Workers' Compensation Legislative Review 2020

Written Submission Guide

Alberta Labour and Immigration

Alberta Labour and Immigration, Government of Alberta
Workers' Compensation Legislative Review
Written Submission Guide
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1. Background

Alberta's workers' compensation system provides benefits to workers who suffer a workplace injury or occupational disease and protects employers from related lawsuits. The system must remain sustainable, affordable and fair in order to benefit workers and employers, both now and in the future.

The workers' compensation system is established by the *Workers' Compensation Act* (Act) and associated regulations. The Act established the Workers' Compensation Board (WCB) to administer benefits and collect premiums from employers, outlines the levels of benefits that workers may be eligible for, and provides authority to the WCB, the Appeals Commission for Alberta's Workers' Compensation, the Medical Panels Office (MPO), and the Fair Practices Office (FPO).

As in all Canadian jurisdictions, the workers' compensation system in Alberta is founded on the principles (known as the "Meredith Principles") of:

- No-fault Compensation - This means workers are paid benefits regardless of how the injury occurred and both workers and employers waive rights to sue.
- Security of Benefits - This means a fund is established to guarantee that money exists to pay for current and future benefits.
- Collective Liability - This means employers covered by the system share liability for workplace injury insurance and the total cost of the system is shared by all employers.
- Independent Administration - This means the workers' compensation organization is separate from government.
- Exclusive Jurisdiction - This means only workers' compensation organizations can provide workers' compensation insurance.

The cost of the system and the related public agencies are covered through the WCB Accident Fund, which is 100 per cent funded by employer premiums. In 2019, over 1.88 million working Albertans were covered with over 159,000 employer accounts.

Substantial amendments made to the Act came into effect in 2018 following a comprehensive WCB review with consultations occurring from 2016 to 2017. Following the consultations, the WCB Review Panel (Review Panel) issued a report with 60 recommendations. Most of the recommendations were accepted though some were modified or rejected. Since implementation of the changes, several stakeholders have raised concerns about the affordability, sustainability, and administrative burden of the new system.

Alberta Labour and Immigration requests your comments and feedback on the following topics pertaining to the Act that have been identified by stakeholders for review, including:

- Benefits
  - Maximum insurable earnings cap;
  - Cost of living adjustments for worker benefits;
  - Presumptive coverage for traumatic psychological injuries;
  - Continuation of employer paid health benefits;
  - Interim relief benefits;
- Return to Work
  - Employer obligation to reinstate worker;

- Termination of modified work;

- System Sustainability
  - Accident Fund surplus allocation;
- Process and Governance
  - Appeals Commission reconsideration process;
  - Appeals Commission time limit;
  - Benefit of the doubt provisions;
  - Health and safety associations oversight;
  - Occupational Disease and Injury Advisory Committee;
  - Physician choice;
  - Liability of directors of corporations;
  - Lost-time claims reporting;
  - Employer premiums submission; and
  - Governance.

Please choose the topics that are important to your organization, fill in those sections of this form, and email the submission to WCBReview@gov.ab.ca no later than August 10, 2020.

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General Information

Which industry sector(s) does your organization operate in?

- ☐ Agriculture
- ☐ Mining and Petroleum Development
- ☐ Business, Personal and Professional Services
- ☐ Public Administration, Education and Health Services
- ☑ Construction and Construction Trade Services
- ☐ Retail and Wholesale Trade Services
- ☐ Forestry
- ☐ Social Advocacy Organization / Group
- ☐ Manufacturing and Processing
- ☑ Transportation, Communication and Utilities
- ☐ Accommodation and Food Services
- ☐ Other

If other, please specify

I would consider our organization to be:

- ○ An employer
- ◉ An employer/industry association or employer advocacy group
- ○ A labour organization/association, union or worker advocacy group
- ○ Other

If other, please specify

2. Benefits

2.1 Maximum Insurable Earnings Cap

Current State

Compensable earnings (previously maximum insurable earnings) are the earnings used to determine worker benefits/compensation resulting from a claim due to injury. As of September 1, 2018, the maximum amount referred to in section 56(4) of the previous Act was removed. Worker compensation benefits are currently 90 per cent of net earnings, with no set maximum limit.

Pre-2018

Injured workers were compensated at 90 per cent of their net earnings up to the maximum insurable earnings amount. In 2017, the maximum earnings amount was $98,700. The WCB Board of Directors was responsible for reviewing and setting the maximum amount based on ensuring 90 per cent of workers in the province would have full wage coverage (i.e. the maximum amount was not legislated).

Considerations

The previous Review Panel recommended the maximum insurable earnings level should have continued to be set by the WCB Board of Directors, and a special graduated benefit be established for workers with wages higher than the maximum insurable earnings cap. These recommendations were rejected and the maximum insurable earnings cap was removed.

The majority of jurisdictions in Canada have a cap on insurable earnings with the exception of Manitoba. However, Manitoba tabled a bill in November, 2019 proposing a maximum annual earnings cap of $150,000 (indexed) for 2021. The cap in other provinces and territories ranges from $55,000 (Prince Edward Island) to $92,600 (Ontario). Of the eleven jurisdictions with a cap on maximum insurable earnings, eight have it legislated while the remaining three adjust the cap according to the Board of Directors' decision.

Written Submission Questions

1. What are you views on the maximum insurable earnings cap?

Many members believe WCB-AB needs some form of capping mechanism for insurable earnings. The overwhelming majority of workers covered by Workers' Compensation are subject to a reasonable "hard" cap on insurable earnings and it does not impact them whatsoever. Most members agree that injured workers need to be encouraged to go back to work if possible, and that there should be an insurable earnings cap. With current policy, there is little incentive for a worker on modified duties to return back to full duty if they are making 90% of net earnings with no set maximum limit.

All jurisdictions (with the exception of Manitoba) have a cap on insurable earnings and at $98,700. Alberta has among the highest insurable earnings amount, and should have a cap. The WCB Alberta formula also provided an annual MIE adjustment intended to keep pace with wage growth. The actuarial estimate provided by the WCB in November 2019 regarding impact of removing the cap on earnings for the 2019 year was $32.2M and the forecast for 2020 was almost $34M. It is important to recognize WCB payments are non-taxable. Taking into account the tax implications, depending on the length of time a worker remains off work, it is not unusual for an injured worker to have a higher take home income while they are off work than they would if they were working. The previous WCB Alberta formula established the maximum insurable earnings amount such that the MIE covered the full wage of at least 90 per cent of workers covered in the province. While there may be some individuals in any given year and whose full salary is not covered, many are kept on full pay by their employers. This difference can be mitigated

within some of the other provisions of existing legislation. In 2019, approximately 44% of claims where the worker's insurable earnings were greater than $98,700 were in two Industries (Cities and Health Care Services).

2. Should a maximum insurable earnings cap:

◯ Not apply (status quo),

◉ Be reintroduced, or

◯ Be reintroduced with modifications.

Please explain your preference and indicate your reasons. If "modification" is chosen, please share your suggested changes.

Without a maximum insurable earnings cap providing additional incentive to return to work, claim length will continue for a longer period of time causing further strain on both the system and the employer.

2.2 Cost of Living Adjustments for Worker Benefits

Current State

The WCB increases an injured worker's benefits through cost-of-living adjustments to prevent a decrease in benefits due to inflation. Current cost-of-living adjustments are calculated based on Alberta's Consumer Price Index, without any reduction or modification. The change was effective January 1, 2018 and applied retroactively to all claims eligible to receive cost of living increases.

Pre-2018

The cost-of-living adjustment amount was equivalent to Alberta's Consumer Price Index minus 0.5 per cent. This formula included a 0.5 per cent adjustment for measurement bias. The cost-of-living adjustment amount was not legislated.

Considerations

Five Canadian jurisdictions use the consumer price index, without alteration, for adjustments to worker benefits. By legislation, Alberta, Ontario, Newfoundland and Labrador, New Brunswick, and Yukon use the consumer price index. British Columbia, Nova Scotia and Prince Edward Island reduce the consumer price index by a legislated amount before cost-of-living adjustments are made. Manitoba and Quebec have a legislated calculation based on a ratio of the consumer price index over two years

Written Submission Questions

1. What are you views on linking the cost-of-living adjustments to the Alberta Consumer Price Index?

Members support a return to the previous calculation (pre-2018 amount of minus 0.5 per cent) The WCB Alberta formula provided for a COLA adjustment which was intended to keep pace with wage growth. The half cent reduction is supported by work done by the Bank of Canada and is a valid adjustment. This amendment has had a significant financial implication. Estimates by Eckler contained in the WCB review were an increase of $13.3 m in premiums ($0.013) and added a $198 m in fund liability.

2. Should the cost-of-living adjustment calculation:

◯ Remain as is (status quo),

◉ Return to Pre-2018, or

◯ Be modified.

Please explain your preference and indicate your reasons. If "modified" is chosen, please share your suggested changes.

2.3 Presumptive Coverage for Traumatic Psychological Injuries

Current State

A worker receives presumptive WCB coverage for psychological injuries if they are exposed to a traumatic event (or series of traumatic events) through their employment and are diagnosed with a psychological injury by a physician or psychologist. This new presumptive coverage provision became effective April 1, 2018 under section 24.2 of the Act.

Presumptive coverage means there is an assumption that a diagnosis is related to the job where a traumatic event or series of events occurred, unless it is proven otherwise. If a psychological injury fits within presumptive coverage, the injury is presumed to have occurred through work. In contrast, for injuries without presumptive coverage, the normal adjudicative process is followed to determine whether the injury arose out of, and occurred in the course of, employment.

Pre-2018

Psychological injuries for workers who experience traumatic events at work were eligible for benefits; however, they were not presumed to be work related even when a traumatic event or series of events had occurred. Workers could make a claim and eligibility was decided using the normal adjudicative process, which includes determining if the psychological injury was work related.

Considerations

The previous WCB Review Panel report did not include a recommendation regarding presumptive coverage for traumatic psychological workplace injuries. The Review Panel stated they did not recommend expanding legislated presumptions beyond those already in place.

If presumptive coverage was removed, psychological injuries would remain eligible for benefits if demonstrated to be work-related.

Based on information provided by WCB, since the legislation came into effect, the number of primary psychological injury cases (excluding presumptive PTSD) grew by 42% from 2017 to 2018 and another 39% from 2018 to 2019.

Alberta, British Columbia, Saskatchewan and Prince Edward Island are the only provinces that offer presumptive coverage for psychological injuries caused by trauma at work. British Columbia provides the presumption to specific occupations, while the other two provinces provide it to all workers.

Written Submission Questions

1. What are your views on presumptive coverage for workers who have experienced traumatic events at work and are then diagnosed with a psychological injury or illness?

Presumptive coverage for psychological injuries is inappropriate. The basis of entitlement to Workers' Compensation is supposed to be the determination that an injury has "arisen out of and occurred during the course of employment." Only upon completion of a thorough investigation, looking into occupational and non-occupational contributing factors should the WCB entertain such claims. The new provision provides presumptive coverage to any worker who is exposed to a traumatic event and is diagnosed with a psychological injury. With the exception of first responders, members' position is that mental illness/PTSD claims should be adjudicated based on work relatedness and medical evidence, as are all other injuries. Often employment is coincidental with the onset of systems and not necessarily the cause. It is essential the workers' compensation system and employers do not absorb the cost of mental health care for disability due to a multitude of non-occupational mental health conditions. In many cases, this presumption is being extended to situations involving regular performance management and allegations of

workplace harassment.

Employers' responsibility to deal with this creates an additional administrative burden and adds to conflict within the employment relationship. Issues related to bullying and harassment are more appropriately addressed within human rights legislation. If a psychological injury is work related, the claim will be accepted through the established adjudication process. In addition, the diagnosis must be made by an appropriate practitioner (i.e. a psychiatrist or clinical psychologist rather than a GP).

Psychological trauma must clearly be work related as opposed to presumptive if coverage is made available. As it currently stands, the policy heavily favours the worker.

2. Should presumptive coverage for psychological injuries be:

○ Maintained (status quo),

◉ Removed, or

○ Modified.

Please explain your preference and indicate your reasons. If "modified" is chosen, please share your suggested changes.

Presumptive coverage should only be provided to specific occupations.

2.4 Continuation of Employer Paid Health Benefits

Current State

When a worker is absent from work or unable to perform their regular duties due to a work-related injury, the employer must continue to pay the employer's portion of any existing employer-sponsored health benefit plan premiums, for up to a year after the date of accident. The worker must also continue to pay their portion of the premiums, if any, for this requirement to apply. This requirement falls under section 88.2 of the Act and was effective as of September 1, 2018.

Pre-2018

Employers were not mandated to continue insurance premium payments for an injured worker's health benefit plan, but could do so at their discretion.

Considerations

Since the legislation came into effect, there have been 8 cases of non-compliance according to WCB, and all were resolved with benefits provided to the worker and no penalties issued to the employer.

Only Ontario, Quebec and Alberta require employers to maintain a worker's health benefits while they are receiving compensation and supports through their respective workers' compensation systems. All three provinces require benefits to continue for the first year after injury, but in Quebec the benefits continue for two years after the injury when the organization has more than 20 employees.

Written Submission Questions

1. What are your views or your organization's experience with the requirement to continue employer paid health benefits for up to one year after a worker's injury?

The policy requires some flexibility to address potential issues such as termination with cause where it becomes inappropriate to continue benefits when employment ceases. Otherwise, this requirement is not practical. If a worker leaves their employment either by choice or termination with cause, it will likely be impossible for an employer to meet this requirement and they would then be subject to an administrative penalty for a private insurance benefit plan provision that is not within their control. Health benefit insurance carriers will generally not extend coverage to an individual who is not an active employee. This provision also provides injured workers with greater benefit coverage than would be available to a non-

injured co-worker who is terminated. If the worker will be returning to work, benefit coverage is generally extended to bridge them.

Members also do not agree that if the employer does not make contributions and the worker incurs expenses, the WCB will reimburse the worker and the employer is liable for the amounts paid. Members prefer for this to be left up to the employer's discretion. If not, this becomes an administrative burden to manage.

2. Should the requirement for continuation of employer paid health benefits be:

○ Maintained (status quo),

○ Removed - not a requirement, or

◉ Modified.

Please explain your preference and indicate your reasons. If "modified" is chosen, please share your suggested changes.

2.5 Interim Relief Benefits

Current State

Interim relief for financial hardship is available to workers and employers (if their application is approved) during the review or appeal process. Interim relief is financial support available to ensure workers can meet basic costs of living while waiting for a review or appeal decision on their claim. Employers can request interim relief by demonstrating that the time required for claim review or appeal would result in financial hardship, causing discontinuation of operations or a layoff of a significant portion of their workforce. Employers may be appealing their assessed premiums, and if successful in their request for relief, would not have to pay the disputed portion of the premiums while waiting for a decision. Sections 13.1, 45(5) and 119(5) of the Act authorize interim relief effective September 1, 2018.

Pre-2018

Based on operational policy, a type of interim relief financial support could be provided by the Appeals Commission to workers who successfully challenged their ability to do a job. Where a worker successfully challenged a specific job more than once, interim relief could be ordered while the worker waited for WCB to find a more appropriate job. This type of interim relief arose as a result of a Court decision. This interim relief was not in legislation, and was not related to financial hardship as a primary consideration.

Considerations

As per WCB, 98 requests for interim relief were received since legislation was passed in 2018 (96 worker requests and 2 employer requests), 15 were granted (14 for workers and 1 for an employer).

The Appeals Commission can also provide interim relief where a worker has successfully appealed the same issue related to suitable employment more than once. In these specific circumstances, the Appeals Commission can order the payment of interim relief while WCB re-evaluates suitable employment. The Appeals Commission only sets the wage rate (generally minimum wage) and does not enter or track an exact dollar amount because the payment is dependent on WCB's operational policies on interim relief.

Interim relief for both workers and employers does not exist in any other workers' compensation systems in Canada. Other jurisdictions which provide relief have it available for workers only.

In Quebec, the Northwest Territories and Nunavut an advance may be given to a worker, if considered appropriate, in accordance with the respective legislation. British Columbia and Manitoba provide interim relief to workers through policy directives. The remaining jurisdictions have no provisions on interim relief.

Written Submission Questions

1. What are your views on the interim relief benefits?

This provision opens the door to frivolous appeals by both workers and employers given that the WCB will not be recovering over-payments if the decision is against the appellant. It has been noted that only 15 of 98 requests were approved, and members have concerns that Appeals Commission resources are being directed to review requests for interim relief that are not supported. However, if this provision is retained, interim relief should continue to be available to both workers and employers. There is no issue with the current model for interim relief benefits as there is now structure to the program.

2. Should interim benefits from WCB:

- (●) Remain as is (status quo),
- ( ) Return to pre-2018 practices, or
- ( ) Be modified.

Please explain your preference and indicate your reasons. If "modified" is chosen, please share your suggested changes.

It is an extra benefit that is not necessary.

3. Return to Work

3.1 Employer Obligation to Reinstate

Current State

As of September 1, 2018, section 88.1 of the Act requires employers to offer reinstatement to an injured worker who had been employed (full or part–time) for at least 12 months continuously before the date of the accident. This obligation applies to most employers, with some exceptions such as subcontractors, those in exempt industries who have personal coverage, and people with personal coverage for business owners. Employers are obligated to reinstate an injured worker and accommodate them, to the point of undue hardship. Employers and workers are compelled to cooperate in the return to work.

The obligation to reinstate a worker does not end unless an employee decides not to return to work. If a reinstated worker's employment is terminated within six months of their return, it will be assumed the reinstatement obligation was not met, unless there is a valid business reason for the termination. If WCB determines that an employer has not met their obligation to reinstate a worker (i.e. has not explored the possible options or is not willing to do so), then after an attempt to resolve the issue, WCB may levy a penalty in an amount up to the worker's net average earnings for the year before the accident. Some or all of the penalty amount may be paid to the worker.

Pre-2018

Prior to the amendments, WCB supported an injured worker's return to work, but employers were not obligated to offer reinstatement. WCB assisted workers and employers in planning for a return to work and guided them through the process.

Under the *Alberta Human Rights Act* every employer in Alberta had (and still has) a legal duty to accommodate a worker with a disability unless the accommodation imposes undue hardship on the employer.

Considerations

A legal duty for employers to accommodate a worker with a disability (unless it causes undue hardship) exists under the *Alberta Human Rights Act*; however, there are difficulties in effective and timely resolution of complaints. The average number of days to close a Human Rights complaint in 2018-19 was 793 days, up from 771 days in 2017-18 and 671 days in 2016-17. The duplication of oversight by WCB in these matters is concerning to some stakeholders who consider it unnecessary.

The 2016-17 Review Panel report recognized smaller employers may have difficulty reinstating injured workers and suggested they may be excluded from the requirements. The report also suggested the obligation to reinstate an injured worker should apply for 24 months after the accident. Section 88.1(20) requires WCB and the Appeals Commission to notify the director of the Alberta Human Rights Commission (AHRC) when either is making a determination regarding the obligation to reinstate an injured worker. If the injured worker has a human rights complaint before AHRC, the director of the AHRC may then refuse to accept the complaint, or may accept the complaint pending the outcome of the matter through the workers' compensation system (to determine whether the whole of the complaint has been dealt with).

Most Canadian provinces and territories have a requirement within their legislative scheme for an employer to reinstate a worker. A number of the jurisdictions have exclusions from the requirement for smaller employers. In Manitoba, small employers are exempt from the obligation to re-employ if they have fewer than 25 full or part-time workers, and in Ontario, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, and Yukon employers are also exempt from the obligation if they have fewer than 20 workers regularly employed.

Eight jurisdictions have limits to the duration of the obligation to reinstate an injured worker ranging up to two years after the date of injury. Quebec and New Brunswick vary the obligation limit based on the number of employees the employer has.

Written Submission Questions

1. What is your experience or your organization's experience with the current requirement for an employer to reinstate an injured worker as outlined in section 88.1 of the Act?

The obligation to reinstate an injured worker is intrusive and inhibits the employer's ability to follow its own policies and procedures. We support the Industry Task Force position in this matter to reverse this policy. Currently the policy provides an injured worker with an unfair advantage, especially as winter work winds down and crews are downsized. If a worker was a below-average performer, an employer is then forced to return that worker back to the workforce. Provisions regarding workplace accommodation already existed within Human Rights legislation and Section 88 of the Act creates a disconnect between Human Rights and Workers' Compensation legislation. If the underlying issue is the length of time for a dispute to be resolved through Human Rights, the appropriate recourse is to ensure more timely resolution of work related complaints within the Human Rights system. When a worker is terminated, the employer is presumed not to have fulfilled the employer's obligations, if workers are terminated within 6 months of reinstatement or while the worker is continuing to receive compensation under the Act. Although an employer can rebut the presumption, the reverse onus creates an administrative burden for employers and often results in unnecessary conflict in the workplace which is detrimental to both workers and employers. Section (13) provides for administrative penalties levied against employers in the event an obligation in Section 88.1 is not met. Employers must have the ability to take into account business operations in considering return to work (e.g. seasonal work, operations in remote locations, overall worksite safety, etc.) Employers must not be forced into a situation where a worker is returned to work without the employer being reasonably confident the safety of the worker and others at the worksite will not be jeopardized. In addition to small employers, this also requirement places an unrealistic expectation on industries that have project-based work (e.g. construction) as well as seasonal workers. These provisions provide injured workers with a greater degree of job protection than is available to a non-injured co-worker.

2. Should the employer obligation to reinstate be:

- ○ Maintained (status quo),
- ◉ Removed,
- ○ Exempt small employers from the requirement, or
- ○ Other

Please explain your preference and indicate your reasons. If "other" is chosen, please share your suggested changes.

It can be hard to bring disgruntled workers back to the office/lab/field. It might work better if the worker has a fresh start elsewhere if it has been a long rehabilitation. It is recognized that employers have a legal obligation to accommodate a worker with a disability, and follow through with the offer of modified work. In many cases, our workers are cleared to return to full duty with no further disability. There should be no further obligation once a worker is cleared.

3.2 Termination of Modified Work

Current State

Workers participating in modified work continue to receive WCB compensation after termination of employment by the employer when there is remaining disability benefit available. This is addressed in section 56(14) of the Act.

The Act requires WCB to adjudicate benefits on the basis of disability, not the worker's post-accident conduct in the workplace. An injured worker who is terminated for egregious acts is still an injured worker with a compensable claim. The injured worker is still prevented by the disability from returning to pre-accident work and, in the absence of suitable modified work, is therefore still incurring earnings loss due to the work-related injury.

Pre-2018

Section 56(14) of the Act did not exist, but the practice in place was the same as currently.

Considerations

Stakeholders have expressed a preference for WCB to end benefits and compensation for workers participating in modified work if their employment is terminated for just cause, regardless of their remaining disability.

Regardless of the cause of employment termination, WCB is responsible for any remaining disability and has an obligation under section 56 to issue benefits for as long as the disability lasts.

Past court decisions have ruled in favour of the no fault nature of the workers' compensation system and that WCB cannot consider moral blameworthiness in deciding whether to pay compensation.

Terminating all benefits where an employer has ended modified work may disadvantage injured workers. Such workers may be unable to secure alternate employment because of their continuing disability.

Written Submission Questions

1. What are your views on continuation of WCB benefits for workers whose employment was terminated while on modified duties? Please share any suggestions (indicate your reasons)?

This policy, in the development and application of benefit entitlement, compromises the ability of an employer to manage personnel. In such cases the employer is put in an impossible position: they either do what is right both in terms of Human Resource practice and in support of their other employees by the proper termination of employment or they face the prospect of additional claims costs and resultant premiums. In all such cases, if, upon review, the WCB is satisfied that the termination process of the worker was lawful and just, then the WCB should at a minimum relieve the employer of all wage loss benefit costs from the termination of employment date going forward. Only by doing so, can there be any balance created between the rights of workers and employers.

Wage replacement benefits to the worker should cease once a worker has removed themselves from the course and obligations of employment. However, cost relief would be a reasonable concession for an employer. Consideration to the fact claims costs will continue to rise should be factored into the final decision.

If WCB continues to pay benefits for a worker whose employment was terminated (with cause), what incentive is there for the worker to participate in the modified work program? The worker will likely want to remain at home. Some member companies do not have an objection to the worker continuing to have access to medical benefits and other services, but where the actions of the worker contributed to their termination for cause, many members believe workers should not receive compensation for lost wages (TTD or TPD benefits). Many members view a situation where modified work becomes unavailable as very different from a situation where the worker's own actions resulted in modified work being withdrawn. Reasons for termination for cause often include failing a drug or alcohol test, workplace violence, theft, insubordination, etc. Workers must comply with workplace policies and safety procedures regardless of whether they are on modified duties. Applying a different standard to workers in receipt of WCB benefits creates conflict in the workplace and interferes with an employer's ability to meet OHS obligations and maintain a safe workplace. This also conflicts with labour and employment standards regarding termination for cause, and interferes with the ability of an employer to manage their workforce in accordance with collective agreement provisions.

4. System Sustainability

4.1 Accident Fund Surplus Allocation

All funds paid to WCB are held in the Accident Fund and dispersed to cover WCB expenditures. WCB must ensure the Accident Fund has enough money to pay present and estimated future compensation. The Accident Fund is held in trust for the benefit of workers and employers to support a sustainable and fair workers' compensation system

The Accident Fund is considered "fully funded" when it meets the Funded Ratio target range of 114 per cent to 128 per cent. The target range was developed by WCB in consultation with actuarial experts and through the use of asset-liability modelling tools. The target appropriateness of the target funding range has been reviewed and verified by an independent actuarial firm specializing in workers' compensation matters. Third party reviews of the funding range occur every five years at minimum and the most recent review was in 2017. The target range creates a buffer in the Accident Fund against investment volatility.

In addition to the independent verification of the appropriateness of the target funding range, WCB conducts extensive funding simulations under various economic and investment return scenarios. For example, had WCB adopted a lower funding target of 110 per cent, a retrospective analysis conducted by WCB in January 2020 using actual financial results over the past 5 years has shown that WCB's funded position would have dropped below 100 per cent and violated the legislative requirement to maintain full funding. In addition, the retrospective analysis shows that different funding targets below the current target range would produce similar results, creating a significant risk that WCB would not be able to maintain its legislative obligations of full funding.

If the funded ratio is below 114 per cent, the shortfall would be recovered by WCB through a special levy on employers, possibly over several years. Surpluses in the fund over 128 per cent may be available for distribution to employers.

Current State

Surplus money in the fund may be directed to health, safety and disability management initiatives, but is also available for distribution to employers. There have been no surplus in the funds since 2016, which were distributed in 2017.

Pre-2018

Prior to the WCB operational policy change, Accident Fund surpluses were distributed back to eligible employers.

Considerations

The 2016-17 Review Panel's recommendation was to end distribution of surplus funds to employers; however, the recommendation was rejected and the WCB Board was directed to develop a new operational policy. Consequentially, a new WCB policy on surplus distribution was developed through a WCB led consultation and came into effect January 1, 2019.

Stakeholders have concerns about the Funded Ratio target range and distribution of surpluses to employers. The 114 per cent to 128 per cent Funded Ratio target range seems high to some stakeholders who would like the target range to be reviewed. Stakeholders have also expressed their preference for distribution of any surpluses to employers.

Alberta's Funded Ratio target range is comparable to target ranges in other Canadian jurisdictions (See Table 1). The threshold for distribution is not always the same as the Funded Ratio target range. Two jurisdiction have a surplus distribution threshold of 140 per cent, which is set above their target range maximum. Two jurisdictions have a funded target of 100 per cent because they have struggled to become fully funded.

Table 1: Canadian Jurisdiction Funded Target Ranges and Distribution Thresholds

	BC	AB	SK	MB	ON	QC	NB	NS	PE	NL	YK	NT / NU
Funded Ratio Target	130%	114% - 128%	105% - 120%	130%	100%	110%	115% - 125%	100%	100% - 125%	100% - 120%	121% - 129%	105% - 135%
Possible Employer Distribution Threshold	None	128%	122%	131%	None	None	125%	None	140%	140%	129%	*

* If ratio is over 135 per cent for two successive years, a one-time adjustment may be actioned. Does not specify if adjustment could be distribution to employers.

Most Canadian jurisdictions have a policy regarding distribution of fund surpluses. In approximately half of the jurisdictions, employers may receive surplus fund distributions. Within the last five years, Alberta, Saskatchewan, Manitoba, Prince Edward Island, Newfoundland and Labrador, and Yukon have distributed surplus funds to employers. Jurisdictions that have policies, but do not distribute surpluses to employers, may use them to adjust assessment rates (premiums). Two provinces have been working towards eliminating their unfunded liability, with Ontario recently becoming fully funded and Nova Scotia funded at 85% in 2018.

Written Submission Questions

1. What are your views on distribution of Accident Fund surpluses to employers?

Members support the ITF position but consider current funding position appropriate also. Section 91(2) now reads "The general purpose of the Accident Fund is to support a sustainable workers' compensation system for the benefit of workers and employers." This statement is too broad and allows the Accident Fund to be used for purposes other than payment of claim related costs. This must be addressed in considering surplus distribution. Holding in trust any funds that accrue over and above what is needed to be fully funded is not appropriate and contrary to Meredith principles regarding collective liability within an insurance scheme. In keeping with Meredith, it needs to be recognized the WCB system is an insurance program and the funds managed as such. Surpluses in the Accident Fund should go back to employers, and these funds do in fact represent "employer money". Employers today have an obligation to fund current and future costs of today's claims. However, when money collected, including interest earned on premiums, exceeds what is required, WCB should be required to return the surplus to employers from whom the premiums were collected. Surpluses in the Accident Fund that result from better than expected investment returns and are not funds that the WCB or the government should be free to distribute for other purposes. It should also be made clear in legislation that government has no role in management of the Accident Fund or the investment portfolio. Employers support the need to ensure the WCB remains fully funded over the long term to account for current and future claims costs. The range of 114%-128% of fully funded premiums is excessive. The WCB operated for years with a funded position above 128% (the top of the Green Zone) Compounding the overfunding is the cap on the amount that can be returned to employers in any given year. As a minimum, the WCB should revert to 112% to 122% which was the previous range.

2. Should WCB's Policy on Accident Fund surplus distribution:

- ○ Remain as is (status quo),
- ◉ Return to pre-2018 state (distribution to employers), or
- ○ Other

Please explain your preference and indicate your reasons. If "other" is chosen, please share your suggested changes.

Should the structure of the Accident Fund change, surplus funds should go back to the industry to aid in the development of free or low-cost training that all industry may access. This would be particularly beneficial for those on modified duty who would be able to complete the training prior to returning back to full duty.

5. Process and Governance

5.1 Appeals Commission Reconsideration Process

If a person with a direct interest disagrees with a decision of the Appeals Commission, they can request that the Appeals Commission reconsider that decision.

Current State

As of September 1, 2018, section 13.1(7)-(7.3) of the Act introduced an additional step in the process to reconsideration of decisions made by the Appeals Commission. The steps for reconsideration are detailed in the Appeals Commission's Appeal Rules and Practice Guidelines.

When a request for reconsideration of an appeal decision is received, the Appeals Commission:

1. Reviews the information to determine if there is an arguable case for reconsideration (Preliminary Review Step);
2. If there is an arguable case, a hearing is held to consider whether the threshold requirements for reconsideration are met (Threshold Step); and
3. If the threshold is met, there will be a hearing to reconsider the decision (Re-hearing).

Pre-2018

The Act granted a general reconsideration power to the Appeals Commission. The Appeals Commission set out the requirements for reconsideration in its Appeal Rules and Practice Guidelines. Only steps #2 and #3 above were required prior to the 2018 amendments.

Considerations

The 2018 changes added another, third step that occurs first. Now, a preliminary hearing must be held to determine if there is an arguable case for reconsideration prior to a threshold hearing. According to the Appeals Commission, this third step has nearly doubled the average reconsideration application's total processing time from approximately 3-6 months, to 9-11 months.

Written Submission Questions

1. What is your view on timelines for the appeal and appeal reconsideration process?

The delays created by this additional step are unacceptable to both employers and injured workers and if they are not reduced or worsen, they will invariably lead to an ever increasing number of Requests for Interim Relief by both constituencies. Unless the first step is effective in addressing some other issue (e.g. deterring frivolous requests for reconsideration) then there is no value added. Regardless, the appeal process timeline must be shortened. It is important that all appeals, including reconsiderations, be heard in a timely manner. If by removing the first step the time frame can be shortened, it will benefit all stakeholders.

Eliminate step one of the appeal process and speed up the process. The appeal process is taking too much time and keeps the worker (and often the employer) involved for far too long. The process should revert back to the former model in 2018.

2. Should the process for reconsideration of appeal decisions:

○ Remain as is (status quo),

◉ Return to pre-2018 practices, or

◯ Be modified.

Please explain your preference and indicate your reasons. If "modified" is chosen, please share your suggested changes.

A worker would want a decision in a reasonable time frame. The current time frame of 9-11 months is unreasonable. The process was always smooth in 2018 and since that time has become more of a burden for both the employer and worker.

5.2 Appeals Commission Time Limit

If a worker or employer does not agree with a WCB decision, they may ask for a review by the internal review body at WCB, known as the Dispute Resolution and Decision Review Body (DRDRB). Where a worker or employer is unhappy with the decision of the DRDRB, they may appeal within the time limit to the external, independent Appeals Commission.

If the DRDRB decision is dated:

- before September 1, 2018, the appeal must be submitted within one year.
- after September 1, 2018, the appeal must be submitted within two years.

Current State

There is a two-year time limit for a worker or employer to launch an appeal of DRDRB decisions. An extension to the time limit is possible under section 13.2(8) of the Act where the worker or employer has a justifiable reason for not appealing in time.

Pre-2018

There was a one-year time limit for appeals of DRDRB decision to the Appeals Commission. Extensions were possible for the some reasons as above.

Considerations

Extension of the timeframe addressed concerns that the complexity of the system and inexperience with the process may cause injured workers and employers to need more time than was allotted.

While the Appeals Commission's overall volume of appeals has decreased between 2018-2019 and 2019-2020, there does not seem to be any correlation between this and the change in time limit to appeal. The Appeals Commission notes that the extension in the time limit to appeal may have resulted in a reduction in overall appeals as parties may be waiting to file their appeals until closer to the expiry of the two-year limit. This may result in an increase in appeals for 2020-2021.

The overall number of requests for extensions to the time limit have gone down. This may be attributed to the increase in the time limit from one to two years.

Written Submission Questions

1. What is your view on timelines for appeals of DRDRB decisions?

We recommend a return to the previous one-year timeline in order to achieve finality on WCB claim decision and a timely resolution of issues. Additional time is not generally warranted in order to file a notice of appeal, and under the previous provisions if there was a bona fide reason for needing more time, the previous legislation allow for this on an exception basis.

2. Should the appeals timeline:

◯ Remain as is (status quo),

◉ Return to pre-2018 practices, or

◯ Be modified

Please explain your preference and indicate your reasons. If "modified" is chosen, please share your suggested changes.

Additional time is not generally warranted in order to file a notice of appeal, and under the previous provisions if there was a bona fide reason for needing more time, the previous legislation allow for this on an exception basis.

5.3 Benefit of the Doubt Provisions

Current State

Benefit of the doubt provisions in several sections of the Act state that where the evidence for and against an issue is "approximately equal" the issue shall be resolved in favour of the worker.

Pre-2018

Previous provisions referred to evidence for and against being "equal."

Considerations

Benefit of the doubt wording is also included in the medical panel provisions of the Act. This is needed as medical panels are intended to come to conclusions on medical issues and are not intended to resolve entitlement issues.

Giving the injured worker the benefit of the doubt is a common practice in workers' compensation systems across Canada. Every Canadian jurisdiction follows the same approach as Alberta, except Manitoba and Quebec which do not address the issue. New Brunswick is different only in addressing benefit of the doubt through policy, rather than legislation. Four jurisdictions including Alberta state that evidence must be "approximately equal", five state it must be" equally" or "evenly" balanced, and two do not address evidence.

Written Submission Questions

1. What are your views on the benefit of the doubt provisions? Are there any suggestions for changes to the requirements, while ensuring protection for workers (indicate your reasons)?

Adjudicators and Case Managers rely on Benefit of Doubt to make decisions in favor of workers with no regard for (or understanding of) what actually constitutes "evidence." Three things are needed here:

1. Specific training for WCB personnel at all level as to what actually constitutes evidence and how the credibility of evidence should be weighed.

2. All cases where Benefit of Doubt is to be used to reach an entitlement decision should be reported to an internal authority on such cases who can review the evidence that has been considered to determine whether it is actually "approximately equal" and that the decision has been properly reasoned.

3. WCB should report to stakeholders in their Annual Report on the percentage of decisions where Benefit of Doubt was used to make a determination.

The fact is that the Benefit of Doubt should be used on an exceptionally rare basis as it is extremely rare that evidence would be approximately equal for and against any particular decision.

Also, the phrase "equal" or "evenly balanced" are more appropriate as a test. Decisions must continue to be based on legislation, policy and clear medical evidence. Prior decisions by the Board or Appeals Commission should not have any precedent.

The WC Act now reads: (4) Each matter shall be decided on the merits and justice of the case and the Board is not bound to follow any previous decision or ruling of the Board as a precedent in reaching its decisions or making its rulings. (4.1) If the evidence in support of the opposite sides of an issue related to a claim for compensation is approximately equal, the issue shall be resolved in favour of the worker. This amendment replaced "Each matter shall be decided on the merits and justice of the case and the Board is not bound to follow any previous decision or ruling of the Board as a precedent in reaching its decisions or making its rulings." We recommend a return to the previous wording in the Act.

The phrase "approximately equal" is not appropriate. Equal or evenly balanced are more appropriate as a test. Decisions must continue to be based on legislation, policy and clear medical evidence. Prior decisions by the Board or Appeals Commission should not have any precedent.

Either remove the Benefit of Doubt provision or change phrasing to 'must to equally or evenly balanced'.

5.4 Health and Safety Association Oversight

Current State

Seven health and safety associations are funded through industry levies collected by WCB. The funding provided to safety associations is intended for promoting education in accident prevention to employers. Funding to the health and safety associations would only be provided if the associations satisfy oversight criteria set out by the Minister responsible for the *Occupational Health and Safety (OHS) Act*. This requirement is stated in section 136(2)(c) of the Act and section 82 of the *OHS Act*.

Pre-2018

Funding installments were generally provided to safety associations upon submission of a business plan or financial statement to WCB. There was no legislated oversight.

Considerations

The Review Panel heard concerns about the accountability of safety associations during the 2016-17 review. Employers in industries which are represented by the seven WCB funded associations are required to pay the levy, even if they question the association's value. Since membership in these associations is not voluntary and employers cannot chose to opt out, some believe there needs to be more effective oversight of funding expenditures.

Others view new oversight requirements as intrusive and unnecessary, as funded associations have governance in place (i.e. board of directors) and are accountable to their membership for administration and performance.

Written Submission Questions

1. Please share any suggestions on oversight of health and safety associations. Please indicate reasons for your response.

Safety Associations all have a governance structure that includes oversight by a Board of Directors elected by their membership. These Boards approve annual budgets and are responsible and accountable to their membership for monitoring activities of the Association. The membership is comprised of employers and other stakeholders as appropriate. The WCB should continue to formally and periodically confirm that employers/industry support continued funding of Safety Associations. Providing the board of directors are being transparent and industry is able to provide feedback and recommendations are heard, the board should be able to govern the association. Instituting a role for government to effect policy decisions that have a material cost impact on the association, interposing a third party into the relationship between the members and the governors of an entity causes rifts in the association, fetters the accountability of the governors, and offends the basic rights of a organizations. Good public policy is achieved when government creates the legislative and regulatory goals and partners with citizens to achieve those goals through democratic organizations.

5.5 Occupational Disease and Injury Advisory Committee

Schedule B of the *Workers' Compensation Regulation* contains presumptions on occupational diseases and their linkages to certain occupations and industries. The occupational disease presumption arises from scientific consensus that exposures to certain hazardous substances are credibly linked to known illnesses and diseases. Where industries are known to utilize or generate the hazardous conditions, workers employed in the industries who later contract or suffer the listed conditions are presumed to have acquired them from work. Therefore, if a worker suffers an occupational disease and was employed in an industry listed in Schedule B within the preceding 12 months then the illness is presumed to have been caused by employment (unless the contrary is shown).

Current State

Established in accordance with Section 24.3 of the Act, the Occupational Disease and Injury Advisory Committee (ODIAC) is mandated to periodically review the Occupational Disease List under Schedule B of the *Workers' Compensation Regulation*, monitor trends in occupational disease and injuries, and provide recommendations to the Minister on legislative amendments pertaining to occupational diseases. Additionally, when ODIAC considers a disease or condition to be linked to employment in a particular industry or process, or to an activity carried out in a particular type of employment, it may direct WCB to deem that the disease or condition is caused by that employment or activity.

The ODIAC membership consists of the Director of Medical Services from Alberta Labour and Immigration's Occupational Health and Safety program, a Physician (designated by WCB), an employee of the Department of Health (designated by the Deputy Minister of Health), an employee of Alberta Health Services (designated by Alberta Health Services) and an employee of Covenant Health (designated by Covenant Health).

Pre-2018

ODIAC did not exist and changes to the presumptions and occupational diseases contained within the regulation had not been reviewed in about four decades. Those diseases not listed in regulation were adjudicated following the normal process

Considerations

The 2016-17 WCB Review Panel recommended establishing this review body due to concerns that the existing presumptions in the legislation were "behind the times", as they reflected the state of medical science as of January 1, 1982. The panel stated that medical studies conducted over the past 35 years have improved our understanding of linkages between injuries and illnesses and certain occupations so the legislation should reflect this new knowledge.

Alberta is the only jurisdiction in Canada to have a legislated committee to review diseases for presumptive coverage.

Written Submission Questions

1. What are your views on the need for the committee to review the occupational diseases contained in the *WC regulation*?

While it may be appropriate for Schedule B to be updated, Article (4) essentially expands presumptive coverage to any number of conditions or diseases based on the opinions and observations of the ODIAC. Introducing expanded presumptive coverage based on numbers of claims of a type in a certain industry is not appropriate. Adjudication must continue to be evidence based and decisions based on medical fact and research, not history that may or may not be relevant. Employers expect that occupational disease claims will continue to be accepted where an adjudication based on work relatedness and medical evidence takes place. We are not interested in more claims being denied, only that occupational disease claims clearly be established as being work related. There is merit in the AC having a role to identify policy issues that are unclear, contradictory or problematic from an administrative law perspective but this change introduces expanded presumptive coverage. Claim decisions should always be evidence based. The ODIAC does not include broad based employer or industry representations and should not be the decision maker on policy.

5.6 Physician Choice

Current State

An injured or ill worker may choose their treating physician (e.g. their family doctor). However, under section 38 of the Act, when WCB requires the worker to undergo an Independent Medical Examination (assessment not treatment) the worker selects a physician from a roster maintained by the Medical Panels Office.

Pre-2018

Injured and ill workers selected their treating physician, but if they were required by WCB to have an Independent Medical Examination, the worker would be required to use a physician selected by WCB based on availability and area of expertise.

Considerations

It has recently been suggested that WCB should choose the physician when they require an injured or ill worker to submit to an Independent Medical Examination, to avoid potential delays based on physician availability.

WCB reports that when an Independent Medical Examination is needed, 93% of workers choose a physician during the initial conversation with WCB about booking an appointment, and the remaining workers take 1 to 3 days to make a decision. WCB states this does not cause a delay because 3 examination dates, all of which are booked within the same time frame, are held until the worker calls back.

In its final report, the 2016-17 review panel stated WCB's former approach of choosing the physician for the worker lacked neutrality and created mistrust between WCB and the worker.

In most jurisdictions workers may choose their health professionals, some of these jurisdictions also allow health professionals to be chosen for the worker in certain circumstances.

Written Submission Questions

1. Please share your views and any suggestions on physician choice. Please indicate reasons for your response.

It is okay for workers to choose from a list of available physicians provided by WCB. It is important to allow the worker to have a voice in the process and have some decision making ability. This is one of those important touch points where the worker can be engaged in the process. Should the worker disagree with the outcome by the physician, the worker cannot fall back on WCB and say the physician was selected by WCB knowing that WCB or the employer would have a favorable outcome. Providing the worker with a choice may eliminate mistrust down the road.

Perhaps there is another way to go about this other than simply leaving it up to the worker to choose. Members recommend that this not be a part of the Act but forms part of WCB policy so there is flexibility? This is another example where 80% of the time, the worker just wants to get better so they will take an appointment with whoever the WCB recommends for a treatment plan.

5.7 Liability of Directors of Corporations

Current State

Under the Act, directors of a corporation are neither workers nor employers. They do not have workers' compensation coverage or protection from lawsuits arising from work related injuries unless they opt to have personal coverage or they have made an application and have been deemed to be a worker by WCB.

Under the existing legislation, a director of a corporation typically must hold optional personal coverage through WCB in order to enjoy the protections provided by the Act, failing which they could face civil action if one of their employees, a contractor or a subcontractor is injured on one of their job sites as a result of their negligent act.

Pre-2018

Requirement was the same. Personal workers' compensation coverage has always been available to directors at their option.

Considerations

Some stakeholders feel that a legislative change should be made that would protect directors of corporations from lawsuits without requiring them to obtain personal WCB coverage. This would mean directors of a corporation would be covered by WCB, premiums would not be paid for corporate directors and they would not be eligible for WCB benefits (i.e. medical coverage), but they would be protected from lawsuits.

Other jurisdictions vary in their approach:

- Prince Edward Island, Northwest Territories and Nunavut have a similar approach to Alberta
- Ontario has legislation in place that protects corporate directors from legal action while not requiring them to obtain personal workers' compensation coverage.
- Manitoba provides similar protection for directors of corporations that employ workers, but directors of corporations that do not employ workers must have optional personal coverage in place in order to have protection from legal action.
- In Saskatchewan, British Columbia, New Brunswick, Nova Scotia, Newfoundland and Labrador and Yukon premiums are collected for directors, treating them the same as workers and providing protection from lawsuits and benefits for workplace injuries or illnesses; however, there are exceptions.
    - In Saskatchewan, directors/executive officers who are not on the regular payroll are not covered unless they have an approved application for personal coverage in effect and may not have protection from legal action.
    - In British Columbia, directors of corporations that fail to register with the Board may not have coverage for injury or protection from legal action.
    - In the Yukon, directors are considered to be workers by default. Non-working directors can apply for an exemption from coverage as a worker. If the exemption is granted the non-working director no longer has protection from a legal suit.

Written Submission Questions

1. Please share your suggestions on corporate director liability. Please indicate reasons for your response.

The Manitoba or Ontario approaches seems the most fair and balanced while addressing the issue.

The WCB Act does not mandate coverage for Corporate Directors. Optional personal coverage is available, and is meant to cover proprietors, partners in a partnership, directors of a corporation or society, or members of an association, board, authority, commission, or foundation for loss of wages in the event of an injury. It was never meant to protect them from lawsuit. Unfortunately, a loophole in the Alberta WCB Act exposes them to this liability, and this is the concern that should be addressed. We favor the approach of Ontario, where they are protected from legal action without being required to obtain personal coverage. This should apply in all situations where the Corporation employs workers. Directors should also have the ability to purchase optional personal coverage for loss of wages, if that is their choice but this is a separate issue. For construction, the Corporate Director is often the employer on site and without this protection the Director could still be subject to litigation even though the Corporation and its employees are covered by the WCB.

Some members prefer the new consideration. Cover Directors giving protection from lawsuits but don't collect premiums for them and don't provide any medical benefits coverage.
They are not workers. They are owners.

5.8 Lost Time Claims (LTCs)

Current State

If a worker's injury or illness results in time missed from work beyond the date of injury, it is considered a Lost Time Claim (LTC). An employer must notify WCB whenever a workplace injury or illness results in lost time or when there is a need to temporarily or permanently modify work beyond the date of an accident. WCB adjudicates the claim and determines the worker's entitlement to benefits and services (such as physician fees, x-rays, physiotherapy, etc.). WCB is responsible for paying those benefits and services.

LTCs can impact an employer's premiums through experience rating. Both small and large employers are impacted as the claim and its costs may lessen discounts or increase surcharges. Experience rating is a method of adjusting premium rates based on the individual employer's accident experience.

Pre-2018

Same as the current requirement.

Considerations

Some private companies use LTC count data to evaluate subcontractor safety, which in- turn may effect work opportunities available to subcontractors. LTC data is likely a poor indicator of workplace health and safety. It is not designed to demonstrate health and safety compliance and does not show an employer's commitment to injury and illness prevention. LTC data may not be a meaningful tool for choosing subcontractors, but it is being used. Most likely consistent standards are being applied to all companies competitively bidding for work.

A stakeholder has suggested that the impact LTCs have on an employer could be reduced by allowing the employer to pay the injured worker's wage loss benefits directly for the first 2 or 3 days after an injury that causes absence from work. Claims would still be reported to and adjudicated by WCB, and any medical or other costs paid through WCB.

It may be perceived that not counting injuries with short-term time loss as LTCs could help lessen the potential impact of any delays in getting physician's reports detailing work restrictions. Physicians report workplace injuries and any restrictions which may affect modified work or lost time claims within the required time frame. The Act requires physicians to send WCB a report within 2 days of their appointment with the injured worker. WCB data shows that in 2019, 64.6 per cent of general physician reports were submitted same day and nearly 90 per cent were submitted within the two day submission requirement. For comparison sake, in 2015, 35.6 per cent were submitted same day.

This approach may be of concern to employers for the following reasons:

- An employer's wage replacement cost would increase, as the employer would have to bear the expense of worker's wage loss for the first 3 days of absence after the date of injury, as apposed to WCB covering these costs.
  - In 2019 WCB paid $9.6 million in compensation costs for the first 3 days of lost time after an injury. These costs would be transferred to employers who would pay the lost wages directly to the worker.
  - If the suggested change was adopted the potential reduction to the premium rate would be less than 1 cent.
- Employers in industries which bid for work (such as oil and gas or construction), may feel it is helpful to them in the bidding process, but it may disproportionately benefit employers with much higher LTC levels than their industry's LTC average.
- It may also result in a cost increase for employers in industries or sectors where lost time claim counts may not be a factor in getting contracts (such as retail, health care, education, and municipalities) as those industries would see little change in their premiums with the additional expense of having to pay workers wage loss benefits directly for the first two to three days of their claim.

WCB data shows 37 per cent of total LTCs in 2019 had 3 or fewer lost days of work. In 2018, 36 per cent of LTCs had 3 or fewer lost days of work.

All jurisdictions in Canada require an injury or illness which results in more than a day's work absence to be included as a claim on the employer's record. No province has a provision that allows the employer to pay for the initial 1 to 3 days of wage loss and exclude the claim from their experience record.

Written Submission Questions

1. Please share your views and suggestions on LTCs. Please indicate reasons for your response.

The introduction of a "grace period", whereby wages would continue to be paid by experience rated employers for the first 1 to 3 days post incident would benefit employers, workers and the WCB system overall. Claims would still be reported and costs other than wage replacement paid as per the usual process. We propose that a claim would not be counted as a time loss claim unless actual time missed extends beyond the grace period for LTC recording.

A "grace period" would help alleviate the challenges created by the WCB change allowing physicians to no longer complete forms at the time of a visit and provide workers with a copy. Employers would not accrue a LT claim because they were not able to offer suitable modified duties for no reason other than because they were not notified that a claim has been initiated or advised about relevant work restrictions on the date of accident. Physician compliance with the 3-day reporting requirement of the WCB by default creates significant potential for a claim to become a LTC unnecessarily. Alcohol and drug cases provide another example. Once an employee is tested post incident, they are generally required to sit out a waiting period pending the results. A grace period would also be beneficial for rural employers, where assessments often cannot happen quickly so restrictions to facilitate a return to modified work are not immediately known. Our interest is in ensuring factors that unrelated to restrictions and limitations arising from a work-related injury do not become a determining factor in whether a claim is or is not a time loss claim. This change would also be of benefit to workers in that there would be less emphasis on a return to work the day following an incident to avoid a LT claim and allows for identification of better modified work opportunities.

Something needs to be done to better balance minor injuries particularly for small to medium sized employers. Another idea is that a grace period to allow employers to finance the short-term costs of wage replacement while protecting safety statistics. WCB could just add a question to the C040 that asks, "Will you continue to pay this worker for the next three scheduled work days after the date of accident if they are medically unfit to return to full or modified duties? Those that choose to pay can self-insure the loss. Those that don't can have WCB issue pay.

5.9 Employer Premiums Submission

Current State

Section 100 of the Act enables the Board to collect WCB premiums from employers either annually, bi-annually, quarterly, monthly or in any other manner of installments it considers reasonable. Premiums are based on the estimated payroll. For example, employers provide their 2020 estimated insurable earnings by February 28, 2020. Employers may revise this estimate throughout the year (with no penalty) and premiums will be adjusted based on the new estimate. Premiums will be invoiced to employers on a standard schedule based on the overall size of their premiums, but they may customize their payment schedules upon request. In 2021, the employer will provide their actual earnings for 2020 and any adjustments to premiums will be made – if they under reported, they will be billed the difference, if they over reported, they will be credited the difference onto their next year's premiums.

Pre-2018

The current requirements were applicable.

Considerations

Premium payments based on actual monthly payroll amounts instead of a yearly estimate may be more reflective of an employer's current payroll and not based on an estimate. However, a mandated monthly reporting requirement may be viewed by some as adding steps in the process vs. submitting once per year and revising as needed.

WCB reports that stakeholders have the opportunity to set up installments throughout the year depending on the amount of estimated payroll and can revise their estimate without penalty as often as needed.

The majority of Canadian jurisdictions offer yearly assessments and payments as the minimum required by legislation. Several offer more flexible options for assessment and payment based on the needs and size of the employer. This appears similar to the approach Alberta takes.

Written Submission Questions

1. Please share your feedback or suggestions on frequency of premium assessment and payment. Indicate reasons.

Members see no reason to make any changes. Employers already have the option of making adjustments in cases where this is warranted, but requiring all employers to move to mandated monthly reporting creates an administrative burden on organizations where this is not needed. Keep it as is. Report annually and give estimate for upcoming year.

5.10 Governance

WCB Board Membership and Selection

Current State

Members of the WCB Board of Directors are chosen from, and are representative of, the interests of one of three groups: employers, workers, or the public. The members are selected from a group of individuals nominated by organizations representing employers, workers or the public.

Pre-2018

The requirement to choose members of the WCB Board of Directors from organization nominations did not exist.

Considerations

The requirement to base WCB Board of Director appointments on lists provided by stakeholder groups may restrict government in the selection process and takes focus away from the competency and skills of the candidates.

Appeals Commissioner Term Limits

Current state

Appeals Commissioners serve for fixed terms, and must seek reappointment at the end of each term. Appeals Commissioners are appointed for an initial term of one year, with re-appointment for terms of up to three years, to a maximum of 12 consecutive years in total, in accordance with the *Alberta Public Agencies Governance Act*.

Pre-2018

Term length and maximum term limits for Appeals Commissioners were the same as above.

Considerations

The appointment and reappointment process is time-consuming (6 – 8 month process) and uses significant resources. As per the Appeals Commission, the three-year term limit causes uncertainty for appeals commissioners. The 2016-17 Review Panel recommended exempting the Chair and Vice-Chairs of the Appeals Commission from the 12-year total term limit. The recommendation was considered and consequentially no changes were implemented.

Future WCB Reviews

Current State

A periodic review of the Act and regulations is to be completed by a review committee consisting of at least three members representing the interest of one of three groups: employers, workers, or the public. The members are selected from a group of individuals nominated by employer groups, worker groups and the public.

Pre-2018

The requirements for a review committee and the mandated legislative review did not exist.

Considerations

The focus on skill and competency may better serve the Legislative Review Panel appointment process, rather than the requirement to choose from stakeholder group lists.

Written Submission Questions

1. Please share your feedback or suggestions on the frequency of future WCB Reviews and review committees requirements. Indicate your reasons.

Members differ somewhat on this but the general consensus is that members support the requirement that a fulsome review of the Workers Compensation Act take place every 10 years, rather than every five years. Conducting a review is time consuming and sufficient time is also required to implement and get accustomed to the new provisions before initiating another review. A more frequent review cycle creates uncertainty and confusion in what is already a complex system. If circumstances warrant review of a specific provision in the interim period, that can always take place. However, members generally support a review of employer premium and worker benefit policies, along with a review of pricing programs, every 5 years. Other policies can be formally reviewed less often. Members also support the requirement for a comprehensive policy development process, including stakeholder consultation, and these provisions should be retained.

2. Please share any feedback or suggestions for changing governance provisions in any of the other preceding categories. Indicate reasons.

The requirements of the Alberta Public Agencies Governance Act (APAGA) regarding term limits for appointees should be balanced with a careful consideration of the needs of the stakeholders of the Workers' Compensation system. While term limits can be beneficial for certain appointments to public agencies, governance policies must ensure public agencies are able to operate effectively while maintaining the public interest. Applying the APAGA term limit provision to appointees to the Appeals Commission has a serious negative impact on the ability of the Appeals Commission to fulfill its mandate and obligations to the workers and employers of Alberta. Commissioners are merit-based appointments selected through a structured process that involves key stakeholder representation. Historically, commissioners conduct over 1100 hearings per year and the Appeals Commission is amongst the most

heavily tasked quasi-judicial bodies in Alberta. Matters that reach this level of appeal are complex and often heavily contested and not having APAGA term limits imposed on this body, notwithstanding that the Minister can exempt specific individuals on a case by case basis, would allow for better functioning of the system overall.

It can take 3 to 5 years for a Commissioner to acquire the knowledge and hands on experience to fully function in this role. Hearing Chairs have an even more complex role. In the period between 2013 and 2014, we understand the Commission lost the contribution of 17 commissioners, including 11 hearing chairs due to a combination of natural attrition overlaid by the term limit imposed by the APAGA. This unprecedented loss of experience because of arbitrary term limits impairs the Appeals Commission's ability to fulfill its adjudication responsibilities as well as its ability to recruit, train and mentor new commissioners. The impact was clearly felt again in 2018, with over 50% of Commissioners being new hires. On a practical basis, this has translated into significant delays in hearing timelines. The AC is facing significant recruitment again in 2020. For Appeals Commissioners keep the 12 year maximum including the Chair and Vice Chair.

Other Considerations

Written Submission Questions

1. Do you have any suggestions for streamlining the Act and associated regulations for reducing red tape, regulatory and/or administrative burdens, while still supporting injured workers?

The biggest burden at the current time is the obligation to reinstate. Too often the employer is bound in a relationship for an extended period of time, or, in some cases the worker becomes stuck but finds comfort in knowing they can ride things out for an easy six months with little effort required on their part. It's an unfair advantage to those workers who do not have a permanent disability. It has the potential to create a toxic work environment. The obligation to reinstate needs to be removed.

Consideration should be given to aligning definitions between related legislation. For example, the definition of harassment in the OHS Act is:
"(q) "harassment" means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person that the person knows or ought reasonably to know will or would cause offence or humiliation to a worker, or adversely affects the worker's health and safety, and includes
(i) conduct, comment, bullying or action because of race, religious beliefs, colour, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, gender, gender identity, gender expression and sexual orientation, and
(ii) a sexual solicitation or advance,
but excludes any reasonable conduct of an employer or supervisor in respect of the management of workers or a work site"
There should be a clear connection between what is a workplace hazard and what should be accepted under WCB. Having a different and broader definition of harassment applied by the WCB allows for claims to be accepted that are unrelated to a workplace hazard.

2. Are there any other issues or suggestions related to Alberta's workers' compensation system, the Act and associated regulations and the administration of the Act and/or regulations that you would like to be considered?

Some members indicated that they would like to see claims with suspicion of fraud investigated with boots on the ground. They would like to be a WCB investigator keeping a watchful eye on workers claiming to still be injured and they working under the table elsewhere, etc.

Other members support rescinding Section 147.1 (Disclosure of information to OHS) - This section governs the sharing of information with OHS and indicates the Board may collect information, including personal information, in addition to the information necessary to administer the WC Act, in order to disclose the information to the Minister responsible for the Occupational Health and Safety Act so long as the collection and disclosure are carried out in accordance with the Occupational Health and Safety Act.

The WCB is an insurance company whose role is to gather and analyze data for insurance purposes. Dissemination by the WCB should be limited to aggregate data used to monitor the performance of WCB/ insurance related programs and activities. The use of insurance claim data by OHS provides inaccurate and flawed data upon which OHS is basing assumptions regarding workplace safety and safety performance. The integrity and interpretation of WCB data for injury prevention purposes has been a long-standing concern and continues to be so. WCB data is relevant only for insurance purposes and it is not appropriate to be used for safety and injury prevention purposes.