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Briefs

Bill 23 Consultation on Permanent Partial Disability Benefits

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 policies related to Permanent Partial Disability Benefits (PPD) arising from the *Bill 23* changes of the *Workers Compensation Amendment 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 ("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. The BCFED thanks our affiliates and worker advocates for their submissions on this consultation.

The policy changes on PPD benefits are required to ensure consistency with the legislative amendments of *Bill 23*.

The *Workers Compensation Amendment Act* sets out two methods for assessing PPD benefits: loss of function (LOF) and loss of earnings (LOE). *Bill 23* has changed the worker's entitlement to PPD benefits.

The BCFED strongly supports the changes introduced by *Bill 23*. The changes reinstate the "Dual System" that was used prior to 2002 by the WCB for calculating pension awards. This system required the WCB to consider both LOF and LOE awards in calculating all pension benefits. The worker would receive whichever of the awards was greater.

In 2002, post the Core Review by Alan Winter, legislative changes resulted in a drastic drop in workers qualifying for an LOE assessment. The Act required the LOF method to be used exclusively to assess PPD benefits unless the "so exceptional test" was met. Only if workers met the "so exceptional test" would the decision makers have to consider the LOE method.

Since 2002, the BCFED has consistently urged government and the WCB to reinstate the "Dual System" and our 2009 report "Adding Insult to Injury"[1] outlined the devastating consequences of the changes for injured workers.

Bill 23 removes the "so exceptional test," thereby entitling every worker with a permanent partial impairment to have their PPD benefit assessed using both the LOF and LOE methods.

Although we strongly support the reinstatement of the Dual System, we believe further amending policy #40.00 could improve outcomes for injured workers.

Recommendation

Policy #40.00 should confirm that a suitable occupation is one that the worker truly be expected to get in a competitive labour market.

Consideration must be given to factors other than skills, functional capabilities and education. Factors such as language barriers, age and lack of experience are unlikely to encourage any employer to hire the worker in a competitive job market. The policy needs to clearly require the decision makers to consider factors beyond the standard list when assessing for a suitable occupation for a worker.

Recommendation

Policy #40.00 should require the WCB to consider the “whole worker” when assessing for suitable occupations.

In determining a suitable occupation for a worker, Policy #40 directs the decision maker to consider medical evidence of the limitations imposed by the compensable disability. There is the list of guidelines to be considered in the assessment which may limit decision makers in their analysis to the impacts of the compensable condition.

The “whole worker” concept considers the unique circumstances of each individual worker. And if you will, applies the merits and justice principle to the process of determining the suitable occupation for the worker.

Conclusion

The BCFED supports Option 2 in the Discussion Paper:

- WorkSafeBC policy would be consistent with the Act;
- Decision-makers would have policy guidance on the legislative framework for PPD benefits;
    - WorkSafeBC’s approach to PPD benefits would be inconsistent with the majority of Canada’s other jurisdictions, as they use the LOE method exclusively to assess PPD benefits;
    - The cost impact would be minor; and
    - Changes to policy would be informed by stakeholder feedback.

The BCFED urges the WCB to seriously consider implementing our recommendations to amend the Policy #40.00.

The BCFED supports the WCB's commitment to monitor the impact of the *Bill 23* legislative amendments and corresponding policy changes on the provision of PPD benefits by tracking:

- how many PPD benefits are assessed using the LOF and LOE methods;
- the value of PPD reserves approved, e.g., on an annual basis; and
- operational costs associated with the *Bill 23* changes to WorkSafeBC's PPD benefits model.

The BCFED is pleased to provide our submission on this very important issue.

[1] https://bcfed-d7.ddev.site/news/briefs/insult-injury