

Workers' Compensation Board changes

Albertans would see an improved workers' compensation system that is fair and provides greater benefits to support injured workers.

Overview

The Workers' Compensation Board (WCB) compensates injured workers for lost income and for health care and other costs associated with work-related injuries.

Changes to the WCB system are long overdue. The *Workers' Compensation Act* (the Act), which established the WCB, hasn't had a comprehensive review in more than 15 years. Much has changed since then.

To ensure the system continues to support Albertans and that it remains sustainable and affordable, an independent panel completed a [review of the WCB](#) in June 2017.

The panel received more than 1,700 survey responses and 300 written submissions from Albertans. Stakeholders participated in a series of engagement sessions between Sept 2016 and Jan 2017. Feedback from this review was used to inform proposed changes to the Act.

[Bill 30: *An Act to Protect the Health and Well-being of Working Albertans*](#) proposes changes to the *Workers' Compensation Act*.

If passed, most changes would take effect Jan 1, 2018.

Make the WCB more accessible to workers

A new Code of Rights and Conduct would enshrine the rights of workers dealing with the WCB and its employees, and would detail how WCB would recognize these rights. This would help ensure the system is friendlier and more compassionate.

If passed, Bill 30 would also:

- revise the preamble to clarify the purpose of the act and the WCB system
- revise the appointment process to ensure balanced representation among employers, workers and the public
- allow for regular statutory reviews of the system

Establish a fair practices office

Many Albertans have raised concerns that the WCB is a complicated and highly bureaucratic system that can be challenging to navigate.

In response, Bill 30 would establish an independent fair practices office to:

- help workers manage their claim from start to finish
- be a way for people to raise concerns
- monitor trends in the workers' compensation system to ensure that it is working efficiently and effectively

The office of appeals advisors, reporting to the fair practices office, would provide extended representation at judicial review for:

- small- and medium-size employers (up to 100 employees)
- non-unionized workers
- unionized workers where access to representation has been exhausted

Better benefits to workers

Proposed changes would provide for a more fair compensation and meaningful rehabilitation for injured workers.

- Coverage for psychological injuries, including Post-Traumatic Stress Disorder (PTSD), would be extended to all occupations. Coverage of PTSD for first responders remains the same. To get coverage, workers would need to provide:
 - a qualified diagnosis from a psychologist or physician for a psychological injury
 - evidence of exposure to a traumatic event or events at work.

- The \$98,700 annual cap on maximum insurable earnings – the net earnings of each worker – would be removed. Workers earning more than the cap would now be compensated for 90% of their earnings. This means injured workers would receive benefits more in line with their expected earnings.
- In the tragic event of a worker’s death, a fatality benefit equal to the maximum Non-Economic Loss Payment would be provided to the spouse or dependant. If there’s no spouse or dependant, it would be paid to the estate.
- The surviving spouse of a worker killed on the job would no longer be treated differently depending on the family’s income, whether there are children involved, or whether the spouse can be gainfully employed.
 - If there are children, the surviving spouse would receive benefits until the youngest child reaches 18, or up to 25 if they attend post-secondary education.
 - Spouses without children will receive full benefits for 5 years with the ability to receive longer, and can apply to continue receiving benefits until 65 if not considered capable of employment.
- Cost-of-living adjustments to an injured worker’s benefits would no longer be reduced by 0.5% on Alberta’s Consumer Price Index (CPI). Adjustments would be calculated based on the actual CPI, without any reductions.
- Provide the ability to adjust the benefits of young workers to mitigate the hardship they might otherwise experience when they sustain a long-term injury on the job. These changes recognize that significant injuries can affect the future career opportunities of a young worker.
- The long-term compensation rate for severely injured young workers, who were either under 25 at the time of accident or over 25 and enrolled in a vocational or academic program, would be the higher of:
 - 90% of net earnings at time of the accident or
 - 90% of net earnings based on the Alberta average weekly earnings for the previous year
- Retirement provisions would be updated to better recognize the impact of a workplace injury on an injured worker’s retirement savings.

Obligation to return to work and duty to accommodate

Employers now have an obligation to return their employees who suffered injuries and illnesses in their workplaces to work, unless it imposes an undue hardship. This obligation does not remove a worker’s rights under the *Alberta Human Rights Act* around accommodation.

Following other jurisdictions in Canada, the proposed changes to the Act would enshrine the obligation of an employer to return employees to work.

- When a worker is medically able to perform the essential duties of the worker's pre-accident employment, the employer must:
 - offer to re-employ the worker in the position that was held before the accident or
 - provide alternate employment of a similar nature and at the earnings comparable to the worker's employment at the time of the accident
- WCB would be responsible for addressing concerns about return to work.

Deemed earnings

“Deeming” is a process where the WCB reduces a worker's benefits by identifying a job it believes the worker could be doing and the level of income that the worker could be earning from the job.

In the past, “deeming” resulted in some workers not receiving the level of benefits they should have received based on a fair evaluation of their experience, skills and training.

The proposed changes would introduce provisions so the deeming process used by the WCB would be a last resort after other options – obligation to return to work, job search and retraining – have been exhausted

Medical examinations

Injured workers would have more choice in selecting a physician if they needed a medical examination. This would give injured workers the ability to better manage their own health care.

- Injured workers would be able to initiate the medical panel process.
- Health professionals other than physicians would be able to participate as advisors to the medical panels.
- An informal medical dispute resolution process would be established to ensure timely consideration of disputes.

Occupational disease and injury advisory committee

If passed, Bill 30 would establish an occupational disease and injury advisory committee to advise on diseases, injuries and conditions that may be linked to employment in a particular industry, process or activity, including Schedule B of the WCB Regulation.

- The committee could direct the WCB to deem commonly seen linkages between certain injuries and illnesses and certain types of employment and activity.
- A review of occupational diseases would be conducted on a regular basis by experts using the best sources of information. They would also promote the regular exchange of information on best practices.

Appeals commission

The appeals commission is the final level of appeal for workers and employers who disagree with a decision of the WCB and the Dispute Resolution and Decision Review Body (DRDRB).

Proposed changes would strengthen the appeal commission review and appeal process to:

- extend the timeframe to launch a formal review to two years
- permit the WCB to provide interim relief while matters are under review and appeal when it's determined that a case is arguable
- clarify the role of the WCB at an appeals commission panel, and require that the WCB submit notice of its intention and rationale to attend
- enable the appeals commission to take note of commonly seen linkages between certain injuries and illnesses and certain types of employment and activity and communicate to the WCB and occupational disease and injury advisory committee
- allow the appeals commission the opportunity to move to a dissenting opinion model if desired
- publish all decisions of the appeals commission on the appeals commission website
- require the appeals commission to take a two-stage approach to reconsider applications: a documentary review that has a low threshold to pass and a tribunal that assesses the merits of reconsidering the decision

- establish the ability for single-adjudicator hearings on certain matters to approve the timeliness of the appeals process

Occupational health and safety changes

Albertans would see an improved OHS system that better protects workers and ensures they have the same rights as other Canadians.

Overview

The *Occupational Health and Safety Act* (the act) establishes the minimum standards for healthy and safe workplaces in Alberta. These laws are supported through the internal responsibility system and enforced through compliance activities.

Alberta has not done a comprehensive review of the OHS system since it was enacted in 1976. Much has changed since then.

A comprehensive [review of the OHS system](#) was concluded in fall 2017. We received more than 1,300 survey responses and nearly 90 written submissions from Albertans and more than 200 stakeholders participated in 8 roundtable discussions across the province. Feedback was used to inform proposed changes to the act.

[Bill 30: *An Act to Protect the Health and Well-being of Working Albertans*](#) proposes changes to the Occupational Health and Safety Act that would better protect Albertans at work.

If passed, most of the changes would come into effect June 1, 2018.

Basic rights of workers

The proposed changes would enshrine the three basic rights of workers in Alberta's legislation:

- **The right to refuse unsafe work** protects workers from any form of reprisal for exercising this right, including loss of compensation or benefits.

- **The right to know** ensures workers are informed about potential hazards and have access to basic health and safety information in the workplace.
- **The right to participate** ensures workers are involved in health and safety discussions, including participation in health and safety committees.

Responsibilities of worksite parties

The OHS system is grounded on the principle that everyone in the workplace is responsible for health and safety in the workplace.

- Employers would be responsible for:
 - ensuring the health, safety and welfare of workers and the public
 - providing competent supervisors, training workers, and preventing violence and harassment
 - working with the joint worksite health and safety committee or health and safety representative
- Supervisors would have legal responsibilities for OHS and be responsible for preventing violence and harassment.
- Workers would be responsible for protecting their own and others' health and safety at worksites and refraining from violence and harassment.
- Contractors would be responsible for ensuring that work under their control does not endanger health and safety.
- Prime contractors would be required in construction, oil and gas worksites or any other projects that are designated by the OHS director. They would also have added responsibilities to ensure worker health and safety.
- Owners of worksites would be responsible for ensuring that property under their control does not endanger health and safety.
- Suppliers would have to ensure their products are safe to use, and must include user instructions for all equipment, including leased equipment. They would also have to provide a notice when their product or equipment doesn't comply with the law.
- Service providers would have to ensure the services they provide comply with the laws, are provided by a competent person and do not create a hazard.
- Self-employed persons would have responsibilities to ensure they do not create a hazard to others and to comply with OHS laws.
- Temporary staffing agencies would have to comply with OHS laws and ensure worker health and safety.

Availability of information

Workers have the right to know of workplace health and safety hazards and employers have an obligation to provide this information. The proposed changes to the act would:

- enshrine a worker's right to know about workplace hazards
- require all worksite parties to ensure that information on health and safety hazards is provided onsite

Worksite health and safety committees and representatives

Joint worksite health and safety committees are important forums for workers to participate in OHS. They ensure supervisors and workers discuss health and safety issues in the workplace and work collaboratively to find ways to address them. These committees would be responsible for:

- inspecting the work site for hazards
- helping employers respond to health and safety concerns of workers
- helping resolve unsafe work refusals
- helping develop health and safety policies and safe work procedures
- helping with new employee health and safety orientation
- developing and promoting education and training programs

Proposed changes would bring Alberta in line with the other provinces.

- Larger employers (20 or more workers) would be required to have a joint worksite health and safety committee for work lasting 90 days or more.
- Smaller employers (5-19 workers) would be required to have a health and safety representative for work lasting 90 days or more.
- An employer can use an alternative approach to meeting these requirements with approval from an OHS director.

Right to refuse dangerous work

Workers have the right to refuse dangerous work and be protected from reprisal for exercising their rights and responsibilities under the legislation.

Employers must ensure workers understand the hazards at the workplace, know what needs to be reported and have the support to exercise their right.

- Employers must investigate the matter in cooperation with the joint worksite health and safety committee or health and safety representative, if there is one.
- Employers would not be able to take or threaten discriminatory action against a worker for exercising their rights and duties under the legislation.
- Workers would continue to be paid their normal wages and benefits while a work refusal is being investigated.

Health and safety program

- Employers with 20 or more workers must have a written health and safety program. The program must be reviewed every 3 years and include mandated elements.
- Employers with less than 20 employees must involve workers in hazard assessment and control.

New role for OHS Council

The OHS Council would become an advisory council to provide specialized advice to government to better protect working Albertans.

Reporting serious injuries, incidents and fatalities

The government must be notified when a serious injury, incident or fatality occurs to ensure it's adequately investigated to prevent future occurrences.

- Threshold for reporting a serious injury would be changed to an injury that requires admission to hospital.
- Employers will be required to report "near misses" (incidents that had the potential to cause a serious injury or incident).

Medical assessments

Medical assessment requirements would be updated to align modern care practices and how medical services are delivered.

- Medical examinations could only occur with the worker's consent and would be considered time at work.
- The list of health-care professionals who are required to report a notifiable occupational disease would be expanded.
- The director of medical services would be provided more access to medical information to prevent occupational illnesses and injury.

Compliance and enforcement

Powers to conduct inspections and investigations, as well as compliance tools, will be expanded and updated.

- The person who receives an order would be required to
 - report back to OHS on measures taken to remedy any infractions
 - provide a copy of the report to their joint worksite health and safety committee or health and safety representative, if they have one
 - post the report at the worksite
- Officers would be able to issue a stop-work order to an employer with multiple worksites.
- When a stop-work or stop-use order is issued, workers would continue to be paid their normal pay and benefits.
- Sale, rental, lease or transfer of equipment would be prohibited in the event of a stop-use order.
- Officers would only be able to enter a private dwelling that is a worksite with the owner's consent or a court warrant.
- Suppliers would be prohibited from supplying any substance or material that does not comply with the legislation.

Appeals process overhauled

The OHS appeals processes require modernization, streamlining and better alignment.

- Certain types of OHS officer orders and decisions could be submitted to an OHS director for review. The director could:
 - confirm, vary or revoke the order or decision
 - issue a new order
 - refer the matter to the appeal body
- The OHS director review would apply to:
 - refusals to do dangerous work

- orders to remedy unhealthy or unsafe work conditions
 - stop-work orders/stop-use orders
- Responsibility for other OHS appeals would be shifted to the Alberta Labour Relations Board to streamline processes and create efficiencies. These would include:
 - discriminatory action complaints
 - cancellation of a licence
 - administrative penalties
- The process for hearing appeals would be modified to align with current practices used by the Alberta Labour Relations Board.
- Transitional appeal requirements would be added to allow for appeals submitted before changes to the act come into place.

Offences and penalties

The types of offences would be expanded (for example, to include not reporting a reportable injury or incident) and more options would be provided for creative sentencing.

- [Fines and penalties](#) would remain unchanged.
- Creative sentencing requirements would be expanded by providing the court with additional powers to direct how penalties could be used and provide more oversight. These powers would include:
 - directing offenders to pay into training regarding health and safety
 - research on preventative medicine
 - any creative remedy order the court felt appropriate

Information collection and exchange

Changes would provide greater opportunities for government to acquire and share information to help with prevention efforts for workplace illness and injury.

- Alberta Labour would be allowed to share data with other government bodies, agencies and external organizations beyond the WCB-Alberta.
- More information about employers would be published at regular intervals. Expanded information would include:
 - orders issued

- tickets issued to employers (but not workers)
 - investigation reports completed by an officer
 - acceptances issued
 - approvals issued
- WCB-funded health and safety associations would be required to submit a report to government each year for review. Government could make recommendations on the effectiveness of the association's OHS efforts.
- Government would be able to designate organizations and programs to promote OHS in Alberta.

Duties of the government

Roles, responsibilities and authorities of government for OHS will be clearly articulated.

- Government would be concerned with OHS generally and maintaining reasonable standards to protect workplace health and safety.
- The OHS Act would have to be reviewed every 5 years.
- A plan for the review of any OHS regulations and the OHS Code would be published every 3 years.
- The minister must consult with workers and employers, and can recommend changes to OHS legislation.
- Ensure OHS statistics are maintained and published.