

January 31, 2023

Hon. Don Morgan, Minister
Ministry of Labour Relations and Workplace
Workers' Compensation Review
Corporate Services Division
300 – 1870 Albert Street
Regina, SK S4P4W1

Submitted by email: legislation.labour@gov.sk.ca

Re: Legislative Recommendations of the Workers' Compensation Act Committee of Review

Dear Minister Morgan

Thank you for the opportunity to provide feedback on the legislative recommendations of the Workers' Compensation Act Committee of Review 2022. The Saskatchewan Chamber of Commerce (SCC) is the *Voice of Business* in Saskatchewan. The Chamber, which is supported by provincial businesses and local Chambers of Commerce, advocates for policies that increase the attractiveness and competitiveness of operating a business in Saskatchewan. The SCC appreciates the efforts of the Ministry and the WCB to continuously engage with Saskatchewan businesses to help build a workers' compensation system that works for everyone. The SCC has long advocated for broad recognition of the fact that there is a competitive advantage to operating a safe workplace; beyond the personal impacts, high injury rates disrupt operations, create replacement costs, and drive-up workers compensation premium costs. We continuously engage with our members on making safety a priority. Nevertheless, the SCC is also very mindful that with healthcare costs escalating, and the types of claims workers' compensation is covering changing, controlling costs is a challenge for the system. It is critical that government understand and pay close attention to the implication of WCB changes on the premium rate as Saskatchewan businesses, operating in a competitive environment, are the sole funder of the WCB system. With these considerations in mind, the SCC is pleased to offer its advice on the 2022 WCB Committee of Review recommendations that would require legislative amendment.

Recommendation 1

Make legislative changes to cover work-based learning programs by providing workers' compensation benefits to students

The SCC supports this recommendation. While the Chamber has not heard concerns regarding the current Memorandum of Understanding process, our members believe this recommendation can enhance clarity and legal certainty within the system.

Recommendation 2

Increase the minimum and maximum awards payable for permanent functional impairment in order to provide fairer compensation for permanently injured workers. The maximum awards should be

calculated using rate of impairment, reflect the workers' actual annual earnings and cannot exceed the workers annual earnings in the year that the accident occurred.

The SCC agrees there should be a mechanism to better reflect a workers' actual earnings in the situation of a permanent functional impairment but cautions against paralleling SGI and WCB; these are two different insurance programs with different primary funders and arguably different purposes since the *return to function* basis of the WCB is not mirrored through SGI. Further, the SCC is concerned with the impact of changing the minimum and maximum awards payable for permanent functional impairment on premium rates, this represents a tangible cost. Ultimately, the SCC supports recommendation two within the limits outlined. The SCC would not support increasing the maximum awards payable for permanent functional impairment beyond the amount recommended by the COR.

Recommendation 3

Amend subsection 80(2) of the Act to extend coverage of transportation of the worker's body to his or her usual place of residence, regardless of if outside Canada, where it is requested by the family of the deceased.

The SCC supports this recommendation. In the case of a workplace tragedy the SCC believes this is a reasonable, appropriate service to offer and our members accept the limited increase in premium rates it will represent.

Recommendation 4

Provide death benefits such as a one-time payment to the estate of a deceased worker who has no dependents, no parents or who has parents, non-dependent child

The membership of the SCC recognizes the limited financial impact of this recommendation on the system as a whole but questions the value this change will provide. Specifically, concerns were raised regarding the ability of benefits provided to an estate to reach non-dependent recipients. Concerns were raised over court costs and processes in such situations. Uncertainty was voiced regarding the benefit and necessity of this amendment. The SCC suggests that, if the Ministry decides to implement this recommendation, additionally perimeters be put in place, perhaps similar to the age guideline in SGI's no-fault coverage. The SCC suggests this recommendation undergo more consultation prior to implementation.

Recommendation 5

Amend subsection 93(3) of the Act to add a similar or same provisions as clause 93(1)(b) in order to provide equitable compensation to a worker's dependent children or other dependents regardless of if the injured worker parent had received benefits for less or more than 24 months before the worker passed away from a non-work-related injury

The SCC supports this recommendation. While representing a small cost increase, our membership agrees with the COR's observation that all dependent children whose injured worker parent dies of a condition other than the work injury should receive compensation for three months including those whose parent has been on a longer-term compensation claim.

Recommendation 8

Amend subclause 2(1)(ii)(iii) of the Act under the definition of a worker to remove the wording of executive officer. Coverage for a director could be similar to that provided to an owner or partner per General Regulations section 14 and POL 12/2020

The SCC supports this recommendation. The organization agrees this change will assist in clarifying the system and prevent the opportunity for additional compensation post-injury for a select few. The SCC continues to support the voluntary coverage for entrepreneurs but routinely finds limited awareness, and uptake, of this option among our membership. With this in mind, should the government implement this change, a targeted communication effort needs to be undertaken to inform the employer community.

Recommendation 11

Add subsection 174(3) of the Act to the list of administrative penalties in subsection 183(1) to create accountability if an employer breaches privacy of a worker's information

The SCC strongly opposes the implementation of recommendation 11. Small business owners, especially those that do not work in higher risk industries, often have no material expertise in the WCB system, nor the handling of medical information. Nevertheless, the SCC recognizes that more and more duties related to privacy and health are starting to be applicable to them. The SCC has repeatedly heard that clarity and education are needed to help all participants in the workplace understand their roles and responsibilities. In lieu of the application of penalties we believe the government and the WCB have a responsibility to assist employers by facilitating education and awareness, our organization requests that processes be put in place to formalize such supports.

Recommendation 12

Any amendments to section 174 of the Act to create an easier process for providing an injured worker's medical information to their employer would require a dispute mechanism for those workers who object to their medical information being shared with their employer

One of the most frequent challenges employers reference regarding the WCB is how difficult it is for them to get appropriate information to fulfill their obligations to the best of their ability. Plain communications and consistent staff practices can address some of these concerns, but ultimately employers also need to be able to access more information. Respondents to the SCC's request for information on this recommendation were unanimous in agreement that they, and the injury worker, would benefit from better information sharing but were mixed with regard to the capacity of the WCB to make appropriate determinations. Despite the WCB's notable efforts, there is still a broad sentiment among employers that they are perceived negatively by frontline WCB staff. Concerns were voiced that this perception might lead to poor information sharing. Ultimately, while the SCC is uncertain of the success of this approach, the current system for information sharing is not serving stakeholders well, therefore the SCC supports this recommended change. Our organization looks forward to continuing to work with the WCB to improve perceptions.

Recommendation 16

Clarify and adjust the legislation for psychological injuries to further address the issue of presumptive coverage in order to provide quicker supports. The Policy and Procedure Manual needs to support the intent of the Act.

The SCC would like to acknowledge the progress related to the handling of psychological injuries that the WCB has made since the 2016 changes particularly in light of the rapidly escalating number of mental health claims being submitted. The SCC recognizes the mental hazards of some workplaces and supports WCB benefits being provided to those impacted in the course of their employment. Nevertheless, the SCC cannot offer a position on this recommendation because of the lack of specifics regarding what 'clarify and adjust' will entail. We caution that the incorrect use of the presumptive clause can be disastrous for all parties, either employers being charged excessive premiums or injured workers not receiving the supports they are entitled to. As the scope of the change is unknown to the SCC membership, so too is the cost that employers will have to pay. Our organization agrees with the WCB acknowledgement in the COR report that more consultation should be done to gather particulars before any legislative changes are drafted.

Recommendation 20

Develop a communication strategy with the Saskatchewan Medical Association, the College of Physicians and Surgeons and Chiropractors' Association of Saskatchewan on the important role of the primary practitioner in the process to help guide the injured worker to return to work including providing details on their functional abilities, restrictions and limitations.

The SCC supports this recommendation. Employers have voiced concerns to the SCC regarding injured workers still being written off work for specific lengths of time by medical professionals without any awareness and/or consideration of the modified work arrangements a workplace can provide. The SCC would like to see the option to write an injured worker off work removed and medical professionals be required to provide a list of restrictions; employers would then be able to make an informed decision on their ability to accommodate.

Recommendation 27

Simplify the language and requirements and improve the processes in section 59,60, and 61 of the Act in order to increase the acceptance of the MRP Enabling Certificate applications and make it easier to find medical professionals who will sit on an MRP

The SCC did not receive adequate input from its membership to adopt a position on recommendation 27. Foundationally, the SCC supports the use of simplified language in all communications, as well as other efforts to facilitate expanded awareness among medical professionals on the importance of the Medical Review Panel (MRP).

Recommendation 33

Amend section 23 of the Act stating all decisions shall require reasons for the decision, and to include clarification of the significance of evidence used to make the decision.

The SCC overwhelmingly supports this recommendation and recommendation 34 to accompany it. The SCC has routinely heard support for the establishment of an external Appeal Tribunal for the WCB, directly contradicting COR recommendation 32. A primary complaint of those seeking an external tribunal is the perceived lack of fairness or reasonableness in the WCB Appeal Tribunal decisions. Adopting this recommendation, in conjunction with recommendation 34, will significantly address this concern. The SCC believes the operation of any appeals process, internal or external, should follow the

best available practices and principles while focusing on timely responses and transparency. Without all these elements the process loses credibility. In addition to the appeal process improvements this recommendation offers, publicly providing information on the Tribunal's reasons for appeal decisions will better enable employers, and workers, to self-determine appeal worthy cases, saving resources for all stakeholders.

Additional items

The SCC continues to recommend that *The Workers' Compensation Act, 2013* be amended to clearly allow non-unionized workers to serve as employee representatives. This could be done by delinking the definition of the term *labour organization* in the legislation from *The Saskatchewan Employment Act* and replacing it with one not tied to collective bargaining. Such a measure would serve to increase and diversify the pool of qualified candidates eligible to serve as employee representatives

Finally, the SCC recommends legislative amendments to formalize and strengthen the role of the Employer Resource Centre, similar to those provided to the Worker's Advocates in PART VII of *The Workers' Compensation Act, 2013*, be introduced. The SCC envisions the full role of the Employer Resource Centre as providing one-on-one confidential assistance and advice without a direct fee to an employer on issues such as claims management or appeals.

Conclusion

Thank you again for the opportunity to submit comments on the recommendations from the Workers' Compensation Board Committee of Review. The SCC applauds the WCB COR for the effort they undertook to draft the 2022 report and appreciates the conversations it has triggered. Saskatchewan employers understand the importance of the WCB and the legislation that governs and regulates it. Employers are proud to be partners in the system with the same ultimate goal, which is to see everyone home safe at the end of the day and to do everything within their power to help an injured employee on their journey to wellness. Nevertheless, employers are mindful of the cost of WCB to their business and want the system to function as efficiently and fairly as possible. We believe the recommendations made in this paper will help the WCB accomplish that goal. As a final word of caution, change inevitably catches people by surprise and employer resources are currently stretch incredibly thin. It is therefore incumbent upon the Ministry and the WCB to ensure that any changes are clearly explained and well communicated to the employer community. We welcome any follow up questions the Ministry might have. For clarity on any of these recommendations, please contact Kristin McKee at kmckee@saskchamber.com.

Sincerely,



Prabha Ramaswamy, CEO
Saskatchewan Chamber of Commerce