

WCB Committee of Review Submission



Submitted by:
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November 10, 2015

Introduction

SAHO is pleased to provide the Workers' Compensation Board Committee of Review with the below written submission. In SAHO's capacity as the designated employer representative for the various Regional Health Authorities in the province, and in order to provide the Committee with as comprehensive a reply as possible, SAHO has incorporated submissions received from the following Regional Health Authorities: Five Hills, Saskatoon, Cypress, Mamawetan Churchill River, Prince Albert Parkland, and Regina Qu'Appelle. It is also SAHO's understanding that submissions may be provided to the Committee from other individual Regional Health Authorities, and the below submission is in no way intended to be a complete comprehensive submission on behalf of all Regional Health Authorities in the province, and should not be taken as such. SAHO is thankful to the Committee for the invitation to provide this submission.

Issue #1 – Delays in Adjudication

Applicable section of *The Workers' Compensation Act*: 48

Many collective agreements stipulate that an employer will continue paying an employee from the date of injury, until the length of time loss is greater than one year, or when the claim has been denied. Delays in adjudication of WCB claims can place significant hardship on employers related to rework. Further, employees are responsible to pay the employer back if their claim is denied, which can have a detrimental impact on their rehabilitation.

Issue #2 – Accepting Claims without Medical Documentation

Applicable section of *The Workers' Compensation Act*: 58

The WCB accepting claims without medical documentation has been a concern. We haven't seen an issue lately so this may have been rectified.

Regarding having employees go for an assessment: this appears to be part of a larger problem – the lack of communication between WCB and the Health Regions. There have been times over the last few months, where Five Hills Health Region has really struggled getting answers. This really needs to improve and we need to work together. We recognize, however, the need to balance boundaries.

There is a concern expressed by several health regions that WCB is sending employees for a multi-disciplinary assessment at a standard time marker (such as 4 weeks) and recommendation should be that WCB have a conversation with the employer and the medical provider prior to referring the employee for a multi-disciplinary assessment.

Issue #3 - Treating recurrent claims as new claims.

Applicable section of *The Workers' Compensation Act*: 72

It seems that WCB looks at recurrent incidents as new claims. There is no limitation period on a claim and it can be reopened at any time. This is difficult for employers to manage, particularly from an administrative perspective.

Issue #4 – Lag time before Experience Rates are Determined

Applicable section of *The Workers' Compensation Act*: Part VI

There is significant lag time before rates are determined using experience. This period is long. Example, the rates for 2015 are based on 2013, 2012 and 2011 annual experience. Could the lag be shortened?

Issue #5 – Timing for Making Claims

Applicable section of *The Workers' Compensation Act*: Section 44 (1) (b)

44(1)(b): “the claim for compensation is made within six months”. This should be reduced significantly. For Employers to validate that an injury occurred within last six months can be challenging, if not impossible, in addition to our inability to correct the situation in a timely manner.

Issue #6 – Employees being given the benefit of the doubt to provide information for too long

Applicable section of *The Workers' Compensation Act*: Section 46

The concern from employers is that this consideration seems to be quite loose. For example, an employee that does not comply with requests and timelines, for no good reason, continues to be given an opportunity to provide information. This needs to be tightened up.

Issue #7 – Healthcare Professionals Timely Responses

Applicable sections of *The Workers’ Compensation Act*: Section 55 and 56

If the employer has a timeline to report information and can face fines, health care professionals should also be governed by a timeline to respond. This will aid all parties in timely and effective return-to-work (RTW) planning.

Issue #8 – Coverage

Applicable Policy from Policy and Procedure Manual: 1.9 Work-Based Learning Assignments

Saskatoon Health Region has a number of affiliations with other schools, post-secondary institutions, national and international institutions. This may be an area that WCB should review to ensure appropriate coverage is in place. The list below includes our affiliations that are not contained in the currently policy:

Alabama University at Birmingham	Minot State University
Arcada University (Finland)	Mohawk College
Athabasca University	Mount Royal College
Aurora College	New Brunswick Community College
Bow Valley College	New Brunswick University
Brandon University	Norquest College
British Columbia University	N. Dakota University
CAET Academy	Ottawa University
Calgary University	Prince Edward Island
Capilano University	W. Ontario University
Cariboo University College	Queens University
Dalhousie University	Ryerson University
Eastern Washington University	Stonybrook State U of New York

Fort Hayes State University (Kansas)	Thompson River University (see Cariboo University College)
Grant MacEwan College	Toronto University
Great Plains College (Biggar)	Trent University
Jamestown College (N Dakota)	Vancouver Art Therapy Institute
Laurentian University	Victoria University
Lethbridge College	Wascana Campus
Lethbridge University	Washington State University
Manitoba University	
McGill University	
McMaster University	
Medicine Hat College	
Memorial Universty	

Issue #9 - Cost Relief

Applicable Policy from Policy and Procedure Manual: 2.2.1 and 2.2.3

2.2.1: Cost Relief

Employers seek clarity around how employers receive cost relief. We have a number of topics in appeal that the policy fails to address, yet applies. For example, capping cost relief per year based on the maximum wage rate, even if the cost relief is substantially higher.

There should be an option, at the discretion of the employer, as to how to apply those cost relief credits. For example, credits could be applied either beginning in the year that the appeal started, or in the year that cost relief was granted.

2.2.3: Cost Relief

Employers should have access to all cost relief information, including how those cost relief credits are being applied to our experience rating calculations. Just because we are no longer paying premiums on these files, the cost relief from them is still impacting our costs.

Issue #10 – Types of Injury

Applicable Policy from Policy and Procedure Manual: 3.1.1 and 3.1.4

3.1.1 Injuries – Communicable Disease (POL 02/2010)

After employer investigation, if the source of the infectious disease cannot be found, how can the WCB accept these claims?

Coverage beyond infectious period. ie: infectious only for 48-72 hours – however, employees may be off due to symptomatic issues related to condition.

3.1.4 Injuries – Psychological (POL 01/2009)

Timelines from duration of claim, RTW or accommodation into alternate work/departments.

Issue #11 – Benefits to Worker

Applicable Policy from Policy and Procedure Manual: 4.1

4.1 Benefit Calculation

4.1.1 Consider the issue of a summer student returning to University in Fall. The employers' liability extends beyond the summer months and benefits continue as long as the loss of earnings continue, based on average hours. Potential inequity to employer is addressed in 4.1.1 Establishing Initial Wage Base – item 6, which states:

6. Where the worker was not available for employment for the full period of 52 weeks preceding the commencement of earnings loss, or the casual nature of the employment makes it inequitable to determine the worker's average gross earnings, consideration may be given to using the average gross earnings of a worker regularly employed in the same grade of employment. POL 35/2010, Compensation Rate – Casual and Seasonal Employment – Section 70(4), will apply.

- Payroll is not always able to identify similar seasonal/casual workers or positions for comparative purposes, making employer compliance problematic. How do we get these people off claim, particularly when they have returned to school and cannot/will not work up to their average hours while alternate work is available? (Claim JB – ee had not fully recovered but could not participate in RTW)
- Should the student be pro-rated to availability to work? IE was working 40 hours per week prior to injury and now able to only work 20 hours due to schooling. Should the wage loss reflect the 20 hours of availability if the employee is not able to accommodate?

Issue #12 – Suspension of Benefits

Applicable Policy from Policy and Procedure Manual: 4.5.1

When the client's absence is for good reason, the WCB may continue wage loss benefits during a notice period. This will provide opportunity for the client to:

- Define notice period. Is it always four weeks?

a) Return to the program, or

b) Access an alternate source of support, such as employer sick leave, and other private or government long or short-term disability plans.

- When an employee is not attending a RTW because of sick, vacation, or another leave, all hours should be coded according to reason for missing work. We need to look not only at the EE's availability to work that day, but also if the Employer is able to offer alternate times and/or day to work to further mitigate loss. IE: EE calls in sick or another leave for a.m. shift – employer may be able to offer p.m. or nightshift.

3. Suspension of benefits may be delayed for a maximum of four weeks or until the client qualifies for an alternate source of support, whichever occurs first.

- The duration and circumstances of payment needs to be reviewed. Notwithstanding that the costs are assessed to the Second Injury and Re-Employment fund, the employee should be directed to utilize alternate benefit programs, where appropriate (i.e. access employer sick leave benefits for unrelated illness/absences, bereavement leave for family deaths etc). Alternatively, the employer would suggest a cap of 3 days where an employee is “absent for good reason”.

4.5.1 – Policy 7:

- This goes against Section 51 or 52 to not mitigate their loss and participate in program. They are still accruing vacation time and in the meantime; the employer is being penalized with increased costs and premiums.

Issue #13 – Serious and Wilful Misconduct

Applicable Policy from Policy and Procedure Manual: 6.25 (POL 13/2011)

4. Section 30 of the Act directs “if an injury is attributable solely to the serious and wilful misconduct of the worker, no compensation is payable unless that injury results in death or serious functional impairment.”

...Where an injury is the sole result of serious and wilful misconduct, compensation will not be payable, unless the injury results in serious functional impairment or death. Conversely, in keeping with the principle of “no fault,” acts of carelessness or negligence will not typically be seen as wilful and compensation may be payable.

3. The WCB will not provide coverage for workers who are injured while participating in a workplace conflict (e.g., fighting) that results solely over a personal matter, as the workers' actions will be seen as removing oneself from the course of employment. However, if it is determined that the conflict arose over an issue associated with employment, the claim may be accepted. "

6.25 – Policy #3 – further definition / clarity over an ability to prove conflict was work related or personal. If not directly to work – should have separate investigation held with all parties to determine coverage.

Issue #14 - Funding Policy

- 6.4 – Funding
 - Policy Point 2: Does the injury fund need to be 120%? What is the comparison across Canada? As employers continue to decrease injuries to staff, we foresee yearly refunds needing to be sent back to employers, which causes rework for WCB staff.
 - Policy Point 3.b.: Refunds should not be discretionary. If Employers are contributing to an overfunded plan, refunds should be distributed.

Conclusion

We trust that the above noted issues will be of interest to the Committee of Review. If there are questions or further clarification of issues required, please do not hesitate to contact Jolene Horejda at SAHO at Jolene.horejda@saho.ca or 306.347.1734 and follow-up with the applicable health region will be initiated.

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