Some Big Changes Coming to the Workers' Compensation Act:

By now everyone is no doubt familiar with Bill 30 that has brought or will be bringing significant changes to the Occupational Health and Safety Act and the Workers' Compensation Act.

Following the final report of the Workers' Compensation Review Panel and the many recommendations made, amendments coming into force on September 1, 2018 have the potential to have a significant impact on members and on all employers in Alberta. This requires that the WCB review its policies and in some cases, implement new policies. Recently, the WCB hosted meetings in Edmonton and Calgary with members of industry associations and labour groups to seek feedback on four such policies. Members can see and comment on the proposed policies here. The policies are open for comments until March 6, 2018.

Code of Rights and Conduct

The Workers' Compensation Board has been committed to providing excellent customer service to employers and workers for a very long time but inevitably, there will be instances of dissatisfaction. Codifying the standards of conduct by the WCB and the rights of workers and employers, along with the recourses they can take is therefore a positive step and one that both employer and worker representatives support. The code will include standards regarding dignity and respect, fairness and impartiality, communication, full and correct information, access to information and privacy and confidentiality. No significant change from how the WCB currently strives to conduct itself is really anticipated. The proposed policy and Code is part of the larger recommendation made by the Panel for the establishment of a Fair Practices Office who will become the final arbiter of any complaints arising from the Code.

Feedback from the consultation groups included clarity regarding the proposed complaint process (in that it is not and should not be viewed as an appeal) and a clear articulation within the code that financial compensation would not be part of the complaint resolution process.

Obligation to Return Injured Workers to Work

This amendment to the WC Act will have a broad effect on many employers, especially small and medium sized employers. Essentially, this amendment to the Act duplicates the provisions already present in the Alberta Human Rights Act with regard to Duty to Accommodate. With this amendment the WCB will be moving from adjudicating injury and disability to adjudicating the employment relationship and until a great deal of training has occurred, this could be a real minefield. Employers will be required to re-employ any worker that has been continuously employed for 12 months or more, either temporarily or permanently in an accommodated capacity, up to the point of undue hardship. The WCB will recognize similar limitations as the HRC as far as undue hardship is concerned such as financial hardship, safety risks, morale, inter-changeability of workforce and so on.

While many providers are already providing their employees with early and safe return to work (modified work and/or hours), it isn't yet industry wide, especially among smaller providers. Larger

employers are easily able to absorb quite a bit of accommodation before they reach the point of undue hardship but smaller operators will have to consider carefully how this amendment is going to impact them.

A point raised to the WCB that hadn't been factored in to the definition of continuous employment is how healthcare's casual employees would be viewed. It isn't unusual for a casual to work just 1 or 2 shifts in a 12 month period, to have (sometimes many) more than one employer or to hold a regular full or part time position concurrently with one or more casual pools. The point was taken and we can expect the WCB to provide some clarity on what accommodation expectations would be in place if a casual employee is injured in the near future. In the meantime, operators are well advised to review and update their casual pools and temporary positions with respect to assessing continuity of their employees, particularly casuals.

Interim Relief for Workers and Employers

This new policy arising from the panel's recommendations represents an unprecedented aspect to the appeal process where, in eligible cases, workers (and employers*) can be granted "interim relief" while their matters are under appeal. The idea behind it is to provide workers that are unable to meet basic living expenses relief in the form of compensation benefits payable at the minimum rate payable or their TTD rate (whichever is less) until the appeal is heard. The draft policy includes the provision that when interim relief is granted, a hearing must be held within 2 months.

The WCB hasn't been left with a choice about whether this policy will be implemented or not since the legislation has already been amended. What is important is that this policy not provide loopholes where workers can file multiple appeals in order to extend the payment of benefits or set up a parallel appeal system where those appellants granted interim relief are essentially queue-jumping what would otherwise be a longer process in getting a hearing date.

Finally, the WCB is proposing that before an appellant be granted interim access that the appeal "has a reasonable chance of success and is not frivolous". The intent here is clear but the wording can create problems by implying that before an appeal is heard, the outcome is being, if not pre-determined, then at least signaling that the appeal has merit. Moreover, the WCB thought that the same appeal body hearing the appeal can make the decision on whether or not to grant interim relief. However, again, the focus group largely agreed that the perception of fairness and impartiality would be compromised in that scenario (in contravention of the brand new Code of Rights and Conduct!) and urged the WCB to revisit the process and ensure someone independent of the appeal within the WCB be reviewing cases for interim relief.

Because interim relief payments will be cost relievable to the employer, individually employers will not be impacted but there is the potential for increased premium rates collectively if the use of interim relief becomes too widespread.

Estimating Earning Capacity: Making Reasonable Efforts to Support a Job Search

The proposal here is not actually a new policy but some proposed adjustments to the existing policy on Permanent Disability to ensure it is aligned with the review panel's finding that it didn't believe the WCB had been doing all it could to support permanently injured workers unable to return to their pre-disability employment in supported job searches or in deeming the impairment to their earning capacity. This is done in order to determine if and how much of a temporary or permanent earnings loss is payable to the worker – the earnings loss is the difference between what the worker earned pre-injury and what they are earning, or *deemed* to be capable of earning post-injury. The policy is being amended to make the supported job search more responsive to the individual worker in terms of factors such as age, target industry unemployment rates, Alberta economic region and pre-injury earnings. This policy will only apply to (generally) permanently restricted workers who cannot return to their pre-injury occupations and cannot be accommodated by their pre-injury employers. Our industry, fortunately, experiences a relatively very few injuries and WCB claims that result in permanent disability and the proposed changes to this policy won't directly affect our members but it does have the potential to increase premium rates in future.

Overall, the panel had some 48 separate recommendations. The four outlined above represent the first and perhaps the most costly and yet, because the changes to the Act come into force so soon, must be hastily developed and implemented. It seems inevitable that premium rates will have to increase in the coming years to offset the additional costs these policies represent.

* Very few employers, if any, are anticipated to ask for or require interim relief.

- 30 –

By Sandra Smale
Manager, Safety and Disability Management
Bethany Care Society