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Briefs

Submission to the WCB on proposed amendments to policy regarding determining the employer of volunteer firefighters

A pdf of the complete submission can be found here(231 KB).

The BC Federation of Labour (“Federation” “BCFED”) appreciates the opportunity to provide our submission with respect to the proposed amendments to policy in the Assessment Manual regarding determining the employer of volunteer firefighters.

The BCFED 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 Federation is recognized by the Workers’ Compensation Board ("WCB” “Board”) and the government as a major stakeholder in advocating for the health and safety of all workers in BC and full compensation for injured workers and their surviving dependents.

This submission was prepared in consultation with our affiliates. The BCFED thanks our affiliates for their assistance in developing our response to this consultation.

To begin, the proposed changes are to remove outdated language from policy in the Assessment Manual and provide additional guidance about how the Board will determine the employer of a volunteer firefighter.

The discussion paper notes that the Determining Workplace Status policy in the Assessment Manual sets out how WCB determines whether someone is an employer, worker or independent operator. This determination has important implications for a person or entity's rights and responsibilities under both the compensation and the OHS provisions of the *Workers Compensation Act* ("Act").

As such, the proposed amendments are not simply about employers paying assessments to the WCB. In this case, they address the need for people involved with volunteer activities – including volunteer firefighting – to be clear about, and to be afforded, their rights and responsibilities in the system.

In the discussion paper, the Board proposes to amend the section of the policy on volunteers in relation to volunteer firefighters. Volunteer firefighters that are primarily assigned to fire suppression and/or fire investigation duties are specifically identified as workers in the Act.

However, the need to remove outdated language and offer additional clarity in the policy about determining the workplace status of volunteers is not exclusive to firefighters. We know that volunteers often work alongside workers and are exposed to the same workplace hazards, yet they are generally determined to be outside of the system and have limited protections under the Act. The BCFED identified this as a serious concern in our 2022 submission[1] on previous proposed changes to the Determining Workplace Status policy and we reiterate it here.

The BCFED is concerned about a number of issues regarding volunteers in workplaces. The first issue is that many people identified as "volunteers" should actually have worker status under the Act. In the existing policy, the opening paragraph of the section on volunteers defines a volunteer as "an individual who generally provides services freely and without pay or expectation of pay," and goes on to say that volunteers are not workers under the Act, even if they receive "tokens of appreciation including honorariums."

To illustrate these points, the policy then includes an example of a "sheltered workshop" providing "mentally or physically disabled individuals with training or life enrichment opportunities." The example says that even if the participants receive a living allowance, incentive allowance or nominal

payment from the provincial government, they are not considered workers under the Act.

In our view, this example is outdated, confusing and inappropriate. Sheltered workshops often engage people living with disabilities in work that would be considered paid employment if it were done by others, and are recognized as contributing to the continued exclusion of people living with disabilities from the labour market. For many years, efforts have been underway in BC, Canada and internationally to move away from sheltered workshops and toward labour market inclusion. On this basis, the example included in the policy is outdated.

Further, this example does not effectively illustrate the content of the Act or the Board's existing practice. First, it refers to the workshop as serving a training purpose. As such, participants may be extended coverage under Sections 6 or 7 of the Act, since their situation might also be characterized as a practicum or an internship. But this possibility is not mentioned, an omission that may be a reflection of outdated and discriminatory ideas about people living with disabilities. It also creates confusion about whether voluntary coverage is possible for practicums or work-study programs.

Secondly, the example outlines several potential forms of consideration (living allowance, incentive allowance and nominal payment from the provincial government) but then reiterates that even if the participants in the sheltered workshop received these payments, they would not have worker status. This assertion does not appear to align with Practice Directive #1-1-1(A).

In the Practice Directive, the Board outlines a detailed process for assessing the specific circumstances to determine whether a person is a worker or volunteer, including considering the nature of the relationship between the parties, the nature of the work performed and both the type and amount of remuneration offered in exchange for the individual's services. The approach established in the Practice Directive is not applied or even mentioned in the "sheltered workshop" example, leaving the impression that receiving cash payments would not result in a volunteer having worker status. Yet, according to the Board's practice, and the general principles outlined elsewhere in the policy on determining workplace status, cash payments could very well result in a conclusion by the Board that a volunteer is considered a worker under the Act.

As the discussion paper acknowledges as a concern in relation to volunteer firefighting, employers, workers and volunteers may not be aware of their rights and responsibilities under the Act and the *OHS Regulation* ("OHSR"). Greater clarity is needed to assist workplace parties to understand whether volunteers may have worker status, their rights and their obligations related to the health and safety of both workers and volunteers.

Finally, Section 5 of the Act allows the Board to extend coverage to volunteers involved in "public interest undertakings." Policy Item AP1-5/6/7-1 - Extending Application of the Act requires that organizations apply to the Board for this coverage. But, the section on volunteers in the Determining Workplace Status Policy (Policy Item AP-1-1-1) does not refer to this section of the Act. Organizations engaging volunteer firefighters, for example, may apply for coverage for their volunteers that do not meet the definition of a firefighter. And other workers and organizations engaged in activities that are in the public interest, as well as Board decision makers, should also be alerted to this possibility.

In summary, the BCFED recommends that the discussion about a sheltered workshop be removed from the Determining Workplace Status policy and replaced with a clear, generic explanation of the Board's approach to distinguishing volunteers from workers. In addition, the BCFED recommends that reference to Section 5 of the Act and Policy Item AP1-5/6/7 – Extending Application of the Act be included in the section about volunteers in the Determining Workplace Status policy. The existing policy about practicums and internships refers to voluntary coverage available under Sections 6 and 7 of the Act, so it is our view that the guidance in relation to volunteers should refer to Section 5 of the Act. Together, these changes would remove outdated language and offer greater clarity to employers, workers and volunteers.

In the discussion paper, the Board proposes to remove outdated guidance saying that if a volunteer fire brigade is operated by a society, coverage is not compulsory but may be extended on a voluntary basis. The BCFED supports these proposed changes, as they update the policy to align with the 2019 changes to the Act.

The Board also proposes to include clarifying language about determining the employer of a volunteer firefighter. The proposed amendments to the policy include adding a reference to the Act's

definition of a firefighter and say that in determining the employer of a volunteer firefighter, the Board will consider the guidelines set out in the other sections of the Determining Workplace Status policy. In cases where the guidelines may not best reflect the nature of the relationship, the fire brigade of which the volunteer firefighter is a member is generally the employer.

The BCFED supports these changes, as they offer helpful clarification. Since volunteer firefighters are clearly defined as workers, the responsible employer must also be defined. There is broad public recognition of the importance of volunteer firefighters' service to BC communities, and the need for volunteers to be on more equal footing with professional firefighters, especially in terms of access to compensation for injuries and occupational diseases. But the 2019 legislation extending workers' compensation coverage to volunteer firefighters also establishes the responsibility for employers of volunteer firefighters to prevent injuries and occupational illness according to at least the minimum requirements under the Act and the OHSR, and to meet other requirements like ensuring worker participation in health and safety.

The discussion paper notes that a significant proportion of volunteer fire departments are not currently registered as employers of volunteer firefighters, indicating that proactive efforts are needed to ensure that volunteer firefighting organizations understand their status, rights and responsibilities, and are meeting their obligations in terms of occupational health and safety.

This is particularly relevant in the wildland firefighting context. In the wake of unprecedented fire seasons in BC, local groups are increasingly organizing to prepare to fight wildfires in their own communities on a volunteer basis. The provincial government is currently providing funding through a pilot project aimed at training and equipping local volunteer groups to assist with wildfire fighting – they are called "Cooperative Community Wildfire Response Groups."[2] In the event of a wildfire, these groups may be hired and paid by the provincial government. This approach has features reminiscent of gig work, where volunteer firefighters (who are workers) have a shifting, tenuous and temporary relationship to multiple entities that have employer responsibilities. In our view, this model is vulnerable to gaps, miscommunication and non-compliance and poses risks to worker safety.

We know that firefighting involves exposure to hazardous conditions, and proper organization, training and equipment are critical to ensure firefighters' safety. Given this context, BCFED implores the Board to closely monitor, inspect and do enforcement in relation to volunteer firefighting activities, including volunteer wildfire fighting in particular. It is also urgent to provide clear requirements for these activities by moving ahead with the development of regulatory language specific to wildfire firefighting – a project that has been on the WCB's OHS regulatory change workplan for more than five years now.

Conclusion

In conclusion, the BCFED prefers Option 2 presented in the Discussion Paper.

Option 2:

Updated guidance in determining workplace status policy and remove outdated information in extending coverage policy. Under this option, Item AP1-1-1, Coverage under Act – Determining Workplace Status, and Item AP1-5/6/7-1, Extending Application of the Act of the Assessment Manual would both be changed to provide guidance on how to determine the employer of a volunteer firefighter and to remove guidance that has become incorrect as a result of Bill 18.

Implications:

- Policy would be aligned with current practice regarding the determination of a volunteer firefighter's employer, resulting in greater consistency and transparency in decision-making.
- Policy would no longer include outdated information that coverage for fire brigades operated by a society is not compulsory.
- Employer stakeholders would have greater clarity as to their rights and obligations under the Act and the OHSR.

In addition, the BCFED urges the WCB to make further amendments as discussed above in relation to volunteers in general, to provide greater clarity and ensure both volunteers and workers are afforded their rights to compensation and to health and safety protections under the WCA.

The BCFED thanks the WCB for the opportunity to participate in this consultation on changes to policies in the Assessment Manual regarding societies and volunteer firefighters.

[1] https://bcfed.ca/news/briefs/submission-wcb-determining-workplace-status

[2] https://www2.gov.bc.ca/gov/content/safety/wildfire-status/partners/rural-remote-firefighters