CUPE·SCFP | Canadian Union of Public Employees
Syndicat canadien de la fonction publique

MANITOBA REGIONAL OFFICE
703 – 275 Broadway, Winnipeg, MB R3C 4M6
Tel.: (204) 942-0343 Fax: (204) 956-7071 / cupe.ca / scfp.ca

To: Workers Compensation Act Legislative Review Committee

From: CUPE Manitoba

Date: March 31, 2026

Re: CUPE SUBMISSION TO THE WORKERS COMPENSATION ACT LEGISLATIVE REVIEW COMMITTEE

Please accept this as CUPE Manitoba's submission to the Workers Compensation Act Legislative Review Committee. The Canadian Union of Public Employees is Canada's largest union representing more than 800,000 members. As the largest union in Manitoba, CUPE represents approximately 40,000 members working in health care facilities, personal care homes, home care, school divisions, municipal services, social services, disability support services, childcare centres, public utilities, libraries, and family emergency services. We should also note that CUPE is proud to represent the dedicated and hard-working staff of the Workers Compensation Board (WCB) of Manitoba.

The Workers Compensation system in Manitoba is critical to the health, safety, and well-being of all workers in Manitoba. And while we are proud of our WCB and CUPE Members who work there, we know that there are things that should be done to improve how workers compensation works in Manitoba. In that spirit, please find below our recommendations:

CUPE Endorses Manitoba Federation of Labour's recommendations to the Committee

CUPE endorses all twenty-three recommendations from the Manitoba Federation of Labour submission as outlined below, and we direct you to the MFL submission for additional background information on each recommendation.

Recommendation 1: Amend the Act to contain specific provisions providing coverage for all workplace psychological injuries, including both chronic and traumatic stress injuries.

Recommendation 2: Eliminate internal Health Care Advisors altogether or, at a minimum, limit their role under the Act to assisting WCB staff to interpret (i.e., understand) medical information provided by workers' own doctors; WCB Health Care Advisors should not be permitted to generate new or conflicting medical information.

…/2

Recommendation 3: Eliminate the "dominant cause" standard of causation set out in the Act for occupational disease.

Recommendation 4: Establish a panel of experts to review the Schedule at least every two years, and any other time emerging evidence indicates a need to do so, and to provide advice and recommendations for expansion to the WCB based on the review.

Recommendation 5 (a): Provide the spousal/partner benefit from the date of fatality until the worker would have reached 65 years of age or the spouse/partner turns 65, whichever is longest.

Recommendation 5 (b): Provide benefits for each dependent child of a deceased worker in addition to the spousal/partner benefit.

Recommendation 5 (c): Require WCB to establish and contribute to a plan with equivalent benefits for a surviving spouse/partner and any dependents that would have been eligible under the employer-sponsored plan, for the duration of time they would have been eligible.

Recommendation 6 (a): Provide injured workers on wage-loss benefits for less than 24 months an amount equivalent to any contribution the employer would have made to an employer-sponsored pension plan while they are on wage-loss benefits, which the worker can invest in a personal retirement plan.

Recommendation 6 (b): Provide all injured workers with an amount equivalent to any contribution the employer would have made to CPP while they are on wage-loss benefits, which the worker can invest in a personal retirement plan.

Recommendation 7: Ensure workers' wage-loss benefits reflect increases to which they are entitled under a collective agreement.

Recommendation 8: Amend the Act's section on "Calculation of Net Average Earnings" to specify that probable deductions means what will be deducted based on the information available, including whether annual limits for deductions have been reached.

Recommendation 9: Eliminate the artificial cap on wage-loss and other benefits.

Recommendation 10: Eliminate the cap on insurable earnings.

Recommendation 11: Clarify the language on the interaction between wage-loss benefits and collateral benefits to ensure WCB wage-loss benefits are not reduced based on benefits received from other sources such as EI and CPP.

…/3

Recommendation 12: That WCB be mandated to develop a comprehensive Prevention Plan every three years, based on consultation with labour and employers, that will set out specific actions to address prevention priorities, including but not limited to the unmet prevention needs listed above, with clear targets for each priority. WCB should be required to publicly report on progress annually in a detailed way.

Recommendation 13: That the WCB undertake a comprehensive evaluation of the SAFE Work Certified program, including:

- Inadequate representation and participation of workers and unions in oversight and quality assurance of the program.
- Current total lack of independence in the process used to assign auditors to validate employers' achievement of standards, resulting in systemic conflicts of interest and perception of bias.
- Blacklisting of auditors that raise concerns with health and safety program deficiencies.
- No transparent process for raising concerns or complaints about an auditor or an audit.
- Complete lack of public reporting on quality assurance activities.

Recommendation 14: That the WCB develop and lead a Violence Prevention Strategy incorporating the experiences and input of unions and workers who are on the front lines of the workplace violence epidemic, and that this strategy include specific actions to be taken, dedicated resources, and clear accountability measures.

Recommendation 15 (a): That the WCB provide increased core funding to SWOT to allow it to continue and expand its important work, and collaborate with SWOT and the Department of Education to facilitate delivery of SWOT programming to all students and all schools in Manitoba.

Recommendation 15 (b): That, in keeping with the priority identified in the WCB's Five-Year Plan to provide prevention services to newcomers, the WCB provide support for the OHC's long-established Cross-Cultural Health and Safety Programming and explore the potential for new partnerships with the OHC to further shared goals.

Recommendation 16 (a): That the WCB Funding Policy be amended to require that, in considering whether a surplus distribution is warranted, the Board of Directors explicitly assess the results and needs of its prevention activities along with the adequacy of its current coverage and benefit levels, prior to approving any employer rebates. The Act should require that the Board of Directors publish a summary of its assessment and rationale.

Recommendation 16 (b): That workplaces where there has been a worker fatality within the last five years be excluded from any employer rebates, along with any employers convicted of an offence (such as claim suppression) under the WCB or WSH Act within the previous five years.

…/4

Recommendation 17: To reinforce an important principle of injury and illness prevention, remove the term "accident" from the *Workers Compensation Act* and Regulations and replace it with the more suitable term "incident."

Recommendation 18: Eliminate the category of Individually Assessed employers or, at a minimum, raise their administration fees.

Recommendation 19 (a): Increase the minimum penalty to a level that serves as a real deterrent, and have the amount escalate with every subsequent offence based on a percentage of the employer's payroll.

Recommendation 19 (b): Should the WCB choose to provide rebates to employers from the Accident Fund, exclude employers found guilty of claim suppression penalty during the previous five years from receiving a rebate.

Recommendation 20: Amend the Act to require that the WCB regularly consult with excluded industries, employers and workers, on whether they should be brought under mandatory coverage.

Recommendation 21: Require regular review of the Schedule to ensure the list does not inappropriately exclude occupations that should be included under mandatory coverage.

Recommendation 22: Extend mandatory WCB coverage to professional athletes.

Recommendation 23: Amend Section 27(5) to make explicit that an injured worker has the right to choose the health care provider or facility they will attend.

Further Recommendations

In addition to endorsing the above recommendations from the Manitoba Federation of Labour, CUPE is making the following recommendations:

Worker Centric Approach

Workers' compensation needs to be worker centric. This means that there be a clear vision and role: to support an injured worker to the extent of maximizing their recovery from their injury and restoring them as much as possible to their pre-injury employment status. This vision must incorporate the biopsychosocial model of disability, which is now the internationally accepted understanding of disability. This model includes a recognition that many barriers involved in a worker's disability are social and beyond the worker's control. The Board has an important and positive role in addressing each worker's disability, and for a work-caused injury, has the responsibility to do so. It must be recognized that some disabilities will truly need substantial support from the Board, often for life. This should include:

…/5

- Holistic process
- Early Intervention
- Individualized Approach
- Active participation of the individual
- Collaboration
- Qualification of Experts
- Monitoring and Evaluation

PREAMBLE AND STATEMENT OF PURPOSE

Preamble

Whereas the workers' compensation system has benefited injured workers and continues to serve both workers and employers well;

And recognizing that the historic principles of workers' compensation, namely the collective liability of employers for workplace injuries, guaranteed, no fault compensation for injured workers, immunity of employers and workers from civil suits, should be maintained;

And also believing that improvements to the workers' compensation system are desired to ensure that the workers' compensation system continues to meet the changing needs of workers and more adequately reflects the true costs, in both human and economic terms, of injuries arising out of the workplace and enable a holistic approach to the rehabilitation of injured workers;

And whereas it is important to advance efficient strategies for the prevention of workplace injuries;

And whereas the government has confidence in continuing to delegate to the Workers' Compensation Board the trusteeship of the compensation fund to manage it in the best interests of its main stakeholders, namely workers and employers;

And whereas the commitment exists to promote a greater understanding of this legislation, all efforts have been made to make this Act more readable.

Purposes

The purposes of this Act are:

a) to provide for an open and fair system of guaranteed, adequate compensation for all workers or their dependents for work-related injuries;
b) to promote recovery from workplace injuries through early return to work, appropriate health care as well as vocational rehabilitation, where required;

…/6

c) to maintain a solvent compensation fund managed in the interest of workers and employers;
d) to provide for fair assessments on employers;
e) to provide an appeal procedure that is simple, fair, and accessible, with minimal delays;
f) to combine efforts and resources for the prevention of workplace injuries, including the enforcement of health and safety law and regulation;
g) to establish a board of directors, with equal representation from workers and industry and a neutral chair to administer workers' compensation, health and safety for all industries;
h) and to ensure that workers, dependents of deceased workers, and employers are treated with compassion, respect, and fairness.

Issue: Use of Artificial Intelligence:

The use of artificial intelligence, including artificial general intelligence – an untested technology in workers compensation - does not align with a worker centric approach. The use of artificial intelligence should not occur in workers compensation claim adjudication and administration.

Recommendation 25: That artificial intelligence is not used in workers compensation claim adjudication and administration, and that artificial intelligence be subject to a new consultation process and review before being implemented in any capacity.

Issue: Decision letters rendered in lay person language:

Workers, families, employers, and third parties state that the decision letters are complex, bureaucratic and difficult to understand. Many workers reported not only being confused by these letters but also overwhelmed, humiliated or beaten down by having important decisions about their injury delivered through bureaucratic, incomprehensible jargon.

Recommendation 26: That a "Plain English" approach to decision letters be used. If this is adopted, form letters will need to be reformatted, and staff will need guidelines on how to adopt this approach in their written communications. I recommend that the Board engage a subject matter expert in "Plain English" adaption to ensure this approach is undertaken efficiently and professionally, as has been done by many other organizations. Changes to decision letters should include:

- Decision letters should set out the decision in the initial paragraph. The letter should then briefly summarize the key evidence and the reasons (from evidence and policy) for the decision.

- The literacy standard should be whether the average worker or employer with a grade 8 education could easily understand letter, including the key decision in the letter.

Issue: Role of Medical Advisors:

Adjudication of claims should not be the role of medical advisors. The medical advisor is not a practitioner selected by the worker, therefore, the role should remain collaborative and consultative. This would mean that they are not making direct decisions regarding the care the worker receives or decisions about the worker's fitness for work or for particular programs. By moving away from involvement in claim adjudication, they should be able to respond promptly to requests for communication, collaboration, and assistance.

A successful case management process should have defined milestones at which various decisions and/or assessments are made. These could include milestones for the following:

- Early clarification of the working diagnosis and treatment plan;
- Agreement for a suitable return to work plan in which all parties are engaged;
- Medical case review when there is delay in a return to work; and
- Standard medical case review to ensure optimal medical management.

Recommendation 27: Develop policy and practices to guide decision-makers in this new approach to health care management during the life of the claim.

Recommendation 28: Workers will have a choice in their health care provider, and the Board will supervise minimally and intervene only where the treatment is likely to impede or delay recovery.

Recommendation 29: The medical advisors will not adjudicate claims.

Issue: Chronic Pain:

Chronic pain adjudication often occurs without assessment or consideration of individual circumstances. There have been some major developments in the scientific understanding and classification of chronic pain. The World Health Organization (WHO) has adopted new ICDs, the latest revision of its International Classification of Diseases, including a new classification system for chronic pain. There needs to be differentiation between different types of chronic pain, improve patient outcomes by facilitating multimodal treatments and provide the ability to evaluate impairment of functioning resulting from chronic pain diagnoses.

Recommendation 30: That all necessary treatment to maximize their ability to RTW will be carried out, that there be a maximum award of up to 100% for chronic pain, and that chronic pain be adjudicated as psychological condition as well as a physical injury due to the significant overlaps.

Recommendation 31: Include consideration of the most current ICD Version of the International Classification of Diseases, including new diagnostic codes for chronic pain in the development of updating chronic pain policy. Provide for an individual assessment and a range of possible permanent impairments.

…/8

Issue: Interest payments on retroactive awards:

Workers' compensation claims can take years during the appeal process. During this time, workers have left with significant and onerous financial obligations. They incur debt, that has interest, yet the retroactive payments on claims decisions do not provide appropriate interest compensation. There should be payment of interest on retroactive benefits where injured workers have done without financial support to which they were entitled. This is an important step towards fairness and accountability in the decision-making culture.

Recommendation 32: That payment of interest retroactive benefits where injured workers have done without financial support to which they were entitled.

Issue: Equity lens, Indigenous persons lens, and gender-neutral lens applied to workers compensation:

A biopsychosocial approach to disability requires that there be a realistic assessment of a worker's barriers to recovery and employment opportunities, as well as an assessment of "impairment", before the disability can be reduced or managed. For a successful RTW to be developed with a Gender-based Analysis Plus (GBA+) lens, Indigenous persons lens, and equity seeking persons lens, the "barriers" to be assessed for a RTW plan must include factors that affect women, and persons from equity seeking and Indigenous groups, even if these factors have not been perceived as "barriers" to a RTW by men. This includes a consideration of their unpaid role in family responsibilities, the impact of changed hours of work and a changed work environment which may include exposure to harassment, discrimination, or danger in working alone.

Recommendation 33: That the legislation reflect that claims adjudication and RTW must include consideration of the worker's disability, and an assessment of the workplace duties from a GBA+ perspective, Indigenous persons lens, and equity seeking group lens.

Issue: Return To Work (RTW) and Accommodation:

RTW is primarily an employer exercise; the Board only enters the RTW arena when there is a dispute. Once the worker has RTW, the file is closed. This approach leaves the parties on their own, with little guidance and then is dispute and appeal oriented. For workers, the approach is problematic, especially for vulnerable or seriously injured workers. Injured workers are left to navigate the difficult task of aligning light duties with an injury, with an employer, to arrive at a suitable temporary work arrangement. Evidence may be scanty or not shared. Further, the process requires the injured worker to formally "object" to an offer of light duties and then "prove" the reasonableness of the objection with medical evidence which may or may not be available and which may or may not be accepted. This is at a time when the worker is injured and vulnerable medically and vocationally.

…/9

There is a need for a culture-shift in current processes to take an inclusive, holistic approach regarding RTW services. Education initiatives about the benefits of timely RTW; comprehensive reporting and sharing of a worker's limitations and abilities; improved access to health care; access to a dedicated, front-end RTW services team; robust decisions and claim monitoring to provide the right information to the right people at the right time; and ongoing problem-solving and timely dispute resolution are some of our suggestions to improve the RTW system.

In short, we believe robust information-sharing coordinated by an RTW team would go a long way to reflect a worker-centric delivery model that streamlines case management to ultimately improve confidence and satisfaction for all stakeholders.

Recommendation 34: Revise its Return to Work (RTW) policies and delivery service to accord with the International Social Security Organization (ISSA) International Guidelines for RTW and the Seven 'Principles" for Successful RTW which are the recognized best practices in return-to-work. Given that policies are well developed by the ISSA Guidelines and in other jurisdictions.

Issue: Age of Retirement and Disability Awards:

We heard from multiple workers that their disability does not end at age 65 or retirement, so why should their disability award on this date? In older age, they still had the pain and limitations and medical needs but no financial support. It is inequitable as it significantly disadvantages some workers, depending on when an injury occurs in a life. This may be reasonable for a traditional worker who is injured near retirement age and has a clear concept and/or plan for retirement. However, many workers are injured years before retirement and have not yet planned retirement. It is an impossible bar for a young worker who is highly unlikely to have considered retirement at all. And even if a person at, for instance, age 25 had formed some general intent about when to retire there are so many events, not taking a compensable injury into account, that would change those plans. It is also clear that injury changes everything. A compensable injury may reduce earnings and contributions to retirement benefits and not at all compensate for pension contributions or other ancillary benefits. Retirement plans get altered due to compensable injuries for other reasons as well. Compensation benefits are intended to compensate for the lost earning capacity resulting from the injury. The earning capacity is not fixed at the date of the injury.

Recommendation 35: Allow consideration of all relevant evidence regarding the actual impact of the injury on the workers likely retirement date, including evidence after the date of the injury.

Issue: Disability Awards (Pensions) maximization of payments:

Disability Awards, including Loss of Earnings should be based on the principle of maximizing the worker's earnings and should be the greater of the two. When the PDES does not adequately compensate for impairment of earning capacity, an assessment of the actual impairment of earning capacity must be done for the worker and the award was based on the higher of the two.

…/10

Recommendation 36: Workers will receive the higher of the permanent functional impairment awards and the Loss of Earnings award during the disability award determination process.

Issue: Collective Liability Model and the Experience Rating System:

The Experience Rating system is not working. The model incentivizes employers to suppress injury claims and under-report workplace incidents, undermining the foundational principles of the compensation system. As per the Super-Assessment in the Yukon, the principle of collective liability is used to place the priority on incentives that promote prevention initiatives and control of the hazards that cause injuries in the first place, rather than an incentive focused on controlling the claim costs after the injury has occurred.

Recommendation 37: Replace the experience rating with a return to the collective liability model.

Final Thoughts

In recent years, WCB has routinely run significant surpluses that were returned to employers - $95m for 2021, $118m for 2023, $122m for 2024. These surpluses have typically been equal to 50% of employer premiums. Governments and business lobby groups have been quick to praise these rebates – they assist companies with their bottom lines and make government look good – but they have come at significant opportunity costs to workers. WCB has a mandate to keep workers safe and to support workers and their families with workplace injuries and deaths. This review is an opportunity to address, in a wholistic way, current inadequacies of our system and to do so at a time when WCB clearly has ample fiscal capacity. We urge you not to let this opportunity go to waste.

MM/mn/cope491