October 12, 2021 |

Briefs

Submission to WCB on proposed regulatory amendments to Part 3

A PDF of the complete submission can be found here.

Introduction

The BC Federation of Labour ("Federation," "BCFED") appreciates the opportunity to provide our submission with respect to the proposed amendments to:

Part 3: Rights and responsibilities, Occupational first aid, Sections 3.1, 3.14-3.21 and Tables: 3-A Minimum levels of first aid and 3-1, Minimum requirements

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 Federation is recognized by the Workers' Compensation Board (WCB) 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.

Part 3: Rights and responsibilities, occupational first aid, Sections 3.1 - 3.21

The Legacy of Ted Gramlich

In the early 2000's under the Liberal government's "Red Tape" program, the Occupational First Aid regulation was substantively changed. The requirement to follow the Schedule A tables which specified minimum levels of first aid required for workplaces were removed to guidelines, and employers were instead required to do a risk assessment to determine their own first aid requirements.

The BCFED and our affiliates warned that this gutting of the regulation would endanger workers and likely result in worker deaths. Unfortunately, our predictions became reality in the death of Ted Gramlich in 2006.

The veteran faller had been working on a remote, steep hillside when he was hit by the tree he was harvesting. Seriously injured, he died in hospital two hours later. There was no plan for emergency transportation to a hospital.

A Coroners Inquest into his tragic death made several recommendations to improve health and safety for fallers. This included a recommendation to the WCB that, "Minimum first aid services and equipment be withdrawn from guidelines to be once again governed by regulation." The recommendation was implemented.

The BCFED supports this long overdue review of the Occupational First Aid regulation. Overall, we believe the changes are good. We are pleased the proposed amendments will enhance the first aid provided to injured workers.

As stated in the Explanatory Notes, the purpose of the review is to update the first aid requirements, with a focus on high-risk remote industries and to harmonize the regulation with the first aid training and the first aid kits requirements of the CSA Z1210-7 and CSA Z1220-17. Schedule 3-A has not

been reviewed for 20 years.

Section 3.1 (1) (a) (ii) When program required

Section 3.1 (1) (a) (ii) sets out the requirements for employers to have an occupational health and safety program. Under the current language the hazard rating is determined by the workplace assessment according to Section 3.16 (2) (b).

The WCB is proposing to amend Section 3.1 (1) (a) (ii) to determine hazard rating under Section 3.14 Definitions.

At least one workplace that has a hazard rating, within the meaning of Section 3.14 of moderate or high.

Section 3.14 Definitions

Hazard rating

In relation to a workplace means the hazard rating of low, moderate or high that is specified by the Board for the workplace classification under section 244 of the Act.

The BCFED has concerns with the establishment of the WCB hazard rating system.

The definition for hazard rating is reliant upon Section 244 of the *Workers Compensation Act* (WCA) which sets out the authority of the WCB to assign classification units as follows.

Classification of industries

Section 244 *(1) The following classes are established for the purpose of assessment in order to maintain the accident fund:*

Class 1: Primary resources

Class 2:	*Manufacturing*
Class 3:	*Construction*
Class 4:	*Transportation and warehousing*
Class 5:	*Trade*
Class 6:	*Public sector*
Class 7:	*General sector*
Class 8:	*Canadian Pacific Railway Limited, Teck Resources Limited*
Class 9:	*BNSF Railway Company*
Class 10:	*Air Canada, Canadian National Railway, Via Rail Canada Inc.*
Class 11:	*British Columbia Assessment Authority, British Columbia Ferry Services Inc., Government of British Columbia, Workers' Compensation Board.*

(2) The Board may do one or more of the following:

(a) establish new classes in addition to those referred to in subsection (1);

(b) divide classes into subclasses and divide subclasses into further subclasses;

(c) consolidate or rearrange any existing classes and subclasses;

(d) assign an employer, independent operator or industry to one or more classes or subclasses;

(e) withdraw any of the following from a class and transfer it to another class or subclass or form it into a separate class or subclass:

(i) an employer, independent operator or industry;

(ii) a part of the class;

(iii) a subclass or part of a subclass;

(f) withdraw any of the following from a subclass and transfer it to another class or subclass or form it into a separate class or subclass:

(i) an employer, independent operator or industry;

(ii) a part of the subclass;

(iii) another subclass or part of another subclass.

(3) If the Board exercises authority under subsection (2), it may make the adjustment and disposition of the funds, reserves and accounts of the classes and subclasses affected that the Board considers just and expedient.[1]

Section 244 does not mention hazard ratings. It very specifically deals with dividing industries into their classification units. The BCFED is concerned with this disconnect. It is unclear how the WCB determines hazard ratings. What is the methodology and who is responsible? Are the ratings reviewed and updated regularly and can the ratings be challenged by workers and employers?

If employers have questions about their classification unit, they are directed on the website to call Certification Services.

We have concerns about employers with “deposit accounts” that do not have classification units and clear hazard ratings, for example the BC Public Service. Within the public service there are very different kinds of hazards for workers depending on the nature of the work, for example, wildfire fighting, corrections, office work. Health care has an overall designation of low risk when workers may be exposed to hazardous drugs, violence and musculoskeletal injuries.

Recommendation

The BCFED agrees with the proposed amendment to use the WCB system of hazard rating rather than rely on the employer’s assessment, but the WCB must publish their methodology, responsibilities, reviews and updates of the hazard rating system. While this information remains unclear, the BCFED cannot fully support the proposed amendment.

Section 3.14 Definitions

“Injury” includes an occupational disease or illness.

This is the current definition of injury in Section 3.14.

Recommendation

The BCFED proposes the WCB amend the definition to include psychological injury or mental disorders. This would align the definition with WCA Part 4 Division Compensation for Injury, Mental Disorder and Occupational Disease, Sections 134-136 and ensure that psychological injury in clearly covered by the definition.[2]

Section 3.16 Basic requirements

Section 3.16 (1): *the employer must provide at each workplace such equipment, supplies, facilities, first aid attendants and services as are adequate and appropriate for*

(a) promptly rendering first aid to workers if they suffer an injury at work, and

(b) transporting injured workers to medical treatment.

The BCFED opines there is a need to clarify “workplace” in this section. We want to ensure employers are clear there is a need for site-specific conditions to be assessed and accounted for. For example, health authority employers develop generic exposure control plans that cover many separate work locations.

“Workplace” is defined in the WCA Part 2 Division 1 - Interpretation and Purposes Section:

"workplace" *means any place where a worker is or is likely to be engaged in any work and includes any vessel, vehicle or mobile equipment used by a worker in work.* ***[3]***

Our concern for the need to clarify “workplace” in relation to Section 3.16 is addressed in the guideline for conducting an assessment.

Step 1:

Identify the workplace.

First identify the workplace for which first aid is required. As a result of this step, you may determine that you have more than one workplace. An assessment of the first aid requirements for each workplace must be done.

Is the workplace at one location only?

For most workplaces with one location, there is one workplace. However, if there is more than one location or if there are lodgings, there may be more than one workplace.

Consider the factors in the following table to see if they apply to your workplace. In any situation, the factors may point to different conclusions. It is then necessary to weigh those factors indicating one workplace against those indicating separate workplaces. After considering all the factors, you should choose the option that provides the greatest level of first aid service. ***[4]***

Recommendation

The BCFED recommends Sections 3.16 (1) and (1.1) be further amended to add “workplace location” to provide clarity and to ensure employers provide the highest levels of first aid in all locations.

Additionally, we recommend an amendment to Section (b) “promptly transporting injured workers to medical treatment” to reflect the requirement in (a) “to promptly render first aid to workers if they suffer an injury at work.”

Section 3.16(2)

The BCFED is pleased the WCB is proposing to amend Section 3.16 (2) requiring the employer to prepare a written assessment. Documentation is an important element of an effective health and safety program.

Recommendation

This section should be expanded to reflect the first aid kits list of considerations from the CSA standard. For example, special needs (known medical conditions, persons with disabilities), history of injuries at the workplace location, injury trends in sector/industry.

The BCFED is very concerned and disappointed the WCB has not proposed to amend the Section 3.16, subsections 1, 2 or 3 to require joint health and safety committee involvement.

The WCB document. *Jurisprudence package for other jurisdictions: Obtaining OFA certification in B.C.* includes a section on the role of the joint occupational health and safety committee:

Ensuring the incident investigation evaluates the first aid response The joint health and safety committee plays an important role in the oversight and maintenance of the first aid program. The committee should establish a systematic review process that includes the following:

- *Analyzing the monthly injury report takes from the first aid record*
- *Making recommendations for change if necessary*

- *Ensuring workers are provided with follow-up care*
- *Ensuring the reporting system contributes to or initiates incident investigations*
- *Ensuring the incident investigation evaluates the first aid response*
- *Identifying and promoting alternative duties*
- *Supporting workers' rights to be cared for at work if injured at work.* [5]

The WCB recognizes there is a role for the joint committee in the oversight and maintenance of the first aid program, and the BCFED sees a role for the committee in the process of assessment, reviewing and making recommendations for improvements. As an example, Section 4.53 of the Ergonomic Requirements requires consultation with the joint health and safety committee:

(1) The employer must consult with the joint committee or the worker health and safety representative, as applicable, with respect to the following when they are required by the Ergonomics (MSI) Requirements:

> *(a) risk identification, assessment and control;*
>
> *(b) the content and provision of worker education and training;*
>
> *(c) the evaluation of the compliance measures taken.*[6]

The BCFED believes first aid attendants should be involved in the consultation process as well.

Recommendation

The BCFED recommends Section 3.16 be amended to add Subsection (5) requiring involvement of the joint health and safety committee and the first aid attendants in the assessment and review of the first aid program.

Section 3.17 First aid procedures

The BCFED generally agrees with the proposed amendments in Section 3.17, subsections 1 (C.1) and 4 to require the employer to consider how an injured worker will be accessed and moved and to

conduct drills annually or when procedures change.

Subsection 2 sets out requirements to ensure the procedures are posted and if that is not possible the employer must adopt other measures to ensure the information is effectively communicated. Posting information relies upon the workers to read the information rather than ensuring the employer proactively ensures workers know and understand the procedures. We would prefer workers are trained on the procedures, thereby ensuring active engagement and documentation.

Recommendation

The BCFED recommends the WCB consider either expanding Section 3.17 (1) and adding (g) to include training for all workers on the written procedures or include a training requirement in Section (2).

Section 3.17.1 Air transportation

Section 3.17.1 sets out the requirements when air transportation is the primary or only method of transporting an injured worker. Before the start of operations, the employer must make arrangements with and air service to ensure that:

(i) *an appropriate aircraft is reasonably available to the workplace during those operations*

This section is in the current regulation and has been renumbered. There is no explanation in this section as to what is contemplated by “reasonably available.” Section 3.17.1 applies when air transport is the primary or only method of emergency transportation. This suggests that medical treatment is not close by. The BCFED believes air transport must be available for the work to proceed. “Reasonably available” implies there are options for transportation.

Recommendation

The BCFED recommends Section 3.17.1 (a) (i) be amended by removing “reasonably” to require “an appropriate aircraft is available to the workplace during those operations.”

Schedule 3-A Minimum requirements

Section 3 (3)

The BCFED believes it is important to have a minimum standard for first aid as set out in Schedule 3-A. We are pleased to see a clear definition of requirements for dressing stations and/or first aid rooms. The requirement for water was important in a burn incident involving a member of the BC General Employees' Union (BCGEU) where the dressing station/mobile treatment unit did not have access to a large amount of water to cool the worker's burns.

Section 5 (1) and (2) Minimum requirements- emergency transportation

These sections require an employer to provide emergency transportation for an injured worker from a workplace, excluding ferries, to a qualifying hospital if an ambulance cannot safely reach the workplace within 30 minutes. The requirement is dependent upon the number of workers per shift and on the hazard rating.

The BCFED is pleased to see requirements for emergency transportation applied to smaller high hazard workplaces and larger low hazard workplaces.

Subsection 2 refers to Section 16.1 (1.1) and what the employer must provide for each workplace for supplies, facilities, first aid attendants and services. In this case, the requirements for determining the need for emergency transportation.

The BCFED is concerned that the WCB consulted with Emergency Health Services (EHS) given the current situation of lengthy wait times people are experiencing across BC. The wait times were exacerbated by the summer heat wave [7]combined with the opioid crisis[8] and the COVID-19 pandemic.[9] Given these conditions will continue, it maybe be unreasonable to expect an ambulance to reach an injured worker in 30 minutes or less. More employers may have to increase their first aid qualifications and provide emergency transportation.

Recommendation

The BCFED recommends the WCB consult with EHS to fully understand the issue of ambulance wait times and the implications for the provision of emergency transportation, and how this will affect an employer's assessment.

Section 5 (3)

According to the Explanatory Notes, emergency transportation includes an emergency transportation vehicle (ETV), industrial ambulance, mobile treatment centre (MTC), helicopter and other forms of water or air transportation.

Subsection 3 determines the requirements that must be met by the emergency transportation. We are concerned there is no requirement for confirming the emergency transportation meets the standards set out here.

Recommendation

The BCFED recommends the WCB implement an annual inspection program like the farmworker vehicle inspections mandated under the Interagency Agricultural Compliance Committee.[10]

Section 6 Minimum requirements for ferries

Section 6 is a new section that sets out the separate emergency transportation requirements for ferries.

The requirements are confusing. Subsection (1) states that emergency transportation must be provided when an ambulance cannot safely travel from its base to a terminal accessible to the ferry. Curiously, Subsection (3) (a) offers an alternative stating that; "A ferry not provided with emergency transportation described in this section must be provided with a first aid attendant holding an advanced first aid certificate during a shift of 16 or more workers." And in Subsection (3) (b), the advanced first aid attendant can be provided in place of a first aid attendant in Section 3, subsections (1) and (2).

If ferries were required in all circumstances to have an advanced first aid attendant or attendants, it seems they would be capable of providing an appropriate level of care until they arrived at the terminal to be met by an ambulance.

Recommendation

The BCFED recommends the WCB revisit Section 6 and develop plain language requirements to improve clarity for employers and workers. We would support an amendment requiring advanced first aid attendants be aboard all ferry sailings.

Table 3-1 Minimum requirements and Table 3-2 Minimum requirements for less accessible workplaces

The BCFED strongly supports the new minimum requirements in Table 3-1 and Table 3-2. We support clear regulatory first aid requirements for employers over individual workplace assessments.

We believe the enhanced requirements for increased levels of first attendants, dressing stations and first aid rooms where there are fewer workers for the most part addresses our priority for workers to be provided with appropriate first aid without delay and to be transported to medical aid as soon as possible.

We do have concerns with Table 3-2, Item 1, 2-5 workers, Column 3, Moderate hazard rating and Column 4, High hazard rating. Our affiliates have identified workplaces that are doing dangerous work such as hand and automated falling in remote locations requiring emergency air transportation. Much of this work is done by subcontractors with crews of 2-5, not near each other and without a co-ordinated first aid plan. In these circumstances, injured workers need a higher level of first aid until they can be transported out. There are many examples of small crews of workers working in dangerous occupations in less accessible workplaces: park rangers, wildfire fighters, community social services and healthcare.

Recommendation

The BCFED recommends Table 3-2, Item 1, 2-5 workers, moderate hazard rating be amended to require an intermediate first aid certificate and high hazard rating be amended to require and advanced first aid certificate.

Conclusion

The BCFED is pleased to provide our recommendations for further amendments Part 3, Sections 3.14-3.21 Occupational first aid and Table 3-A and 3-2. We believe our proposed amendments will strengthen the rights of all injured workers to the highest levels of first aid and transport to medical care.

We strongly encourage the WCB Board of Directors to seriously consider our recommendations, and urge the WCB to allocate resources and efforts to ensuring the effective implementation of the changes.

We believe our proposed amendments will improve the health and safety of workers.

[1] https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19001_05#section244

[2] https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19001_04#division_d1e10886

[3] https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/workers-compensation-act/part-2-occupational-health-and-safety#SectionNumber:Part2Div1Sec13

[4] https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-guidelines/guidelines-part-03#998F33D891434F2D915491565A68E1F9

[5] https://www.worksafebc.com/en/resources/health-safety/information-sheets/out-of-jurisdiction-ofa-jurisprudence-package?lang=en

[6] https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-regulation/part-04-general-conditions#SectionNumber:4.53

[7] https://globalnews.ca/news/8017380/bc-ambulance-crisis/

[8] https://www.cbc.ca/news/canada/british-columbia/bc-paramedics-overdose-calls-record-1.5998950

[9] https://www.citynews1130.com/2021/06/02/bc-paramedics-staffing-issues/

[10] https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/hiring/farm-workers/iacc