of healing can be developed;
- c. follow the proven protocols of returning a worker to the workplace at the earliest possible moment.

Issue: Apparent pressure for the injury / illness to be work related

The costs of injuries related to the workplace are born exclusively by the employers in Saskatchewan. The costs related to injuries away from work are supposed to be born by the taxpayers. Based on data from Safe Saskatchewan there are ten (10) times as many injuries away from the workplace as there are at the workplaces in Saskatchewan.

Just the ratio of work related to non-work related injuries alone suggests that many non-work injuries will be mistakenly attributed to the workplace. However, there appears to be a reason for work related injuries to be preferred by the health care industry. Injured parties are often repeatedly asked if the injury happened at, or arose from, work with the "right" answer becoming more apparent with each inquiry. This is the first (or possibly second) step onto the slippery slope of non-work injuries being attributed to the workplace. If the employer feels that the injury was a non-work related they must invest many hours and dollars to get the injury re-defined as a non-workplace injury. This "re-attribution" of the cause happens often enough that many employers now question every injury.

Suggestion:

Except in cases where it is clear the injured worker misled the initial medical staff, if the injury is later determined to not be work related the PHCP's fee should be returned to the WCB.

Issue: Incomplete restrictions forms

The WCB's contract with the medical providers requests that the PHCPs complete a simple form to outline the restrictions that the injured worker should follow to ensure safe healing. However, **many PHCP's do not complete the forms.** Those PHCP's that do not complete and provide the proper forms during the initial consultation should not receive payment.

Suggestion:

WCB's payment to the PHCP should only be made upon the receipt of properly completed restrictions forms.

Issue: "Time off" as the only restriction

The most common prescription provided to injured workers by the PHCP's is "x days off work" or "x weeks off work". **"Time off" prescriptions without further restrictions or directions to manage the injury (i.e. don't lift more than x kg, etc.) are not in keeping with the proven best practices when treating the patient.** We can only hope that the PHCP sending a worker away with a "two weeks off work" restriction from a job that requires lifting a 10kg part also informs the worker that lifting a 10kg child or bag of groceries will cause more injury and potentially a loss of wage compensation.

The Canadian Medical Association, the Saskatchewan College of Physicians and Surgeons, and other medical associations clearly indicate that getting a worker back to the workplace as fast as possible (preferably never taking them out of the workplace) is far better for the worker than "time off". The WCB Act specifically requires injured workers *"to mitigate the workers' loss of earnings resulting from an injury"*. The WCB Act requires employers *"to co-operate with the board to achieve the early and safe return of an injured worker to his or her employment"*. SASM strongly advises our Members to have an entire list of non-regular (modified and/or alternative) jobs that can facilitate an injured worker. Enacting legislation only to let some PHCP's thwart the system makes no sense at all.

Suggestion:

The WCB should demand that the PHCP's follow proven medical best practices and restrict payment from those that refuse to support return to work.

Issue: Financial implications for the injured worker

The PHCP's efforts to heal the injured worker's body are very understandable. However, "time off" prescriptions have the unintended consequence of adversely affecting the worker's financial well-being, especially if the worker is being paid by the WCB and not the employer.

Wage compensation paid by the WCB is 90% of the normal take home pay. None of the worker's benefits (CPP, RRSP's, etc.) or other mandatory payments (EI, etc.) are made by the WCB. The WCB 2014 Stakeholder's Report indicates that the average period from claim registration until the first payment is issued in 2014 was 30.48 calendar days which is up from 2013 (28.14 days) and 2012 (12.28 days).

According to leading financial institutions many workers live from pay cheque to pay cheque. The PHCP's willingness to reduce the pay cheque and the WCB's inability to get the cheque out in less than a month must be bitter pills to swallow after having been injured at work.

Suggestion:

SASM's suggestion is that all PHCP's working in Saskatchewan be required to attend at least a one day training session about the WCB system (including return to work) before being able to do business in Saskatchewan. Simple "time off" prescriptions should only be accepted if they include total bed rest, or, the injured worker's medications will make them a danger to themselves and others.

Issue: Financial implications for the injured worker's employer

The WCB is regarded as being the "first payer" on a workplace injury claim. This designation when used to facilitate the legal and accounting procedures between insurance firms (i.e. a driving injury at work includes at least SGI and the WCB) is welcome and necessary. However, the WCB's role as the first payer when paying injured workers wage compensation is not as welcome and never necessary. The 'first payer' concept can affect the employer / worker communications in a negative fashion, and actually becomes a significant surcharge to the employer.

If the injured worker has received an “x days or weeks off work” restriction and the WCB is direct paying the injured worker, the worker and the employer often do not have regular communication. If the length of time off work is substantial the potential for communication difficulties to arise increases dramatically. Thus, **every manner of keeping the communication current between the injured worker and the employer is extremely important.** Obviously, keeping them on the regular payroll is one of the most compelling manners of maintaining and accomplishing that communication.

The financial side of the “first payer” issue occurs when the employer continues to pay the worker for the entire time the worker is off work. This arrangement is **much better for both the worker and the employer.** The worker receives their regular pay and benefits on time, and, the employer stays in contact with the worker. Normally, however, the WCB then sends the employer a cheque for the amount that the WCB would have sent to the worker if the WCB had been paying the worker directly. **Reimbursing the employer is well outside the WCB’s mandate.** The entire WCB mandate is to protect workers, not employers, from the financial impacts that arise from a workplace injury.

WCB personnel when asked have insisted that by reimbursing the employer they are just “paying the cost of the claim”. However, when the cost of the claim includes this reimbursement from the WCB, **the employer is being charged a surcharge on the funds the employer paid directly to the worker!** This is, in fact, why the WCB sends the reimbursement to the employer.

The WCB 2014 WCB Stakeholder Report indicates an administration cost of 0.27 per \$100 of assessable payroll and just under \$5,000 per time lost claim. However, for the years 2012 to 2014 inclusive, the total premiums paid for the manufacturing rate codes M41, M72, M91 and M94 were 207% of total costs. Thus the surcharge that the employer pays on funds they paid directly to the injured worker so that the injured worker was not impacted financially may be as much as 200% of the salary cost. **Is it the WCB’s place to penalize employers for supporting their injured workers better than the WCB can support those workers?**

If the employer cannot prove that the injured employee is being paid directly at their full wage during the healing timeframe, then the WCB must send the wage compensation directly to the worker and add the complete cost of that service to the claim. However, if the employer can prove that the injured worker is being paid the WCB not should be paying the wage compensation and adding into the “cost” of the claim.

Suggestion:

The WCB be restricted from sending the employer the wage compensation amount and including it in the claims cost when the employer can prove that they are direct paying the injured worker.

Issue: WCB excluded economic sectors and “second class” workers

The Meredith Principles indicated that all workers be should be protected. Political considerations when the WCB Act was first proclaimed in Saskatchewan precluded many workers, most notably those in agriculture and related industries, from being protected. The political expediencies from the 1930’s have long since disappeared. **That these workers as well as those in over 30 other economic endeavours are relegated to being second class citizens and unprotected workers is a travesty.** A number of provinces are reportedly re-drafting their WCB Acts, Regulations and programs to ensure that at least agricultural workers are financially protected in the case of injury at work.

Every year in Saskatchewan there are injuries ranging from minor injuries to tragedies such as broken backs and life altering brain injuries to individuals working for or volunteering for entities that can easily afford WCB protection for their workers. None of these workers or their families are protected from the financial impact yet their “employer” is free to profit from the workers’ toils. The injured workers and often their families end up with minimal assistance through the tax funded support systems in Saskatchewan if they have any support at all. SASM believes that this must end.

Suggestion:

That there is an intensive examination of the WCB Act Exclusion Regulations (2014) with the intent of removing all exclusions.