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BY UPLOAD

Ministry of Labour, Training and Skills Development
Health, Safety and Insurance Policy Branch
400 University Avenue, 14th Floor
Toronto, ON M7A 1T7

To Whom It May Concern:

RE: WSIB Fund Surplus Distribution Model Consultation

We are writing this letter upon learning that the Ministry has requested a consultation to discuss the current WSIB surplus. It is disheartening to learn that this consultation has been offered to employers and there has been no consideration for involving the injured workers who rely on the benefits awarded by the WSIB and who will be significantly affected by any financial measures related to surplus taken by the WSIB.

Currently, the Board is not meeting its obligations to workers. The WSIB cannot project a surplus when there are many injured workers who are receiving either no benefits or insufficient benefits. Before any decision is made, the impact of the decision on the injured worker community must be taken into account and various issues need to be addressed. In the following paragraphs, we will reference issues that any designated surplus should be allotted to workers before it should be given to employers.

Awarding Loss of Earnings

The Board has continued with its unjust practice of deeming workers with apocryphal jobs that exist in idea alone. With this practice, a worker who is incapable of returning to work, despite their best efforts, has their benefits slashed outright because it is determined that they should be able to work in at the very least a minimum wage position. This determination is made too frequently without real consideration for the restrictions set in place by their doctors or what the worker has been trained to do. If a worker made \$17.50 an hour before the injury and the WSIB now deems that they can work a job, at the same amount of hours, that earns \$14.00 an hour, then the worker will only make 85% of the net difference (\$3.50/hour) regardless of whether or not they have a job. How is any individual supposed to live on this amount?

This is a continued practice where the WSIB hides behind the guise of getting workers back to work. It is important to get a worker back to work; yet, it has to be in a position that is suitable and available. If work is not suitable nor available, the Board is mandated to continue paying full loss of earnings, until both prerequisites can be achieved. However, the WSIB has held firm on this path of deeming workers able to return to work without appropriate regard to the job suitability and availability as an effort to keep its unfunded liability down.

Any discussion about surplus should be used to end the wrongs associated with deeming. A step in the right direction would be to increase loss of earnings benefits from 85% of net average earnings to 90%. This was an established practice in Ontario, before 1998, and is the rate that provinces and territories such as Manitoba, Saskatchewan, British Columbia and the Northwest Territories use to award loss of earnings.

Fair Adjudication of Occupational Diseases

More funding must be allocated towards ensuring that workers who have been impacted by an occupational disease are appropriately compensated. Since the Occupational Disease Standard Panel was dissolved in 1998, workers who have made claims for an occupational disease have faced greater barriers making their claims; and as such, have been more likely to be denied. Reinstatement of the Panel would be a sign of good faith to workers that the Board wants to ensure fair compensation to those afflicted with occupational diseases. This is most relevant in a time where many workers have contracted COVID-19 in the workplace. Before any surplus is allocated to employers, this issue should be remedied.

Addressing Claim Suppression

This is an area where more resources need to be allocated. The most recent Operational Review Report mentions that the WSIB did not conduct sufficient claim suppression audits. At a time where employers of all sizes are more sensitive to added costs, it is very important that these employers do not receive incentives to cut costs by suppressing claims at the expense of workers. It is unclear whether the WSIB is meeting its legislative obligation. Moreover, if this concern is not addressed, and the surplus is given to the employers, it would be as if those employers who are engaging in claim suppression are being rewarded twice.

Addressing Inadequate NEL Awards

NEL awards are the only form of compensation given to workers in Ontario to compensate them for their permanent impairments. Compared to the previous pension system, this award is wholly inadequate to address the loss that is associated with a permanent injury. This is made worse by the fact that with the passage of time, NEL awards have been decreasing. Again, this has been done in a concerted effort to decrease unfunded liability. If there is a surplus, then it could be used to ensure that permanent impairment awards are more representative of the damage done to workers. This can be done by providing an increase to the base amount.

Mental Stress Claims

The changes to the WSIA regarding chronic mental stress injuries is a recent development. The amount of chronic mental stress claims that are allowed, compared to other injuries, is extremely low (6% of chronic mental stress claims are allowed compared to 78% of other claims). This is the result of the different standard that is in place for mental stress injuries - requiring “pre-dominant cause” as opposed to significant contributing factor – which is discriminatory and needs to be addressed. Once this is addressed, the claims that have been unfairly denied will likely result in significant LOE benefits for those workers. With this in mind, it is difficult to see how the WSIB can have a surplus, when this discriminatory policy continues to be applied. It would be wise for the WSIB to set aside funds to avoid any shortfall that could result from the benefits that may be awarded in the future.

Conclusion

It is clear that this consultation needs to hear from the injured workers’ community so that current issues with the Ontario workers’ compensation system can be addressed, creating a fair and equitable system for both workers and employers. It is understandable that employers are feeling pressure to find funds wherever possible, however fair compensation for workers should not be the price paid for corporate interests. Corporations can find assistance from other avenues, this is the only system in place for injured workers to seek their justice.

Thank you for your attention to this matter.

Sincerely

A handwritten signature in black ink, reading "Vasanthi". The signature is written in a cursive style with a long horizontal stroke extending from the end of the word.

Vasanthi Venkatesh
Chair, IAVGO Board of Directors