

August 17, 2016

Honorable Kevin Flynn  
Minister of Labour  
400 University Avenue  
Toronto, ON M7A 1T7

Dear Minister:

Workers' compensation provides some measure of protection for workers who suffer injuries and diseases at work in Ontario. But workers' compensation, administered through the Workplace Safety and Insurance Board (WSIB), does not protect all of Ontario's workers. In fact, WSIB coverage is only mandatory for the employers of about 65% of Ontario's workers. And, of the 35% of workers in Ontario whose employers do not have to provide WSIB coverage, a disproportionate number are women. These workers are left out, and left behind.

## **SYSTEM BACKGROUND**

No fault WSIB benefits are limited to medical and vocational rehabilitation expenses, partial replacement of lost wages and, in cases of permanent disability, small payments for pain and suffering.

In return for WSIB benefits, workers gave up their right to sue their employers. This "historic compromise" means that employers are shielded from personal injury lawsuits by their workers and in most cases even from workers employed by other employers with which they do business. Employers are even protected from lawsuits where they are guilty of gross negligence and clear violations of health and safety regulations.

The historic compromise has lasted for over a century. Sadly, so has an outdated and discriminatory method of determining which workers are covered. Of the more than one-third of the workforce that is left out, a disproportionate number are women.

## **SCOPE OF WSIB COVERAGE**

In Ontario, WSIB coverage is by inclusion. Unless the nature of an employer's business is listed in one of two Schedules to the *Workplace Safety and Insurance Act*, there is no requirement for the employer to obtain WSIB coverage (although employers can choose to obtain coverage by application).

This basic model goes back to the original legislation passed in 1915. Although the schedules have been modified since then, they can hardly be described as up-to-date. Thus, employers who manufacture cheese boxes, butter churns and "spokes and hubs for wooden vehicles" are still subject to mandatory WSIB coverage. Software developers, bank employees and call centre operators, however, are not.

Employers listed in Schedule 1 of the *Act* can be roughly characterized as the manufacturing, construction and resource extraction industries, along with retail shops, restaurants, hotels and associated services. These employers must pay premiums to the WSIB for their insurance coverage.

Schedule 2 of the *Act* is dominated by the operations of the provincial and municipal governments, including publicly funded school boards and hospitals, as well as Crown agencies, boards and commissions. These employers are self-insured, meaning that they pay the cost of their workers' compensation claims as adjudicated by the WSIB, along with an administration fee.

The schedules have always left out a significant portion of Ontario's economy. The most significant omissions include professional offices (accountants, doctors, lawyers, management consultants, architects, etc.), banks and insurance companies, real estate offices and privately funded schools, as well as non-government-run daycare centres, home nursing and attendant services and child welfare services. In addition, many other smaller industries and workers are non-covered. A list of non-covered industries provided by the WSIB to the OFL runs to twenty pages.

Universal coverage for all workers has been demanded by labour and injured worker groups. And, following extensive stakeholder consultations, the WSIB Board of Directors has also taken the position that coverage should be exclusionary, that is to say universal with relatively few, well-defined exclusions from coverage.

This recommendation for full coverage was passed by the Board in December, 2003, but has yet to be given effect. Since coverage is governed by regulation, action by Cabinet is required. Although no public explanation has been provided, it is commonly understood that this failure to act is the result of political pressure from non-covered employers, especially those in the finance and insurance sector. The consequences are borne by injured workers, their families and the public at large.

## **CONSEQUENCES OF NON-COVERAGE**

In theory, injured workers of non-covered employers retain the right to sue for damages arising from workplace injury and disease. In practice, most workers do not have the means to sue their employers, just as it was when the workers' compensation system was first established.

Non-covered employers do not have to provide paid sick leaves or disability insurance. Their workers must often try to survive on Employment Insurance sick benefits or Canada Pension Plan disability benefits, both of which are limited in amount and availability. These injured workers are often forced to deplete their savings, lose their homes, and/or rely on family or welfare.

Such negative consequences are disproportionately borne by women, who are overrepresented in the non-covered sectors.

## **GENDER BIAS IN WSIB COVERAGE**

The issue of gender bias in WSIB coverage has been raised in the past. It has been alleged that the coverage scheme violates the *Charter of Rights and Freedoms* through

its adverse impact on women. Although the Schedules do not specifically target women for exclusion, they do leave out sectors where women are most heavily employed.

The most financially significant non-covered areas are office work, health care and social assistance, and education. These industries employ a higher percentage of women than the manufacturing, construction and primary resource extraction industries that have historically formed the backbone of WSIB coverage. Thus, data from the 2006 census shows that although women make up only 48% of Ontario's workforce, they represent 67% of the education workforce and 83% of the healthcare and social assistance workforce. This can be contrasted with 14% women in the resource sector, 12% in construction and 30% in manufacturing.

In the case of finance and insurance, the workforce is a less lopsided 60% women. But cross-referencing with census statistics for related occupations indicates that the more physically demanding positions in the industry - those which involve the most keyboarding, filing, dealing with supplies, etc. - are overwhelmingly female. Thus, while only 51% of professional positions in business and finance are held by women, 71% of clerical workers in general and 98% of "secretaries" are women.

The same pattern applies in the health care and education fields, with women making up 52% of health professionals other than nurses, but 77% of related technical occupations, 89% of assisting occupations in health care, 95% of nurse supervisors and registered nurses and 92% of child care and home support workers.

These workers need compensation coverage. We know this with certainty from the experience of workers in the same occupations who **are** covered. Hospitals, nursing homes, publicly funded schools and government-run child care centres are all covered, as are legal, accounting and other professional offices run by governments. Disabling injuries occur there just as in other workplaces.

For example, in 2009 in Ontario there were more lost time injuries in "clerical occupations" than among "processing and manufacturing machine operators and assemblers", 7% and 6.3% of the total respectively. These figures show that office work causes injury, just like other jobs. In British Columbia, which has universal coverage, 5.3% of all claims came from the business/finance sector alone.

The reason for the exclusion of so many occupations traditionally associated with women is clear - false notions of men as breadwinners and the workplace as a man's world. As one commentator summed it up:

*the continuing exclusion of these employees from the act rests only on traditional ideas and biases about risk in the workplace, and indeed these biases rest strongly on a gendered concept of the workplace and have a disproportionately adverse impact on women.*

The Ontario Federation of Labour's position is that the continued failure of the government to correct this injustice cannot be justified. We are calling on your government to implement universal coverage.

Making this change will also shift the burden of medical treatment and counseling costs from our health care system to the WSIB. The WSIB is funded through employer

premiums not from taxpayer revenues. The employers who are putting workers in harm's way should not be allowed to continue to off load the costs onto Ontario tax payers

It is the employers who pay for the administration of the Occupational Health and Safety Act (OHSA) and Ontario's prevention system through their WSIB premiums. Many of the WSIB excluded employers are covered by the OHSA but are not paying their fair share for prevention and enforcement systems, but are benefiting from them.

Workers who are injured in the non-covered sectors are not tracked by the WSIB. The MOL relies on the injury statistics tracked by the WSIB to help plan priorities and enforcement strategies.

Without reliable and complete data how can the Ministry of Labour possibly determine the appropriate resources needed for enforcement and prevention? The government cannot really know if the instances of work related injury and illnesses are decreasing.

Employers in the non-covered sectors have no re-employment obligations to the workers they injure. These workers in turn are not provided retraining by the WSIB, leaving them completely vulnerable.

It is time this government ensures all workers are given protection under the Workplace Safety and Insurance Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Buckley', with a long horizontal flourish extending to the right.

**CHRIS BUCKLEY**  
President  
Ontario Federation of Labour

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cc: OFL Executive Board