

SUBMISSION # 13
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Manitoba Federation of Labour

BRIEF

to

Manitoba Workers Compensation Board

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When Sir William Meredith brought forward the historical compromise with its five elements, workers and employers felt that they had achieved a solution to many issues of the day. Today, almost 100 years later, we still have workers being injured and killed at work and some do not receive any compensation while others are disadvantaged in the amounts they received. The MFL is proud to be able to offer solutions to the existing system that will return it to the visions of 1916.

The Manitoba Federation of Labour represents over 95,000 workers in the province – including those in both the public and private sectors. Their workplaces include manufacturing, office and technical, agri-business, mining and forestry, transportation, education as well as many others.

Our members constantly inform us of the difficulties they have faced following a workplace injury with their employer, their claim process and the Board's medical department. We also hear from many members of the workforce who are not represented by a union as they seek help on what is to them, a very overwhelming process.

There have been instances where workers have had their income significantly reduced because of circumstances within the legislation that are unfair and others who will not have enough income to justify staying off work to heal. People who have become permanently disabled have been further insulted by meagre amounts to offset the significant reduction of abilities. There are those whose injury has made it difficult to do the work they were once very capable of doing but inflexible employers have made it impossible to return to the workplace. Others still are becoming sick and dying from the chemicals and processes within their workplaces with no compensation being paid.

This system has turned out to be confusing and is becoming of less value to the workers of Manitoba. Something must change to make our system fair, understandable and available to all when needed. We must concentrate on restoring confidence for those who rely on the system to be there for them when they are injured or for their families if they are killed at work.

When changes were introduced in 1992, many workers who had been injured prior to that date would use the previous edition of the Act for their benefit entitlements. This still causes confusion of pre 92 or post 92 injuries and entitlements and we expect that if these hearings lead to change, much more confusion will result having to apply 3 differing and distinct Acts. When changes go forward from this review process, one of the most important will be to provide clarity by making the new Legislation a blend that will include the two previous Acts we have been working with. This will allow both the injured worker and the Board's staff a single place for guidance in providing entitlements.

Issues and Recommendations

Issue: Protection

Workers Compensation is a system that was designed to pay all workers for wages lost due to an injury while at work. Unfortunately, not all workers in Manitoba are covered by the Workers Compensation Act. When the Act was written only those workplaces that were specifically mentioned in the Act would be required to participate in the plan. Later, some occupations were

allowed to participate on a voluntary basis and as such, were granted the same immunity from being sued for wage loss benefits.

The farm worker in the early days of the last century, were employed on small family owned farms with a diverse production of garden, feed grain and livestock. At the time, it was felt that traditional workplace solutions were not needed due to the lack of "modern" machinery. Most of these farms have evolved into what is known today as Agribusiness. While the nature of the production has changed, so too has the size of the operations and the owners of large tracts of farm land. The scale of animal production has also grown to large multi building operations for livestock.

Public schools used to be small and had neither vocational or laboratory components. Due to advances in education, we now see large central structures that house many opportunities to gain experiences beyond theoretical knowledge to practical applications. It is in these settings that teachers, their assistants and custodial staff are exposed to hazards not envisioned by the early drafters of Legislation. Not all school divisions participate in voluntary coverage and when our members change employment from one division to the next there is confusion when they find they are no longer covered.

Today, many occupations exist that have evolved over the last 20 years due to changes in computer, communication and other technology and have brought their own occupational injuries. Due in large part to this increase in white collar jobs from blue collar, we see many cases of repetitive strain injuries and other disorders of our times. Most of those workers lack protection for wages lost due to a workplace injury. Currently, about 25 - 30 percent of Manitoba's workers have no income protection through the WCB. Another benefit of increasing coverage is a greater base to share the cost, making it a truly collective liability and would more than likely lower the average rate even further than in the past.

A second and most important problem facing the workforce today is the growing trend that sees more workers over the age of 65 still participating in the workplace. Labour has always held that workers should retire on full pension at age 60 and never be forced to work beyond the age of 65. In many of the heavier industries, we have bargained with the employer to allow for retirement at the age of 55 with full service. Even with this stand, Statistics Canada now identifies 14.8% of our workforce as being over the age of 65. Due to the restriction on paying benefits to workers up to the age of 65 only, these workers could be injured on the job and be completely disqualified from receiving any benefits what-so-ever.

The MFL Recommends:

- WCB coverage must be compulsory for all Manitoba workplaces.
- Workers over the age of 65 who are employed and suffer a workplace injury must be fairly compensated for lost wages and other benefit entitlements.

Issue: Income Levels

When a worker in Manitoba suffers an injury on the job they are entitled to wage loss benefits if they miss time from work the next day or any other following day. We have found that some

workers who were injured early in their workday and left the premises to seek medical help, have lost a portion of that days wages as neither the employer nor the WCB reimburses them.

Currently, wage loss is determined to be 90% of a worker's net income. Calculating this, deductions for CPP, EI and Income Tax are subtracted even though they are not submitted on behalf of the worker to those agencies. After two years, the benefits are reviewed and lowered to 80% of net and the new CPP, EI and Income Tax rates are applied.

Most workers have planned their affairs to ensure their wages cover their living expenses as well as debt repayment for homes and other large purchases. When a worker is injured the interruption in their income is expected but undue delays in receiving their first cheque cause a measure of hardship to their families. The longer the delay, the greater the impact of this hardship is felt by the family. This is coupled in some cases with the loss of at least a portion of one day's pay plus a reduction to 90% of net wage levels.

The MFL Recommends:

- Workers should not lose money as a result of a workplace injury on the day they are injured or any time period after that.
- Payments should be calculated from the time workers are injured unless the employer shows they have paid wages for the remainder of that day.
- Workers wages should not be recalculated after two years and reduced to 80% of net pay.
- As the deductions for CPP and EI do not qualify for submission, these amounts should not be deducted.
- Workers should receive a cheque within two weeks of reporting an injury to the WCB and any necessary adjustments made to future payments.

Issue: Lost Wages

Following a workplace injury, workers need wage loss benefits that replace the entire income they have lost. This includes concurrent income from more than one job or other part time jobs. We find today that more and more young workers have many different jobs that allow them to cobble together a full work week. When they are injured, they lose wages from all sources. Work practices have changed as we no longer see workers having one job with one employer until retirement. It is time for the Act to recognize this and change for the times.

Recent increases to the minimum wage have allowed some flexibility in spending habits but many families are still below the poverty line. Calculations for minimum wage and low income earners result in a benefit level that is too low to allow them to maintain a decent standard of living.

Wages for part time and seasonal workers are calculated on a 12 consecutive month average during the previous two years instead of projected loss of earnings. This situation does not allow workers who have been able to find secure or full time equivalent jobs to be compensated for the true loss of income.

The current Legislation also has a maximum level of earnings which prevents middle income earners from receiving lost wages based on their entire income. This results in a greater wage loss to those of higher income levels and corresponding higher financial obligations. Someone today making sixty thousand dollars a year will face an immediate penalty of five thousand dollars when they are injured at work.

The MFL Recommends:

- A minimum level of benefits should be established in harmony with the minimum wage of the Province.
- Workers should continue to receive wages lost from concurrent employment.
- Average earnings for part time or seasonal workers should be either the time of the accident or the best consecutive 12 month average in the preceding 24 months, whichever is greater.
- Remove the ceiling on earnings so benefit levels are based on 100% of income.

Issue: Claims Suppression

The Legislation provides for prosecution of those who try to deter workers from filing a workers compensation claim. There are many ways workers have been discouraged from filing claims that include outright threats of losing their jobs to delays and denials that subtly act against a workers desire to file.

When some employers are constantly late in sending information to the WCB, these delays also make workers reluctant to file a claim with the Board. Another common action lately is to harass workers about returning to work prior to being healthy enough with threats of being cut off benefits for refusing to do work, even against their doctors advice.

Quite often, the worker who had been intimidated is then required to be the chief witness and testify in court against their employer. To date, we have no evidence that any employer has ever been prosecuted for claims suppression.

Many employers have found that if they concentrate on their costs of claims, they will receive an immediate benefit in reduced rates due to experience rating. When experience rating was first introduced as an incentive, we argued that it would not achieve the desired results of accident prevention. We have found no proof that experience rating reduces accidents in any Canadian model in use today.

The minority of employers who interpret their assessment rates as merely a cost of doing business have responded with other measures to absorb higher rates. Beyond claims avoidance, they chose to reduce staff levels, wage freezes, and actions against those who submit claims such as dismissal or inappropriate return to work policies. Some pass on the costs to the consumer or, as in the case of rural areas, the community is forced to absorb these costs.

The use of experience rating created a climate of claims suppression as a cheaper and easier alternative to health and safety initiatives.

The MFL Recommends:

- All acts of claims suppression, late reporting, delays or intimidating actions by anyone must be dealt with effectively with either progressive administrative penalties or court proceedings.
- Experience rating should be reviewed to require injury prevention measures to qualify for rate reductions.

Issue: Impairment Awards

Workers who suffer an injury resulting in a permanent disability are compensated on a flat rate basis. The figures have been adjusted yearly for cost of living but the stipulated rate is \$500.00 for the first 5% of disability, \$500.00 for the second 5% plus \$1,000.00 for every percent thereafter. This amount is reduced for workers over 45 years of age by 2% per year for every year up to a maximum of 40% reduction. This amount does little to compensate workers for the extra expenses for home and lifestyle modification due to their new disability. No amount will ever make up for the true personal loss of their bodies functioning but a fairer system must be achieved.

While there has been no previous discussion on what would be fair, a starting point would be use of a progressive scale that would more likely reflect the significance of loss for greater levels of disability. One suggestion would be as follows;

- \$1,000 for each percentage of disability up to 25%, plus
- \$3,000 for each percentage of disability from 25% to 50% plus
- \$5,000 for each percentage of disability from 50% to 75 % plus
- \$10,000 for each percentage of disability thereafter.

This suggestion will reflect both the degree of significance of disability plus the personal loss suffered by a permanently disabled worker. The comparison would be thus, under current legislation a worker with 25% disability would receive \$16,000 under the new plan they would receive \$25,000. With a 50% disability, current plan \$41,000 - new plan \$100,000. With a 70% disability, current plan \$61,000 - new plan \$200,000. With a 100% disability the worker currently would receive \$91,000 and under the new plan would receive \$475,000. A much more reflective system.

The MFL Recommends:

- Permanent Impairment awards must be changed to a fairer system that reflects the loss incurred by the worker.
- Remove benefit reductions of 2% per year for workers over the age of 45.

Issue: Personal Medical Information

When a worker in Manitoba is injured on the job they either go to an emergency room, a clinic or their own family doctor. Records are kept of these visits which records other personal health information that may affect healing but is not related to the workplace injury. A separated section of the WCB claim file contains all the confidential medical information related to a workers injury, plus past medical information that may be relevant to the doctors.

Employers attempt to access this information under the guise of needing to know the diagnosis for a return to work situation. Some employers get access to the medical information by initiating an appeal whether they file one or not and this personal information is kept on record at the employers premises. Employers, as lay people, have no legitimate use for this information nor should they be entitled to review personal medical information just because a worker has suffered an injury. Any appeal issue can be dealt with by the medical community with file reviews performed at the Board offices.

The MFL Recommends:

- Restrict employer access to medical information on workers files within the Act.
- When medical information is required for a return to work situation, information must only be through the WCB case manager.

Issue: Northern Office

When workers are injured on the job, they contact the WCB in Winnipeg to report their injury, work with their adjudicator for a return to work, see specialists and solve minor problems related to their entitlements to WCB benefits. Having to deal only by phone is difficult for rural Manitobans and more so for those living and working in the North.

Some time ago, an office in Thompson was opened to service those in the North as a pilot trial. The claims manager and staff of this office have proven the need for this office by solving many issues on a timely basis. Workers in the Thompson catchment area are pleased and satisfied with their experiences during this trial period. It is time now to ensure all workers in Manitoba have equal access to service from the WCB, no matter where they live.

The MFL Recommends:

- Include a clause in Legislation to mandate the provision of a fully staffed office in Northern Manitoba.

Issue: Occupational Disease

Workers who become ill from the chemicals and processes within their workplace and are diagnosed with diseases that shorten their lifespan are faced with a difficult task of proving that the

illness is related to their work. These exposures may have been up to 20 years prior to becoming ill. They could even have been at a prior workplace or different occupation so many years ago.

Not all physicians in Manitoba are familiar with occupations and their effects on human health. Many are also unfamiliar with the manifestations of occupational exposures to chemicals, substances and metals and are unable to recognize a person's illness as being caused by the occupation.

The Workers Compensation Act requires proof that the workplace has been the dominant cause of the illness, which is greater than 50%, before accepting responsibility, this proof is often found during an autopsy. Other illnesses, such as workload stress from changes within our workplaces, have been restricted in the Act. Automatic disqualification has been found to be unreasonable by the Nova Scotia Supreme Court.

The MFL Recommends:

- Remove the workplace dominant cause requirement.
- Create an Occupational Disease Panel to research and establish a schedule of occupational diseases.
- Remove restrictions on stress related claims.

Issue: Return to Work

Following an injury a worker will seek medical treatment to get back to their pre-accident condition. Part of the healing is a need to return to work as soon as possible in either a light duty position or, to have the job they were doing modified to support the healing process and allow them to contribute. Some progressive workplaces bring workers back as soon as they are able to work within the restrictions their Doctor has imposed.

Other employers make it very difficult for a worker to return and some never allow the worker back at all. Some of the work assigned is meaningless, some is beyond the worker's restrictions and some is just not available once a worker agrees to return. If a worker does not participate, they are cut off benefits. In 6 of the 10 Provinces, the law requires the employer to take an injured worker back to the workplace when they are able.

The MFL Recommends:

- Add a section to the Workers Compensation Act to obligate the employer on duty to accommodate for return to work.

Issue: Surviving Spouse

When a worker is killed on the job, the surviving spouse is given wage replacement for 5 years following the death of their loved one. Five years is a very limited time after losing your life partner to get your life back together, some never do. In previous years, the spouse was not

recognized as deserving of benefits after remarrying. This injustice was overturned by the Human Rights Act in 1985 but some widows/widowers who remarried prior to 1992 had their benefits terminated and have not as yet been fully compensated.

The MFL Recommends:

- Remove the 5 year limit on benefit payments for a surviving spouse.
- Fully reinstate all recipients of WCB survivors' pension benefit whose spouses died prior to January 1, 1992 and had their benefits terminated on remarriage.

Issue: Pensions for Special Additional Compensation Claimants

Workers who had suffered an injury which prevented them from returning to a particular type of occupation were awarded Special Additional Compensation (SAC) awards to allow them entitlement to vocational rehabilitation. They were also awarded an annuity upon reaching the age of 65 based on 2% their SAC amounts calculated over the length of the SAC period. This was to be paid to the worker in the form of a pension for post 65 years of age.

Recent changes to policy and administrative guidelines to redefine pension plans have removed this entitlement from a significant number of workers who were previously told they would be receiving this and have planned their financial affairs accordingly. This will cause these workers to be in a deficit position regarding their financial retirement planning when they reach the age of 65. This is both unfair and unjust to unilaterally remove pension entitlement once it has been promised.

The MFL Recommends:

- Provide the SAC pension benefit at the time of their retirement date to all who were granted the entitlement and have recently been disqualified.

Issue: Worker Rights

In 1916, workers in Manitoba were given a choice to take the benefits of Workers Compensation following an injury at work if they gave up their rights to sue the employer for negligence. The workers still had retained the right to bargain with their employers on all issues that affected them, including enhancements to benefit levels. Recent changes to the Workers Compensation Act disallowed workers to negotiate any improvements to the benefits they receive, including "top up" to a living wage. Also disallowed was negotiating for wage protection beyond the ceiling imposed by legislation.

Currently, an injured worker needs to see a Doctor of their choosing who will diagnose their injury and assist them to file for Compensation benefits. They will also provide information to the Board's adjudicators to further assist in return to work or clarifying prognosis. It is noted that on many occasions the Board's own medical department has become over involved with some injured worker's files and in some cases, have made adjudicative types of decisions regarding injuries and

recoveries. Some workers have even been called in for a separate examination that resulted in termination of benefits at the suggestion of the Boards medical staff.

One issue that has a negative impact on workers, board staff and employers paying into the collective liability fund is self insured employers. As they only pay for their own claims cost plus an administrative fee, they continually concentrate on suppression of those claims. Many other employers are envious of this freedom from collective liability and have sought in the past to be considered as a self insurer. The only restriction the Board has is in a policy and this needs to be enshrined in Legislation.

There is a section of the current Act that provides for some employers who meet a set criteria to become self adjudicating. While this has never been used and no policy exists, it is not understood how an employer who provides an unsafe workplace that causes injuries to workers would be better qualified than the Board's staff of adjudicators and claim managers to fairly apply the Act and award entitlements.

The MFL Recommends:

- Remove restrictions on workers rights to bargain with their workplaces under Provincial Labour Law to offset inadequate benefit levels and top up provision.
- Reduce the Workers Compensation Boards medical role to clarifying medical issues raised by adjudicators.
- Restrict the access for self insured to only those who are currently so covered.
- Remove that portion of the Act that will allow for self adjudicating employers.

Conclusion

Workers in Manitoba deserve to have a Compensation system that works for them. It must meet their financial and medical needs following an injury so they and their families don't have to worry or experience hardship. Workers should have very little difficulty going through the system and benefits should be provided in a timely manner. Wage loss benefits must not be less for one worker than another due to age or circumstance.

People with permanent disabilities must be dealt with fairly and compensated for their loss. Workers who are ill from their workplace should expect to receive understanding, compassion and assistance to achieve their entitlements. Others who are ready to come back to their jobs when they are medically fit need to be guaranteed that access.

The system, fully paid for by employers, must be available to all workers when they need it, where they need it and without complications. Let's make a workers compensation system that works for everyone.

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