

Name of Presenter: Manitoba Hydro
(Non-Presenting)
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Dear Workers Compensation Act Review Committee Secretariat:

Subject: Workers Compensation Act Review

With respect to the request for submission on review of The WCB Act W200 Manitoba Hydro is offering the following comments and recommendations for consideration by the Review Panel.

Manitoba Hydro Company Background and Work Environment

Manitoba Hydro is an energy utility, headquartered in Winnipeg that provides service to 499,535 electric customers throughout Manitoba and 249,351 gas customers in various communities throughout southern Manitoba. Manitoba Hydro employs approximately 5,770 people who work in various job functions throughout Manitoba. The Corporation's capital assets-in-service at original cost exceed \$9 billion placing Manitoba Hydro as one of the largest electricity and natural gas utilities in Canada.

Manitoba Hydro is governed by the provisions of the Manitoba Hydro Act. Under Section 2, the purposes and objects of this Act are to provide for the continuance of a supply of power adequate for the needs of the province, and to engage in and to promote economy and efficiency in the development, generation, transmission, distribution, supply and end-use of power.

Manitoba Hydro's Vision is to be recognized as the best utility in North America with respect to safety, rates, reliability, customer satisfaction, and environmental management, and to be considerate of all people with whom we have contact. Our primary goals and operating principles focus on continuously improving safety in the work environment and providing customers with exceptional value (rates, service, public safety, reliability, and power quality).

The WCB Act Review Comments:

Issue 1: Act does not make any allowance for overtime, bonuses or incentives for injured employees. This situation is exacerbated when it applies to a young employee or an apprentice. This lack of provision is a deterrent to injured (disabled) employees and inhibits them from progressing in a work environment.

Background Document

In the majority of claims cases, an applicant's remuneration from WCB is based upon their pre-accident earnings. The WCB Act allows claimant entitlement to progress in pay up to the prevailing wage of a starting journeyman when a claimant is injured while in an apprenticeship program. However, once at the prevailing wage, the claimant is then "frozen" and is only entitled to indexing under the Act. Any payment over and above that amount would be considered an overpayment.

Manitoba Hydro has an aggressive Return to Work Program. Therefore, many of our injured employees have worked in several temporary positions since their injury. The majority of these positions have been at a pay level lower than their entitlement from WCB.

The WCB Act is clear that employees and apprentices are only allowed to receive compensation up to their prevailing wage Section 45. The Act does not make any allowance for bonuses or incentives such as overtime, bonuses, Temporary Market Adjustments, etc. and as such, any such payment would amount to an overpayment and would require the WCB to recover that excess payment from the employee. The employee is worst off financially under the current scenario.

Recommendation #1:

Allow companies to implement overtime, bonuses, or incentives for injured employees without penalty to the employee. Today an injured worker's income is adversely affected and therefore the current practice would seem contrary to the general principles of the Act.

Issue 2:

Sections 2, 73, 76 and 76.3 of the Act does not allow for Self Insured businesses to be treated and assessed as unique industries based on their records in Employer' Assessment Rates. The nature of the Board's funding places all industry in a collective liability account for operations and apportions out rates based on safety performance comparisons. Manitoba Hydro has a low disabling frequency and an aggressive safety, health, environment and wellness program. With all the proactive programs, Manitoba Hydro still pays in excess of 40% on its Employers' Assessment Rates. In the comparable area of Long Term Disability Insurance, Manitoba Hydro's rates are among the lowest in industry based on its insurance experience rating.

Background Document

Manitoba Hydro has in house expertise, which mirrors many of the functions of the WCB. Manitoba Hydro has a wealth of Disability Management Services for its employees which include Case Managers, Medical Professionals such as an Occupational Health nurse, a Psychiatric nurse, a Physiotherapist, contracted physicians and psychiatric personnel, placement officers, human resources specialists, union advocates and for those individuals who are removed from WCB but cannot still return to work, a Long Term Disability Case Manager. Supporting this team is a large infrastructure of health, safety, workplace environment and wellness professionals. Manitoba Hydro strives to have a low disabling frequency because we find worker reintegration a win/win for both parties.

Recommendation #1:

Establish unique experience rating and management systems for self insured companies and allow a cafeteria-style choice of services the company can buy from WCB. Injured employees and physicians would still report directly to the Board. These companies would still be required to report statistical information like costs, accidents, lost time injuries, and non lost time data as required by the Board. This would create incentives for business to reduce costs by acting on approved claims to resolve them. The employee would always have the Board Safety Net to which to return. Fees for each transaction would be clearly defined allowing a cost control effort to be pursued by all parties. The fee for service would be based on actual use and experience rating

performance against self and same industry. Therefore Hydro could only be compared to Hydro.

Recommendation #2

Charge self-insured companies a flat annual rate based on employee population and programs offered to reduce injuries. Have all costs paid out by company and ensure that companies report statistical information like costs, accidents, lost time injuries and non lost time data as required by the Board. Since self-insured companies are unlike others, the uniqueness of each company should be rated.

Employers pay premiums or assessments, based on the level of risk associated with the industry they are involved in. However, there is no assessment reduction provided on the preventative measures companies offer and a way to reduce these costs based on preventative issues.

In simple terms, employer assessment rates are calculated by factoring the employer's accident experience and the collective accident experience of other employers who share the same level of risk not the programs placed in a company on prevention. Employer programs to mitigate costs should be factored in as well. This would provide two benefits:

- Employers would place more effort on preventing accidents and incidents from happening; and
- Provide a focus on working safely

In comparing WCB coverage to LTD coverage, the exact same service infrastructure exists for both types of disability management. Manitoba Hydro pays high costs up front to mitigate any negative outcomes like accidents. Should the system operate like insurance, the activities for prevention are weighted with the same value as outcomes.

Recommendation #3:

Maintain self-insured grouping for Corporations.

Issue3:

Section 18(1), employer to report accident needs to be changed to reflect current business realities. For large industries, this section is impractical. It assumes that an employer is the company at large, located in one place, and has workdays that are Monday to Friday. This assumption is outmoded in the business world today. The design and context of this section make it easy for employers to be in breach of this section and receive consequent fines. Five

days is also not reasonable for a company that covers a large territory within the Province. It is possible for a supervisor to be in Winnipeg and a direct report in Lynn Lake and opposite shifts. Changes need to be made that respect the intent, while meeting business reality.

Background Document

Section 18(1) of the Act states that in case of an accident giving rise to a claim for compensation, the employer of the employee shall, within five business days (a) from the day upon which the employee reports the occurrence to the employer; or (b) from the day the employer otherwise learns of it; whichever day is earlier, report the accident and the injury resulting there from to the board and also to any local representative of the board at the place where the accident occurred.

When the societal norm was to work Monday through Friday, this section was reasonable to meet. At present, this time schedule is unrealistic. At Manitoba Hydro, there is various work hours and times recognizing operational requirements and the flexible time employees need to create work life balance. Therefore, the workdays are:

1. 9 day work schedule in some areas
2. 8/6 work day (8 days at work and 6 days off work) in some areas
3. a 4 day work schedule week in others
4. shift work that encompasses weekends
5. on call work

Recommendation #1

Where there is a continuation of wage to the employee, Manitoba Hydro suggests that the reporting be extended to 8 company business days. Since there is no hardship on the employee, this permits the proper information to be identified by the supervisor, allows Workplace Safety & Health Committees to be notified and allows the company, in the event of a serious accident, to worry about the employee, accident investigation and any work practice change to try and avoid any further injury if it was due to equipment, situation, etc. The intent of this section is to provide for the employee, and as such should be the primary focus of the Board and the employers.

Issue 4:

18(1.1) Definition of “business day”: In subsection (1), “business day” means Monday to Friday, except a day that is a holiday.

Recommendation #1:

This definition should be updated and be placed under definitions to be consistent with how the Act is written.

Issue 5

Medical professional through their activities (Section 20 and 27(11)) can slow down resolution of a claim.

Background Document

Employers are fined for not complying with time lines posted by the Board. However, this concept is not equally applied across the fields. In many cases, medical professionals who exceed the medical guideline of 6 weeks cause delay in case adjudication.

Recommendation #1:

There needs to be a progressive fine system for medical professionals who do not comply with this system. It will also develop a level playing field for all individuals involved in a claim.

Issue 6

Personal Medical Information

Employers under the Personal Health Information Act, have a “need to know” an injured employee’s medical status. If an employee gives an employer a medical release, the authorized employer should be entitled to the employee’s WCB file.

Background Document

Manitoba Hydro has a wealth of Disability Management Services for its employees which include Case Managers, Medical Professionals such as an

Occupational Health nurse, a Psychiatric nurse, a Physiotherapist, contracted physicians and psychiatric personnel, placement officers, human resources specialists, union advocates and for those individuals who are removed from WCB but cannot still return to work, a Long Term Disability Case Manager. These individuals are very knowledgeable in facilitating cases and return to work procedures.

Therefore, in those cases where an employer does not agree with the adjudication, an appeal must be filed. Unfortunately, because of the lack of information supplied by the Board, the only way to gain that information and a full understanding of the injury is to appeal. The appeal gives access to information contained in the WCB claim file, which includes all the confidential medical information, related to an employee's injury, plus past medical information that may be relevant to the doctors. A mechanism to create a level playing field and partnership must ensure that an employer has the same information as the Board.

Recommendation #1:

Change the Act to allow a medical release to give an authorized employer access to an injured employee's WCB medical information. In addition, The Board should maintain the current appeal process.

Issue 7:

WCB and/or the employer should be allowed to purchase, contract or arrange expedited, cost-effective medical support and/or services.

Background Document

Injured employees need to receive the best medical attention as soon as possible after an incident. Due to current healthcare problems, the correct, early, effective intervention and treatment may not be available thereby affecting the healing process and the potential for successful return to work. Additionally, an prolongation of effective diagnosis, treatment, or recovery periods has a negative impact on the individual and their family financially and on their quality of life.

Recommendation #1:

Change the legislation to permit WCB and/or the employer to purchase, contract or arranged expedited, cost-effective medical support and./or services.

Issue 8:

Allow independent medical examinations at the employer's request.

Background Document

There is a need for an appropriate evaluation by a physician, chosen by the employer, in situations where the employer deems the period of disability to be misaligned with the perception of injury severity. Although these cases are rare, they do occur, where the medical community may not fully understand the nature of the work, the injury/incident details, nor the possibilities for accommodation. This evaluation would be under the FIPPA/PHIA guidelines.

Recommendation #1:

Introduce legislation that would allow independent medical examinations at the employer's request.

Issue 9:

Occupational Disease definition is inconsistent with current concepts of causation of disease. Secondly, medical professionals need to be educated on recognizing and diagnosing occupational diseases to ensure proper treatment and reporting.

Background Document

Experts have stated that the definition of "occupational disease" used in the Workers Compensation Act is inconsistent with current concepts of causation of disease (Sections 4,17,and 105 of W200). The Workers Compensation Board (WCB) accepts a disease as occupational when occupational factors are deemed the dominant cause of the disease. To have a claim recognized requires that the occupation was the dominant cause of the disease. To facilitate this, the Board can only accept a claim when epidemiologic studies show double the risk. Many cases of workplace occupational disease occur in situations where the risk is not doubled.

The use of a “dominant cause” criterion creates a high burden of proof to demonstrate occupational causation for multi-factorial diseases when workplace and non-workplace exposures interact in the development of the disease. Many of these problems arise because employee’s compensation is a caused-based compensation system, that is, it provides compensation to a disabled person based on the cause of the disability – not on the basis of any other possible criteria. Therefore, many cases of disease where workplace factors played an important role are not recognized as work related.

Recommendation #1:

All occupationally related diseases should be compensable and apportioned to the company or companies that were the source of exposure.

Recommendation #2:

WCB should form an industrial disease panel to create and catalogue a schedule of industrial diseases. This panel would be comprised of multi-sectorial representatives from business, labour and the medical community. The Panel’s primary focus would be creating and maintaining a schedule of industrial diseases, developing criteria for the acceptance of claims, education of the medical community, identifying hazardous products and practices with workplaces and diseases, and written codes and standard clarifying the above.

Issue 10

The Workers Compensation Act should be consistent with existing Human Rights Statutes.

Background Document

Manitoba Hydro operates within the provisions of The Human Rights Code of Manitoba including the requirement to reasonably accommodate injured workers in their return to work. However, many employers do not understand how the various Human Rights Code apply to employees returning to work.

While the duty-to-accommodate already exists within various Human Rights Codes/Acts and these statutes make the appropriate demands on employers to facilitate suitable re-entry in to the workplace by an injured or ill employee, a clear link to the Workers Compensation Act is still required.

Recommendation #1:

Provide linkage to Human Rights legislation to clearly describe the duty to accommodate.

Recommendation #2:

Creating and distributing Information booklets for employers to facilitate re-entry (accommodation) would be of great assistance to all parties involved.

Issue 11

Tracking of Medical Appointments for companies that offer a continuation pay should be stopped.

Background Document

Manitoba Hydro pays their employees on a continuation of pay. When an employee returns to work and has a medical appointment related to their WCB claim, Manitoba Hydro does not dock that employee time for attending a WCB medical appointment if these appointments are less than 4 hours. The Board wants this information reported to ensure an employee receives their tax break as well as for statistical purposes. Recording this information costs the corporation much more than any benefit to the employee. Often or employees do not want this information recorded.

Recommendation #1:

Where there is a continuation of pay, the medical appointment is under 4 hours, and no lost benefits to an employee; medical appointment tracking should be discontinued.

Issue 12

Cost Analysis of all Recommended Amendments

Background Document

Manitoba Hydro supports that any changes to the Workers Compensation Act be accompanied by a comprehensive cost analysis and that this be included in the Review Committee's report. It is further recommended that reviews of the cost analysis be carried out at one, three and five year intervals to assess the

accuracy of the initial forecast. Financial accountability is a crucial element in managing the affairs of the Workers Compensation Board. Any changes that occur resulting from this review be cost analyzed and cost justified. Effective cost management must always be a primary concern of the Workers Compensation Board.

Recommendation #1:

Implement one, three and five year reviews to compare the forecasted costs to the actual costs.

Issue 13

Permanent Impairment Awards

Background Document

The basic methodology associated with the Dual Pension system should remain unchanged, as it is not only fair but also consistent with most other jurisdiction in Canada. However, it is recognized that there is inequality associated with the compensating of employees over the age of 45 as well as the monetary levels of the impairment awards.

The “Dual Pension” method, employed by most other Workers Compensation Boards in Canada, compensates all employees equally for their impairment regardless of earnings or profession. Dual Pension address the physical loss and the impairment had on the employee’s ability to earn the same as they had prior to the accident. If the employee’s earning capacity has been negatively affected by reason of a permanent impairment, the employee will receive wage loss benefits until retirement or until the loss of wages no longer exists.

The aging process appear to have factored in the determination of the impairment award which recommends reduction by 2% for every year that a employee’s age exceeded 45 to a maximum of 40%. It appears that this concept is predicated upon the employee’s life expectancy and the tenet that the older the employee, the shorter the period of time that he/she would have to suffer with their impairment. While this may have been reasonable in the past, reality is that life expectancies have increased. As a society there is a focus on quality of life issues which an injury will definitely impact upon. Employees under the age of 45 should also be recognized that they would have longer to suffer with their impairment. Therefore, the retention of the 2% principal be

amended to recognize the under age 45 recipients. (Specifically, that for every year under 45 years of age, a employee's impairment award will increase by 2% to a maximum of 40%). Across various jurisdictions, it has been noted that the monetary aspect of the impairment awards has simply not kept pace with most. Economically, Manitoba compares well with the province of Saskatchewan and therefore it is recommended that this province consider adopting a schedule similar to the one used in Saskatchewan.

Recommendation #1:

Employees have their impairment awards increased by 2% for every year they are under the age of 45 to a maximum of 40% and that the monetary aspect of the impairment awards is amended to reflect a schedule similar to that, which is currently in place in the province of Saskatchewan.

Issue #14

The Workers Compensation Act Organization and Development of Employee and Employer Guidebooks. The Act should be reorganized to provide better logic to its order and help users locate/access information by including an index.

Background Document

The Workers Compensation Act needs to be re-organized with an accurate descriptive table of contents. The Act should follow other Acts and regulations by design and start with "Definitions" and finish with "General" which would encompass the administrative aspects of compensation. Too many policies digress from the Act and add interpretation differing from the Act. Clear direction must be applied in policies that are analogous to the Act.

Recommendation #1:

The Workers Compensation Act be completely rewritten in the simplest and most comprehensible language possible ensuring understanding by the constituents, workers and employers. Policy documents should not be required since the intent of the Act is clear. In addition a Code of Practice may be required should clarification be needed.

Recommendation #2:

The Act should be updated to today's standard removing or revising outdated sections, such as the reference to specific diseases and condition (hernia, dermatitis, neurosis and silicosis) and the "mortality" clauses.

Recommendation #3:

A guidebook similar to that offered by Manitoba Public Insurance to claimants be developed for employees and a comparable book be developed for employers.

Recommendation #4:

Policy documents, if required should be written in clear language and relay directly to the Act.

Conclusion

Manitoba Hydro endorses a system that equitably, swiftly and suitably provides care and compensation to injured or ill employees. Manitoba Hydro also recognizes the need for a system that works with and respects all stakeholders. As a Crown Corporation, we expect and acknowledge a fiscally responsible management approach in implementing and evaluating all activities of such a system. It is our intent to have the Act improved for ease of use and implementation.

Respectfully submitted on behalf of Manitoba Hydro,

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