

THE ALBERTA WORKERS' COMPENSATION REVIEW 2016

Merit Contractors Association



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

The Meredith Principles require that decision-making be based on evidence, law, policy and a fair, impartial and transparent process. These same principles must be applied when determining eligibility for workers' compensation in all claims, not only the complex ones. There must be a clear

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definition of the occurrence prior to its acceptance as a workplace incident, this includes an investigation of all the evidence provided prior to a decision. Merit agrees that given the complex nature of some incidents and injuries, the “Benefit of Doubt” policy is fair and reasonable when properly applied. This policy should not be used in situations where there is a lack of empirical evidence.

One of the basic tenants of the WCB program is to ensure that there is a clear link between the work performed and the injury or illness. There must be proof that the claim is the result of employment duties and not simply a situation occurring at the workplace. This fundamental principle is integral to the founding of the WCB program.

While there is lack of services for workers facing employment challenges, such as mental health issues, it is Merit's position that the public sector has the responsibility to ensure that the temptation of additional coverage through worker's injur claims, which is funded based on workplace injury and related illness, does not inappropriately replace the systems and programs that should be funded by the public sector. Merit supports the concept that mental health services are a concern in all environments, including the workplace, and that the appropriate services should be available. We caution that unless these complex cases can be linked back to the work performed, then the WCB program should not cover these conditions.

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).

Merit does not support any expansion of the scope of presumptive diseases. Expanding the scope would be contrary to the Meredith Principle's basic fundamentals. If these basic tenants are adhered to in the examination of claims based on evidence and within acceptable timeframes, there is no need to apply a presumptive clause. An appropriate decision should be determined with a payment to the injured worker where warranted. Circumstances prior to employment with an organization should not factor in the overall claim. Evidence for the claim should include a determination of exposure to risks prior to the employment.

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

The inclusion of mental health issues as a workplace related injury or illness is particularly problematic. Mental health issues are rarely simple. They are often the result of multiple factors and personal historical circumstances. That being said, workers with mental health issues have a significant impact on the workplace. In some research, the number of people afflicted with mental health concerns can be as much as 20% of the population. This obviously has a significant impact on the workplace, whether or not the condition is the result of workplace and employment conditions.

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However, the WCB program was established based on clearly defined principles that were agreed upon by the private sector and workers, to ensure that workers with clearly defined workplace injuries and illnesses receive the compensation and programs they need for the appropriate time period. As a result, care must be taken in considering the expansion of this coverage, as it violates the basic agreement between employers and workers. As many of the causes for mental health issues result from circumstances outside of the workplace, it is difficult to link the causal relationship.

For example, in *Martin v Alberta WCB*, the Court of Appeal upheld WCB policy provisions that exclude stressful employment factors considered to be normal pressures and tensions experienced by workers in similar occupations and conditions. This might include conflict between coworkers or with supervisors and performance management including discipline. The importance of this distinction is crucial to this discussion. While many of the affected mental health issues manifest themselves in the workplace, or may be aggravated by pressures in the workplace, it is not the responsibility of the workers' compensation system to absorb the costs of addressing these challenges. These costs should rightly be funded through the provincial government's health care system, as their duty under the Canada Health Act.

Given the economic and fiscal realities facing the Province of Alberta, some might wish to shift this burden to employers. This is inappropriate. The burden for these issues must be the shared social responsibility of all taxpaying citizens in the province. In those cases, where mental health issues are clearly the result of workplace duties, the WCB must ensure that their case managers and adjudicators have the training and experience to serve the needs of this worker population.

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

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The issue of causation/aggravation of a pre-existing condition is a significant issue for the WCB. Many of these claims are paid on the basis of what is perceived to be a dubious “pre-existing condition” with questionable “causation”. The challenge is in determining whether something in the workplace actually aggravated the condition. The claim should be denied unless a specific incident can be identified as aggravating a pre-existing condition.

There is a shared responsibility between the worker and employer when work is assigned to a worker with a preexisting condition. Workers must ensure that they are informing their employer of any potential concerns relating to a previous condition. There is no fairness in supporting a claim where the employer was unaware of the circumstance of the specific pre-existing condition and who are experiencing difficulties due to these pre-existing conditions to indicate that their job duties are aggravating their condition. Consideration should also be given when determining entitlement in situations when a deliberate act of the worker aggravates a pre-existing condition.

The WCB Appeals Commission has maintained policies in many of their decisions to ensure that employers are not disadvantaged when hiring workers with pre-existing conditions, that worker’s with pre-existing conditions are not disadvantaged in the hiring process, and to relieve costs where it would be unfair to charge them to an employer’s experience account when the injury is from a pre-existing condition.

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

To conform to the fundamental agreement between employers and workers as outlined in the Meredith Principles, timely decisions are important to resolve the question of eligibility for compensation and programs, provided that the timeline does not impede in any way the evidence based decision making process.

Merit maintains that the current WCB program is fairly balanced between the needs of employers and workers, although process improvements based on changing technologies and renewed best practices should be a consistent approach over the long term.

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Anecdotally, disputes between employers and workers have decreased significantly in the public forum, mainly due to the large amount of effort completed by the WCB towards better service to their constituencies. Merit is fully supportive of a continued program of process improvements towards better and more timely services to both employers and workers.

Should this WCB Review result in an increase of complex cases, care must be taken to ensure that the majority of worker claims are not impeded by a lack of organizational capacity to manage those caseloads. Of benefit would be additional exploration into greater industry awareness to ensure a fair and equitable process. Merit supports clear and transparent service norms that specifically relate to the varying levels of complex cases.

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?

Merit would support a single window for not only stakeholders but also end users to raise concerns service delivery and claims management. We would caution though against creating an additional layer of bureaucracy that could add to the process requirements and timelines. Any single entry window should incorporate the information provision and assistance that is already located as part of the case management and/or adjudication processes.

Should the WCB create a common service delivery access point, it would be imperative to ensure that this new role is clearly separate from any other jurisdiction, such as the Alberta Human Rights Commission, the Appeals Commission or the Office of the Ombudsman. In these cases, the common service access point could act as a referral body to assist stakeholders and end users with determining the most appropriate body for their complaint or queries. The information collected by the common service access point could be beneficial in creating an environmental scanning culture that could provide the WCB with valued data to support continued process improvement activities. The new service delivery role would need to be restricted to the provision of information without any accompanying decision making authorities. These should remain with the existing layers within the decision making and appeals process.

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.

Information suggests that the primary health care system in Alberta recognizes the need for assessment and referral services for WCB program claimants and clients. What can be problematic is a lack of awareness and training for physicians on both the diagnosis and support for injury workers, as well as the requirements of return to work planning. This lack of awareness

and training sometimes translates into frustrating interactions for the employer, worker and WCB administration.

Additionally, experience also shows that many health providers view one of their principle roles as patient advocates, which in turn influences the objectivity and caliber of information provided in support of the adjudication process. This reality must also be factored in when evaluating evidence provided to the WCB Board of Directors during the adjudication process and the health providers interaction with the system.

Merit supports continued training and information provision on best practices needed to address a successful match of services between the primary health care system and the WCB program.

The Canadian Medical Association's policy "The Treating Physician's Role in Helping Patients Return to Work after an Illness or Injury" includes three major conclusions: The majority of physicians have not received training on the RTW processes; the return of the patient to all functional activities including work as soon as possible post injury; and, the development of efficient strategies to combat the ever increasing demands that physicians experience for medical/functional information.

Merit would encourage the WCB to continue to work with the medical community towards a greater understanding of the WCB program, with an accompanying public relations campaign for greater public awareness.

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

Given that the WCB program is outside of the provincial health care system, workers and employers are well served by the current framework that sees a distinct group of health care professionals address workplace related injuries and illnesses. The current health care system is fraught with wait lists for essential services that would see injured workers wait to receive treatment and return to work. Merit supports the continuation of the provision of health care services outside of the provincial health system. These ancillary encourage a timely assessment, treatment and return to work where appropriate.

Of note is the concern that WCB fee differentials may encourage an incentive for physicians to manage the diagnosis and treatment of health issues as a WCB injury, potentially resulting in fraud. The WCB referral system should not be so rich as to encourage this behavior, nor to compromise existing health services.

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

As with most successful partnerships, the relationship between patients and WCB administrators should encourage an open and transparent dialogue in the interests of workers and their employers. Challenges and disagreements may result in compensation and treatment delays, and/or delayed return to work plans. Information from members' point to a fairly balanced approach on health care provider and administrative personnel.

As with most circumstances, current information is vital. The WCB should seek to continue and expand on guidelines for medical practitioners that reflect best practices and current technologies relating to workplace injuries and illnesses. Additional effort should be undertaken towards increased awareness on best practices on return to work treatments.

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

Merit supports the continued application of provisions where the WCB and Appeals Commission remain the sole bodies that can request the convening of a Medical Panel. Panels are generally necessary where there is a conflict of medical opinion between two physicians of equal expertise or specialty, or to answer a medical question necessary to determine entitlement that cannot be determined through other means. However, panels should not be used where there are other methods for resolving a difference in medical opinion.

The medical assessment of a condition is one of the most vital parts of the claim process. Should there be any issue or question from a medical perspective, there should be the opportunity to utilize a medical panel earlier in the process to assist with the adjudication process. This could in turn encourage a quicker decision, serving both the worker and employer in a more effective way.

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

Merit does not support the expansion of the Medical Panel Office in resolving medical conflicts. Physicians and WCB medical advisors already have clear roles and responsibilities that balance the requirements of the WCB program, employers and workers.

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?

“Merit does not support any provisions that compel an employer or worker to cooperate on return to work. The current system adequately addresses the responsibilities of employers and workers towards the resolution of a return to work plan.”

Merit does not support any provisions that compel an employer or worker to cooperate on return to work. The current system adequately addresses the responsibilities of employers and workers towards the resolution of a return to work plan. There is no need to force stronger measures towards this end when the existing system works. Legislation and policy already direct workers to cooperate towards a return to work through the threat of the suspension of compensation, while the WCB and employers are compelled to deliver a modified work plan to

support that return to work. The current case management environment already seeks to support incentives to cooperate with return to work plans. Where the system fails, dispute mechanisms can be accessed by workers who feel their employer is hesitant or refusing to cooperate with return to work. Fundamentally, the financial incentives through experience assessments and premium determination keep most employers interested in addressing return to work plans.

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?

Challenges include a lack of accountability for medical practitioners to provide timely medical information for the creation and resolution of the treatment and return to work plans. Medical practitioners should be provided with the education and training required to assist with the resolution of any information backlogs. Any distracting impact from either inattentive medical practitioners or WCB administration who lessen their attention once the worker returns to modified duties need to be addressed through a distinct focus on the resolution of the claim.

Over the recent past, WCB and Appeals Commission decisions have allowed a worker continued benefits when a worker performing modified duties violates other non-WCB related employer policies. This causes considerable issue with employers who manage their workforce with fair and transparent workplace policies. The expansion of WCB benefits for workers who violate employment policies slides into areas that are not fundamental to the Meredith Principles and challenges the existing compensation and training system. The WCB should create and enforce policies that support the fundamental principles on fairness and transparency for all workers.

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

No comment.

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

Merit would direct the Review Panel to the points made in number 12. We cannot emphasize enough the negative impact of allowing workers continued compensation when they are terminated due to just cause from an employer. The expansion of the no-fault concept is erroneous in these circumstances. It fails to provide employers with the ability to manage their workforce in a safe and transparent manner, and it gives

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other workers the message that there are circumstances where their inappropriate and potentially unsafe behavior are acceptable. This in effect extended the no-fault principle to situations where workers on modified duties were rewarded through continued WCB benefits. After being terminated for cause because of their own actions. By allowing the continued existence of an uncertain environment, the WCB is causing confusion for both workers and employers. Merit encourages the WCB and provincial government to amend legislation, regulations and policy to enshrine the principle that no-fault does not extend to the worker’s own post-incident behavior and should clearly define circumstances by which the worker has effectively caused their dismissal.

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

Alberta already has the highest cap on insurable earnings at \$98,700. Given wages in the construction industry, any changes to this cap would have a disproportionate impact on our contractors in comparison to other sectors, such as hospitality or retail. Alberta also has a generous payable benefit of 90% of earnings, which given its tax free status, results in a high take home net amount. WCB benefits should not be equal to or more generous than employment income. By changing these parameters, the WCB program could result in a disincentive to return to work, which contradicts the basic tenant of the compensation system.

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

Merit does not support any option for workers to purchase additional coverage through the WCB. This concept directly contradicts the basic tenants based on the Meredith Principles. Given there are numerous organizations that offer private insurance, there should not be an expansion into this area. Not only would this add significantly to the administrative burden for the WCB, but it could also create confusion as to the roles and responsibilities between the WCB and private sector insurance.

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

Merit does not support WCB recognition of career progression or potential earnings. There are so many factors that play into a worker's career progression, including timing, training, economic and personal circumstances. To attempt to assume a worker's career progression could be likened to trying to read the future through a crystal ball. There are no guarantees as a person progresses through their career path.

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.

Merit supports the continued use of deemed earnings for those workers not able to return to their original employer. The basic tenant of the WCB program is to return a worker to employability, not to a particular position or employer. WCB training and support sometimes result in a change of careers and/or employers. All processes and policies must reflect current labour market data and practices when determining deemed earnings. Unfortunately, this data can have gaps and challenges that result in inappropriate deemed earnings considerations. Government must increase their focus on solid data sets. There must be measurable, empirical data that supports the determination of earnings. This can only be completed through a concerted effort and investment by government.

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?

The WCB already supports policies that address non-compliant workers. As a worker fails to work towards a diagnosis, treatment plan, or return to work plan, the WCB can reduce or eliminate compensation benefits. There is no greater incentive beyond a reduction or removal of compensation income. It is ultimately the responsibility of the worker to determine their behavior, with the resulting consequence or benefit.

The WCB program should ensure that they consistently apply existing requirements, and enforce the circumstances where worker fail to follow those requirements. In all instances, the worker should be provided with the opportunity to agree to remedial actions resulting in the provision of continued compensation benefits. The worker should be given access to advice and information, then the WCB should remain vigilant and transparent when deciding on the reduction of benefits.

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

No comment.

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

The DRDRB provides a valuable function in that many issues are resolved internally and the number of claims that go forward to the Appeals Commission is reduced through this process. Given the fundamental principles of the WCB program based on the Meredith Principles, this is a vital step in ensuring a timely and fair process that prevents an overwhelming use of the Appeals Commission process which has a significant cost. It is important that all levels of review ensure a focus on evidence based decision making. Parameters must be clearly defined to ensure effectiveness.

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

Merit agrees that one year is reasonable limitation period to file a request for a DRDRB review. This is consistent with other review processes and allows for sufficient time for the WCB, employers and workers to ensure a fair and transparent process.

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

Merit has no issue with the Appeals Commission process and timelines. It remains imperative that appeals remain independent of WCB processes and influence. The structure is set up well with the Appeals Commission operating independently of the WCB. The provincial government and the ABCs have well established appeal processes and administration that have been based on historical best practices. There is no compelling need to alter this dynamic when the results are effective.

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?

The Appeals Commission process must follow the tenants found in the Meredith Principles, which require that decision-making be based on evidence, law, policy and a fair, impartial and transparent process. This must be applied to Appeals Commission and be bound by both legislation and policy. The Appeals Commission should not be allowed to rule on matters outside of the basics of the appeal, which have the impact of defacto altering policy and procedures. It is not the role of the Appeals Commission to change existing fundamental principles. Any changes to principles, legislation, regulation and policy should stem from stakeholder consultation and agreed upon principle alterations.

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

Merit is confident that existing legislation and policy are fair and reasonable, and should not be changed. Reconsideration of a decision should not be used simply because one of the parties is dissatisfied with the result. As a matter of definition, an appeal must be final and binding. The only consideration should be if there was a fundamental flaw in the appeal process or evaluation that requires further analysis. These circumstances should be infrequent and only applicable when new evidence is available for consideration.

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

The Office of the Appeals Advisor should be established within the Ministry of Labour, and operate at arm's length from the WCB program.

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

There is no doubt that employers should be provided with equal access to WCB funded representation as is afforded to the worker, given the basic tenets of the Meredith Principles that require a fair, impartial and transparent process.

Not all employers have the financial ability to hire a representation for the appeal process and the Office of the Appeals Advisor, which is unfair in comparison with the same provision for workers. Many employers lack the knowledge and resources to take on appeals and should be afforded the same benefits as workers.

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?

Merit has no concerns with the current safeguards in place to address working information during the appeal process.

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

There should be greater controls around the scope of impacted policy changes as a result of Appeals Commission decisions. Appeals Commission decision should not be allowed to circumvent or contradict clear policy/legislative parameters.

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

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Merit fundamentally disagrees with any premise where organized union labour groups are the only organizations considered as representing labour on any WCB committee, board, appeals commission or stakeholder group. As a result, employer and industry associations should be given input on the appropriate designated representatives. This should involve a clear process, with sufficient timelines and without political input. The process should include a collaborative effort where impacted stakeholder groups agree to the proposed membership prior to recommendation to the Minister and Cabinet.

There should be no role for the “general public” within the governance structure of the workers’ compensation system or the Board of Directors of the WCB. In the absence of public funding in support of the financial responsibilities of the WCB program, representation should be confined to parties with a direct financial interest in the system.

Merit supports a non-partisan, competency based approach to WCB appointments.

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

Merit does not believe that there should be increased access to the WCB Board of Directors as a whole. It is appropriate that communications occur from and to the Board Chair and the WCB Executive Team, with the exception of the board member who is designated to represent Merit’s constituency. Merit would like to see a greater focus and defined process on outreach from this board member so that they are aware of the views of a broader spectrum of their stakeholders. Stakeholder engagement should occur consistently with all levels of the organization.

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?

The current performance management matrix is appropriate, and the WCB should invest time and resources for a plan of continued evaluation and alteration towards best practices. This plan should include multiple tiers of measures that address the operations for the short term, operations for the long term, and industry and societal impacts in the long term. Measurement and understanding those measurements is vital to the organizational health of any company. We would caution directly linking too many of the short term operational performance measures to executive compensation, as this could potentially skew the ongoing work of the WCB to focus on short term requirements to the detriment of the long term impact of the compensation system.

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.

Merit would prefer a more formalized policy development and stakeholder engagement process, including a consultation process. The practice of posting potential policy changes online for input, hoping for the best result is an ineffective method of stakeholder engagement. The communications plan for policy changes should also be formalized, with a specific focus on communicating to all sizes of employers. Many smaller organizations have moderate to little capacity to keep abreast of policy changes, and should be given every opportunity for the information to be shared as accessibly as possible.

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35. What are your views about amending the 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?

Merit supports the review of the Workers' Compensation Act on a timeframe of 10 – 15 years, depending on current best practices. The framework for these reviews should be based on an assessment of changes to economic and insurance parameters. Given the system is so complex, more frequent reviews could create a constant cycle of review/change.

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

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It is imperative that the WCB and the Appeals Commission remain independent and operate at arm’s length from government. The Board of Directors should continue to oversee the operation of the Workers’ Compensation Board without any political or governmental interference.

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

The current practice of employer funding of safety associations through a WCB premium levy ensures all eligible employers in an industry contribute financially to a consistent standard of safety education and training program. Relating to safety associations, levy collection and distribution to safety associations should be the only involvement of the WCB. This was deemed to be an expedient way to collect funding, but safety associations are not and should not be considered part of the WCB program.

OH&S and the WCB are distinct systems that should remain independent. This is outside of the scope of this review and should be addressed as part of any OH&S review.

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

Safety associations all have a governance structure that includes oversight by an elected Board of Directors. These Boards approve funding and are responsible and accountable to their membership for monitoring activities of the association. The membership is comprised of employers within the industry and other stakeholders as appropriate. Mechanisms satisfactory to the membership who fund the association are already in place for ensuring accountability of safety associations and evaluation of safety programs. Associations are funded by employers, and the accountability of these Associations is to their members.

WCB and OH&S programs are independent of one another and do not form part of this review or submission.

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

The use of WCB claims data as a key measure to drive prevention is a significant concern; WCB data is meant for insurance purposes, not as a metric of safety performance.

The WCB is an insurance company and has a role to gather and analyze data for insurance purposes. Dissemination should be limited to aggregate data used to monitor the performance of WCB related programs and activities. An employer advisory team established for the purpose of providing information and advice on WCB related matters and action planning based on current data would be beneficial.

Injury prevention activities are outside the mandate of the WCB. The WCB should not have any role in dissemination of individual company statistics to other organizations especially when the data may be misinterpreted or used inappropriately. The WCB does have a role in confirming insurance is in place.

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

WCB data should not be provided for the purposes of safety and prevention needs, as this rests with OH&S which should remain separate from the WCB.

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

There should be no changes to the WCB's role in relation to the prevention of workplace injury and illness. The fundamental tenants of the WCB program are to mitigate the results of workplace injury and illness. The role of workplace injury and illness remains with safety organizations, programs and initiatives.

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

The current compensation system is appropriately balanced with regard to the long term actuarial sustainability of the system while providing an appropriate level of benefits and services. It supports the basic tenant of the system in relation to the Meredith Principles, where the focus of programming and compensation must remain on injury prevention and a return to work.

The experience rating system fails when it works towards addressing safety performance. The intent of the workers' compensation system was never to fund and/or manage safety performance. Employers in Alberta are more aware than ever of the need for competent safety programs, but there should be a function of provincial parameters, in agreement with business.

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?

The processes currently used to investigate claim suppression are sufficient to address the needs of the workers' compensation system in Alberta. The rules and regulations around requirements to report an incident sufficiently incent employers, workers and medical practitioners.

Merit does not agree that there is any evidence that claim suppression is a significant issue, therefore does not believe we can speculate on potential changes to penalties or investigative processes based on anecdotal information. It is likely that many instances that could be interpreted as claim suppression could be cases of incorrect assumptions and a lack of awareness of WCB reporting requirements.

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

No comment.

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

Merit is supportive of maintaining the existing practice of providing premium incentives for employers who participate in the PIR program. The program works well given the collaboration between government and industry on the negotiation of its parameters.

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

The current actuary assessments used to determine WCB premiums have proven effective to address today and tomorrow's costs of workplace injury and illnesses. The practice of returning excess investment returns should remain as a payable to employers, the sole funder of the WCB.

Of concern is the increasing amount in the funding policy of the "green zone" of 114% – 128% which has in fact seen the amount increase up to 136% in recent years. This is an additional cost to employers which does not reflect the current economic viability of Alberta's WCB. The green zone should be strictly adhered to unless agreed upon for economic reasons with stakeholder buy in.

Merit has concerns over the full funding of OH&S program from the WCB account. Given that not all employers pay WCB premiums, it is an unfair practice to fund programming from the WCB program that benefits all employers. A more fair and transparent approach would be to fund the other employer portions through General Revenue and business taxes, which still creates a "double-dipping" from WCB employers, or to fund the OH&S programs entirely from General Revenue.

“Merit fundamentally disagrees with the premise that once WCB premiums are collected into the WCB account, that those funds become a ‘public good’.”

Merit fundamentally disagrees with the premise that once WCB premiums are collected into the WCB account, that those funds become a "public good". The funds are from employers, for the benefit of their employees. Any attempt to expand programming outside of compensation and services as outlined in the Meredith Principles must be resisted. In addition, there should be an additional layer of reporting to employers who pay into the program, outside of the financial reporting that exists through government processes.

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

WCB premiums must be based in concrete actuary systems and evaluations. Data should be based on evidence and ignore anecdotal information that supports to provision of emotional decision making. Employers are willing and able to fund compensation programs that adhere to the basis tenants of fairness and equity.

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?

Surpluses in the Accident Fund due to better than expected investment returns are not funds that the WCB or the government should be free to distribute based on their own agendas. Surpluses exist because employers have paid more into the WCB program through WCB premiums than was required to fund the current and projected future cost of claims and these funds must be returned to employers. Industry and the private sector must be allowed to continue to operate in an environment of competition and fairness. Merit does not agree with any other formula for a return of funds.

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

Employers have no issue with the basic concept that they should fund workers' compensation programs to ensure that workers are supported, but it must be based on fairness and transparency to ensure that employers are not taken advantage of. WCB should ensure that they are financially viable in both the short and long term through premiums. Balance between workers and employers must be maintained in the long term.

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?

All entitlement decisions must be evidence based and Merit does not support a consensual resolution processes when it comes to making benefit entitlement decisions.

Merit believes that stakeholder involvement from both employer and worker groups will be essential is developing any new process to ensure acceptance and a clear understanding of potential challenges.

51. What do you like most about the WCB system?

“Merit believes that the current Alberta WCB program has proven to be an effective and fair insurer for occupational injury/illness and in the provision of rehabilitation and economic loss benefits where recovery and/or rehabilitation to return to previous income is not possible.”

The independence of both the WCB and the Appeals Commission with respect to government, the independence of the Appeals Commission from the WCB, and the separation of OH&S and the WCB each having clearly distinct mandates, are also positive features of the existing system that should continue in the future.

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

Over the past 15 – 20 years the WCB has been exposed to, and influenced by, interventionist governments with objectives seemingly related to integrating the WCB program into the social services system, versus strengthening an insurance system that has served Alberta's workplaces well since its inception. The influence of preexisting medical conditions on entitlement decisions, policy contortions with respect to the “no fault” principle beyond causation, and the introduction of social factors that inhibit medical, occupational and vocational rehabilitation, are examples of interference.

53. We invite you to provide any other comments you have, which are already provided.

Merit Contractors Association is committed to ensuring the views and interests of our over 1400 members are included as part of any policy, process or governance review. We are in full agreement with the tenants as outlined in the Meredith Principles, and caution against changes to the WCB that would expand its mandate beyond the agreed upon principles.

In order for Alberta workers to be successful, Alberta business must be successful. And the construction industry needs effective, productive and safe workers. It is in the best interests of industry and the provincial government, through the arm's length boards of the WCB, to work together towards a balanced injured worker compensation system.

In keeping with this commitment, Merit recognizes the importance and fully supports safe and healthy working environments. The Open Shop sector of the construction industry, similar to other labour sectors, works diligently towards this goal.

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