

## Member's Quarterly

Winter 2018 Edition

## Feature

## Alberta Considers WCB Changes

*Proposed changes cause major concern for employers*

**I**n a year where the Alberta government has already made substantial changes to labour and employment laws, a recent 190-page report points to more anticipated changes in respect to workers' compensation laws. The report follows 16 months of examination.

At the core of the Review Panel's recommendations lies the view that the workers' compensation system needs to change its overall approach to WCB claims. The Review Panel recommends a shift of focus from administrative "claims management" to putting the health and well-being of injured workers at the center of the system. Some of the key recommendations include:

- Establishing a new and independent Fair Practices Office (FPO). The FPO would serve an ombudsman-type function, fielding, investigating, and addressing concerns about administrative fairness.
- Relocating the Office of the Appeals Advisor (OAA) to the FPO. Currently, the OAA forms part of the WCB and is tasked with assisting injured workers and their dependents. The proposed changes would also allow employers to access the OAA's assistance.
- A new roster system for independent medical examinations (IMEs). The goal is to place responsibility for the IME roster with the Medical Panel Office, which is independent from the WCB, in order to increase impartiality and decrease "doctor-shopping."
- Greater choice for injured workers in selecting health professionals. This is one of the recommendations likely to prove controversial. Rather than selecting from an established list of WCB-retained professionals, the recommendation is that injured workers should have greater choice in their treatment professionals.
- Establishing an obligation to return workers to work. Currently, return to work services represent one of many rehabilitative options the WCB administers. The proposal, inspired by the human rights duty to accommodate, is to impose a statutory duty on employers to return injured workers to the workplace. This duty would be accompanied by a worker obligation to cooperate. The WCB would establish protocols to ensure these obligations are observed. While the proposal contemplates some limits to this obligation (e.g., it would only apply to employers of a certain size; the obligation would only subsist for 24 months unless otherwise ordered by the WCB), if accepted, it will represent a dramatic shift in how employers can deal with employees under WCB claims.

The proposal contemplates punishing employers who fail to return an injured employee to work with administrative penalties. In addition, the proposal suggests that the duty to return injured workers is only fulfilled once the worker has returned to employment for 12 continuous months. If an employer terminates the returned worker during this period, it would be assumed that the termination was inappropriate and that the employer failed in its obligation. As a result, the employer would bear the onus to rebut this presumption and convince the WCB that the termination was not related to the worker's injury.

Should this proposal be accepted, employers can expect to face difficult issues when contemplating the termination of injured workers. While the proposal makes allowance for just cause terminations, it recom-



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mends that employers be required to demonstrate "egregious conduct" in order to justify a termination on this basis. The proposal also leaves it unclear as to what options employers have to terminate injured workers in circumstances involving restructuring, lack of work, or general downsizing.

- The obligation to continue an injured workers' health benefit coverage. If the government acts on the recommendation to legislate a mandatory return to work, the Review Panel recommends that terms and conditions of employment, such as health benefits coverage, be continued as well.

- The use of case conference models throughout the system, part of the shift away from a "claims management" model. Formal processes such as internal reviews, appeals and medical panels should be regarded as tools of last resort. Instead, decision-makers in the system engage in meaningful dialogue with employers, workers and appropriate parties.

- End surplus payments to employers. Currently, when the Accident Fund exceeds its annual target, surplus funds are distributed back to employers. The Review Panel advocates an end to this practice.

- Change to WCB policy to address continuing benefits when workers are terminated for egregious conduct. A frustrating aspect of WCB claims administration for many employers was that employees who were terminated from modified work assignments for misconduct would inevitably receive Total Disability Benefits upon termination. WCB often defended this practice on the basis that it is a "no fault" system and the WCB was not mandated to act as an arbiter of workplace disputes. The Review Panel advocates changing the current practice, enabling the WCB to look at all relevant facts to determine whether an employee was terminated for "egregious conduct".

It remains to be seen what recommendations the government will adopt and when any changes will be implemented. Some of the proposed changes are cause for concern.

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