



## **POLICY STATEMENT**

### **A LEGISLATIVE AGENDA FOR WORKPLACE HEALTH AND SAFETY**

Unlike other jurisdictions in Canada, British Columbia has combined its workers' compensation and occupational health and safety legislation into the **Workers' Compensation Act**.

Health and safety issues are addressed in a few sections of the **Act** while most of the statute pertains to claims issues. Virtually no worker rights are guaranteed in this province's legislation.

The B.C. Federation of Labour has identified the need to remedy a number of fundamental weaknesses in the health and safety provisions of the **Act**. These include the need to:

- articulate the purpose of the **Act** and the mandate of the Workers' Compensation Board;
- define the rights and obligations of workers and employers;
- establish effective protection from discrimination for safety-related activities;
- ensure education and training requirements are met;
- introduce protective reassignment of workers;
- refine the safety incentives in assessment systems; and
- mandate ongoing regulation review.

At present, our **Act** is one of the most outdated in the country. It lags far behind legislative provisions in Ontario, Quebec and Saskatchewan, as well as many other jurisdictions. Even within our province, workers in B.C. under the **Workers' Compensation Act** enjoy fewer rights in crucial areas than those covered by the **B.C. Mines Act**.

The Federation believes the B.C. government must introduce substantial changes to the **Workers' Compensation Act** in order to ensure B.C. workers enjoy rights equivalent to those enjoyed by others in the country and enshrined in social democratic labour legislation in other parts of the world.

This legislative change is not only necessary to recognize fundamental rights of workers, but is also necessary to give the Workers' Compensation Board the legal jurisdiction to enact necessary regulations. Employers are currently challenging some regulatory proposals on the grounds that the **Workers' Compensation Act** does not give the Workers' Compensation Board the mandate to implement them.

We believe it is absolutely essential that a strong, concerted, organized effort be made to convince the people of British Columbia that changes to the **Act** are necessary. The changes proposed here will go a long way towards improving the status of worker health and safety in the province, and will directly reduce the cost of injury and occupational disease in our society.

Some key amendments to the **Act** that must be made are summarized below:

## 1. **PURPOSE CLAUSE**

The stated purpose of the **Act** should be the promotion of occupational health and safety and the prevention of occupational injury and disease. It should incorporate the definition of occupational health adopted by Canada on behalf of all provinces as part of the World Health Organization. It is necessary to articulate this purpose in order to ensure that the Board enacts regulations and policies that not only prevent injury or disease but also promote a healthy and safe work environment.

## 2. **WORKERS' COMPENSATION BOARD AUTHORITY AND MANDATE**

The Board should be held accountable for its enforcement and prevention activity, and the **Act** should require the Board enforce all of its regulations. The mandate and the authority of the WCB needs to be fully articulated.

The statute should also set a standard requiring the Board to provide regulatory protection to workers. An example of this is in the U.S. Occupational Safety and Health Administration (OSHA) legislation, which states:

**“OSHA shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard by such standard for the period of his working life.”**

## 3. **ONGOING REGULATION REVIEW**

The **Act** should ensure that there is an ongoing review and updating of the occupational health and safety regulations. The statute should also establish a permanent occupational health and safety consultative body to recommend regulatory changes to the Board, to be brought forward to public hearings. This amendment will give statutory protection to the Board's current commitment to ongoing review.

## 4. **JURISDICTION**

All worker health and safety statutes in British Columbia and the jurisdiction to enforce them should be consolidated under the Workers' Compensation Board. This includes, among others, responsibility for mines, provincial railroads and industrial camps. Workers should not be pushed from pillar to post to find an

agency to deal with a workplace health problem because of divided jurisdiction among several agencies. Consolidation of these agencies would be efficient and ensure equal treatment for all workers.

## 5. EMPLOYER OBLIGATIONS

Legislation should clearly spell out the employers' responsibility to exercise due diligence to provide a safe workplace and respond to worker health and safety concerns in a timely manner.

## 6. PROTECTION FROM DISCRIMINATION

The Board needs to be empowered to assist any worker who is discriminated against for compliance with the **Act** or regulations. Where a worker suffers any form of discrimination as a result of:

- observing or reporting a hazard to the employer, safety representatives and committees, or the Board,
- refusing to work in hazardous situations,
- reporting an injury, making a claim or missing work because of a work-related disability.

The Board must be empowered to order the employer to cease the discrimination, reinstate the employee and pay any lost wages or other expenses incurred by the worker. Section 14 of the **B.C. Mines Act** contains similar provisions that could be incorporated into the **Workers' Compensation Act**.

## 7. RIGHT TO KNOW

Workers must be given the right to know the nature and risk of the hazards they are exposed to in the workplace. This right must also overrule the protection of intellectual property rights.

## 8. RIGHT TO REFUSE UNSAFE WORK

The individual and collective right and obligation to refuse unsafe work must be protected in the statute. Safety and health representatives should have the right and obligation to stop unsafe work or procedures when they observe them. Any worker or workers who suffer loss of wages as a result of a work interruption due to unsafe conditions must be reimbursed.

## **9. RIGHT TO PARTICIPATE**

Workers must be given the right to participate in decision-making about their health and safety. Committees must be mandated in all workplaces with ten or more employees. Safety representatives must be required in all other workplaces. Worker representatives must be selected through their trade union or, where a trade union does not exist, directly elected by all employees.

A worker's union, as well as worker safety representatives, should have the status of a legal party in regard to any Board proceeding affecting the health of its members.

## **10. AUTHORITY OF HEALTH AND SAFETY COMMITTEES**

There should be a statutory requirement for the employer to cooperate with the joint health and safety committee.

The committee should be empowered to ensure the employer is in compliance with health and safety regulations. Regulatory violations would be recorded and the employer notified to remedy the situation without delay. In the event of a disagreement, the Workers' Compensation Board Inspector must resolve the issue.

This proposal gives the health and safety committee the authority required for it to play an effective role in the workplace.

The employer must ensure that all time required to carry out health and safety responsibilities by health and safety representatives and committee members is considered as time worked. These responsibilities include and are not limited to meetings, inspections, accident investigations and completion of required training.

## **11. EDUCATION AND TRAINING REQUIREMENTS**

Each committee member should be entitled to five working days per annum of educational leave in order to complete health and safety training courses of their choice. When a member attends a training program conducted or approved by the Board, the employer must not deduct any pay or benefits. B.C. currently has no requirements for health and safety committee education, making it among the worst in the country.

## **12. HEALTH SERVICES AND MEDICAL SURVEILLANCE**

The Workers' Compensation Board should be authorized to require provision of health services to workers. These health services should be organized according to guidelines developed by the Board and workers' representatives. Workers affected must have the freedom to choose to participate or refuse.

It is necessary to protect confidentiality and workers' rights to privacy when they are involved in medical surveillance programs. Workers must be able to attend the doctor of his/her choice. All medical records must remain confidential, with results

to the worker. Records must be maintained by a physician of the worker's choice and only be released to the employer at the worker's request.

### **13. REQUIREMENT FOR ALTERNATE OR MODIFIED WORK (Protective Reassignment)**

Where medical information is provided advising an employer that the worker requires protection from a hazard on his/her job, the worker must have the right to be assigned alternative work with no loss of pay. If such work is unavailable, the worker should receive wage loss benefits. These provisions should extend to:

- (a) any worker sensitized to a physical, chemical or biological agent; and
- (b) any pregnant worker.

### **14. INJURED WORKERS' RIGHT TO RETURN TO SAFE WORK**

The Workers' Compensation Board, in consultation with the worker, the worker's physician and the employer, must be obliged to design and provide vocational rehabilitation programs for injured workers that ensure the worker will not be re-injured or suffer a worsening of disability after he/she returns to work.

### **15. FINANCIAL INCENTIVE PROGRAMS**

The **Workers' Compensation Act** must establish merit-rating programs to encourage employers to reduce injuries and industrial diseases, and to promote vocational rehabilitation of injured workers. The current method of Experience Rated Assessment based solely on claims costs must be prohibited by the **Act**.

Assessments of registered employers must fully cover:

- costs of claims and claims administration by industry class,
- costs of prevention and enforcement activities for the industry class.

In determining refunds or surcharges to employers within an industry, the Board must consider:

- (a) the diligence and effectiveness of employer health and safety practices and programs in preventing injuries and disease,
- (b) practices and programs in place to help injured workers return to work,
- (c) cooperation of the employer with the health and safety committee, and
- (d) other matters that the Board may consider appropriate.

## **16. SUPPLIER RESPONSIBILITIES**

There needs to be a provision prohibiting any person from selling, leasing or transferring possession of any equipment device or property for use in the workplace when such equipment device or property is unsafe and does not comply with health and safety regulations.

## **17. APPEALS**

Workers must have full rights to appeal any orders, directives or decisions from a Board officer regarding compliance with occupational health and safety regulations or penalty assessments, or lack of an order or assessment. Appeals should be to the Vice-President of Occupational Safety and Health (OSH). An order, directive or decision of the Vice-President of OSH should be appealed to the Appeal Division of the Board.

## **18. PENALTIES**

There should be statutory requirements establishing a schedule of minimum penalty assessments and directing the Board to maintain a list of violations requiring automatic penalty levies. These violations should include but not be limited to:

- all repeat orders;
- a failure to establish a health and safety program;
- a failure to establish a health and safety committee;
- repeated non-cooperation with health and safety committee;
- over-exposure of workers to hazardous environments;
- lock-out violations;
- any act of discrimination against a worker due to health and safety activity; and
- other practices deemed immediately dangerous to life and health.

## **CONCLUSION**

Effective health and safety legislation setting out fundamental rights and responsibilities is long overdue in British Columbia. Without legislated standards and duties, the health and safety of workers will depend on the benevolent exercise of broad discretion by the administration of the Workers' Compensation Board appointed by the government of the day.

These issues deserve debate in our communities and in the Legislature of the province. The B.C. Federation of Labour and its affiliates will work to ensure this debate takes place and to establish these rights and responsibilities in the statute.

**Adopted in Convention 1994  
B.C. Federation of Labour**