

# ITF (Industry Task Force) Association

*Effecting positive change in Workers' Compensation through the views of Alberta employers*

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## Government Engagement

In follow-up to concerns arising from the December workshop with representatives from the WCB and Labour Coalition, ITF contacted the Minister's Office to clarify the change repealing OTR legislation. Lenore Neudorf indicated the obligation to return an injured worker to work was repealed through Bill 47. However the employer duty to cooperate is in the current *Workers Compensation Act* which is more prescriptive than the new provisions in the *Ensuring Safety and Cutting Red Tape Act*.

The new provisions meet the intent of repealing the employer's obligation to reinstate. Employers are to cooperate with the WCB's efforts to return an injured or ill worker to work but are not obligated to reinstate a worker.

ITF was encouraged to participate and provide feedback on policy through the WCB's consultation process. Lenore also invited ITF to contact their office again once the WCB's policy development process is complete if there are remaining concerns.

ITF also received a response to our letter on Coverage for Directors from Minister Copping. Protection from liability was not included in Bill 47. He indicated this was considered as part of the legislative review but was found to be neither cost neutral nor a cost saving for the system. It was felt that protection for Directors would increase the cost of the system. Also, the increase would not be borne by the Directors who benefit, but through employer contributions and it is against the principles of the system to allow someone to benefit from protection from suit without contributing to the system.

He also noted stakeholder feedback indicated general satisfaction with the current approach of allowing Directors to choose whether or not to obtain personal coverage to gain protection from legal action. Directors continue to have the option to obtain personal coverage should they so choose and he noted ITF's request can be submitted again as part of any future reviews and will warrant full consideration at that time.

## Policy Consultation on Legislative Changes

In follow-up to the above concern from the December workshop regarding application of penalties connected to the Obligation to Reinstate, WCB indicated OTR will not be included in the new policy. Instead WCB will focus on

working with employers to understand challenges in returning injured workers to their DOA employment. In 2019 there were 17 penalties, after 367 employee terminations and in 2020 (to the end of Nov) there were 7 penalties, after 347 terminations. WCB was advised we raised our concerns regarding administrative penalties with Minister Copping's office.

The Policy Consultation Advisory Group met on January 22<sup>nd</sup>. Darren, Rebecca, Michael and Boris participated on behalf of ITF. WCB noted there is a lot of work to be done in a limited time. They are currently working with the FPO to transition the fairness review files to the WCB. Other topics discussed included:

**Bill 47 January updates** - changes that have already taken effect include psychological injuries, COLA and maximum compensable earnings. WCB noted the current MIE of \$98,700 covers 93% of Alberta workers.

**Policy Consultations** - open consultations include the fairness review process, duty to cooperate, egregious conduct, and maximum compensable earnings. WCB proposed a group of 10 representatives (5 from LC and 5 from ITF) participate in monthly meetings to look at any issues that arise from the implementation of Bill 47.

**Other Policy Changes** - WCB is consulting on four specific policies but there are other changes that need to be in place for January 1<sup>st</sup> and April 1<sup>st</sup>. These are not major changes in terms of impacts (e.g. wording related to DRDRB and the ODIAC) but WCB doesn't want stakeholders to be surprised. ITF agreed to alert our membership. The January 5<sup>th</sup> Policy Transmittal Sheet is attached to this newsletter.

**Duty to Cooperate (DTC) Discussion** - ITF asked for clarification on how DTC differs from OTR. WCB indicated DTC is less prescriptive in nature than OTR, with greater opportunity for the WCB to review and understand what is reasonable from an employer perspective. However, where employers would be subject to breach of duty to accommodate requirements there could be administrative penalties for employer non-cooperation but this is different than non-compliance with OTR.

**Egregious Conduct** - ITF asked if only the behaviours outlined in the draft policy would be considered as egregious. WCB indicated this is not meant to be an inclusive list but the legal bar for egregious conduct is high. WCB highlighted that behaviours not considered

egregious (e.g. poor attendance) could be addressed under worker duty to cooperate requirements. Employers can implement progressive disciplinary practices and the WCB would be responsible for making decisions regarding suspending benefits.

**Policy project plans for 2021 outside of Bill 47 - WCB** would like to introduce a more thoughtful/forward thinking policy planning process based on a 2-year planning cycle. The Employer Policies took longer than expected but there was value in that approach. WCB would also like to include not just current policies but new workplace trends where policy development would be beneficial (e.g. remote international work, gig economy, etc.).

ITF was asked to provide suggestions for the 2021/2022 policy plan by April/May. This is being discussed by the ITF Policy Consultation subcommittee. ITF suggestions to date include the Funding Policy, cost relief including psychological injury claims, and ICP. The Labour Coalition did not offer any suggestions at the meeting, indicating they are focused on the impact of legislative changes.

### ***Joint OHS/WCB Reporting System***

Members of the subcommittee met with Rob Feagan and Lisa Ross-Rodriguez on January 14<sup>th</sup> to discuss the Joint OHS/WCB Reporting project. The subcommittee then met on January 25<sup>th</sup> to discuss next steps.

Rob noted one of the recommendations of the 2016 WCB Review report involved data collection (see page 144 of the report). The Red Tape Reduction initiative was then introduced by the current government, with the intention of making things easier for job creators. Due to COVID, work on this was suspended in March 2020 and the project has not evolved past discussions regarding more frequent exchange of information. Future phases would look at automation, whether joint reporting is actually needed, and when would be a good time to pursue this.

A data sharing agreement has been in place since the early 2000's, and in early 2019 OHS & WCB started conversations on data sharing. Early discussion focused on the duplication of effort for employers since similar data is being provided to both organizations. Also, from an OHS perspective, there is concern that as the regulator, OHS is not getting reports on everything they should be receiving (employers sometimes only report to WCB believing they have met their OHS reporting obligation).

To date OHS & WCB have mapped out the information each organization collects and identified overlaps in information reporting. Focus then was on what could be done in the short term to address the OHS concern about

deficiencies in reporting to OHS and the types of information WCB could make available to OHS on a more timely basis. Efficiency gains have resulted, and the WCB is now sharing information more frequently but nothing has changed for employers to make it easier for them (i.e. reduce red tape). OHS has talked to WCB about resurrecting this project and indicated there will be consultation with stakeholders to gather their perspectives on the pros and cons.

ITF has written to Minister Copping expressing concerns about the cost of introducing a new IT system and the timing of this project. We also stressed the importance of stakeholder consultation, the need for a business case to be made available for review, and potential for unintended negative consequences.

### ***Medical & Appeal Process Review***

Labour and Immigration has completed the procurement for the workers' compensation system medical and appeals performance review. EngageFirst Management Consultants are the successful proponent.

The review will determine if there are ways to simplify the medical and appeals aspects of the workers' compensation system to reduce costs and red tape.

The review began the last week of January with a final report and recommendations expected to go to government in spring 2021. As part of the review, EngageFirst will be reaching out to the ITF for input in the coming weeks.

### ***Upcoming ITF Association meetings***

Our first meeting of 2021 is on **Wednesday March 3rd starting at 8:30 am**. This will be a virtual meeting.

The Executive is also considering several suggestions for a guest presentation webinar on either March 1<sup>st</sup> or March 2<sup>nd</sup> depending on speaker availability. Topics include the annual OHS update from Myles Morris, the employer role in COVID vaccination and testing, and a Joint OHS/WCB Reporting System project update.