

# Brief Regarding the Review of the Worker's Compensation Board, 2020



Submitted to Occupational Health and Safety  
and WCB Policy and Legislation Branch

ALBERTA UNION OF PROVINCIAL EMPLOYEES  
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The Alberta Union of Provincial Employees (AUPE) welcomes the comprehensive review process for the Worker's Compensation Board (WCB). AUPE remains firm in our stance that strong labour laws and an effective WCB that supports workers and their families contributes to a stronger, healthier Alberta. Over the last several months, the government has made significant changes to the provinces labour laws. AUPE believes that this review of WCB should maintain or improve upon the many changes that were brought to the WCB in 2018, and that this review should not be used as a cost-savings tool or a mechanism to "reduce red tape".

AUPE is the largest public sector union in the province and represents approximately 95,000 workers across Alberta in four sectors: Health care, Education, Government Services, and Agencies, Boards and Commissions.

AUPE represents roughly:

1. 23,000 workers who are direct employees of the Alberta provincial government;
2. 58,000 health Care workers at public, private, and not-for-profit health care providers, this includes auxiliary nursing care employees and the general support services employees of Alberta;
3. 10,000 members in the Education sector who work in support roles at fifteen post-secondary institutions and three school boards across Alberta; and
4. 4,000 members at Boards, Agencies, and Commissions who work for a variety of mostly public sector employers like municipal governments and boards and agencies.

AUPE members provide vital services to the public; however, these workers are also members of our communities and contribute both socially and economically to the province. AUPE believes that a strong WCB system that focuses on the health and needs of workers contributes positively to the lives of all Albertans. The tragic historic cases of the Westray Mine explosion in 1992 in Nova Scotia<sup>i</sup>, the story of a worker crushed to death at a Burnaby construction site<sup>ii</sup>; the injuries that health care aides, LPNs, nurses and other health professionals have faced on the job; and the tragic case of the death of a care worker in Alberta<sup>iii</sup> all point to the dangers and risks that workers across sectors face every day when they go to work. Workers in the public and private sector deserve to have a WCB system that is centred on the realities of the current workplace conditions, including the prevalence of injuries and illness on the job. For the workers that Alberta has lost due to injuries on the job the families deserve to have a system that is built to support their needs, not the needs of corporations.

Our recommendations focus on nine areas with thirty-seven recommendations grounded in the Meredith Principles and a focus on workers' needs.

## **WORKPLACE INJURIES & FATALITIES IN CANADA AND ALBERTA**

Despite some of the devastating cases of workplace violence and accidents, legislation and work conditions continue to contribute to accidents and illness across all sectors in Canada. According to the National Work Injury/Disease Statistics Program and the Association of Workers' Compensation Boards of Canada, in 2018, there were 1,027 workplace fatalities in Canada. Nine of those were in health occupations.<sup>iv</sup> Of the 1,027 there were 349 that were related to traumatic injuries and disorders.<sup>v</sup> 652 of the fatalities in Canada were related to exposure to harmful substances or environments. In addition, 29 were related to body reaction and exertion, 15 cases were related to assaults, violent acts, attacks and harassment, 66 were related to falls, 155 were from transportation accidents, 78 were related to contact with objects and equipment, and 18 were from other events or exposures.<sup>vi</sup>

According to the National Work, Injury, Disease and Fatality Statistics report, in 2018, there was 162 fatalities in Alberta. This is higher than other similar jurisdictions. For example, British Columbia had 131, Saskatchewan had 48, Manitoba had 24. While Ontario and Quebec still have the highest numbers (334 and 226 respectively), Alberta is the third highest province for the year 2018.<sup>vii</sup> The 2017 and 2018 rates are highest years for workplace fatalities in Alberta, with the exception of 2008.<sup>viii</sup> In addition, in 2018, there were 264,438 time lost claims in Canada, with 28,048 accepted time lost claims in Alberta.<sup>ix</sup>

According to the Government of Alberta OH&S Statistics in 2018 there were 51,033 injury claims by workers. Across Alberta the top three causes of injuries to workers was: 22% due to overexertion, 19% related to falls, and 13% related to bodily reaction.<sup>x</sup>

For workers in the provincial and municipal government, education, and health sector for 2018 there were 11,953 injury claims by workers, and roughly three out of a hundred workers were injured.<sup>xi</sup> This is higher than the number of workers who were injured in the mining and petroleum sector in 2018 (one out of a hundred), which is often perceived as a more dangerous industry.<sup>xii</sup> According to the statistics, there were three areas with the highest rates of

injuries. This included 19% of injuries were reported by nurse aides, orderlies; 7% of injuries were reported by registered nurses and registered psychiatric nurses; 6% was reported by community service workers.<sup>xiii</sup> The ages with the highest rates of injury claims were 24% for workers within the 35-44 age range and 24% for those within the 45-54 age range. The most common types of injuries were sprains/strains/tears at 57%, superficial wounds 10%, and fractures/dislocations/nerve damage at 5%.<sup>xiv</sup>

AUPE has worked with and assisted our members who have experienced workplace injuries and illnesses, and we have seen firsthand how these incidents have impacted workers.

## **2018 CHANGES TO WCB**

According to the 2017 *Alberta Worker's Compensation Board Review Panel Report and Recommendations*, the panel notes that the core purpose of WCB needs to be to provide compensation to workers who have suffered workplace injuries or illnesses and helping them recover and return to work.<sup>xv</sup> The panel made sixty recommendations. Below are some of the highlights from their recommendations:

- I. "The best approach is to put the health and well-being of injured workers at the centre of the workers compensation system."<sup>xvi</sup>
- II. The establishment of the Fair Practices Office. This office serves as an ombudsman-type function for the worker compensation system.
- III. Increased assistance for employers and workers with regards to appeals and reviews. This report recommended that this be done through an Office of the Appeals Advisor (OAA) that would be relocated from the WCB to the Fair Practices Office.
- IV. "The use of a new roster system for independent medical examinations (IMEs)." The responsibility for the roster was proposed to reside with the Medical Panel Office which was suggested to be independent from the WCB.
- V. The report advocated for greater choice for injured workers with regards to selecting health professionals, rather than picking from a list of WCB-retained professionals.
- VI. "The establishment of an obligation to return workers to work, and an obligation to cooperate on the part of the workers". Through new policy, the report advocated that the WCB establishes protocols to ensure that these obligations are appropriate.
- VII. The report advocated for the use of "case conference models throughout the system", and a system wide commitment to focus on early and collaborative resolution of disputes.
- VIII. The adjustment of certain benefits, with a particular aim at addressing areas where hardship may exist, the permanent injuries of young workers, fatalities, retirement benefits or people who are affected in dramatic ways by the current application of WCB policies.<sup>xvii</sup>
- IX. Additional studies and reviews of the complex aspects of the system.<sup>xvi 1</sup>

While these were some of the proposed changes, according to their website, the WCB notes, the legislative and policy changes that were made in 2017 and implemented throughout 2018. These changes include:

- I. Effective September 1, 2018 a Code of Rights and Conduct that focused on the rights of workers and employers was brought in;
- II. Effective September 1, 2018 the WCB had the obligation to reinstate. The WCB provides information about the employers' obligation to return injured workers to work, and the workers responsibility to cooperate;
- III. Effective September 1, 2018 interim relief was introduced. This provides financial support to workers during the review and appeal process. This is provided in exceptional circumstances;
- IV. Effective April 1, 2018 changes to WCB included expanded psychological coverage. Coverage for workers experiencing psychological injuries was expanded. In addition, presumptive coverage for post-traumatic stress disorder coverage was extended to correctional officers and emergency dispatchers in addition to first responders;

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<sup>1</sup> Additional information on the policy and legislative specific changes that the Review Panel suggested in Appendix B of the Working Together Report, available beginning on page 9 of the Report.

- V. Effective September 1, 2018 an “extended appeal window was introduced, which extended the window for an appeal to two years after a decision from the Disputes Resolution and Decision Review Body has been made”;
- VI. Effective September 1, 2018 enhanced survivor benefits were introduced. In addition, effective January 1, 2018 a new lump sum benefit (up to \$90,772.20) was provided to the spouse or dependent(s) of a worker who has died as a result of a workplace injury or illness;
- VII. Effective September 1, 2018 continued coverage for injured workers under their employer’s existing health benefits program;
- VIII. Effective September 1, 2018 it was “confirmed that WCB will not estimate earnings capacity until all reasonable efforts have been made to help injured workers in the job search;”
- IX. Effective January 1, 2018 WCB policy was “updated to make it clear that workers have the right to choose their own health care provider”;
- X. Effective January 1, 2018 safety associations funded through WCB-collected levies received their grant installments from WCB “only after satisfying oversight requirement” as established by Occupational Health & Safety;
- XI. As of January 1, 2018: WCB legislation included a regular review schedule for every three years, and then every five years after that;
- XII. As of September 1, 2018: the maximum insurable earnings cap was removed. “Workers with a date of accident on or after September 1, 2018 will be compensated at 90% of their net earnings with no limit on earnings”;
- XIII. Effective September 1, 2018 the ability to adjust the benefits of a severely injured young worker was introduced, which allowed for the worker to be compensated closer to their earning potential in relation to what it would have been if they were not injured;
- XIV. Effective April 1, 2018 there was expanded presumption of myocardial infarction (heart attack) to include coverage for paramedics in addition to fire fighters;
- XV. Effective January 1, 2018 the Cost of Living Adjustment was based on 100% of the change in the Alberta Consumer Price Index. “The previous 0.5% reduction has been removed”;
- XVI. In January 2018, enhanced retirement benefits were introduced. These changes included:
  - a. “A new lump-sum benefit provided to workers who received an Economic Loss Payment (either temporary or long term) for two or more years before regaining their earnings capacity”
  - b. “Normal retirement age was extended to 65 years or 5 years from the date of the accident, whichever is later”
  - c. “Calculation change for retirement adjustment benefit”;
- XVII. Additional enhancements included: ensuring “that the approach to treatment and coverage reflects the individualized needs of each worker”, and that “the use of predominant cause for claim acceptability didn’t create an unreasonable threshold for eligibility.”<sup>xix</sup>

Some may argue that the 2018 changes placed greater strain on employers and on the finances of WCB. It is important to acknowledge that despite these changes the WCB is in a decent financial position. In 2018, the WCB had a funded ratio of 118.3%.<sup>xx</sup> Furthermore, in 2019 WCB had a \$278.7 million premium rate deficit; however, they were still able to end the year within their target funding range of 119.2% slightly above their 2018 rate.<sup>xxi</sup>

AUPE was pleased to see these changes to WCB in 2018, and we hope that this current review will continue to improve upon these amendments. With that in mind, AUPE makes the following recommendations:

**AUPE Recommendations:**

- I. **First and foremost, AUPE is strongly advocating that the WCB system and any amendments made to WCB or to the legislation be grounded in the Meredith Principles:**  
 AUPE continues to reaffirm our stance that the WCB system should be based on the Meredith Principles. The worker’s compensation system that is currently in place arose from a historic compromise between workers and employers. This compromise was founded on the recommendations of Ontario Chief Justice William Meredith in 1913. The guiding principles of workers compensation has become known as the “Meredith Principles”. These principles are:

- i. **No Fault compensation.** This means that there is no argument over responsibility or liability for an injury, and injuries are treated equally no matter how they arose. The worker and employer waive the right to sue. This shifts the focus on providing compensation and healing the worker.
- ii. **Collective Liability.** The total cost of the compensation system is shared by all employers who contribute to a common fund. Financial liability becomes their collective responsibility.
- iii. **Guaranteed benefits.** A fund is established to guarantee that compensation monies will be available for all injured workers.
- iv. **Independent administration.** The governing board is separate from government and both are autonomous and non-political. The administration of the system is focused on the needs of its employer and worker clients, providing service with efficiency and impartiality.
- v. **Exclusive Jurisdiction.** All compensation claims are directed solely to the compensation board. The board is the decision maker and final authority for all claims.

As noted above, workplace injuries continue to be a significant issue across Canada, but also throughout Alberta. This is one of the reasons that AUPE considers it so crucial to ensure that the WCB system is grounded in the Meredith principles. A return to the original purpose of worker's compensation, underpinned by the Meredith principles should be the ultimate objective in all reforms to policies, programs, and legislation.

## II. WCB & Gender Equity & Families in Alberta

- A. WCB has the ability to contribute to gender equity in Alberta. That is why AUPE is recommending that the enhanced survivor benefits be maintained. We are also recommending that the new lump sum benefit (up to \$90,772.20) that was provided to the spouse, adult interdependent relationship as defined under the *Adult Interdependent Relationship Act*, or dependent(s) of a worker who has died as a result of a workplace injury or illness be maintained or increased.

The reality is that many workers who are injured at work or who have died as a result of a workplace incident have spouses and children. Similar to their peers, women in Alberta have often faced significant economic and social challenges<sup>xxii</sup> - these challenges are often exacerbated when their spouse is injured or killed on the job.

Gender inequity in Alberta has recently been exacerbated by the recent COVID-19 pandemic. In a new report by the Royal Bank of Canada, the pandemic has caused women's participation in the workforce to drop to the lowest it has been in thirty years. This puts women back to the 1990's.<sup>xxiii</sup> In addition to the pressure resulting from labour force participation declines, women across Canada face additional pressure as schools, summer programs, and childcare centres have closed leaving a significant portion of childcare responsibilities on women.<sup>xxiv</sup>

- B. Furthermore, across Canada women are overrepresented in precarious work, i.e. minimum wage and part time work.<sup>xxv</sup> Women face significant challenges in the economy, and should their partner or spouse die at work these economic challenges are further exacerbated when their household loses one salary, that is why AUPE is recommending that this benefit either be maintained or enhanced. In addition, the 2018 changes to enhanced retirement benefits should be maintained or improved upon.

It is time for the Government to consider how broader systems of inequity can be impacted by the WCB system, and to consider bold and innovative policy approaches that address broader inequities in Alberta.

## III. WCB is not a cost-saving mechanism:

The underlying principle of WCB is to compensate workers for illness or injury experienced as a result of their work or workplace. The objective of the WCB system should always be to return the worker to employment safely. When a worker's injury is severe enough and they cannot return to work, workers' compensation helps to fill the financial gap. WCB also helps to ensure that public health and social service programs are not overburdened.

Unfortunately, over time in Alberta we have seen the focus shift from the health of workers to the bottom line of WCB, and to the operation of WCB as a cost-saving insurance plan. WCB is not, nor has it ever been an insurance plan. WCB funds are not public money, and only injured workers have access to them. As such, WCB should not be viewed from the perspective of "tax savings" for Albertans, or as a cost reduction strategy for the government.



AUPE is concerned that the review of WCB could be approached from the perspective of cost-savings for employers. We are also concerned that at times WCB has been viewed as “fully employer paid”; however, this is simply not the case, WCB premiums are included in the total compensation for workers. It is workers, who fund WCB premiums as part of their salaries. In the past, in WCB annual reports, website, and communication materials WCB has highlighted how they are keeping costs low for employers, updates on surpluses and rebates, and has pointed to resources where employers can further reduce their premiums. This is still evidenced today, in the 2019 Annual report, it states: “our Board of Directors used our strong funding level to offset what would have been a significant increase in employer premium rates.”<sup>xxvi</sup> AUPE is reiterating what we advocated for in 2016, which is that a focus on profitability and maintaining low premiums subverts the fundamental purpose of worker’s compensation and leads to inappropriate claims management, claims suppression behaviour, and point to other resources to help employers keep their premiums low. WCB was not intended to serve employers’ as a profit-driven insurance scheme.

This is why AUPE is advocating that surpluses not be provided to employers in the form of rebates, and that this restriction be imposed through legislative amendments. The surplus allows the WCB to create more opportunities to provide workers with the appropriate tools to return to their date of accident work, or to other work that is suitable for them if they can no longer do their date of accident (DOA) work. AUPE is also advocating that both the WCB policy and legislation need to be amended to ensure that any surpluses that arise are not provided to employers. We recommend that legislation be explicitly written so that any surpluses must be put towards worker safety and compensation programs rather than be distributed to employers.

In addition, vocational services have drastically changed, which has created a more fair and reasonable approach to workers finding new employment when no longer able to do DOA work. Current language still allows for employers to get surplus refunds just as the previous (Pre-2018) language did.

#### **IV. A ‘post’ pandemic WCB needs to Centre Worker’s Needs:**

With the rates of lost time claims and fatalities, the short and long-term impacts on workers from injuries and illness, and the potential financial impacts that workers could experience, AUPE has made the following recommendations in order to ensure that WCB is aligned with the needs of workers in Alberta.

1. WCB needs to continue to provide support to Alberta’s young workers. AUPE advocates that the government maintain the status quo on the ability to adjust the benefits of a severely injured young worker, which allows for the worker to be compensated closer to their earning potential in relation to what it would have been if they were not injured. Alberta’s young workers are the future of the province, and we need to continue to ensure that young workers can thrive in Alberta. Supporting young workers will contribute to retention, this provides both economic and social benefits for the province.
2. With a focus on the Meredith Principles, AUPE advocates that the government maintain the Interim Relief that was introduced in 2018.<sup>xxvii</sup> The interim relief that was previously provided by the Appeals Commission was only provided once the claim made it to their level of appeal. This can often take over a year. By the time that the worker is able to get their claim to this level of appeal the relief benefits were often too late. This requirement that was provided prior to 2018 meant that some workers were in financial ruin. If the changes were reversed significant financial pressure could be placed on workers. This pressure would be compounded should Alberta experience another recession. In addition, workers are already facing economic pressures due to the challenges that have arisen due to COVID-19.
3. AUPE advocates that presumptive coverage for PTSD for correctional officers, first responders, and emergency dispatchers be maintained. We are also advocating that, given the COVID-19 pandemic, and the impacts that we have seen due to stress on workers that presumptive coverage for PTSD be extended to all frontline workers including those in Government Services.

AUPE believes that this coverage should be expanded to cover additional classifications of workers, primarily to be extended to include all public sector workers. Prior to the change for presumptive language for traumatic psych injuries, these claims generally take a long time to be adjudicated. The WCB language is as follows:

*“A traumatic incident(s) is defined as a direct personal experience of a work-related event or directly witnessing a work-related event that reasonably and objectively assessed is:*

*- Specific, sudden, frightening or shocking and/or*

*- An actual or threatened death or serious injury to oneself or others or threat to one’s physical integrity.”*

The criteria to be eligible for a presumptive traumatic psych injury are very specific; however, the language is still flexible enough to allow for a claim to be denied or changed due to an aggravation of a pre-existing condition if the injury was found to not be related to the workplace injury.

We are advocating that the definition used for frontline workers extend beyond the scope of healthcare to include all public sector workers who have been working to keep Alberta functioning throughout the pandemic. The reality is that many frontline workers besides first responders experience high rates of PTSD and work in environments that raise the risk of developing PTSD through exposure to trauma and high levels of stress and fatigue.

Other jurisdictions currently cover more jobs than the Alberta legislation. For example, in 2018 British Columbia introduced presumptive coverage legislation and the expanded list of eligible occupations included: firefighters (paid and volunteer workers who are assigned to fire suppression duties); police officers; nurses regulated by the British Columbia College of nursing professionals including RNs, RPNs, LPNs, and NPs; emergency medical assistants including paramedics; corrections officers including wardens; emergency dispatchers for firefighters, police, ambulance, 911; and health care assistants registered with the BC Care Aide and Community Health Worker Registry.<sup>xxviii</sup> Other jurisdictions cover significantly more classifications. For example, Ontario covers fire investigators and members of emergency response teams. Nova Scotia covers workers in Correctional Institutions, nurses, and continuing care assistants. Alberta should strive to not only align with other jurisdictions, but to be a leader, particularly when it comes to supporting our frontline workers. This is especially important given the COVID-19 pandemic and the trauma and stress that many frontline workers across various classifications have experienced on the job.

In 2016, AUPE advocated that Alberta incorporate a similar approach to the Government of Manitoba, where the exposure conditions in the workplace that might lead to PTSD is the determining factor in a worker’s eligibility for presumptive status as opposed to the strict divisions based on occupational classification. In our current submission, we expand on this to argue that the classification system should not be used as the determining factor; however, given the COVID-19 pandemic and how COVID-19 spreads we must acknowledge that all workers regardless of workplace or classification are going to be in working conditions where they risk exposure to the virus.

While some workers, such as health care workers supporting patients on ventilators and those working in long term care facilities are at a higher risk of being exposed, the new reality is that most workers are at a risk of being exposed. This new risk of exposure and the stress that this risk as well as the virus has on workers means that workers are more likely to experience extreme stress, fatigue, workload issues and PTSD. That is why AUPE is recommending that through legislative amendments, regulatory changes, and changes to WCB policies that presumptive status is extended to all frontline public sector workers.

Granting presumptive status also encourages workers experiencing symptoms of PTSD to seek help, diagnosis, and treatment and alleviates some of the stigma that is still prevalent for mental health conditions.

4. AUPE is recommending that the extended appeal window to file an appeal up to two years after a decision from the Disputes Resolution and Decision Review Body (DRDRB) has been made be continued. AUPE is recommending that the two-year timeline should apply to the initial stage of denial at the Customer Service Level (Case Manager/Adjudicator) as well as to the DRDRB. All appeals should be given a two-year timeline.
5. AUPE is recommending that the continued coverage for injured workers under their employer’s existing health benefits program be maintained. This will help with the healing process and can help these workers return to work. This requirement should be maintained as status-quo. Workers should not be

penalized for having an injury by being required to pay the employer's portion of their health benefits. Many workers across Alberta put their lives and health at risk in order to provide vital services like long term care work or help build vital infrastructure in the construction industry. These workers should not be penalized for an injury.

6. Employers build the cost of benefits into a worker's wage, as such the employer is not at an economic disadvantage. For the employer this is a budgetary decision made once a worker is hired. If this provision is removed it would put workers at a significant disadvantage.
7. AUPE recommends that the practice of WCB not estimating earnings capacity until all reasonable efforts have been made to help injured workers in the job search be maintained.
8. AUPE recommends that the WCB policy that ensures workers have the right to choose their own health care provider be maintained, and that this be enhanced through legislative amendments. It is imperative that workers can go to a doctor that they trust, this will help the healing process.
9. AUPE recommends that the 2018 change to remove the maximum insurable earnings cap be maintained. Currently this entitlement is one of the best in Canada. AUPE wants Alberta's WCB system to be a leader amongst provincial jurisdictions.
10. AUPE recommends that the government explore how expanded presumption of myocardial infarction (heart attack) could be expanded to other frontline workers like social workers, LPNs, health care aides, correctional workers etc. who may face extreme stress on the job.
11. AUPE recommends that the changes that tie the Cost of Living Adjustment to 100% of Alberta's consumer price index be maintained or enhanced to be equal to or higher than CPI.

Alberta is a province with high wages and a high cost of living. A worker who has based their financial decisions on the salary they earn and future expected earnings growth, will be put in a difficult financial situation through no fault of their own if injured at work and relying on WCB. Cost of Living Adjustments that are to be equal to or higher than CPI will help ensure the injured worker or their families are not put in future financial difficulties. Similarly, failing to compensate a worker for the loss of their full earnings potential will or may force them to return to work while not fully recovered from their injury, raising the risk of re-injury, exacerbate their injury, and/or prolong their condition.

12. AUPE recommends that the enhanced retirements benefits be maintained or even enhanced. All Albertans deserve to retire with dignity, and enhanced retirement benefits help to ensure that Albertans who have experienced an illness or an injury on the job are still able to retire and not experience additional financial challenges due to an injury or illness.
13. AUPE is recommending that the Employer obligation to reinstate an injured worker under section 88.1 of the Worker's Compensation Act be improved by extending the timeline for this requirement from six months to one year.

The industries that rely on the WCB experience ratings are often the most dangerous ones for workers, and often have higher rates of accidents. Many workers in these industries that rely on the experience rating experience are being threatened and coerced into not filing claims.

Workers that report claims anyway often do so knowing that they will likely be out of work once they are fit to for modified work or to return to their date of accident job. The language does not require that employers have to take workers back for a determined amount of time if it is shown that it would result in undue hardship. However, employers who are not in a position of undue hardship must be required to find work for the workers that were injured on the job. Some may argue that there are other avenues that a worker could pursue, such as a Human Rights complaint. However, these complaints are often long and difficult for the average worker to navigate, and the awards often do not cover the total wages that a worker would lose through termination.

14. With regards to the continuation of WCB benefits for workers whose employment was terminated while on modified duties, AUPE provides the following opinion:

Before the 2018 changes, benefits were paid when workers were terminated even without the language that the 2018 changes put into the Act because WCB does not get involved in labour relations issues.



AUPE recommends that this requirement be maintained as status quo. At AUPE, we have seen cases where an injured worker is able to continue their health benefits (when they have them), and when they know that for at least a year they will have employment the worker tends to relax and they don't have to worry while they are trying to heal. By continuing this requirement this will ensure that workers can heal and return to work healthy.

There is no reasonable way for WCB to determine if a termination was with cause or not. Should language be altered it could create the possibility for employers to terminate workers, specifically non-unionized workers, without just cause while they are on modified duties in order to avoid their return to work obligations under section 3.2. At this time, Employment Standards does little to protect non-unionized workers, the WCB system should not exacerbate this gap. WCB should protect all workers including those who are non-unionized.

15. AUPE is recommending that the Occupational Diseases in the regulation be reviewed thoroughly every two years. We feel that given the recent pandemic and given that at this time scientists do not know the potential long-term health impacts of COVID-19 that this should be reviewed frequently.
16. With regards to physician choice AUPE is recommending that this remain status-quo. Even though the IME doctors are supposedly "independent", we have had the experience where there are some that often side with the WCB and even have a reputation as doctors that do so. In addition, some physicians also do contract work for companies that represent companies' interest. The system needs to be collaborative in nature and should be focused on ensuring that workers are healthy and can return to work. Potential conflict of interest and bias amongst the doctors could impacts this.  
  
Workers should not be forced to have to attend an IME with a physician who gets paid by employers or employer representatives to review injured workers medical.
17. With regards to LTCs AUPE recommends that employers be allowed to opt-in or out of this change. The stress on injured workers to go to the doctors right away after an injury to report and to determine if they are fit for modified duties or not is often very high. Unless the experience rating system is abolished, AUPE recommends expanding this for employers.
18. In recent legislation under Bill 22 (2019), WCB funds were placed under AIMCo. Unfortunately, it has been reported that AIMCo has lost significant amounts of their client's funds.<sup>xxx</sup> In fact, it was recently reported that: "the risk management controls were 'unsatisfactory', and that a culture change is needed" at AIMCo.<sup>xxx</sup> The WCB system is vital to both employers and workers, and it is essential that the funds be managed appropriately. AUPE recommends that the government roll back the legislative changes in Bill 22 (2019) that forced WCB to have their funds managed by AIMCo.
19. AUPE recognizes that other jurisdictions like British Columbia combine Occupational Health & Safety and Worker's Compensation. AUPE is advocating that these remain separate entities. This allows for both bodies to receive the funding that is needed to properly support both workers and employers.

**V. WCB is not a means of enhancing private health care:**

With the introduction of *Bill 30: Health Statutes Amendment Act (2020)* AUPE is concerned about how this legislation enhances the opportunities for additional privately-run health care providers in Alberta. We are concerned that this signals a greater emphasis on providing public funds to private facilities. WCB should not be used as a venue to further expand privately run clinics in Alberta. AUPE firmly believes in a publicly funded publicly provided health care system, because we believe that every worker and family in Alberta should be able to access health care when they need it, not just those who can afford it.

AUPE recommends that the *Workers Compensation Act* be amended to mandate that the WCB uses only public only health services. Currently, there are private clinics set up that employers can register and use. AUPE has always strongly advocated for publicly funded, publicly run health care. Publicly funded and run health care provides opportunities for ALL workers and patients, this is not the same in the private system, which provides opportunities for those who can afford it.

## **VI. Process and Governance:**

- I. With regards to the to the timelines for the appeal and appeal reconsideration process for the Appeals Commission AUPE is recommending that this remain status quo.
- II. With regards to the timeline for appeals to the DRDRB decisions AUPE is recommending that this be modified. AUPE is recommending that the two-year timeline should apply to the initial stage of denial at the Customer Service Level (Case Manager/Adjudicator) as well. The appeals should be given a two-year timeline. We feel that the extended timelines help to ensure the health of workers.
- III. With regards to the benefit of doubt provisions AUPE is recommending that the language stay the same.
- IV. With regards to corporate director liability AUPE is recommending that this remain the same.
- V. With regards to frequency of premium assessment and payment AUPE makes the following recommendation:

Premiums are based on payroll, and the employers must be required to file audited financial statements to the WCB showing the amount of payroll for the previous year. As some employers use December 31 and others use March 31 for their year-end reporting, all audited financial statements should be submitted to the WCB no later than June 30 of any given year. Premiums are set commencing January 1. As an example, the financial statements for 2019 are received no later than June 2020, reviewed by WCB, employers are advised in November, December, 2020 of their premium rate commencing January 1, 2021. WCB requires time besides the financial statements to also assess the employers' accident rating, identify any active three-year surcharges on their account or that need to be added. Billing should be in the form of the total amount or a monthly amount. Payment can be made monthly, however if an employer pays the amount in full on January 1 of each year, a 5% savings will be possible. In the event during any given year, an employer's experience rating is blemished due to an increase in accidents (two or more over the previous time period), WCB is authorized to immediately put on the surcharge in the year of the accidents. AUPE recommends that WCB should also advise the Safety Associations, if the employer is a member, of this surcharge and that this employer's health and safety, injury record, could impact their grant application for the next year.
- VI. AUPE is recommending that governance provisions remain as is. They should be in place to help facilitate the collaborative nature of the WCB system.

## **VII. Health and Safety Associations:**

Even though, Health and Safety organizations are charged with worker and employer education on accident awareness and prevention, they focus their injury reduction programs in order to get reduced premiums from the WCB. For example, they offer educational sessions to employers in relation to their industry; however, OH&S oversight does not ensure that cost-savings are not the goal of the employer. AUPE has asserted that OH&S is about keeping workers safe, cost-savings should not be the objective of any OH&S association. Despite the intended purposes of OH&S, some of their curriculum offered such as ensuring the employers get their certification under PIIR for reduced premiums, confirms that the emphasis has been on savings rather than worker's safety.

In addition, AUPE is concerned that some associations do not check to see if the association member meets the legislated requirements and actually has functioning joint health and safety committees. AUPE recommends that greater oversight be established to ensure that when employers take training information is brought back to workers.

With regards to Health and Safety Associations AUPE has three recommendations:

- a. The Minister must ensure that in the annual grant applications that a full curriculum, dates for when the sessions are offered, follow up visits to the employers are outlined along with operating costs for the associations that are accredited and listed on the WCB website including staff and travel expenses for the previous year and projected years spending.
- b. The Minister should also request that the associations provide an individual report at least twice a year. The Minister should advise Associations that their grants will be impacted based on the performance of the employers they represent and that a reduction in employer WCB premiums is not done until one complete year after their PIIR status has been attained.

- c. The Minister is provided by the Association with statistics on their members that include employer class attendance lists, worksite inspections and participants, coupled with a noticeable difference in the number of accidents from the year prior to PIIR, the first year of the designation of PIIR in effect, prior to authorizing a deduction in premiums for year two with PIIR forward. Any increase in accidents in a fiscal year of over 5% results in a 50% reduction in the premium forgiveness for employers and a 50% reduction in the Association's grant. Associations and/or employers who dispute this reduction would have to present the Minister's office with audited financial statements for the year previous showing a noticeably marked increase in their workforce over the previous year which may have contributed to the increase in accidents. This incentive will encourage the Safety Associations have to be proactive with their member employers, keep on top of education and changes in their industry and its equipment and also identify those employers whose safety records are impeding their ability to assist other members. The focus then will be safety first to obtain the savings, money second.

### **VIII. Legislative Review**

- A. Currently, the legislation includes a regular review schedule for the workers compensation system. AUPE is advocating that this be maintained, but that the legislation and its regulations be reviewed every two years. The economy has changed substantially over the last few months, and the last year, and we know that the pandemic has introduced new challenges into the workplace and has shifted workplace culture. The *Worker's Compensation Act* should be reviewed to take into consideration how the world and work has been shaped by COVID-19.

However, reviews should not be done as a means of "red tape reduction" or as a cost-savings mechanism. Reviews should be used to ensure that the Meredith Principles are at the core of the system, and that the system maintains a worker-centred approach. AUPE recommends that the review committee continue to include individuals nominated by employer groups, and worker groups. In addition, AUPE recommends that when individuals are nominated from the public that these individuals have significant experience as a worker. Meaning that individuals nominated from the public should not have a bias in favour of employers. In addition, individuals from the public should have experience with the WCB system and should be able to bring experience from a variety of sectors.

### **IX. Worker's Compensation Legislation Language:**

- A. The Worker's Compensation Act was amended in 2017 and a preamble was included. This preamble currently states:

*"Whereas the workers' compensation system in Alberta is founded on the principles of no-fault compensation, security of benefits, collective liability, independent administration and exclusive jurisdiction;*

*WHEREAS the purpose of the workers' compensation system is to provide appropriate compensation to workers who suffer workplace-related injuries and illnesses;*

*WHEREAS the central focus of the workers' compensation system is the health and well-being of workers;*

*WHEREAS it is recognized that the success of the workers' compensation system requires a commitment by all parties to work collaboratively with each other;*

*WHEREAS it is recognized that the workers' compensation system must be sustainable, affordable and fair in order to benefit workers and employers now and in the future;"<sup>xxxix</sup>*

AUPE recommends that should the legislation be amended that this preamble be maintained. This preamble is an important symbol of the collaborative nature of the WCB system. It also enshrines in the legislation that the purpose of this Act is to *"provide appropriate compensation to workers who suffer workplace-related injuries and illnesses."*<sup>xxxix</sup>

- B. Section 2 of the Regulations, and sections 56, 67, and 68 of the Worker’s Compensation Act cover worker’s compensation for Temporary Total Disability (TTD). Section 2 of the Regulation sets out the 90% for computations. AUPE is recommending that this should remain the same.
- C. AUPE recommends that the Act be amended in order to reflect any wage increases that are negotiated for Collective Agreements that have come into effect during the time that the worker is on TTD be recognized.

**CONCLUSION:**

The Alberta Union of Provincial Employees appreciates that the government is undertaking this review of WCB. However, we continue to reiterate our position that a review should be used to ensure that the WCB system is fair and equitable for workers and should not be used as a tool to find cost-savings or to “reduce red tape”. After the tragic workplace fatalities that we have seen across the country, a “reduction of red tape” is most certainly not the approach that we would like to see the government take. In many cases, things that are perceived as “red tape” are often regulations, changes to the Criminal Code like Bill C-45 (2004) commonly referred to as the *Westray Law*,<sup>xxxiii</sup> or enhanced labour laws have provided opportunities to help reduce the rates of workplace injuries and fatalities. Given the rates of incidents across sectors, we hope that the government utilizes this review to ensure that the WCB system is grounded in the Meredith Principles and focused on ensuring that workers are healthy and safe and not focused on the employers’ bottom line.

We appreciate the opportunity to provide our recommendations.

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