

IMPROVING BRITISH COLUMBIA'S TERRIBLE RECORD

WORKPLACE HEALTH & SAFETY

A brief by the
British Columbia
Federation of Labour

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Introduction

The provincial government has the responsibility to ensure that our entire system of workplace health and safety protections delivers on a very basic commitment: that workers return home safe and healthy every day of their working lives. Under the **Workers' Compensation Act**, we have worked to establish, over many decades, standards that protect us at work and make sure employers obey the rules spelled out by the agency charged with overseeing workplace health and safety.

The provincial government has a great deal of influence over WorkSafeBC, the provincial agency established by the **Act** to both develop and enforce health and safety standards. The provincial cabinet appoints the Board of Directors, which, in turn oversees the management and administration of WorkSafeBC. The government can also change the legislation that guides WorkSafeBC.

The mandate of WorkSafeBC, which is also enshrined in the **Workers' Compensation Act**, clearly states:

- Promote the prevention of workplace injury, illness and disease.
- Rehabilitate those who are injured and provide timely return-to-work.
- Provide fair compensation to replace workers' loss of wages while recovering from injuries.
- Ensure sound financial management for a viable workers' compensation system.

Further WorkSafeBC's mandate also states:

"The origin and fundamental value of workers' compensation rests on the principle of mutual protection arising from the historic compromise in which workers relinquished their right to sue their employer and employers agreed to fund a no-fault insurance system."

Today this historic compromise is at risk. Principally, the ability to prevent workplace injury, illness and disease is under threat from the deregulation of

health and safety standards and diminishing enforcement of what standards remain.

As well, the compensation portion of the compromise has also been challenged by cuts to both financial support and services for injured workers. Workers are asking today whether that compromise is being fulfilled. If today's trends in both cutting standards and enforcement continues, the inevitable answer is no.

Throughout this government's first term in power, the B.C. Federation of Labour and other groups strongly argued that the Liberals' plans to cut one-third of all government regulations and to implement funding reductions at WorkSafeBC would weaken BC's workplace health and safety record.

Sadly, the record since 2001 has borne out our predictions. More workers are being injured on the job, a growing proportion of those injuries are classified as "serious," and more workers are being killed on the job. That's not a record to be proud of.

We have a serious and growing problem in British Columbia, and it will take considerable political will and resources to solve it. This document outlines potential solutions in three main areas:

- Increased focus on prevention of workplace injuries, illnesses and deaths (including regulations, enforcement and education);
- Restoring fairness and equity to the worker's compensation and appeals system; and
- Providing additional resources to WorkSafeBC to allow it to live up to its stated mission.

Workplace injuries affect us all, whether we acknowledge it or not. Much has been written on the economic effects of labour disputes and work stoppages, but little has been written of the economic cost of injured workers not participating in the economy. Nor has sufficient recognition been granted the fact that a workplace free of injuries is, by definition, more productive and contributes more to our economy. There is a strong economic case to support increased investment and resources to prevent workplace injuries and deaths.

Increased focus on prevention of workplace injuries, illnesses and deaths

In 2004, there were 2.76 million working days lost because of workplace injuries, while only 293,630 days lost to strike or job action; more than eight times greater.

Last year, 188 workers died on the job, the highest level in 25 years, a 40 percent increase over the previous year. This included 11 young workers (5 of the 11 worked in the construction industry) 43 fatalities in the forest sector and 39 deaths in the construction industry.

These rising numbers are no accident; they parallel a decrease in enforcement activity.

Cuts to enforcement levels must be reversed

Despite promises to the contrary, the government's mandate to "streamline, cut red-tape and deregulate" led to a direct and dramatic drop in WorkSafeBC's enforcement activities. The reality is less enforcement of surviving regulations.

For example, between 2001 and 2004 inspection reports decreased by 44 percent, resulting enforcement orders fell by 46 percent, penalties recommended dropped by 45 percent, and penalty amounts decreased by 57 percent, from \$4.27 million to \$1.8 million.

Let no one be mistaken, falling levels of enforcement didn't reflect a growing compliance with health and safety regulation, they were directly tied to staff cuts, weakened standards and a new environment of employer self-regulation.

That evaporating enforcement can be found in the tragic story of Grant De Patie. Last spring, Grant, a young man, 24 years old, was killed while working alone and trying to stop a thief. Even since his death the inadequate measure taken by WorkSafeBC to enforce working alone regulations highlights the shocking absence of any meaningful health and safety enforcement.

Earlier this year, the Federation conducted an informal survey of gas stations operating in the Lower Mainland. Despite the significant media attention paid to the tragedy, less than one year later, of the 12 stations surveyed, only one appeared to have implemented a working alone policy as outlined by WorkSafeBC regulations.

In addition, a visit to the station where Grant worked, showed that not only was the employer still not in compliance with existing health and safety standards, WorkSafeBC is fully aware of this and feels no additional measures were necessary because there is no "immediate risk" at this time.

This employer has already been found in violation of health and safety laws, has experienced the death of one employee, and still does nothing to protect his other employees. His lack of action and the shocking admission from WorkSafeBC is further evidence that the culture of self-regulation isn't working.

WorkSafeBC resists penalizing employers that ignore health and safety laws; employers resist complying. Grant's story not only highlights the need for adequate standards and enforcement, but also highlights the fact that education and consultation are no substitute.

Education a must, but not enough

With reduced standards in place, and fewer staff designated to prevention and enforcement, WorkSafeBC attempted to absorb changes mandated by the provincial government by adopting an approach of consultation and education.

In fact the level of consultation and education activities dropped.

While education is a must, it can not be successful if it only focuses on workers and ignores employers. Too often education and prevention activities are attempting to address a “culture of risk” that’s assumed on the part of workers. In fact for many workers, it’s our health and safety regime, governments and employers who are assuming a culture of risk for workers. While the B.C. Federation of Labour has successfully worked with WorkSafeBC to develop an Occupational Health and Safety Education Project that has provided training to over 1,000 workers annually and 20,000 high school students last year alone, there is a critical absence of education for employers.

Employers who act in ignorance of health and safety standards create workplaces that create greater workplace stress.

Greater education by itself offers no teeth and no deterrence to bad employers. Instead of fulfilling a mandate of prevention, education, taken alone, promotes a health and safety system that tells employers they’re free from penalty and any consequence until a worker is seriously injured or killed.

Health and safety regulations must be restored

In its first term, the government implemented an arbitrary political goal of cutting a full one-third of all government regulations on the books at the time the BC Liberals took office in 2001. The Federation, among many others, aggressively argued that this policy course would have a negative impact, but our voice, like so many others that took a different view from the government, was shut out.

The deregulation agenda at WorkSafeBC included significant cuts to regulations and watered down regulations concerning first aid, workplace washrooms, lunchrooms and change rooms. Basic elements of healthy and safe workplaces were undermined as well as the basic dignity employers and workplaces afford workers.

At a time when the construction industry is growing and demanding new and untrained workers, we’ve seen lower standards required for fall protection, ladders and scaffolds. This has no doubt contributed to the construction industry developing some of the highest levels of injuries and fatalities in the province.

In the face of efforts to reduce illness and disease and almost daily scientific discoveries, cuts were administered to critical made-in-BC toxic chemical exposure limits and replaced them with weaker American standards. Growing

correlation between diseases such as cancer and respiratory illness were ignored in favor of eliminating standards to meet the government's goal to cut one-third of all regulations.

In addition, many specific regulations were replaced with more generic regulations and guidelines that employers are not required by law to apply, opting instead for a system of self-regulation that wouldn't stand the public test if it was equally applied to our roads and highways.

Instead of cutting regulations today, we need more than ever to ensure we have regulatory system in place that reflects changing workplaces. Look again at the tragic example of Grant De Patie. Consumers are being offered more and more 24/7 retail operations, but workers often left staffing these sites alone and with no protection from violence or robbery. Instead of developing guidelines that reflect these changes, we see no enforcement of inadequate regulations currently in place. Specifically, with respect to working alone, the B.C. Federation of Labour is calling for changes to WorkSafeBC regulations so they at least require two workers working together on night shifts at 24/7 retail operations. In addition, the Federation is calling for pay-before-you pump policies to be implemented in all gas stations, and a requirement that employers file their safety plans for workers with WorkSafeBC.

This spring, legislators have heard from members of the United Steelworkers who have outlined the need for more action to top the increase of injury and workers' deaths in our forest industry. With respect to regulations the Steelworkers have highlighted the negative impact forest policy changes have had on workers' health and safety. When the government changed the forest policy, there was no analysis of its impact on health and safety. Instead of being an after thought and paying attention after 43 workers lost their lives, that analysis has to be made before policy changes are made, and every effort taken to ensure worker health and safety remains paramount.

The Steelworkers have outlined a six-point plan to address this specific problem, fully supported by the B.C. Federation of Labour and passed unanimously by our 49th Convention last fall. Despite the efforts of the Steelworkers and workers' families to remind employers and governments about the dangerous and inadequate standards in our woods, just this month, the BC Forest Safety Council announced they supported increasing hours of works for truckers to a level that exceeds federal safety standards. In the face of carnage in our forests, instead of acknowledging the need for higher standards, forest industry employers are once again advocating for the same approach of self-regulation and cuts to standards that created this situation in the first place.

Restoring fairness and equity to the workers' compensation and appeals system

Restore fairness to compensation

While our first goal remains that no workers suffer injury or death at work, we must ensure that we have a system to fairly and equitably compensate workers or their families should such an unfortunate event occur. Legislators know that the provincial government's cuts to compensation benefits and services to injured workers and their families have created real hardships. Appeals for advocacy received by MLA's offices are just a small sample of the frustration and indignity injured workers are facing every day.

Compensation benefit levels for injured workers have been reduced from 75 percent of a worker's gross income to 90 percent of a worker's net income, while at the same time, 50 percent of the CPP benefits that disabled workers are entitled to collect have been cut by 50 percent. Instead of providing fair and adequate benefits to injured workers as envisioned by the historic compromise outlined in the **Worker's Compensation Act**, injured workers and their families are being further harmed and penalized by an inadequate compensation system.

This is further compounded when pension awards for permanently injured workers are determined. Lifetime pensions have been eliminated and replaced with so called post-retirement benefits that provide far less in actual dollars. Any worker injured after June 30, 2002 would receive a lump sum post-retirement benefit based on five percent of the monthly compensation benefits they received, plus interest. Working British Columbians whose livelihoods were effectively impaired or eliminated by workplace injuries are now being forced to become poor seniors. Personal savings are exhausted to make up for an inadequate pension that without injury, workers would have successfully earned.

This fundamental breach of obligation has been extended by reducing pension awards by basing the award on a hypothetical assessment of a workers' functional impairment (i.e. loss of mobility, limb or hearing) rather than a worker's real loss of earnings.

The government also cut WorkSafeBC support for both union and non-union workers alike by reducing benefits to injured workers and cutting funding for rehabilitation programs. The government scaled back future benefit increases while lowering the starting point for future claimants, and it de-indexed wage loss benefits for workers disabled on the job, potentially costing an injured worker more than \$600,000 over his or her lifetime.

Restore rights and dignity to appeals process

This government has presided over a record of increased injuries and deaths to workers, including young workers, and to quite literally add insult to injury, the

government has acted to punish workers who require compensation and rehabilitation.

Cuts to staff have included those who coordinate compensation and rehabilitation services to injured workers, including those at the Workers' Compensation Appeals Tribunal (WCAT). These cuts have made the compensation process more difficult and frustrating to navigate, particularly when combined with the government's previous elimination of a number of appeals mechanisms, this has effectively stripped many injured workers of their rights.

Major cuts to workers' access to appeal WCB decisions included:

- Abolishment of all three levels of appeal and replacing it with one internal review by the Review Division, and in some cases one external appeal to the Workers' Compensation Appeals Tribunal (WCAT);
- Eliminating a worker's right to appeal to the external body, WCAT, vocational rehabilitation decisions and some pension decisions;
- Limiting workers to one reconsideration even where new medical information becomes available; and
- Binding the WCAT to apply WCB policies in all cases even if the WCAT finds that a policy contravenes the law.

Appeals are primarily done on a read-and-review basis and few oral hearings are held. As well, strict time limits for filing reviews and appeals, with very limited opportunities for extensions, have made the system much more difficult for workers to navigate and therefore more difficult to access the benefits they are entitled to.

In addition to the closure of the rehabilitation residence and clinic in Richmond for injured workers living outside of the Lower Mainland, the situation is even more acute. Closed offices in Williams Lake, Vernon, Campbell River and the elimination of compensation and assessment services from the Cranbrook office makes face-to-face meetings almost impossible. The onus remains on the worker to prove their injury claim, yet fewer and fewer resources and opportunities are available to the workers to do so.

Solutions: A Healthy and Safe Workplace

Too often injured workers are referred to as having suffered an accident on the job. But, it has been no accident that 550 staff were cut from WorkSafeBC. It was no accident that enforcement and education activities, the basis for preventing injury, have fallen. It's been no accident that one-third of all regulations was cut.

It's been no accident that the compensation system for injured workers has been dismantled.

We can be global leaders in workplace health and safety, where workplace health and safety are more than talked about - they are practiced every day. The B.C. Federation of Labour is prepared to work with all stakeholders to make this a reality, our desire, to ensure workers come home in the same condition they leave.

Recommendations:

1. Direct WorkSafeBC to implement stricter enforcement rules including mandatory penalties for repeat offenders, particularly the enforcement of the violence prevention regulations.
2. Eliminate employer self-regulation because it fails to provide the clear directions needed to create a healthy and safe workplace.
3. Direct WorkSafeBC to implement more prescriptive regulations that outline workplace requirements necessary to protect workers' health and safety.
4. Direct WorkSafeBC to increase education activities, not only targeting workers, but also focussed on better educating employers.
5. Direct WorkSafeBC to increase staffing to 2001 levels to support both greater enforcement and prevention activities, as well as enhance injured workers access to compensation and rehabilitation services. Particular care should be paid to restoring access in the regions of BC outside of Greater Vancouver.
6. Implement the B.C. Federation of Labour's previous recommendations to the Minister of Labour regarding workers working alone.
 - Requiring all employers, open to the public with 24-hour or late night operating hours, to file their safety plans for employees with the Workers' Compensation Board. Any employer who fails to file such a plan should be barred from operating in these hours;
 - Implementing regulations that would require customers to pay for gasoline before they pump, in an effort to prevent violent crimes occurring;
 - An education and awareness campaign for both workers and employers, advising them of the risks, rights and obligations in the service sector;
 - Greater enforcement by the WCB and Ministry of Labour, Employment Standards Branch, of current laws and standards; and

- Ensuring that at least two workers are on shift together during late night hours.
7. Implement the United Steelworkers six-point plan for improved health and safety in the forest industry.
 - Ensure timely investigations of serious accidents and workplace fatalities, as well as immediate mandatory coroner's inquests following any fatal accident;
 - Create implementation committee(s) with authority to order immediate workplace changes in response to fatality investigations and inquests;
 - Increase Workers' Compensation Board monitoring and enforcement activities,
 - Ensure the WCB puts ultimate responsibility on licensees;
 - Aggressively pursue full enforcement in BC of Bill C-45 (Westray Bill), and
 - Declare a "Day of Mourning" every time there is a fatality in the forest and wood-products sector.
 8. Implement new legislation that restores lifetime pensions for disabled workers.
 9. Implement legislation that restores the loss of earnings calculation for injured workers.
 10. Implement legislation that provides injured workers the dignity of a fair and accessible appeals process, and that allows injured workers to appeal all classes of rehabilitation or compensation issues they are facing.