

Submission #96



Manitoba Nurses' Union

**Presentation to the Review Committee
of the
Workers' Compensation Act Of Manitoba**

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Introduction:

The Manitoba Nurses' Union appreciates the opportunity to appear before the Workers Compensation Act Review Committee. The Manitoba Nurses' Union will address issues specific to our members, but also supports initiatives for change led by the Manitoba Federation of Labour. Injuries in the workplace and the challenge faced by injured workers in dealing with the 'system' are a problem that the labour movement as a whole confronts everyday.

Time loss injury statistics in the health care sector are shocking. In Manitoba for the year 2001 over 70,000 days were lost in health care due to a workplace injury. The average time lost in Manitoba across all occupations in 2001 was 17 days. In health care an average of 28 days were lost, with nurses filing between 18% and 20% of all claims.¹ Heavy workload, inadequate staffing levels, overtime and lack of proper equipment contribute to workplace injury occurrences. Back injuries continue to be most prevalent with nurses filing 19% of the 1250 back injury claims filed in 2001.²

The Manitoba Nurses' Union represents 11,000 nurses who work in a variety of health care settings across Manitoba, which include acute care, community and long-term care. Our members represent the overwhelming majority (97%) of unionized nurses in the province. Membership includes Registered Nurses, Licensed Practical Nurses, Registered Psychiatric Nurses and Operating Room Technicians. Our members are concerned with the challenges involved with the Worker's Compensation process, which include, but are not limited to the following: lost wages as a result of a workplace injury, occupational disease, return to work programs, employer access to personal medical information, and compensation claim suppression.



Lost Wages and Income Levels:

The Manitoba Nurses' Union supports recommendations to provide payment to workers for the day a workplace injury was sustained. Vacating the workplace to seek medical attention should not result in a loss of a day's pay. As the Act currently reads, the Workers' Compensation Board (WCB) is not compelled to compensate an injured worker for the day of the injury. To add insult to injury, workplaces that do not have income protection do not have to pay a worker for the remainder of that workday either.

Wage loss for an injured worker for the first two (2) years of compensation is determined to be 90% of the worker's net income. Included in the wage loss calculations during the first two (2) years are the deductions for Canada Pension Plan (CPP), Employment Insurance (EI) and Income tax. The deductions are subtracted from the worker's compensation income, but are not submitted to those agencies on behalf of the worker. Recommendations to eliminate the CPP, EI and income tax deductions from compensation claims are supported by the Manitoba Nurses' Union.

Sustaining an injury is extremely stressful physically and mentally. The burden is compounded if a worker is faced with a claim that extends beyond two (2) years. The Manitoba Nurses' Union supports recommendations to eliminate the current practice of recalculating and decreasing the wage loss to 80% after two years of compensation. Under the current formula workers that are experiencing challenges with recovery are being assigned fault for their injury and through an increased loss of income are being unjustly penalized.

Current legislation further penalizes many injured nurses through the maximum level of earnings for lost wages. Many nurses are at the top of their wage scale.



If a workplace injury occurred the potential to be penalized in excess of five thousand dollars exists for them. Recommendations to remove the ceiling of sixty thousand dollars per year on earnings so the benefit levels are based on 100% of a workers income are supported by the Manitoba Nurses' Union.

Recommendations:

- **Workers should not lose money as a result of a workplace injury on the day they are injured**
- **Wages should not be reduced to 80% of net pay after two years.**
- **As deductions for CPP, EI and Income Tax do not qualify to be submitted, these amounts should not be deducted.**
- **The maximum earning ceiling must be removed and benefit levels shall be based on 100% of combined personal income.**

Impairment Awards:

The Permanent Impairment Award System as it is currently administered requires a complete revision that is fairer to the injured worker. Workers over 45 years of age who suffer an injury resulting in a permanent disability have the flat rate compensation reduced by 2% per year for every year over 45 to a maximum reduction of 40%. Figures released in 2003 by Statistics Canada confirmed what the Manitoba Nurses' Union already knew – the workforce is getting older. The average age of the Canadian worker is 39.0 years compared to 37.1 in 1991.³ Manitoba nurses continue to experience a higher average age in the profession. The average age of a nurse in Manitoba is 47 years. If an 'average aged' nurse sustains a permanent injury in the workplace that worker is immediately

penalized by a 4% benefit reduction. The Manitoba Nurses' Union supports recommendations for a more progressive formula.

Recommendations:

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

Occupational Disease:

Health care is perceived by the public as a safe and healthy place to work. Studies across the country detail that health care providers are more likely to suffer musculoskeletal injuries than those in other industries.⁴ Nurses face the highest musculoskeletal injuries compared to any other group of Canadian workers.⁵ Nurses' time loss claims of soft tissue sprains, muscle strains and back injuries are more costly than those of fire fighters and police.⁶ Manitoba nurses working on orthopedic, medicine, neurology, surgical and long-term care units, are most likely to report the highest rate of back injuries.

Nurses also face other injuries such as: exposure to virulent and deadly biohazards, blood borne pathogens, asbestos and workplace chemicals which include sterilization liquids and chemotherapy drugs. A preventable workplace injury that nurses face numerous times through their shift is the possibility of a needlestick. Research states that one-third of nurses suffer such an injury. Unfortunately, it is also believed that needlestick injuries is an under reported workplace injury.⁷ Available to employers are several models of safety syringes designed to eliminate the need to recap the needle. The practice of recapping can account for 25 to 30 percent of all needlestick injuries.⁸ Employers cite the

high cost of a safer needle as a concern. Human costs are not part of the equation. The potential for a needlestick is as life threatening as an unguarded piece of machinery. A growing threat is Hepatitis C (HCV), of which there is no vaccine and no known cure. Researchers estimate that between 28 and 78 health care workers will eventually die every year due to exposure.⁹

The aforementioned workplace hazards may have varying time delays from exposure to onset of the illness. The Act needs to recognize and acknowledge these delayed occupational injuries and illnesses. The Manitoba Nurses' Union strongly supports recommendations to create an Occupational Disease Panel and a special department to research and advise on occupational disease.

Concern is also mounting with the substantial increase in nurses off work due to workplace-induced stress and psychological burnout. The Workers Compensation Board refuses to recognize this area of injury. Other organizations, the Healthcare Employees Benefit Plan (HEBP) Disability and Rehabilitation and the Employee Assistance Program have also expressed concern that workplace-induced stress and burnout may in fact be contributing to the many hours of lost time injury. In an effort to cope with excessive workplace induced stress, currently restricted in the Act, nurses utilize income protection or cancel shifts. The Manitoba Nurses' Union supports recommendations to remove restrictions on stress related claims and encourage the Review Committee to recognize work-induced stress as a compensable injury.

A safe and secure work environment is an undeniable right of every nurse and is an essential element of providing quality care. Employers, governments, nursing organizations and nurses themselves have a shared responsibility for ensuring a safe workplace. Nurses work in a wide variety of settings providing care to



individuals and families who may be mentally or chemically impaired, experiencing stress, or in danger of losing control. Sickness and potential life-threatening factors as well as staffing shortages raise levels of destabilizing stress in patients, their family members and personnel in the healthcare workplace. Such stress is seen to exacerbate the factors, which lead to violence.¹⁰ Violence against nurses must not be tolerated; a position of zero tolerance to violence is the only approach.

Recommendations:

- **Create an Occupational Disease Panel to research and establish a schedule of occupational diseases.**
- **Remove restrictions on stress related claims.**
- **Safe workplaces and zero violence policies**

Rehabilitation, Return To Work & Accommodation:

A challenge many injured nurses have expressed is the lack of understanding by rehabilitation staff with respect to the demands of the healthcare workplace. Nursing is a physically demanding profession involving the lifting and turning of patients, moving of beds and equipment, all of which involve twisting, pushing, pulling and bending. Nurses have indicated that the rehabilitation program had not addressed their recovery needs and injured nurses were expected to successfully complete their program far too quickly. The result of this expectation is that the nurse will either have an increased risk of failure and/or re-injury.

Resources need to be allocated for the development of a team approach for successful recovery. Planning of a rehabilitation and return to work program

must be accomplished through meaningful consultation between the nurse, health professionals which include occupational health physicians, the family physician, physiotherapists, psychologists, and occupational therapists, the employer and Worker's Compensation. Currently the assessment process appears to be based on a snapshot rather than an overall look of the injured workers situation. An early return to work can injure an employee if it isn't done with thoughtful consideration of the employee's injury, illness, or limitations. The Manitoba Nurses' Union strongly supports an employer actively participating and facilitating the rehabilitation and return to work of an injured worker. Any such worker must be supernumerary in nature.

Modified work programs make good business sense. Employers win reduced costs involving income protection loss, replacement costs, long-term disability claims, and Workers' Compensation claims. Experienced employees are a valuable resource. Replacing an injured or disabled employee results in higher training costs. The Manitoba Nurses' Union would also recommend the WCB develop a guideline or protocol for healthcare workers with respect to accommodation and return to work.

Under Human Rights Legislation, employers have a "Duty to Accommodate" their employees, however our union is alarmed at the lack of knowledge, understanding and accountability of employers regarding this issue. Nurses in many workplaces are discouraged when requesting accommodation; still others are offered work assignments that are meaningless.



The Manitoba Nurses' Union strongly supports recommendations to amend the Act to obligate the employer on Duty to Accommodate for return to work.

Recommendations:

- **Amend the Act to include a section that would obligate the employer on Duty to Accommodate for return to work.**
- **The WCB develop a guideline or protocol for healthcare workers with respect to accommodation and return to work**

Advocacy:

Entering the WCB system is often very intimidating to the injured worker. Every effort should be made to support the injured worker and accommodate any advocate they may chose to assist them in every aspect of interaction with WCB. From the onset of claim processing and including medical exams or meetings with compensation personnel, the worker should not be denied access to representation of his/her choosing.

Recommendations:

- **Advocacy policies need to be established which provide the worker access to support through the entire claim.**

Northern Office:

Members in the North utilizing the pilot office in Thompson have expressed satisfaction with the staff and efficiency of the service provided from this office. Workers in the North should have equal access to WCB services and the



Manitoba Nurses' Union strongly supports recommendations to mandate an office for Northern Manitoba.

Recommendations:

- **Provide an office for Northern Manitoba.**

Medical Information:

An employer may gain access to an injured workers file in two ways: one is by filing an appeal of a WCB decision, and secondly, before a decision is rendered by the WCB, an employer may request medical information from the injured worker's physician under the guise of developing a modified duties program for the injured worker. Workers are often intimidated into signing permission slips authorizing the release of medical information to their employer. The WCB must be the sole recipient of an injured worker's medical information. The Manitoba Nurses' Union strongly supports recommendations to remove employer access to medical information on workers' files.

Recommendations:

- **Remove employer access to medical information on workers' files from the Act.**
- **When medical information is required for a return to work situation, information must be accessed through a WCB case manager.**

Claim Suppression, Off-Loading and Collateral Benefits:

Claim suppression and/or intimidation of injured workers by employers is a very



real situation in many Manitoba workplaces. The Act provides for prosecution of individuals participating in activities that would discourage workers from filing a workers compensation claim. To our knowledge, no prosecutions under this language have occurred. Claim suppression and intimidation must be dealt with and the Manitoba Nurses' Union supports recommendations calling for administrative penalties or court proceedings.

It has also become apparent that the WCB offloads, or transfers the responsibility for payment of injury claims to health care disability plans or any other paying agency to reduce WCB costs. It is both easy and convenient to terminate a WCB claim knowing the nurse will alternately be covered by her disability plan. Consequently, the health care disability plan has been under increased pressure for years. A motor vehicle accident injury sustained during the course of a nurse's work routine, as an ambulance escort for example, may become the responsibility of the Manitoba Public Insurance. WCB must take full responsibility for workplace injuries and the continuance of payment of claims. The Manitoba Nurses' Union recommends a review of previously denied health care injury claims and an investigation into claims that may have been compensable by WCB.

The WCB policy with regard to collateral benefits requires a complete review. The WCB legislation allows for a maximum wage loss benefit of 90 per cent of net income for all workers injured at work. Workers seeking a recovery of the 10 per cent income loss through additional insurance are unable to do so. Prior to the development in 1988 of a long-term disability plan, workers in the health care sector were encouraged to purchase private disability insurance for themselves – and many did. Many nurses continue to maintain private insurance plans.

Nurses who sustain workplace injuries and receive payments from a private insurance have that amount deducted from the compensation payment. The Manitoba Nurses' Union contends that private insurance should not subsidize a workplace injury.

Recommendations:

- **Claims suppression, late reporting, delays or intimidating actions by anyone must be dealt with through either administrative penalties or court proceedings.**
- **Review and investigation of denied health care injury claims.**
- **Collateral benefit policy review.**

Conclusion:

A review of the WCB Act is long overdue and the Manitoba Nurses' Union supports positive change to support injured workers. In Manitoba there are many injured healthcare workers. Unfortunately, health care occupations lost time in Manitoba continue to top the statistics. An average of 28 days were lost in 2001, with nurses filing between 18% and 20% of all claims. The system must work with and for the injured health care worker.

The system, created almost 100 years ago, through the efforts of the labour movement, was to make workplaces safe and to provide injured workers with decent levels of compensation. Workers continue to be injured at work, are often intimidated into not filing a claim and in many cases experience a severe financial hardship due to their injury. The system requires more work and the Manitoba Nurses' Union will continue to lobby for an improved system for all workers.



Endnotes

¹ Information provided by Planning and Evaluation Department, Workers Compensation Board, May 19, 2004.

² Workers Compensation Board of Manitoba, Claims Database, Nurses Claims Data, April 2004.

³ Statistics Canada. "2001 Census: Analysis Series. The changing profile of Canada's labour force," May 8, 2004
<<http://www12.statcan.ca/english/census01/products/analytic/companion/paid/pdf/96F0030XIE2001009.pdf>>.

⁴ Canadian Institute for Health Information, *Health Care in Canada 2001*, p.86.

⁵ Canadian Institute for Health Information, *Canada's Health Care Providers*, p. 90.

⁶ Canadian Institute for Health Information, *Canada's Health Care Providers*, p. 88.

⁷ Canada. Canadian Centre for Occupational Health and Safety, "OHS Answers," May 18, 2004 <http://www.ccohs.ca/oshanswers/diseases/needlestick_injuries.html>.

⁸ Canada. Canadian Centre for Occupational Health and Safety, "OHS Answers," May 19, 2004 <http://www.ccohs.ca/oshanswers/diseases/needlestick_injuries.html>.

⁹ Service Employees International Union. Guide to Preventing Needlestick Injuries, 1998.

¹⁰ International Council of Nurses. "2000 Position Statement," May 17, 2004
<<http://www.icn.ch/psviolence00.htm>>.

