

WORKERS COMPENSATION ACT REVIEW
SPRING 2004

SUBMISSION OF UFCW LOCAL 832

FULL DOCUMENT

SPEAKING NOTES

1. OPENING REMARKS

UFCW Local 832 was founded in 1938, when it was chartered by the International Union. Between 1964 and today we have grown from a local of 700 to over 15,000 members. We continue to grow while meeting the needs of working Manitobans throughout this province.

We are the largest single voice representing working people employed in the private sector.

Local 832 members live and work in all areas of Manitoba. Industries where Local 832 members work include retail, food processing, health care, security, industrial, the garment industry, transportation, and many others.

UFCW Local 832 is proud of its history, but our focus is on the future and ensuring that we remain in the forefront of progress and change on the Manitoba labour scene. Local 832 answers today's challenges with bold and innovative solutions that win new benefits for members while protecting the gains made during the past 65 years.

There are many employers in this province. Some of them have been unable to see any profit in health and safety at work. Efforts have been made by economists to attach monetary values to subjective costs leading to firms that are both economically rational and socially unjust. Some researchers suggest the prevalence of occupational injury and disease is underestimated

globally: it's true economic effect is likely to exceed that of malaria due to it's universal and immediate relationship to production.

All these injuries and illnesses are meant to be managed by the Workers Compensation systems. How they are managed is entirely dependent on the legislation enacted to protect the interests of the workers. We must revisit the original reasons for implementing these systems.

Prior to such legislation, injured and ill workers had no choice but to fight for compensation from their employer through the courts, where access was limited for those with little money. Those workers were never compensated. Others did sue but were unsuccessful in court. They too were never compensated. Some did win their suits and in those cases, many workers won big- receiving large awards that cost their employer vast sums of money. The employers kept lawyers on retainer, paying significant legal fees in addition to large awards imposed by the courts.

Our focus today is on amending the current Workers Compensation Act of Manitoba. On behalf of our more than 15,000 members, many of whom have been injured or made ill by their work, we come to you in order to affect positive change, not just for our members but for all working Manitobans.

We congratulate and commend this government and the Review Committee for taking on the huge job of bringing our legislation up to standards meant to meet the realities of today's work environment and the very real needs of injured Manitobans.

We want to see positive changes in many areas.

1. INCOME LEVELS AND WAGE LOSS BENEFITS

Entitlement to wage loss benefits should begin on the day of injury.

- Currently, the WCA Act does not provide wage loss benefits on the day of injury.
- It was expected that employers will pay those lost wages.
- That doesn't always occur, leaving the injured worker with a financial penalty for his/her injury.
- Wage loss benefits must be calculated from the day of injury.

Wage loss benefits should be calculated ensuring 100% of loss is paid.

- Under previous governments, we witnessed changes in legislation and Board policy that sought to ensure injured workers did not "benefit" financially as a result of injury.
- To make this happen, they introduced series of convoluted and confusing policies to calculate weekly wage loss rates.
- What workers end up with is a weekly rate loosely resembling 90% of their regular net salary.
- We believe workers should receive 100% of their lost wage.

Wage loss benefits should remain at 100% throughout the claim.

- The Tories believed that injured workers needed financial incentives to get them back to work.

- So, regardless of the seriousness of an accident, or the functional ability of an injured worker, after 2 years on claim, their entitlement to wage loss benefits is reduced to 80% of their regular net salary.
- This is both morally wrong and represents a significant injustice to injured workers.
- They should not be further penalized for suffering a significant injury.

Deductions for CPP and EI must stop.

- When calculating the weekly wage loss benefit rate, the current WCA Act allows the WCB to consider and deduct the contributions an injured worker would be making if they were still at work.
- Now, keep in mind these deductions are not submitted to either agency on the workers behalf.
- The amounts are used only to decrease the amount of the weekly benefit rate paid to the injured worker.
- This must stop.

Weekly benefit rates must never be less than minimum wage levels.

- There are many cases of low wage earners being injured at work.
- In those cases, the current legislation and policy allows the workers weekly benefit rate to fall below the minimum hourly wage rate.
- This practice leaves the workers and their families in dire straits.

- This government has recognized the need to provide a minimum wage level in other legislation.
- We commend them for that.
- Now, we want to see the same protection extended to injured and ill workers involved in the Workers Compensation Act.
- No one in this province should be expected to live below this minimum standard, especially someone who is not working due to a compensable injury.

Weekly benefit rates should have no ceiling.

- The current legislation and regulations have placed a ceiling, the current regulation cites \$56,000, on the maximum annual salary that will be considered when calculating entitlement to wage loss benefits.
- This means those injured workers, who are high wage earners, will lose substantial amounts of income, should they be forced to miss time from work as a result of a workplace injury.
- This is inherently wrong and punitive.
- The ceiling must be removed.

2. IMPAIRMENT AWARDS

- The last legislative review resulted in huge savings for the WCB and the employers in this province.
- These savings were realized on the backs of injured workers who have suffered a permanent impairment, including those who are permanently and significantly disabled.

- We represent workers who have been maimed on the job.
- Their impairment awards are often degrading, reminding those who've lost limbs and digits of how little their bodies are actually worth.
- How much would you charge for one of your fingers? Our members get very little for sacrificing a body part to get the job done quickly and efficiently for the employers of this province.
- Those who suffer a permanent disability affecting each and every area of their life, including the provision self care, are given sums between \$90,000 and \$100,000.
- This sum is expected to meet the very real and unrelenting physical needs, such as securing medical assistance and support, associated with their disability.

3. OCCUPATIONAL DISEASE

- Workers are exposed to a myriad of substances both at work and at home.
- Today, all province have workers' compensation legislation that compensates occupational disease victims.
- This was not always the case.

What used to happen?

- Many courts construed early workers' compensation statutes to deny recovery for disease, reasoning that the statutes were intended only to codify common law remedies while eliminating defenses and fixing recovery.
- By this logic, they did not compensate for disease because the common law did not.

What happens now?

- Some jurisdictions still seek to limit coverage to diseases peculiar to the workplace, thereby excluding ordinary diseases of life and eliminating coverage for a significant amount of occupationally related disease.
- Our current legislation places a heavy burden on the ill worker who must establish the connection between workplace exposure and disease.
- This burden of proof is compounded by long latency periods, multiple causes, effects of synergism, and statutory minimum-exposure requirements, all of which combine to keep the rate of compensation for disease low.
- It has been estimated that only 5 percent of occupational disease may be covered by workers' compensation, thus providing a possible disincentive to employers to internalize the costs of occupational disease with preventive measures .

What do injured and ill workers need?

- We are looking for considerations based on fairness while others who come here may rest their case on issues of economic efficiency.
- A compensation model based on a criterion of economic efficiency must always begin with the proposition that “ the cost of the product should bear the blood of the working man.”
- We can't accept that premise.
- Despite the very real differences between workplace injury and disease, we wish to treat them within the same compensation framework as a matter of fairness since the employer is the one who most directly benefits from the artificially decreased cost of production.

- What kinds of things are workers exposed to while in the course of their duties? Lead, Sharps injuries, Indoor smoke from solid fuels, Outdoor air pollution, Occupational carcinogens, Occupational airborne particulates, and Occupational noise to name a few.
- Employers are currently left off the hook in terms of accepting responsibility for illness and disease linked to the use of and exposure to workplace chemicals and toxins.
- How can this be? The WCAct says that workers made ill, must prove their workplace exposure was the dominant cause of the development of their disease.
- The often complex and confusing nature of exposures and medical findings, research and opinions can make this burden insurmountable to many.
- Justice and fairness has been denied in those cases.
- The dominant cause provisions must be removed.
- An Occupational Disease Panel should be established to research epidemiological studies and to establish a schedule of occupational diseases.

Remove workplace stress exclusion.

- The Filmon government's amendments specifically excluded stress as a compensable condition.
- Those regressive amendments coincided with the most turbulent time of change for working Manitobans.

Does stress really cause health problems?

- Our bodies are designed, pre-programmed if you wish, with a set of automatic responses to deal with stress.

- This system is very effective for the short term "fight or flight" responses we need when faced with an immediate danger.

- The problem is that our bodies deal with all types of stress in the same way.

- Experiencing stress for long periods of time (such as lower level but constant stressors at work) will activate this system, but it doesn't get the chance to "turn off".

Stress in the workplace can have many origins or come from one single event. It can impact on both employees and employers alike. Fear of job redundancy, layoffs due to an uncertain economy, increased demands for overtime due to staff cutbacks act as negative stressors. Employees who start to feel the "pressure to perform" can get caught in a downward spiral of increasing effort to meet rising expectations with no increase in job satisfaction. The relentless requirement to work at optimum performance takes its toll in job dissatisfaction, employee turnover, reduced efficiency, illness and even death. Absenteeism, illness, alcoholism, "petty internal politics", bad or snap decisions, indifference and apathy, lack of motivation or creativity are all by-products of an over stressed workplace.

(From: Canadian Mental Health Association, "Sources of Workplace Stress " Richmond, British Columbia)

- It is exactly these conditions that are currently excluded.

The body's "pre-programmed" response to stress has been called the "Generalized Stress Response" and includes:

- *increased blood pressure*
- *increased metabolism (e.g., faster heartbeat, faster respiration)*
- *decrease in protein synthesis, intestinal movement (digestion), immune and allergic response systems*
- *increased cholesterol and fatty acids in blood for energy production systems*
- *localized inflammation (redness, swelling, heat and pain)*
- *faster blood clotting*
- *increased production of blood sugar for energy*
- *increased stomach acids*

(from the Basic Certification Training Program: Participant's Manual, Copyright© 1999 by the Workplace Safety and Insurance Board of Ontario)

- Occupational Stress must be included as a compensable injury.

4. CLAIMS SUPPRESSION

Some employers use a variety of methods to discourage and suppress the filing of WC claims. These include but are not limited to:

- Suggesting the worker apply for private health benefits.
- Responding with frustration and anger when a worker comes to report an injury.
- Blaming the worker for the accident and injury.
- Being slow to report accidents and injuries to the WCB.
- Offering incentives to those workers who don't miss time from work.
- Having injured workers sit and do nothing while being paid their regular salary, in exchange for not filing a claim.
- Assigning degrading alternate work to injured workers, ensuring those not yet injured will not want to file a claim and end up having to do that work.
- Harass workers to continually and repeatedly provide medical information relating to the injury.

- The Workers Compensation Board must enforce the current provisions and policies.
- In addition, amendments must be made to provide a progressive level of administrative penalty to those employers using such tactics.
- Finally, the legislation must be amended to enable the WCB to initiate court action(s) against such employers where necessary.

5. Duty to Accommodate

- Our experience shows that most employers are keenly interested in providing alternate work to injured and ill workers but only on a temporary basis.
- This means that injured workers will be compelled to return to the workplace, and in some cases they return immediately after receiving medical attention, when it is expected the alternate work assignment is temporary.
- We believe the association between the employer rate setting model, emphasizing each company's experience, has provided financial incentive to those employers wishing to reduce or control their claims costs and eventually their assessments.
- What we don't see is the same employer commitment to providing long term permanent accommodations.
- It is our position the employers of this province are compelled to do everything possible, up to a point of undue hardship, to accommodate our permanently injured workers.

- They must not offer only the least appealing job- with a “take it or leave it” attitude.
- They must not reduce the workers wages.
- They must be compelled to consider options for employment throughout the company, not just within the bargaining unit or current work area.
- They must work with the Unions and the injured workers themselves in order to achieve fair and reasonable accommodations for workers who, in many cases, have contributed their entire work lives to the employer.
- The Duty to Accommodate in the Canadian Workplace states that an employer and/or a union are required by law to accommodate an employee, unless the required accommodation would result in undue hardship to the employer or conflicting Bona Fide Occupational Requirements. The duty to accommodate applies to but is not limited to, initial job advertising, interviews, on-the-job performance and exit interviews.
- Duty to accommodate in employment entails an employer’s obligation to take appropriate steps to eliminate discrimination against employees and potential employees. The onus is on the employer to prove Bona Fide Occupational Requirements and Undue Hardship.

BONA FIDE OCCUPATIONAL REQUIREMENTS (BFOR)

- It is recognized that in some situations a limitation on an individual’s rights may be reasonable and justifiable. If a discriminatory standard, policy or rule is a necessary requirement of a job, discrimination or exclusion may be allowed.

- The Meiorin and Grismer court cases have set precedence and provided direction to employers for establishing reasonable and justifiable occupational requirements.
- These cases set out the following parameters to evaluate a BFOR :

Whether the standard is rationally connected to the performance of the job or service being provided:

- what is the purpose of the challenged standard?
- what are the objective requirements of the job or function of the service to which it applies?
- how is that purpose related to the requirements of the job or function of the service being provided?

Whether the standard was adopted in an honest and good faith belief that it was necessary to the accomplishment of its purpose:

- when, how and why was the standard developed?

Whether the standard is reasonably necessary for the employer to accomplish its purpose:

- were alternatives considered?
- can the respondent demonstrate that it is necessary that all employees meet a single standard or could different standards be adopted?
- how was the standard designed to minimize the burden on those required to comply?
- was the assistance of others sought in finding possible accommodations?
- what evidence exists that the respondent would face hardship if it adopted alternative standards or provided accommodation?

UNDUE HARDSHIP

- To substantiate a claim of undue hardship, an employer must show that they would experience more than a minor inconvenience. In many cases, accommodation measures are simple and affordable and do not create undue hardship.

- If accommodation would create onerous conditions for an employer, undue hardship occurs. Factors that can be assessed to determine if undue hardship would occur include :

 - Financial costs: Those significant enough to impact productivity and efficiency would need to be incurred to establish undue hardship. Lost revenue can be included when assessing financial costs, however if increased productivity, tax exemptions, grants, subsidies or other gains are a result of the accommodation, then undue hardship may not be a factor. Expenses incurred to comply with other legislation or regulations, such as building codes, are not considered as undue hardship.

 - Size and resources of the employer: The employer's capability to cover the cost of the accommodation(s) and amortize such costs can be assessed. A small business has fewer resources, whereas a larger organization has a larger amount of resources to support accommodation(s).

 - Disruption of operations: The extent to which the accommodation would prevent or disrupt the employer from continuing essential operations.

- Morale problems of other employees brought about by the accommodation: The impact on other employees can be considered, including overtime, stress, and increased workload.

- Substantial interference with the rights of other individuals or groups: Objections from others, based on valid concerns that the accommodation would interfere significantly with their rights or discriminate against them can be assessed.

- Interchangeability of work force and facilities: An employer's ability to assign or relocate employees to other positions on a temporary or permanent basis can also be considered.

- Health and safety concerns: The level of risk, responsibility of the risk and the impact on workplace safety are factors to be considered, such as if the accommodation would violate health and safety regulations.

- Undue hardship is different for each employer, depending on size, economic circumstances and more.

Principles to remember are:

- Provide accommodations in a respectful manner that will not stigmatize or disempower the individual
- Start with an open, creative mindset that is focused on the individual's strengths
- Involve the individual in the decision making
- Promote an environment that welcomes reasonable accommodation
- requests and respects confidentiality

- In the workplace, stress can be the result of any number of situations. Some examples include:

Categories of Job Stressors	Examples
Factors unique to the job	<ul style="list-style-type: none"> • workload (overload and under load) • pace / variety / meaningfulness of work • autonomy (e.g., the ability to make your own decisions about our own job or about specific tasks) • shift work / hours of work • physical environment (noise, air quality, etc) • isolation at the workplace (emotional or working alone)
Role in the organization	<ul style="list-style-type: none"> • role conflict (conflicting job demands, multiple supervisors/managers) • role ambiguity (lack of clarity about responsibilities, expectations, etc) • level of responsibility
Career development	<ul style="list-style-type: none"> • under/over-promotion • job security (fear of redundancy either from economy, or a lack of tasks or work to do) • career development opportunities • overall job satisfaction
Relationships at work(Interpersonal)	<ul style="list-style-type: none"> • supervisors • coworkers • subordinates • threat of violence, harassment, etc (threats to personal safety)
Organizational structure/climate	<ul style="list-style-type: none"> • participation (or non-participation) in decision-making • management style • communication patterns

(adapted from: Murphy, L. R., Occupational Stress Management: Current Status and Future Direction. in Trends in Organizational Behavior, 1995, Vol 2., p. 1-14)