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Briefs

Bill 23 Consultation on Retirement Age Determination Policies

A PDF of the complete submission can be found here.

(Unceded Squamish, Tsleil-Waututh and Musqueam Territories — Vancouver, BC)

The BC Federation of Labour ("Federation" "BCFED") appreciates the opportunity to provide our submission with respect to the proposed amendments to the policy on retirement age determination arising from the *Bill 23* changes to the *Worker Compensation Act* ("Act).

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 and worker advocates for their submissions on this consultation.

The BCFED is pleased for the opportunity to provide our submission with respect to the Board's policies related to retirement age determinations. The policy changes are required to ensure

consistency with the legislative amendments of *Bill 23*.

The *Workers Compensation Amendment Act* amended the provisions governing the duration of a worker's permanent disability award by adding subsection 201(3):

> *A determination made under subsection (1)(a)(ii) as to a date on which a worker would retire after reaching age 65 may be made after a worker has reached age 63, and the Board may, when making the determination, consider the workers circumstances at the time of that determination.*

This amendment was informed by a recommendation from the Parr report:

> *The Act provide authority to WorkSafeBC to make a final determination of the retirement age of an injured worker at a point when the worker is approaching normal retirement age.*

The Parr report concludes that a review of a worker's likely retirement age as the worker gets closer to normal retirement age would lead to more accurate and fairer decisions about the retirement age for injured workers receiving permanent disability benefits.

Bill 23 amendments were intended by government to move the WCB to a system that is fairer and ensures injured workers and their families get the support they need. The changes move a bit closer to the worker-centred approach recommended in the Petri report.

The WCB Board of Directors has recently defined and committed to a worker-centered approach for injured and disabled workers:

> ***Worker-centred Approach for Compensation***
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> *A worker-centred approach for injured and disabled workers is one that considers the worker's individual circumstances in applying policy and making decisions about benefits entitlement and rehabilitation measures. This approach is designed to maximize the worker's recovery from work-related injury or disease and to restore, as close as possible, the worker to their pre-injury employment status without a loss of earnings. A worker- centred approach treats the*

worker with compassion, respect, and dignity, and ensures WorkSafeBC is responsive to the needs of the worker whose health and well-being is at the centre of the workers' compensation system.

The BCFED is concerned this worker-centred approach is not as strongly reflected in the policy changes for retirement age determination as could be contemplated given the flexibility allowed by the legislation.

Therefore, we make the following recommendations for amending the current policies.

Evidence gathering and types of evidence

The BCFED is concerned with the current policy requirements on the gathering of evidence and the list of examples provided of the kind of evidence the WCB will consider in determining whether a worker would retire after the age of 65.

The worry is that the decision makers will not base their decisions on the actual evidence in the claim file. Rather decisions are often based on a lack of evidence from the non-conclusive list of examples set out in the retirement age policies. Although the policy states that the WCB will look at other relevant information decision makers may use, the absence of evidence from the list may result in the decision maker discounting other evidence the worker may bring forward as insufficient.

We are concerned that many injured workers, particularly those who are precariously employed will not be able to provide some of the evidence on the list. And we agree with the BC Building Trades that the policy must be nimble enough to ensure that these workers are given full consideration as they reach retirement age. Other relevant evidence that should be taken into consideration is when an injured worker experiences divorce, bankruptcy or other situations which may take a financial toll on the worker.

Policy# 97 of the Rehabilitation Services and Claims Manual, Vol. ll, sets out the evidence gathering requirements and requires the WCB decision makers to actively seek out all evidence that will fully inform their decision.

> *The Board gathers the relevant evidence and determines whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If not, the Board considers what other evidence might be obtained, and must take the initiative in seeking further evidence.*

Age retirement decisions must be based on an abundance of evidence not on an absence of evidence from the list. If the evidence found in the claim file or provided by the worker is not good enough, then the decision maker must actively find the evidence they need.

Therefore, the BCFED recommends the retirement age polices specifically reference the evidence gathering requirements of policy #97.

Reconsideration of a workers retirement age

The BCFED agrees with the Community Legal Assistance Society's (CLAS) and the BC Building Trades' concern with the retirement age policy statement that the WCB can only reconsider a worker's retirement age if "the worker has not reached the age of retirement as previously determined by the Board."

This limitation is nowhere to be found in the transitional provisions of *Bill 23*. Rather *Bill 23* states:

> *A determination maybe made under section 201(3) of the Workers Compensation Act, as added to section 18 of this Act, whether or not a determination has been made under Section 201(1) of that Act before the date section 18 of this Act comes into force.*

The prohibition in the policy will discriminate against many workers beyond the age of 65 whose retirement age was determined earlier. Unlike workers under the age of 65, workers who have reached the age of 65 are excluded from having another determination. Just like workers below the age of 65, those over 65 may have changes in their lives that would make them eligible for an extension of their pension. This could include continued employment.

Therefore, the BCFED recommends this restriction be removed from policy thereby allowing workers beyond the age of 65 to be eligible for reconsideration of their retirement age, regardless of whether the WCB previously determined their retirement age.

Clearly communicating age requirement determinations to workers

The BCFED opines that injured workers are often unaware the WCB has decided their retirement age and what the consequences of the determination may be. The retirement age decisions may be communicated in letters about other details of the claim. Now that most retirement age decisions will be made separately when the worker reaches the age of 63, this issue maybe less problematic. Nevertheless, a requirement for clear communication in a way that workers will understand the decision and the consequences should be in the age retirement policies.

Therefore, the BCFED recommends the age retirement policies must require the WCB to clearly communicate and explain decisions about retirement age in a manner that workers will understand.

The BCFED is concerned with the suggestion in the Discussion Paper that workers who are unable to work due to their compensable injuries may now be limited to a retirement age of 65.

In the Discussion Paper, the WCB contemplates changing the words “would retire” in legislation to “will retire” in the policy and this could disadvantage workers who have had to retire early because of their injury.

The BCFED strongly believes the intent of the *Bill 23* was to assess a worker’s likely retirement age more accurately; and to estimate the likely duration of the worker’s lost earnings capacity resulting from their injuries. For the WCB to say that every worker who is competitively unemployable would retire at or before age 65, even if there is evidence suggesting otherwise, flies in the face of the intent of the legislation and of the legislature.

Therefore, the BCFED recommends workers who are unemployable due to a compensable injury should be assessed for a later retirement age.

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

Option 2:

Change policies related to retirement age determinations in the RS&CM Under this option, the PRRD would recommend the Board of Directors approve changes to the newly revised policies informed by stakeholder feedback. Implications

- *WorkSafeBC policy on retirement age determinations would be consistent with the Act.*
- *Decision-makers would have policy guidance on the legislative framework for retirement age determinations.*
- *Additional changes to policy would be informed by stakeholder feedback.*

We urge the WCB to give serious consideration to our recommendations for amending the current age of retirement determination policies ensuring that the policies are consistent with the Act.