

WCB CONSULTATION

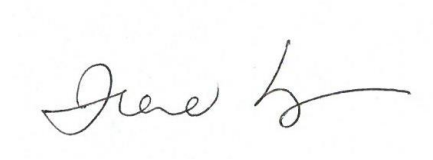
Submission on Proposed
2016-2018 Policy Priorities
Workplan

April 2016



Authority

This document is respectfully submitted on behalf of the Executive Officers of the BC Federation of Labour ("BCFED") and represents the views of more than 500,000 affiliated members across the province of British Columbia.

A handwritten signature in black ink, appearing to read 'Irene Lanzinger', with a long horizontal flourish extending to the right.

IRENE LANZINGER
President

ab/move**up**

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Introduction

The BC Federation of Labour (“Federation”) appreciates the opportunity to provide our submission with respect to the Draft 2016 – 2018 Compensation, Occupational Disease, Assessment, and Occupational Health and Safety (OHS) Policy Priorities Workplan.

The Federation represents more than 500,000 members of our affiliated unions, from more than 1,100 locals, working in every aspect of the BC economy. The BCFED is recognized by the Board and the government as a major stakeholder in advocating for the health and safety of all workers in BC.

The BCFED’s submission was prepared in consultation with its affiliates and supports the individual submissions of its affiliates.

Background

The Board presents the draft workplan for policy priorities in the discussion paper¹, “Draft 2016 – 2018 Compensation, Occupational Disease, Assessment, and OHS Policy Priorities Workplan”, dated February 10, 2016.

The Board identifies items to be added to their workplan through various sources, including the Board of Directors (BOD), the Senior Executive Committee, stakeholders, WCB Operating Divisions, the Review Division and Workers’ Compensation Appeal Tribunal, and other jurisdictions.

The discussion paper notes that, despite the approved workplan, issues often arise throughout the year that may be added as a workplan priority.

¹ Workers’ Compensation Board of BC. (February, 2016). *Draft 2016 – 2018 Compensation, Occupational Disease, Assessment, and OHS Policy Priorities Workplan*. Retrieved April 2016, from: http://www.worksafebc.com/regulation_and_policy/policy_consultation/assets/pdf/2016-18PolicyPrioritiesWorkplan.pdf. [WCB DP]

Submission – 2016-2018 Policy Priorities Workplan

The following is the submission of the BCFED with respect to the proposed policy workplan for 2016-2018. It is pertinent to note that, despite our submission below, the BCFED may advocate for additions to the 2016-2018 workplan in the future.

Appendix A: Compensation and Occupational Disease Policies

Appendix A² of the discussion paper lists the proposed priorities for compensation and occupational disease policies as follows:

- Chronic Pain – Item C3-22.20 and #39.02 of the *Rehabilitation Services & Claims Manual*, II (RSCM)³
- Treatment of Dividends Paid to Principals - RSCM Item #68.90
- Overpayments – RSCM Item #48.41
- Average Earnings – RSCM Chapter 9
- Vocational Rehabilitation – RSCM Chapter 11
- Psychological Disability Awards – RSCM Appendix 4
- Prior Shoulder Dislocations – RSCM Item C3-16.10
- Range of Motion Method and Disabilities of the Spine – RSCM Appendix 4
- Clothing Allowance – RSCM Item C10-82.00
- Measurement of Earnings Loss – RSCM Item #40.13
- Permanent Disability Evaluation Schedule – RSCM Appendix 4
- Diverting Pension Benefits to Pay for Worker's Maintenance – Section 35(5) of the *Workers Compensation Act (Act)*.⁴

➤ The BCFED generally supports the above-mentioned priorities for the workplan.

² WCB-DP, *supra* note 1 at 6

³ Workers' Compensation Board of BC. (2002). *Rehabilitation Services & Claims Manual*, Volume II. Retrieved from: http://www.worksafebc.com/publications/policy_manuals/rehabilitation_services_and_claims_manual/volume_ii/default.asp.

⁴ *Workers Compensation Act*, RSBC 1996. c. 492.

Presumptive Legislation – Post-Traumatic Stress Disorder

There is a national sweep to request presumptive benefits for trauma related mental disorders, especially Post-Traumatic Stress Disorder (PTSD) and in particular for emergency response workers (First Responders). At the writing of this report, Alberta, Manitoba and Ontario have introduced new legislation to address this issue.

Alberta introduced new legislation in 2012 for presumptive PTSD under Part 4, Section 24.2 of their *Workers Compensation Act*.⁵ In this section, PTSD is defined as a condition diagnosed by a physician or psychologist per the most recent Diagnostic and Statistical Manual of Mental Disorders (DSM). Section 24.2(2) states that the presumption applies to, “an emergency medical technician, firefighter, peace officer or police officer”.

Manitoba’s *Workers Compensation Act*⁶ Part I was amended in January 2015 to make PTSD, diagnosed by physician or psychologist in accordance with the DSM, presumptive for **any worker** that is “is exposed to a traumatic event or events of a type specified in the Diagnostic and Statistical Manual of Mental Disorders as a trigger for post-traumatic stress disorder”. This is so far the best legislation in Canada with respect to PTSD as it does not limit the presumption to First Responders.

Ontario recently passed Bill 163⁷ which amends Part III of the *Workplace Safety and Insurance Act*⁸ by adding Section 14, “Posttraumatic stress disorder, first responders and other workers”. Section 14 provides presumptive benefits for PTSD as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), published by the American Psychiatric Association, and as diagnosed by a psychiatrist or psychologist. As per Section 14(2), the

⁵ *Workers Compensation Act*, RSA 2000, c. W-15. Retrieved April 2016, from:

<http://www.qp.alberta.ca/documents/Acts/W15.pdf>

⁶ *The Workers Compensation Act*, RSM 1987, C.C.S.M. c. W200. Retrieved April 2016, from:

<http://web2.gov.mb.ca/laws/statutes/ccsm/w200e.php>.

⁷ Bill 163, *Supporting Ontario’s First Responders Act (Posttraumatic Stress Disorder)*, 2016. Royal Assent Apr. 6, 2016. 41st Parliament. 1st session. Retrieved April 2016, from the Legislative Assembly of Ontario website:

http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=3713.

⁸ *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A. Retrieved April 2016, from:

<https://www.ontario.ca/laws/statute/97w16#BK12>

presumption applies to: firefighters, fire investigators, police officers, members of an emergency response team, paramedics, emergency medical attendants, ambulance service managers, correctional workers, workers in a place of secure custody or temporary detention, and emergency response dispatchers.

Across Canada, First Responders and the labour movement continue to lobby for presumptive benefits for PTSD, with varying degrees of response by the governments, as follows:

- In Nova Scotia Bill No. 11⁹ was introduced in October 2014 with the intention of permitting emergency responders to receive benefits for post-traumatic stress regardless of when it was diagnosed. This Bill did not get beyond first reading but the government promised to explore steps to support first responders and stakeholders continue to lobby for change.¹⁰
- New Brunswick introduced Bill 39¹¹ on April 1, 2016 which proposes to provide presumptive benefits for police officers, firefighters and paramedics for PTSD, diagnosed under the DSM by a psychologist or psychiatrist.
- Private Member's Bill No. 106¹² was introduced in the Yukon in April 2015 for PTSD for "emergency response workers", pursuant to lobbying by the firefighters and Fire Chiefs. It remains on the list of Bills before the House for the current session of the Legislative Assembly.

⁹ Bill No. 11, *Workers Compensation Act (amended)*. 1st Reading Oct. 1, 2014, 62nd General Assembly. 2nd session. Retrieved April 2016, from the Nova Scotia Legislature website: http://nslegislature.ca/legc/bills/62nd_2nd/1st_read/b011.htm.

¹⁰ National Union of Public and General Employees. *NSGEU urges Minister to honour promise, establish PTSD Working Group for first responders*. (October, 2014). Retrieved from: <http://nupge.ca/content/11927/nsgeu-urges-minister-honour-promise-establish-ptsd-working-group-first-responders>.

¹¹ Bill 39, *An Act to Amend the Workers' Compensation Act*. 2nd Reading Apr. 6, 2016, 58th Parliament, 2nd session. Retrieved April 2016, from the Legislative Assembly of New Brunswick website: <http://www.gnb.ca/legis/bill/FILE/58/2/Bill-39-e.htm>.

¹² Bill No. 106, *An Act to Amend the Workers' Compensation Act, with Respect to Post-Traumatic Stress Disorder*. 1st Reading Apr. 28, 2015, 33rd Legislative Assembly, 1st session. Retrieved April 2016, from the Yukon Legislative Assembly website: http://www.legassembly.gov.yk.ca/pdf/bill106_33.pdf.

- In Saskatchewan firefighters also continue to lobby for this change. Last year it was reported that the *Workers Compensation Act* review committee was engaged in consultation about this issue and expected a report in mid-2016.¹³
- Introducing PTSD presumption legislation for First Responders became an election platform issue in Newfoundland in 2015, however, no bill has been introduced in the Legislative Assembly to date.

In British Columbia, a private Member's bill, Bill M 203 - 2016¹⁴, was introduced on February 23, 2016. This Bill follows closely the principles of Ontario Bill 163 described above. To date, there has been no further progress on this bill.

Presumptive Legislation – Operational Stress Injuries for First Responders

In February 2016, the BC Professional Firefighters' Association (BCPFFA) lobbied the BC Provincial Government for a modified version of the legislation proposed or enacted in other provinces and territories. The BCPFFA are proposing that the presumptive legislation be applied to "First Responders", which they define as police, firefighters, paramedics and prison guards. The key difference is the proposal for presumptive coverage of "operational stress injuries", as opposed to limiting it to the narrow diagnosis of PTSD. The BCPFFA defines "operational stress injuries" as diagnoses of depression, anxiety disorder, trauma and stressor-related disorders (notably PTSD), or any related mental health injury.

The BCFED is not in favour of the narrow definition of "First Responders" in the BCPFFA proposal. It is the BCFED position that any presumptive legislation should have a broad application to recognize the plethora of workers that are routinely exposed to traumatic events in their occupation. The following are just a few examples:

¹³ Graham, J. (2015, November 18). Firefighters call on Saskatchewan to recognize PTSD. *Global News*. Retrieved from: <http://globalnews.ca/news/2346577/firefighters-call-on-saskatchewan-to-recognize-ptsd/>.

¹⁴ Bill M 203 – 16, *Workers Compensation Amendment Act, 2016*. 1st Reading Feb. 23, 2016, 40th Parliament. 5th session. Retrieved April 2016, from the Legislative Assembly of British Columbia website: <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/40th-parliament/5th-session/bills/progress-of-bills>.

- Emergency response (911) dispatchers – these are the workers that receive the calls and are expected to stay on the call until the First Responders arrive on the scene.
- Healthcare workers in emergency – these workers are the ones that receive the patients that the First Responders service.
- Care-aids and other workers in long-term care facilities that witness death every day. These workers are often emotionally attached to their patients due to the length of time that many of the patients are in the facility. Yet, when a patient they care about dies – an all-too-common occurrence – they must continue their shift, caring for other patients, with no time to properly grieve and recover.
- Workplace First Aid Attendants or other health and safety professionals are usually the “First Responders” to traumatic workplace incidents involving serious injury or death, and sometimes even public traumatic incidents if they are working in the vicinity and are first to the scene. These workers often attend to the patient for a significant period of time prior to the arrival of First Responders, especially in more remote workplaces.

However, the BCFED does support the BCPFFA’s efforts to expand the presumption beyond PTSD to include other serious trauma-related disorders. The whole intention of this national movement was to ensure that workers exposed to trauma, in particular emergency responders, had their injuries recognized and provided benefits, including timely treatment, without a long drawn-out fight. Sadly, the delay in treatment and benefits has resulted in exacerbations of these conditions, up to and including suicide.

Due to the increasing political pressure to address this issue, it would seem that legislation in some form to address trauma-related disorders is imminent. Therefore, the BCFED encourages the Board of Directors to add this issue to the 2016-2018 workplan to begin to explore the accompanying policy options.

➤ The BCFED generally supports the above-mentioned priorities for the workplan.

Appendix B: Assessment Policies

The proposed assessment policy priorities for the 2016-2018 workplan are outlined in Appendix B¹⁵ of the discussion paper, as follows:

- Workplace Status – policies of the *Assessment Manual*¹⁶(AM)
- Dividends Paid to Principals: Payroll Categories – AM Item AP1-38-2
- Payroll – Principles for Determining – AM Item AP1-38-3
- Allocation of Claims Costs
- Transfer of Experience Between Firms – AM Item AP1-42-3
- Minimum Annual Assessment – new AM policy
- Fishing Industry – Section (4) of the *Act*
- Experience Rating – AM Item AP1-42-1

➤ The BCFED generally supports the above-mentioned priorities for the workplan and does not have additional items to suggest at this time.

Appendix C: Occupational Health & Safety Policies

Appendix C¹⁷ of the discussion paper proposes the OHS policies priorities, as follows:

- Partners in Injury and Disability Prevention Program – AM Item AP1-42-4 and Item D2-111-4 of the *Prevention Manual*¹⁸ (PM).
- Discriminatory Action Policy Review
- Discriminatory Actions – PM Item D6-153-1
- Formaldehyde – Biennial Review
- Styrene – Biennial Review

➤ The BCFED generally supports the above-mentioned priorities for the workplan and does not have additional items to suggest at this time.

¹⁵ WCB-DP, *supra* note 1 at 10

¹⁶ Workers Compensation Board of BC. (January, 2003). *Assessment Manual*. Retrieved from: http://www.worksafebc.com/publications/policy_manuals/assessment_policy_manual/Assets/PDF/assessment_manual.pdf.

¹⁷ WCB-DP, *supra* note 1 at 13

¹⁸ Workers Compensation Board of BC. (January, 2014). *Prevention Manual*. Retrieved from: http://www.worksafebc.com/publications/policy_manuals/Prevention_Manual/Assets/PDF/prevmnl.pdf. [WCB-PM]

Occupational Health & Safety Regulation (OHSR) Workplan

The Board's discussion paper notes that the OHS regulatory amendment workplan is still under review and therefore has not included the regulatory amendment priorities for 2016-2018.

However, the BCFED would like to take this opportunity to recommend adding the following to the OHSR workplan.

1. Violence in the Workplace – the BCFED is developing a proposal to amend the Violence in the Workplace regulation, currently Sections 4.27 to 4.31 of the OHSR.¹⁹ This proposal will include moving the requirements of the current policies for workplace bullying and harassment²⁰ into the regulation, where it properly belongs, along with adding requirements to prevent domestic violence in the workplace. The BCFED expects this proposal to be ready to present by the end of 2016.
2. Psychological Health and Safety in the Workplace – following the completion of work on the above-mentioned project, the BCFED intends to begin work developing a proposal for introducing regulations respecting psychologically healthy and safe workplaces. The proposal will be largely based on the Canadian Standards Association's National Standard for Psychological health and safety in the workplace.²¹

Conclusion

The Federation recommends that the Board of Directors seriously consider this submission and revise their proposed 2016-2018 workplan accordingly, in support of safer workplaces and work activities for all workers.

¹⁹ Occupational Health and Safety Regulation, B.C. Reg. 296/97; Retrieved from:

http://www.bclaws.ca/Recon/document/ID/freeside/296_97_00

²⁰ WCB-PM, *supra* note 18 at D3-115-2, D3-116-1 and D3-117-2.

²¹ CAN/CSA-Z1003-13/BNQ 9700-803/2013. (January 2013). *Psychological health and safety in the workplace — Prevention, promotion, and guidance to staged implementation*. BNQ/CSA Group/MHCC.