

144/2016

WORKING TOGETHER

ALBERTA WORKERS' COMPENSATION BOARD (WCB) REVIEW

WORKBOOK



2016/2017

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MESSAGE FROM THE PANEL

As the members of the Workers' Compensation Board (WCB) Review Panel, we are pleased to invite you to engage in this review process. The last comprehensive review of the WCB was conducted more than 15 years ago. The world has changed a great deal in that time.

The WCB provides coverage to over two million workers and thousands of employers across the economy. Individual workers, large industries, small and medium-sized businesses, unions, safety and industry associations, and other Albertans all have interests in the WCB.

Our Panel has extensive experience representing workers and employers through Alberta's workers' compensation processes. However, as we work through many complex issues, we need the input of Albertans to ensure we have a thorough understanding of different perspectives.

In this Workbook, we provide basic information and ask questions about key areas of workers' compensation in Alberta that are of interest to stakeholders. The current state of legislation and policies are described as we understand them to be. We know that workers, employers and other stakeholders have many different views and experiences regarding how this is put into practice day-to-day.

Through this Workbook (and the companion *Working Together – A Guide to the Review of the Workers' Compensation System*, which provides more detailed information), we hope to gather and better understand those different views. The information you share will guide our Panel as we further explore the issues in the coming months.

We will be working hard to engage stakeholders throughout our review process. You all have wisdom to share and unique ideas to provide about how the WCB should operate. By working together, we will be able to develop recommendations for the Government of Alberta that are practical to implement, meaningful to stakeholders, and productive in their impact.

We look forward to your submissions.

The WCB Review Panel

ABOUT THIS WORKBOOK

This *Workbook* is one of several ways that our Panel is gathering input from Albertans about Alberta's workers' compensation system. To learn more about the WCB Review and our engagement process, visit <http://www.alberta.ca/wcb-review.cfm>

In this *Workbook*, you will find some basic information about key topics in Alberta's workers' compensation system, along with questions about those topics. You may find it helpful to consult the companion *Working Together – A Guide to the Review of the Workers' Compensation System* (available at www.alberta.ca/wcb-review-get-involved.aspx), which contains more detailed information about these topics.

In each section of the Workbook we will ask you to provide specific details. Your expertise or insight is vital for this review to be successful. Please provide your comments in the boxes provided.

The content of this *Workbook* does not reflect existing or potential Government of Alberta policy. It outlines issues in the current system, presents some ideas that have been expressed by Albertans and provides opportunities for you to share your thoughts and perspectives.

The *Workbook* is organized around six areas:

- The WCB Claims Process
- WCB Benefits
- Review and Appeal of WCB Decisions
- WCB Governance
- Prevention of Workplace Injury and Illness
- Funding and Financial Sustainability

We appreciate any feedback you wish to provide in some or all of these areas. You can complete as much or as little of this *Workbook* as you wish. You can complete the *Workbook* online at www.alberta.ca/wcb-review-get-involved.aspx#written

If you prefer, you can complete a hard copy of this *Workbook* and submit it by email to wcbreview@gov.ab.ca. Or you can mail it to the following address:

WCB Review
Alberta Labour
c/o Service Alberta Mailroom
11th Floor Commerce Place
10155 – 102 Street
Edmonton, AB T5J 4L5

To be considered, your input needs to be submitted to us by **July 15, 2016**.

DISCLAIMER

The WCB Review website does not automatically gather personal or identifying information.

Submissions from organizations may be made publicly available on the WCB Review website. Submissions from individuals will not be made publicly available.

The information collected will be used for the purpose of assisting the WCB Review Panel, the WCB Review Secretariat and the Government of Alberta in the review of the workers' compensation system. Any information you provide during this review may be summarized, used, disclosed or published at the discretion of the Government of Alberta in accordance with *Freedom of Information and Protection of Privacy Act* (FOIP Act).

Any personal information you provide is collected under the authority of section 33(c) of the FOIP Act and the use and disclosure of your personal information will be managed in accordance with the FOIP Act.

If you have any questions, please contact the WCB Review Secretariat by email at wcbreview@gov.ab.ca or 780-644-8498.

CONTACT INFORMATION - ORGANIZATIONS

As submissions from organizations may be made publicly available, we may need to contact a representative from your organization about the submission. Please provide the information about your organization below.

Organization Name Work Comp. Tech Ltd.

Contact Name Karl Elias, President

Email [REDACTED] Phone [REDACTED]

Please identify the industry of the organization(s) you represent [Select One or more that apply]

- | | |
|--|--|
| <input type="checkbox"/> Accommodation, Hospitality and Food Services | <input type="checkbox"/> Health |
| <input type="checkbox"/> Agriculture | <input type="checkbox"/> Manufacturing, Processing and Packaging |
| <input type="checkbox"/> Business, Personal and Professional Services | <input type="checkbox"/> Mining |
| <input checked="" type="checkbox"/> Construction and Construction Trade Services | <input checked="" type="checkbox"/> Petroleum, Oil and Gas |
| <input type="checkbox"/> Education | <input type="checkbox"/> Pipelines, Communication and Utilities |
| <input type="checkbox"/> Forestry | <input type="checkbox"/> Transportation |
| <input type="checkbox"/> Government | <input type="checkbox"/> Wholesale and Retail |
| | <input type="checkbox"/> Other (specify) |

[WCTL medically manages WCB claims for employers](#)

WORKERS' COMPENSATION IN ALBERTA

Before workers' compensation was developed, workers who suffered workplace injuries or illnesses had to sue their employers for damages. Many workers were not in a position to sue their employers or, if they did, were not successful. Under the law workers could be denied any compensation if they were found to have contributed in any way to their injury or illness. When a worker was successful in suing an employer, the costs could impact the continued viability of the employer's business.

In 1910, the Ontario government commissioned Chief Justice William Meredith to produce a report on workers' compensation for that province. He recommended a program based on collective liability and a wage-loss approach to benefits. Over time, provinces and territories created workers' compensation boards based on this. Alberta's WCB was created by an act of the Alberta Legislature in 1918.

There are five basic principles that underlie most workers' compensation legislation in Canada today, including Alberta. These are often called the "Meredith Principles".

- No-fault compensation. This means workers are paid benefits regardless of how the injury occurred. The worker and the employer waive the right to sue. There is no argument over responsibility or liability for an injury.
- Security of benefits. This means a fund is established to guarantee that money exists to pay benefits.
- Collective liability. This means that, on the whole, employers covered by the system share liability for workplace injury insurance. The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.
- Independent administration. This means the organizations that administer workers' compensation insurance are separate from government.
- Exclusive jurisdiction. This means only workers' compensation organizations provide workers' compensation insurance. All compensation claims are directed solely to the compensation board. The board is the decision-maker and final authority for all claims.

The Workers' Compensation Board – Alberta (WCB) is a third-party, independent and neutral agency that is responsible for the administration of workers' compensation in our province.

The WCB operates under the authority of the *Workers' Compensation Act* and three regulations under that Act: the Workers' Compensation Regulation, the Medical Panels Regulation and the Firefighters Primary Site Cancer Regulation.

For many industries in Alberta, coverage by WCB is mandatory. Employers in these industries must contribute to workers' compensation. Certain industries are not required to contribute to workers' compensation, but have the option to participate voluntarily. These industries are outlined in the Workers' Compensation Regulation. They include industries such as accounting, photography and real estate.

Approximately 92.63% of all workers in the province are covered by the WCB.

THE WCB CLAIMS PROCESS

The *Workers' Compensation Act* uses the term "accident" as a basis for many aspects of workers' compensation. The definition of the term includes injuries and illnesses.

When an accident occurs in the workplace, a claim is submitted to the WCB. People have many views about how the WCB should manage these claims, including how it assesses whether a claim is eligible for benefits.

DETERMINING A CLAIM'S ELIGIBILITY FOR BENEFITS

To be considered eligible for payment of benefits, an accident must meet two conditions: it must **arise out of employment**, and it must **occur in the course of employment**.

For many claims, it is relatively straightforward to determine if the accident arose out of employment (for example, if a worker falls from a ladder while performing their duties at work and breaks their arm.)

In some instances, it can be more challenging to determine that a worker's injury or illness arose out of employment. For example, a person may have a heart attack while at work, but that does not necessarily mean the heart attack arose out of employment.

For these kinds of situations, the WCB looks at several factors to determine causation of the worker's injury or illness (such as the worker's medical diagnosis, their conditions and duties at work, and personal factors such as pre-existing conditions.)

1. **Please provide your insights below on how eligibility for workers' compensation in complex claims should be determined.**

Current approach is reasonable

PRESUMPTIONS ABOUT INJURIES AND ILLNESSES

Workers' compensation legislation in Alberta contains a number of presumptions about occupational diseases and workers in certain occupations and industries.

- Many presumptions are set out in the Workers' Compensation Regulation¹. If a worker suffers an occupational disease, and was employed in an industry listed in the regulation within the preceding 12 months, then the disease is presumed to have been caused by employment, unless the contrary is shown.
- In 2003, the *Workers' Compensation Act* was amended to include a specific presumption relating to firefighters and certain types of cancers.
- In 2005, the Act was amended to include a similar presumption related to myocardial infarctions suffered by firefighters when occurring within 24 hours after attendance at an emergency response.
- In 2012, the Act was amended to provide that if a first responder is diagnosed with post-traumatic stress disorder (PTSD) then it is presumed the PTSD arose out of and occurred in the course of the first responder's employment in response to a traumatic event or series of traumatic events. First responders are defined as police officers appointed under provincial legislation, firefighters (both full and part-time), emergency medical technicians and peace officers who are authorized to use the title "Sheriff".

Some suggest that the entire scope of presumptive diseases should be expanded, to better reflect linkages that exist between certain occupations and certain injuries and illnesses. Others feel evidence does not support the assumption that it is the type of occupation that should presume coverage, but rather that coverage should be based on the incident and whether it was the cause of the injury.

2. Please provide your insights below on expanding the scope of presumptive diseases. Please elaborate on occupations and injuries/illnesses where you think presumptions should be expanded (or reduced).

Current approach is reasonable.
Costs should not be experience rated - allocated to industry

Psychiatric and psychological injuries (including chronic onset stress) can be challenging from a claims standpoint, because there can be many different causes of these conditions (e.g., both work-related and non-work-related causes). This makes it challenging to determine if the injury arose out of and in the course of employment.

¹Workers' Compensation Regulation Section 20
(www.qp.alberta.ca/1266.cfm?page=2002_325.cfm&leg_type=Regs&isbncln=9780779789368)

The state of policy today represents an evolution from the past. Not long ago, the WCB generally did not cover psychological and psychiatric injuries. Over time, workers' compensation systems have come to cover these injuries but struggle with these types of cases.

Presently, the WCB will consider a claim for psychiatric or psychological injury when there is a confirmed psychological or psychiatric diagnosis as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) and the condition results from one of the following:

- Organic brain damage,
- An emotional reaction to a work-related physical injury,
- An emotional reaction to a work-related treatment process,
- Traumatic onset psychological injury or stress, or
- Chronic onset psychological injury or stress

In the years to come, these types of cases are likely to continue to be challenging not only in terms of determining eligibility, but also in terms of return to work and vocational rehabilitation.

3. In your experience, what are some concerns that arise when it comes to claims around psychiatric and psychological injuries?

Cost relief should be expanded to address pre-existing psychiatric conditions

CLAIMS INVOLVING PRE-EXISTING CONDITIONS

The WCB's current policy provides that where a workplace injury causes a pre-existing condition to deteriorate or become symptomatic, the injured worker is eligible for payment of benefits.

- Medical evidence must show that the accident caused some worsening of the worker's pre-existing condition, at least on a temporary basis.
- It is not a requirement for the worker to have sustained a permanent clinical impairment as a result of the injury to qualify for benefits.
- Benefits for the worker continue until the worker recovers to the point that their remaining disability is due entirely to the pre-existing condition or unrelated health problem.

4. Please provide your views on some of the issues and concerns that arise in claims involving pre-existing conditions.

Cost relief should be maintained

CLAIMS MANAGEMENT AND SERVICE DELIVERY

There are many views about the service experiences (i.e., quality, effectiveness, timeliness) that workers and employers currently have when they interact with the WCB.

5. Please provide your comments on the timeliness and effectiveness of the WCB claims process.

Good compared to other provincial WCBs

When a person in Alberta has concerns about the way their claim is being managed they do not have a single window through which to raise these concerns. Instead, they can raise their concerns through the Alberta Ombudsman, the Office of the Information and Privacy Commissioner of Alberta, the Alberta Human Rights Commission, their MLA, and/or the Minister of Labour, depending on the nature of their concerns.

The workers' compensation organizations in Saskatchewan, Manitoba, and Ontario each have a Fair Practices Officer that investigates service delivery complaints and attempts to resolve them. The Fair Practices Officer is a WCB employee who examines, investigates and reports on trends and potential systemic problems to the board of the organization. The Fair Practices Officer cannot change a WCB decision.

In New Brunswick, the Issues Resolution Office offers a secondary review of a claims decision and also acts as an ombudsman to help resolve service issues. The Issues Resolution Office reports to the WorkSafeNB's corporate secretary and general counsel.

6. What are your views about creating a mechanism in Alberta's workers' compensation system that would provide a single window for people to raise concerns about WCB claims management and service delivery? If you support this concept, what could it look like?

BC model of using Fair Practices office is reasonable

MEDICAL SERVICES

The timely communication of accurate medical information can impact decisions about a worker's claim, how their claim moves through the WCB process, and even the worker's income. Physicians and other health providers are therefore key partners in the workers' compensation system. There are many views about the strength of these partnerships.

7. Please describe your views on the willingness of physicians and other health professionals to interact with the workers' compensation system on behalf of their patients.

Conflict of interest arising when firm conducts FCE and recommends their own occupational rehabilitation programs.

Seek to improve relationships with physicians

The WCB negotiates with physicians and other treatment providers, who have interest and expertise in work-related injuries and issues, for access to their services. This sometimes enables the WCB to have injured workers tested and treated faster than these services could be accessed in the publicly-funded health system. The WCB pays these service providers directly for these services. The benefit to this is the reduced time it takes injured workers to be ready for employment, and it reduces employer costs.

8. What are your views on the WCB's current process for referring injured workers for medical treatment or services?

See #7 - Conflict of interest

RESOLVING DISAGREEMENTS ABOUT MEDICAL ISSUES IN A CLAIM

There can sometimes be disagreements about the medical issues in a worker's claim. These can affect a worker's benefits.

9. How do disagreements about medical issues impact the relationships that physicians and other health providers have with the workers' compensation system?

Greater weight should be given to specialists' opinions over opinions of generalists

In Alberta's workers' compensation system, Medical Panels are used to provide an impartial, independent decision-making process to resolve bona fide conflicts of medical opinions. For example, the Medical Panel can resolve medical disputes between a worker's physician and a WCB medical consultant. The findings of a Medical Panel are binding on the WCB or the Appeals Commission for Alberta Workers' Compensation (Appeals Commission).

Medical Panels are composed of three physician members who are recognized as experts in their field and who are independent from the WCB.

Currently, only the WCB or the Appeals Commission can request a Medical Panel review. Some have suggested there would be value in allowing others (such as workers and employers) to also request a Medical Panel review.

10. In your view, who should be able to request a Medical Panel review? Why?

These have not been effective. Takes 6 - 12 months to get a report; much too long a process. Needs a faster resolution of complex medical issues.

The Medical Panel Office performs an adjudicative function, but there are suggestions it could play other roles as well. For example, some say it might be valuable for the Medical Panel Office to provide educational or consultative roles with respect to the WCB's medical consultants.

11. What other roles, if any, could the Medical Panel Office play in resolving medical conflicts? Please describe.

Greater role in setting policies relating to medical issues. Could also assist in making decisions, if timely

RETURNING TO WORK

One objective of Alberta's workers' compensation system is to help the injured worker return to work. An injured worker's return to employment can take several forms.

RETURN TO FULL OR MODIFIED DUTIES AT ORIGINAL EMPLOYER

Ideally, when a worker is capable of doing so, they can go back to their original employer (i.e., their employer on the date of accident). This might entail returning with modified duties based on the worker's abilities, which may be different than they were on the date of accident.

There is currently no requirement under Alberta's *Workers' Compensation Act* for an employer to return an injured worker to the workplace.

Under Alberta's human rights legislation employers have a duty to accommodate workers with disabilities, unless the accommodation imposes undue hardship on the employer. Alberta's WCB does not handle disagreements or complaints about non-compliance with human rights legislation. Worker concerns about an employer's failure to accommodate, or employer concerns about undue hardship, must be filed separately with the Alberta Human Rights Commission.

Several other jurisdictions have provisions in their workers' compensation legislation that require an employer and worker to cooperate with return to work efforts.

12. Should the *Workers' Compensation Act* contain a provision that influences or compels an employer or worker to cooperate on return to work? Why or why not?

No. Experience rating model adjusts costs when Modified Work is not offered. Employees are encouraged to place injured workers in order to manage costs.

13. What challenges do employers face in returning an employee to work? If there are challenges, what additional supports do employers need from the WCB?

May not be enough work.

WCB needs to enforce labour standards when workers act in contravention of employment standards such as the use of drugs / alcohol in the workplace or commit acts of violence.

NO RETURN TO ORIGINAL EMPLOYER

When an injured worker cannot return to their pre-accident position, or where there is a permanent disability requiring a work modification, the WCB may provide Vocational Rehabilitation Services. These services are aimed at helping injured workers develop the skills and capabilities that will assist them to reach a state of employability. Vocational Rehabilitation Services can take a varying amount of time to complete, depending on individual circumstances.

The WCB will assist a worker in assessing skills and abilities within their anticipated work restrictions and will help them develop a long-term goal, upon which a vocational rehabilitation plan will be based. The goal is often set with an aim to maximize the worker's earnings potential. Once the goal and the plan are identified, the worker will start 12 weeks of assisted job search, unless other skills or training opportunities have been identified. Through the program the worker can access various services, such as short-term skills training or assistance with developing a resume. Potential earnings in the job are assessed using a survey methodology (labour market research conducted by an independent firm). These can be used to "deem" the worker's earnings (and adjust their benefits), if the worker remains unemployed.

People have many views about the effectiveness of Vocational Rehabilitation Services in helping prepare workers to re-enter the workforce.

14. In your view, do Vocational Rehabilitation Services provide injured workers with meaningful rehabilitation that prepares them for employment? Please explain.

Very hard for employers to access information to measure effectiveness of return to work services.

There should be data published.

OTHER THOUGHTS YOU MAY HAVE

15. Please provide any other comments you have relating to the WCB claims process.

Employees need regular access to treatment and diagnostic information in order to create and maintain suitability of modified work and to assess the reasonableness of decisions,

Ensure Cost relief is available.

Best outcome for vocational services is with existing employer - more incentives should be directed at encouraging employers to find work for injured workers.

WCB BENEFITS

When a claim is determined to be eligible, the WCB will provide benefits to the injured worker.

LOSS OF EARNINGS

If a worker misses time from work beyond the day of the accident (a lost time claim), an injured worker receives monetary benefits based on their earnings as of the date of accident. These payments are non-taxable.

In 2016, injured workers eligible for temporary total disability (TTD) benefits receive 90% of their net earnings, up to a maximum insurable earning of \$98,700 per year. The 2016 maximum insurable earnings amount translates into weekly compensation payments of \$1,225.61.

There are questions about the WCB's current limits on insurable earnings. Some people have suggested that the current limits may be too low, given that wages in several occupations can be much higher than the current maximums. Others have suggested that the current limits should remain unchanged, but that workers should have the option to purchase additional coverage from the WCB for amounts above the current limits.

16. Please comment on whether the current limits on insurable earnings should be changed.

No comment

17. Should an option be made available for workers to obtain additional coverage through the WCB? Why or why not?

Extra coverage would serve as a disincentive to return to work

BENEFITS ADJUSTMENTS

Benefits can be adjusted through cost-of-living adjustments that are calculated by the WCB using a specific formula. The WCB Board of Directors approves the adjustments, which are effective January 1 of each year.

The WCB's cost-of-living adjustments are calculated on the basis of the worker's earnings on the date of accident. The adjustments do not account for earnings increases the worker may have received due to career progression.

Some suggest that benefit adjustments should take a worker's potential earnings as well as career progression into account. Others say this would not be practical, since it cannot be assumed a worker would have progressed in their career or received earnings increases.

18. Please comment on whether WCB benefits should recognize career progression.

Would be too difficult to enforce, very subjective

DEEMING EARNINGS

Based on the goal that is set for a worker as part of Vocational Rehabilitation Services, the WCB will assess potential earnings in the job using a survey methodology (labour market research conducted by an independent firm). Select employers within each community where an occupation exists are surveyed to determine what they would pay employees hired into these occupations and how those earnings would increase to reflect growing experience for the first five years.

If a worker remains unemployed, but the WCB determines they are fit and ready to work in a potential position, the worker will be deemed capable of performing this work and earning this income. The WCB adjusts the benefits paid to the worker, to reflect the income that the worker is deemed capable of earning. The deemed earnings incorporate increases based on career progression that the worker would theoretically have in the deemed job.

Some people have suggested that this deeming process may not result in successful employment outcomes for injured workers, because the rehabilitation services provided may not have a connection to a worker's employment history nor be based on work realistically available in the economy. Others have suggested that the deeming process makes sense, since it is not always viable for a worker to return to their original position or secure employment when they are ready.

19. Please comment on the WCB's use of "deeming" earnings for those workers who are not able to return to work with their original employer.

No comment

NON-COMPLIANCE AND EFFECT ON BENEFITS

Where the WCB considers a worker to be non-compliant, the WCB currently has the authority to suspend payment of the worker's benefits.

The WCB can consider a worker to be non-compliant in a number of circumstances.

One circumstance is if an injured worker refuses to participate or cooperate with the WCB's directions regarding medical treatment. This can happen for various reasons. The worker might not agree with the treatment plan; they may wish to see a provider who is not on the WCB's approved list; or they may wish to explore other treatment options (e.g., acupuncture versus surgery).

Another circumstance is when a worker refuses to return to work even though the WCB has deemed them fit to return to full or modified duties. This too can happen for various reasons. For instance, the worker's personal family doctor might disagree and advise them they should not yet return to work.

20. When circumstances arise that may be considered non-compliant (e.g., refusal to participate in medical treatment, refusal of return to work, etc.), what actions should WCB consider and what should happen with a worker?

Current policies and enforcement work well.

We support current WCB AB policy to suspend wage loss entitlement in both of the above cases.

OTHER THOUGHTS YOU MAY HAVE

21. Please provide any other comments you have relating to the WCB benefits process.

Benefits should be paid based on objective medical evidence as opposed to subjective medical reporting such as pain.

REVIEW AND APPEAL OF WCB DECISIONS

The *Workers' Compensation Act* establishes a review and appeal process in the workers' compensation system. The Act provides for an internal review and an external appeal for issues brought forward by either workers or employers.

THE DISPUTE RESOLUTION AND DECISION REVIEW BODY

A person with a direct interest in an adjudicative decision or an employer account decision can request an internal review of that decision by the Dispute Resolution and Decision Review Body (DRDRB). Members of the DRDRB are WCB employees.

The DRDRB is able to review issues related to entitlement to benefits. Generally the parties to a DRDRB review are the worker and the employer. The DRDRB will review the file material, gather information and submissions from the parties, and attempt to facilitate a resolution.

The DRDRB is a required step before an appeal can be made to the Appeals Commission. DRDRB decisions are not binding on the WCB.

22. Please provide your views on the effectiveness and timeliness of the DRDRB process.

DRDRB lacks objectivity of independence.

Seeks to uphold Customer Service decisions to meet performance targets.

A person has one year from the date a WCB decision was issued to request a review of that decision by the DRDRB. Some people say that this period is too short. Others say the one year limit is sufficient, since there is an opportunity to request extensions.

23. What are your views about the one year limitation period to file a request for a DRDRB review?

One year is reasonable

APPEALS COMMISSION

The Appeals Commission is a body established under the *Workers' Compensation Act* that is separate from the WCB. The Appeals Commission has adjudicators appointed by the Government of Alberta through a public recruitment process, as well as the Chief Appeals Commissioner, who also acts as CEO of the Appeals Commission.

The Appeals Commission has the authority to examine, inquire into, hear and determine all matters and questions arising under the Act in regards to decisions made by the DRDRB. The Appeals Commission may confirm, vary or reverse a decision of the DRDRB, and it may entertain new evidence during the appeal hearing. The Appeals Commission is required to follow the provisions of the Act and WCB policies.

The Appeals Commission is required to provide all persons with a direct interest in a matter the opportunity to be heard and to present any new or additional evidence. It must also permit the WCB to present to the Commission regarding the proper application of WCB policies, the Act or regulations related to the matter under appeal.

24. Please provide your views on the effectiveness and timeliness of the Appeals Commission process.

Appeals commission, since gaining its independence has significantly improved at both the quality and timeliness of its decisions.

Presently, during a hearing the Appeals Commission limits its examination to the matters that are the subject of the appeal. Some have suggested the Appeals Commission should examine all issues impacting a claim, beyond the specific matters under appeal, if it is possible to resolve the matter in its entirety. Others say this would not be desirable, as it would raise the possibility of the Appeals Commission wading into matters that neither party wanted to revisit.

25. What discretion, if any, should the Appeals Commission have to examine issues relating to a claim that might not be the subject matter of the appeal, but might resolve the matter in its entirety?

Absolutely not. This would be unfair to the parties.

DRDRB should first consider the issue.

RECONSIDERATION OF APPEALS COMMISSION DECISIONS

The Act allows for the reconsideration of Appeals Commission decisions. A reconsideration is not an appeal. Currently, there must be very good reasons for a reconsideration application to be successful. These reasons include:

- the presence of relevant evidence that was not available at the time of the appeal decision and which is likely to change the result of the original decision; or
- a significant defect in the appeal process or the content of the decision.

Some have suggested that the criteria the Appeals Commission considers for reconsideration of appeals may require more flexibility.

26. What factors should be considered by the Appeals Commission when determining whether a case should be reconsidered?

Current standards are reasonable.

GETTING HELP AT THE REVIEW AND APPEAL STAGES

The WCB operates an Office of the Appeals Advisor, which makes advisors available to inform and represent workers through the review and appeal processes.

For example, an advisor can help a person determine whether they have grounds for review or appeal of a decision. An advisor may also suggest alternatives to filing an appeal. Advisors can accompany workers and represent them at Appeals Commission hearings.

Some people question whether the Office of the Appeals Advisor is able to provide impartial and effective advice to workers, since it is not independent from the WCB. Others feel the services being provided by the Office of the Appeals Advisor are effective.

27. What are your views about the ability of the Office of the Appeals Advisor to offer impartial and effective advice to workers?

No comment

Currently, the Office of the Appeals Advisor is not available for employers. Employers can access the Employer Appeals Consulting Service (EACS), which is provided by WCB account managers.

EACS can help employers understand the facts, policies and legislation used to make a specific decision, and help them determine whether to proceed with a formal review or appeal. EACS will not accompany or represent an employer at an appeal. EACS will offer advice to an employer on how to present their position in an appeal.

Some people have suggested that employers should have access to WCB-funded representation at an appeal, similar to what workers have in the Office of the Appeals Advisor.

28. Should employers have access to WCB-funded representation at appeals? Please explain.

No comment

PRIVACY AND CONFIDENTIALITY

When a worker appeals a decision, the WCB is required to provide the Appeals Commission with its records and information, including personal information (e.g., medical) relating to the claim or matter that is under appeal. The WCB is also required to provide the Appeals Commission with the written decision that is being appealed.

On request, the worker (or the worker's representative), the employer (or the employer's representative), and any other person with a direct interest in the claim may also receive redacted copies of this information from the WCB.

Recognizing that privacy rights are important to everyone, it makes sense to consider how information sharing takes place in the appeals process. Questions have arisen regarding what and how information about a worker's claim is presently shared with parties.

29. Are the safeguards currently in place by the WCB adequate to protect worker information during the appeal process? If not, what safeguards would increase your level of confidence?

Employers are under disclosure obligations. WCB file contains relevant requirements.

No changes are required.

OTHER THOUGHTS YOU MAY HAVE

30. Please provide any other comments you have relating to reviews and appeals.

Two years for a worker to file a claims is too long.

WCB GOVERNANCE

The *Workers' Compensation Act* establishes the WCB and sets out the WCB's powers and how it is governed. People have many views about these subjects.

BOARD OF DIRECTORS OF THE WCB

The WCB is governed by a Board of Directors, which is appointed by the Lieutenant Governor in Council. Among its roles, the Board of Directors:

- guides the WCB's strategic direction;
- appoints and evaluates the performance of the WCB's President and CEO;
- determines the salary and benefits of the WCB's President and CEO which are paid out of the Accident Fund;
- approves and monitors the WCB's administrative budget and financial results;
- provides oversight of the WCB's management of its business and affairs; and
- is responsible for establishing the operating policies of the WCB.

The Board consists of a Chair, and up to three members considered to be representative of the interests of each of: employers, workers and the general public. Varying opinions have been expressed about the relationship between these board members and the stakeholders they are considered to be representative of.

31. What involvement, if any, should stakeholders have in the nomination and recruitment process of WCB directors?

Remove political interference and lobbyists.

Seems to work well as present.

**32. How do you (or your organization) currently provide input to the Board of Directors?
What works and what could be improved?**

At present do not provide direct input

Better access to to Board would be helpful especially for policy changes.

WCB CORPORATE OBJECTIVES AND KEY DELIVERABLES

On an annual basis, the WCB Board of Directors establishes corporate objectives and key deliverables.

Some of the measures and their results (from the 2015 WCB Annual Report) include the following:

- Returning injured workers to a state of fitness needed to return to work. With WCB support, 92.5% of injured workers achieved the fitness needed to return to work. This result exceeded the target of 90%.
- Delivering fair decisions. Decisions are reviewed and audited to ensure they are fair. WCB's average audit score of all decisions audited was 94%.

Performance targets can drive the culture of an organization. Some have expressed concerns about how the achievement of corporate performance targets such as early return to work for injured workers are being rewarded. Others say that an injured worker's chances of successfully returning to work increase significantly if they return to work within 3 months. Based on this, they suggest that the WCB's performance measures are valid.

33. What are your views on the performance measures and targets currently set by the WCB? Are there additional or alternate measures you feel would be appropriate?

More performance measures specific to vocational rehabilitation and long term job placements.

POLICIES OF THE WCB

The Board of Directors determines the need for and nature of consultation in its policy development process (i.e., when a policy is developed, changed or evaluated).

On an annual basis, the WCB creates a Policy Development Plan that identifies the issues it plans to address during that year. In addition, if a stakeholder believes a policy should be changed, they can send in a written request to the Chair for a policy review.

The WCB has established a policy and consultation process which includes:

- Issue Identification;
- Research and Analysis;
- Policy Development/Amendment;
- Stakeholder Consultation;
- Approval and Implementation.

Consultation can include public and/or expert consultation. For the most part, consultation is conducted through the WCB website (posted for 60 days). Depending on the nature of the issue, the WCB may convene an in-person meeting.

Stakeholders can subscribe to receive an email notice when the WCB's Policies and Information Manual is updated online, or when a new policy is posted for consultation.

In British Columbia, there is a Policy and Practice Consultative Committee made up of representatives from WorkSafeBC (the WCB equivalent in BC) and the employer and worker communities. The committee provides input and advice to WorkSafeBC's senior executive on stakeholder consultation processes, stakeholder perspectives on priority issues (e.g., policy, legislation) and the identification of stakeholder issues. In addition, on behalf of their communities, the committee is a forum to receive updates on key operational initiatives and share relevant information.

In Alberta, the WCB covers over 2 million workers and thousands of employers. The WCB's policies have wide-reaching consequences in the province, so it is important that its policy development process is adequate and effective.

34. In your experience, is the WCB's current policy development process effective? Please describe how you would like to be consulted in the development of WCB policies.

More discussion about major policy initiatives and changes - not just a sales process when changes are proposed.

REVIEW OF THE WORKERS' COMPENSATION SYSTEM

The last comprehensive review of the workers' compensation system in Alberta was conducted more than 15 years ago.

The *Alberta Public Agencies Governance Act* contains a general requirement for the Minister to review each agency's mandate and operations every seven years. However, there is no requirement in the *Workers' Compensation Act* to conduct a review of the entire workers' compensation system within a specific time period.

Other Canadian jurisdictions have requirements in their legislation to review their workers' compensation statutes and regulations on a regular basis. For example, Saskatchewan has a requirement to conduct a review every four years; Newfoundland and Labrador every five years; and Manitoba every ten years. Some have suggested Alberta should adopt a similar requirement.

35. What are your views about amending Alberta's *Workers' Compensation Act* to require that the government review the workers' compensation system on a regular basis? If you support this approach, how often should such a review occur?

Periodic review every 4 - 5 years seems appropriate.

OTHER THOUGHTS YOU MAY HAVE

36. Please provide any other comments you have relating to the WCB's governance.



PREVENTION OF WORKPLACE INJURY AND ILLNESS

Occupational Health & Safety (OHS) falls under different provincial legislation, so the WCB Review is not intended to conduct a detailed examination of OHS. However, since the workers' compensation system impacts OHS, the WCB Review will examine interactions between the system and OHS. People have many views about this subject.

ROLE OF WCB IN PREVENTION

The OHS program in Alberta is responsible for improving workplace compliance with OHS legislation through evidence-based prevention initiatives, education and enforcement activities. OHS is located in the Ministry of Labour.

Among its functions, OHS:

- is responsible for prevention activities that include: Work Safe Alberta; proactive strategic programs; the Certificate of Recognition (COR) Program; and the Work Right Campaign;
- educates workers, employers and the public through the use of bulletins, publications, e-learning programs and other educational materials;
- approves training programs across Alberta, such as Workplace Hazardous Materials Information System (WHMIS) training, First Aid training, and Spirometry and Lung Function training;
- approves worker permits, such as the Blasters Permit Program and the Asbestos Permit Program.

The funding for OHS in Alberta is provided through the WCB. This approach is consistent with other jurisdictions in Canada. In some jurisdictions, however, OHS and workers' compensation are housed in one organization.

The WCB also administers grants of annual operating funding to seven Alberta safety associations, for the purpose of promoting education in accident prevention to employers. These grants are funded through a levy that is added to the WCB premiums of employers in the represented industries. In some industries, safety associations are funded directly by member contributions.

Some people have indicated it is currently unclear who safety associations are accountable to. It is also unclear whether there are regular evaluations of the outcomes being achieved by safety programs and associations.

37. What role should the WCB or Occupational Health & Safety have in the funding and oversight of safety associations?

38. Please provide your insights below on the accountability of safety associations and the evaluation of their safety programs.

Safety associations are too close to WCB as they receive funding, they may be reluctant to challenge WCB on any policy issues.

HEALTH AND SAFETY INFORMATION

Information gathered by the WCB represents the only available source of health and safety information that can be compared across employers and industries. This information is useful in setting health and safety policy and program direction. It is also often used by the public to evaluate the health and safety performance of Alberta’s employers.

The users of WCB information are diverse, including: the Government of Alberta; industry and safety associations; employers; researchers; health practitioners and service providers; workers; unions; other jurisdictions; and the public. The types of information available are also diverse, including: industry level claims; employer level claims; injured workers demographics; injuries and illnesses claims; and financial aspects of employers and claims.

39. How is the data currently gathered by the WCB meeting your safety and injury prevention needs? Please describe.

40. What other data would be of assistance to you in meeting your safety and prevention needs?

OTHER THOUGHTS YOU MAY HAVE

41. Please provide any other comments you have relating to WCB and roles it could play in the prevention of workplace injury and illness.

FUNDING AND FINANCIAL SUSTAINABILITY

The WCB administers billions of dollars, through employer premiums and the payment of benefits and claims costs. Given that it manages significant amounts of money, people have many views about the WCB's funding and financial sustainability.

EMPLOYER PREMIUMS

The WCB is funded through premiums assessed to employers. There are no tax dollars involved in the workers' compensation system, and there are no deductions made from workers' paycheques to fund the system. Employer premiums are established each year.

An employer's assessment rate is determined in the following way:

- The WCB assesses the overall financial picture of the workers' compensation system. Using actuarial reports and financial forecasts, the WCB determines what it will need to pay out. A significant piece of this puzzle is the projected present and future costs of claims that are expected to be made to the WCB in the upcoming year. Historical data helps the WCB project these figures.
- On the basis of the overall financial picture, and with a view to its Funding Policy, the WCB determines what overall amount of money it needs to collect from all employers covered by the WCB in Alberta. **This amount of money is determined so that the total premiums collected in the current year will pay for all estimated present and future costs of claims that are made during that year.**
- Based on the overall amount of premiums that need to be collected, the WCB determines premium rates for each rate group. There are 118 rate groups covering 364 industries. Some rate groups have only one industry in them, while others include up to 20 industries. The premium rates of each rate group are set based on their historical pattern of claims costs. (This is sometimes called the "industry rate".)
- Each employer within a rate group is then assigned their premium rate based on their record of claims costs. This is called the "experience rating". Based on how the employer stacks up to the average of their rate group (or "industry average"), their premium rate for large employers can be set up to 40% higher or lower than the industry rate. Small business premium rates can be set up to 5% higher or lower than the industry rate.

This process is intended to achieve three things.

- First, it ensures that every employer pays something, thereby maintaining the collectivist nature of the workers' compensation system.
- Second, it provides for fairness by distributing the premiums based on which employers and industries are more likely to be the source of WCB claims and costs.
- Third, by reflecting the different claims histories of different employers and industries, it builds accountability into the system.

The WCB's use of an "experience rating" component means that an employer's WCB claims influence the WCB premiums they pay. Some have suggested the experience rating gives employers an incentive to suppress WCB claims. Others say the experience rating gives employers an incentive to undertake safety programs and measures that prevent injuries and illnesses in their workplaces.

Some have expressed concern that the WCB does not have sufficient processes in place to investigate or deter claims suppression. Others say that existing processes work well.

Claim suppression is intentionally inducing a worker not to claim WCB benefits they are entitled to claim. Claims suppression can occur when incidents are not reported to the WCB, or when a claim is reported as 'no lost time' but actually involved lost time by a worker.

42. To what extent is the WCB experience rating system an incentive for preventing workplace injuries and diseases? To what extent is experience rating an incentive for promoting claims suppression?

Experience rating system does balance competing interests.

43. Is there a sufficient investigative process in place to deal with complaints of claim suppression and are the penalties sufficient to deter employers from this practice? How could investigative and penalty processes be improved?

INDUSTRY CUSTOM PRICING

The WCB offers Industry Custom Pricing (ICP) as an option for the calculation of employer premiums. Participation in ICP is industry-based. The WCB works with representatives of an industry to customize a pricing model for that industry. Various options exist. For example, an industry can choose to change the experience rating component, so that individual employers' claims records are weighted more heavily in the calculation of WCB premiums.

An industry must choose to move to ICP. Employers in the industry are polled on the proposed ICP program. If a majority of the industry votes in favour, the ICP program is then implemented for all employers in the industry.

An industry can later choose to opt out of the ICP program and revert back to the WCB's standard pricing model, by way of a similar majority vote.

In an industry-wide vote about ICP, a "majority" is defined as at least 50% of the industry as measured by insurable earnings. This means that, in some industries, a handful of very large employers can decide the vote, even if they constitute a minority of the total number of employers in the industry.

As a result, some have raised concerns that the WCB's approach to establishing an ICP program creates inequities between smaller and larger employers. Others say the approach is not inequitable, because it is based on the number of workers in the industry, not the number of employers.

44. Are employers of different sizes treated equitably in regards to ICP? If not, what strategies might be available to minimize inequities?

Should ICP even exist? Cost relief should not be eliminated. Pre-existing conditions should not be charged to employers through the experience rating system.

Industry vote was problematic, should be an individual employer's decision.

WCB does not provide or allow for contrary opinions to ICP participation. WCB tries to sell this program which is problematic.

ICP base rate reduction should be subject to audit by external reviewers.

PARTNERSHIPS IN INJURY REDUCTION

The Partnerships in Injury Reduction (PIR) program is a voluntary program in which employer and worker representatives work collaboratively with the government to build health and safety management systems.

A Partner is an association, corporation or organization that commits to taking a leadership role in health and safety by entering into a formal agreement with the Alberta government. The Government and each Partner sign a Memorandum of Understanding outlining the specific commitments made by each organization.

The WCB offers an incentive (in the form of a premium reduction) to employers who participate in PIR. Some have questioned whether this incentive makes sense, since it is not connected to the employer's experience rating (i.e., their claims record). Others have suggested that the incentive makes sense, as it encourages employers to build safety management systems.

45. What are your views about the WCB's current practice of providing a premium incentive for employers who participate in the PIR program?

This is a good program.

THE WCB ACCIDENT FUND

The *Workers' Compensation Act* requires the WCB to maintain sufficient funds in the WCB's Accident Fund for the payment of present and future compensation to injured workers.

The concept of **future** compensation is important. In many instances, the WCB will be required to pay benefits to a worker for a long time period. Benefits will also be subject to inflation over time. There needs to be sufficient money in the Accident Fund to cover these long-term costs.

The Accident Fund is considered fully funded when the total of all assets equals or exceeds 100 percent of total liabilities.

The Accident Fund is managed so that it can generate investment returns. **These investment returns can sometimes be better or worse than expected.**

In managing the Accident Fund and setting employer premiums, the WCB follows its Funding Policy, which is established by the Board of Directors. The Funding Policy has several goals:

- Minimize the risk of being unfunded – To ensure injured workers benefits are secure, and that there is sufficient money in the Accident Fund for the payment of current and future benefits.
- Current employers pay for today's accidents – Stability is maintained in the Accident Fund by having today's employers pay for the current and future costs of today's accidents. This reduces the risk of passing the costs on to the next generation of employers.

- Minimize cost volatility to employers – To ensure that volatility of the Accident Fund does not create volatility in employer premiums. The objective is that premium rates reflect the current and future costs of today's accidents.
- Minimize the total cost charged to employers – The Accident Fund is managed to earn a rate of return that covers the annual growth in the liabilities associated with current and prior year accidents.

To achieve the goals of the Funding Policy, the WCB has established a target funding range for the Accident Fund of **between 114% and 128%**. This range was developed in consultation with experts independent of the WCB and the use of asset-liability modelling tools. The WCB indicates that the funding range, and the financial modelling that supports the range, are reviewed each year to ensure they remain appropriate.

If the funded ratio of the Accident Fund falls below the target funding range (i.e., lower than 114%), the WCB can decide to collect additional money from employers in order to bring the Accident Fund to required levels. This will be done in the form of a levy.

Conversely, if the funded ratio of the Accident Fund rises above the target funding range (i.e., greater than 128%), the WCB can decide to distribute a portion of surplus to employers. When the WCB does this, any money distributed is from **better-than-expected investment returns**, not the premiums that were collected.

This is akin to using a portion of interest from an investment, without touching the principal of the investment. Employer premiums are like the principal, and they stay in the Accident Fund so that they can fully fund the present and future costs of claims. Interest amounts that are realized from better-than-expected investment returns can be taken out of the Accident Fund and distributed to employers.

Questions have arisen about the WCB's target funding range and its implications for premiums, levies and distributions.

Some people say that the WCB should freeze or cut premiums so that it does not have a surplus in its Accident Fund. Other people say that freezing or cutting premiums would go against the principle that today's premiums pay for today's accidents and would raise the risk that there would be insufficient money available to pay the current and future costs of benefits for workers. Still others say that the Accident Fund should retain a comfortable surplus, in case markets are volatile and the Fund's investments fall in value.

46. What are your views about the way the WCB establishes and implements WCB premiums, levies and distributions?

47. What other ways can the WCB ensure the sustainability of the workers' compensation system?

WCB and employers must find a way to better manage claims costs.
Back to work programs need to be better.

48. Distributing surplus money from the Accident Fund to employers is one way to address better-than-expected investment returns. What are some other ideas about what to do with these surpluses?

Return excess to employers who fund the system.

OTHER THOUGHTS YOU MAY HAVE

49. Please provide any other comments you have relating to funding and financial sustainability.

ADDITIONAL QUESTION

ALTERNATIVE DISPUTE RESOLUTION

Some people have said that various aspects of the workers' compensation system have become legalistic, daunting and/or too adversarial over time. (For example: the Medical Panel process, the DRDRB process and the Appeals Commission process.)

There have been suggestions that it would be valuable for the workers' compensation system to incorporate consensual resolution processes (such as alternative dispute resolution) at key points, as a way of making the system more accessible for workers and employers.

50. Where, if anywhere, do you see opportunities to incorporate consensual resolution processes (such as alternative dispute resolution) in the workers' compensation system? What could these processes look like?

ADR must be timely and not cause undue delay.

GENERAL QUESTIONS

51. What do you like most about workers' compensation in Alberta?

Alberta WCB is better run than its provincial counterparts, despite angry worker reactions.

52. What are your primary concerns about workers' compensation in Alberta?

53. We invite you to provide any other comments you have, which you have not already provided.

Thank you for taking the time to complete this workbook.



Alberta 