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Standing Committee on Social Policy
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To Whom It May Concern:

RE: Bill 27, Working for Workers Act, 2021 - WSIB Fund Surplus Distribution to Employers

We, Injured Workers Action for Justice (IWA4J), are a community-based group of injured workers in the Greater Toronto Area and other areas of Ontario with partners across the province, such as the Ontario Network of Injured Workers Group (ONIWG) and other local injured workers groups, community legal clinics, unions, and community organizations and groups.

We are writing to express our grave concern and opposition to the WSIB fund surplus distribution to employers in Bill 27 put forth by the Ministry of Labour, Training and Skills Development (MLTSD). We believe that this proposed bill is against legislative obligations to injured workers. There must be true accountability and transparency to address the following issues for both workers and employers.

Historically, workers gave up their right to sue employers in exchange for full and fair compensation for work injuries. Currently, not only have employers been protected from being sued, they have also been rewarded with rebates -- their WSIB premiums were reduced by over 50% since this government was in power since 2018. And employers have received a financial relief package during the pandemic. While employers have enjoyed these favourable conditions, injured workers have had to suffer from cuts under the “unfunded liability (UFL)” for decades and the legislation change from the WCB compensation model to the WSIB insurance model. We urge you to consider reversing these cuts. If there is any surplus, we insist that it should be put towards efforts to ensure all injured workers are receiving their legal entitlements.

Here are some recommendations based on the life experiences of injured workers in this province:

1. **Claim Suppression:** As the Operational Review Report pointed out, the WSIB claim suppression audits are insufficient. This impacts many workers from racialized backgrounds and in precarious workplaces such as migrant workers, temp-agency workers and undocumented workers. If the WSIB allocated resources properly and fulfilled its obligation to investigate and penalize claim suppression, there should be no surplus in the first place. In addition, this surplus distribution to employers could have a negative consequence of creating the conditions for even further (and more aggressive) claim suppression by employers. This would put workers at further risk of having their claims denied.
2. **Real Healthcare for Injured Workers:** Based on the “Bad Medicine” report (IAVGO, 2017), the WSIB payment of drug benefits decreased 35% (\$33M) from \$96M in 2010 to \$63M in 2015 while the new claims entering the system are consistent during that period. It says, “About 18,000 injured workers per year have disappeared from the drug benefits program, with no viable explanation from the WSIB.” However, the WSIB’s own Annual Financial Reports confirmed that the benefits paid out to injured workers’ were cut in half from 2010 to 2015. The WSIB should provide health care injured workers need and fund medical treatments and medication our doctors prescribe, especially for those workers and migrant workers injured in precarious workplaces and repatriated to their countries with no medical attention.
3. **Chronic Mental Stress Injuries:** Since the legislation change in 2016, the WSIB is now required to cover work-related chronic mental stress injuries but only 6% of these claims are allowed in 2018. It means another discriminatory cut (94% denial) to many injured workers who are experiencing tremendous hardship, especially during this pandemic. The WSIB’s policy of mental stress contributing factor is discriminatory in our view and should be changed. Eligible workers whose mental stress injury cases have been denied should be reconsidered for benefits.

4. **Language Barriers and Racism:** As Professor S. Premji identified in her study in 2015, language barriers in the WSIB process, Early and Safe Return to Work and Work Reintegration programs are inadequately taken into account in the implementation of policies and practices, such as in the determination of suitable work. The WSIB should implement policies against these barriers and racism in the WSIB system and fully support workers who are speakers of English as a Second Language (ESL).
5. **Occupational Disease:** The researchers highlighted systemic barriers faced by workers filing occupational disease claims, especially complex claims involving multiple hazardous substances. As the result, workers are most likely denied. The Occupational Disease Standard Panel must be reinstated and fully funded, and all recommendations of Demers Report respecting occupational diseases must be implemented. Victims of occupational disease should be properly compensated.
6. **Loss of Earnings:** The WSIB should restore the Loss of Earnings benefits from 85% of net average earning to 90% as it was established in Ontario before 1998, and it is the rate used for Manitoba, Saskatchewan, BC and the Northwest Territories. Also, injured workers should be paid inflation at the actual rate of the consumer price index.
7. **End the WSIB Deeming:** The WSIB deeming policy is another critical benefit cut to injured workers and pushes us into poverty and forces many to turn to other public-funded programs such as ODSP and OHIP. This completely serves corporate interests on the backs of injured workers. The government must pass Bill 119 to end the WSIB deeming practice so that injured workers are allowed to receive their benefits when an appropriate job is declined with no income.
8. **Sufficient Retirement for Injured Workers:** The WSIB should provide at least 10% of the Loss of Retirement Income benefit and provide a sustainable pension when injured workers with permanent impairments reach the age of 65 years with no sufficient retirement fund.
9. **Non-Economical Loss (NEL)** benefits were inadequately replaced with the injured workers' pension system in 1990, and the NEL benefits payments continue to go down by 65% from 2010 to 2015 under the UFL. Now it's time to restore the NEL rates so that permanent impairments are more accurately and realistically rewarded.

The above recommendations we are putting forth come from lived experiences of injured workers in Ontario. Here are some testimonials to highlight some of their experiences from the group.

"I was injured in 2010 from workplace sexual harassment and retaliation. After I filed a complaint in two hours, my manager forced me to work with the harasser, one-on-one and in-person. I lasted 3 more days at work before hospitalization for the mental crisis. My WSIB claim for mental injury was rejected mainly due to WSIB financial reasons. I have met injured workers who were forced to return to work when not ready. Some of them repeated several times return to work, re-injure and reclaims became permanently impaired. Submission to UN CRPD (Committee on the Rights with Disability) complained that deeming cuts compensation. It is clear to our society that compensation is inadequate: academia reported more than 46% of permanently impaired injured workers living on the poverty line, and media reported injured workers became homeless. No more delay. Pay injured workers benefits first!" -- Jenny Tang from the IWA4J Chinese Injured Workers' Group

"I was injured at my work, but my employer blamed and abused me while I was suffering from my work injury instead of protecting me and providing a safety net to recover from my work injury. That impacted my psychological condition. In addition, the WSIB with the employer attacked me by saying that I'm lazy and treated me like I was a fraud. The WSIB is not designed to help people like me with a language barrier in the Spanish-speaking community, who have already faced so many problems during this devastating pandemic. The WSIB should provide more funding and sustainability to the workers who speak English as a second language." -- John Camargo from the IWA4J Spanish-speaking injured worker Group

"I was injured in 2016 in my workplace. After a few months on modified duties, the WTS (Work Transition Specialist) from the WSIB and my employer without consultation with me just picked a permanent position for my RTW (return to work) that was not suitable and safe for my work injury. And then, the WSIB cut my benefits while I'm still recovering from my work injury. I learned about the creation of the "surplus" under the "unfunded liability" on the backs of injured and ill workers benefit cuts. This is a systemic problem in our legislature. It's not right! I support this submission and also urge the government to stop the surplus distribution to employers. Please consider pay workers benefit first!" -- Justina Wright (not her real name) of the IWA4J Spanish-speaking injured worker Group

"As an injured worker, I am bound by several regulations that now govern my life. WSIB and employers govern using paper doctors and not the Meredith Principles that are supposed to protect the injured workers. That shared liability has been siphoned to the point of oppression of injured workers forced into poverty. Along with the drainage of our rights, the people controlling the decisions are not utilizing the regulations they were intended, creating more barriers and denials. Please use the surplus to injured workers benefits they are entitled". -- Justiniana (not her real name) of Injured Workers Action for Justice Group

"I have a repetitive work injury, carpal tunnel syndrome from my work, but my employer and the WSIB denied my injury, and my employer started bullying and harassing me about my injury and my request for modified work. And then, the employer pushed me to resign from my job and laid me off at work. Because of this kind of injustice and lack of help and support system at the workplace, I had to go through a very difficult time suffering from injury and stigma in our system. When I found out about this consultation, I feel like there is no justice. This is not right! I'm supporting this submission. The MLTSD should listen to the injured workers' community and stop distributing the surplus to employers. The WSIB needs to break down the barriers, systemic problems and provide injured workers benefits now." -- Mohammad Naqvi, Injured Workers Action for Justice Group

We as an injured workers' group demand that the government amend the bill and abolish all harmful policies and practices at the WSIB. In order for the Ministry of Labour to fulfill its legislative obligations, the WSIB system must be made responsive and accountable to the public it's supposed to serve, not the corporations. This so-called "surplus" at the WSIB resulted from denial of benefits, claim suppression and cuts under unfunded liability. In other words, the "surplus" was gotten off the backs of injured workers.

Please reconsider how you can best carry out your mandate to serve the community for a more fair and full compensation system for workers.

Thank you for your consideration.

Regards,

Injured Workers Action for Justice

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