

# **SASKATCHEWAN MINING ASSOCIATION**

## **Submission to the 2016 WCB Committee of Review**

Submitted by:

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## **MISSION**

“Represent and support a safe, responsible and growing Saskatchewan mining industry”

## **Introduction**

The Saskatchewan Mining Association (SMA) is pleased to provide this written submission to the Workers Compensation Act (WCB) Committee of Review. As the voice of the mining industry in Saskatchewan, the SMA is making this submission on behalf of the collective experiences and concerns of our members with respect to the Saskatchewan Workers' Compensation System.

The Saskatchewan mining industry is a leading industrial employer, directly and indirectly employing over 30,500 people annually, and is the largest industrial employer of Aboriginal people in Saskatchewan. In 2015, the sector had a direct payroll of \$996 M in 2015, which is projected to increase to \$1.055 Billion in 2016.

SMA Members have a strong commitment to safety, and to continuously improving the safety culture and performance of their respective companies, both with internal programs and programming offered by the SMA.

In 2016, the projected Premium Rates of all Mining Industry Codes (D71, D72, D73 and M31) continue to be well below the "all industry rate". The mining sector continues to have both "time loss" and "duration of claims" lower than the "all industry rate", however there is more work to be done.

We note that the 2010 Committee of Review (COR) table responded that many of recommendations made in that process required "no change", or "confirms current practice". However, many of the SMA recommendations in this 2015 submission are built on the recommendations made in the previous SMA 2010 submission. This suggests that while there may be a policy in place, it is not been consistently applied by Sask WCB.

The SMA appreciates the opportunity to provide input into this review to ensure the WCB system is operating in an efficient, fair and transparent fashion in the review and management of injury claims, and which will ultimately make for a safer, more productive workplace.

### **Issue 1: Return to Work (RTW) Programs (S 51.1 WCB Act)**

The Act clearly identifies that it is the duty of a worker to participate in return to work programs. While these programs have been demonstrated to be highly effective for both the worker and the employee, there continues to be a lack of awareness, and in some case willingness, on the part of the worker that they are obligated to participate in doctor-approved return to work programs in order to maintain benefits.

The 2010 COR Response to recommendations indicate this would be considered in the RTW process review project, however our members continue to see resistance to RTW programming.

***Recommendation: That the WCB be more aggressive in ensuring workers participate in return to work program, and have consequence for employees that choose not to participate in these programs.***

## **Issue 2: Duties of Health Care Professionals (S 54, 55 SCB Act)**

Medical professionals (including physicians and increasingly physiotherapists) are not consistently providing clear parameters for work restrictions for employers' consideration in RTW programs.

One of the actions of the 2010 COR was to re-design an electronic RTW form for physicians use, this is not being consistently utilized.

***Recommendation: That the WCB provide more education for physicians, physiotherapists and other medical professionals, so they have a better understanding of what routine and non-routine tasks an individual performs so they provide higher quality return to work assessments. Furthermore that the WCB not pay for medical consultations that do not contain clear parameters related to work restrictions.***

## **Issue 3: Fraud**

Fraudulent claims continue to be an issue, largely because there are no consequences when investigations identify fraud. There is no legislative requirement or enforcement of repayment of claims paid out. Ultimately companies do pay for WCB inaction related to lack of enforcement. Enforcement of fraudulent claims by workers would be a deterrent to individuals who:

- Falsely claim that an injury is work related.
- Exaggerate the work injury or delaying return to work in order to receive WCB benefits.
- Work and/or earn an income while receiving WCB benefits.
- Make false or misleading statements

***Recommendation: That the WCB Act include a provision that requires repayment of any compensation to individuals who have made fraudulent representations in their claims, as well as immediate rejection of the claim. Additionally, WCB must accept information provided by an employer, and consider that in their determination of whether a fraudulent claim has been made.***

## **Issue 4: Appeals (S 22 of the Workers Compensation Act)**

The Act indicates that the decision and finding of the Board are final and conclusive, however, the Appeal process allows an individual to continue to appeal a decision indefinitely as long as they bring forward "new information". There are no time limits or limits on the number of appeals possible. Aside from being costly for employers, experience has reflected that if an individual appeals enough times, it appears to wear down the system and eventually the claim will be permitted. The employer should also be able to fully participate in the appeals process. As an example, an employee has had 3 appeals of one issue that has lasted over a 6 year period. While the employee has lost each appeal, he is allowed to continue engaging in the appeals process as he brings forward "new information".

***Recommendation: A limit of 1 appeal per claim, within a certain time period (3 months) is required to improve the efficiency of the appeals mechanism and provide for a balance in the rights of the individual and employer in having due process.***

### **Issue 5: Case Management**

The current case management system lacks a systematic approach and is therefore inefficient. A more systematic approach/framework to case management would be beneficial, particularly as claims become more complex and multiple people are involved in ensuring appropriate treatment and return to work programming.

***Recommendation: That WCB develop a policy that provides the framework for a systematic and timely approach to case management of claims.***

### **Issue 6: Northern/Remote Camp Workers**

The current WCB system in Saskatchewan does not recognize the distinctive work environment at northern/remote sites. Consequently, these work sites are assessed more injury claims and for longer durations than workers at non-remote sites. For instance:

- i) When a camp worker is injured at a remote mine site, and the injury occurs when the individual is engaged in personal activities, outside of scheduled work time, that injury is eligible to be considered as a WCB claim.
- ii) Accommodating treatment, such as physiotherapy, can be impractical in remote camps due to cost considerations/logistics of arranging flights for individuals who may require treatment every other day. In these instances, it is most cost-efficient to have the individual remain away from work to receive timely treatment. This is also true for individuals who may, due to scheduling or treatment/assessment, miss a shift. Unfortunately, the result in both cases is an increase to the duration of a claim.

#### ***Recommendations:***

***1. When an injury occurs at a remote/northern mine site because an individual is engaged in personal activities outside of scheduled work time, and the injury is not related to any hazard on the premise or condition of equipment, that this injury is not eligible for consideration as a WCB claim. This is consistent with both Alberta WCB and NWT WCB who have adapted their respective WCB Acts and policies to reflect the reality of remote/northern work sites.***

***2. Where an injury occurs at a remote/northern mine, that “administrative days” are assessed to account for logistical factors as identified above (impracticality of arranging flight logistics to accommodate treatment options, or when treatment affects when an employee is available to return to shift). These “administrative days” would not be included in the “duration” time of a claim, and would also not be included in considerations related to the experience rating of a company.***

**Conclusion:**

The mining industry in Saskatchewan continues to work towards improving the safety culture and performance at our workplaces. We feel that the recommendations presented in our submission will contribute to a more balanced and transparent WCB system and ultimately make for a safer and more productive workplace.

On behalf of the members of the Saskatchewan mining industry, thank you for your consideration of these comments Review. We look forward to learning of your recommendations. Please do not hesitate to contact me if you have any questions regarding this submission.

Yours sincerely



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cc. SMA Board of Directors