

Minimum wage and “deeming”

Backgrounder

What is deeming?

“Deeming” refers to the practice used by the workers’ compensation Board to decide the compensation that it will pay for loss of earnings as a result of workplace injury or illness. It reduces a permanently injured worker’s loss of earning benefits under the pretence that the worker is employed - when the reality is that they do not have a job and, in many cases, are not able to work due to their injuries. This systemically leads to poverty among injured workers.

Case example

Vinay earns \$18 an hour when he suffers a permanent back injury and cannot return to his old work. While recovering from his accident he receives full loss of earnings benefits (85% of net earnings) of \$2163 per month. But soon the WSIB says it’s time to go back to work. Although he has limited education, no Canadian education, limited English skills, no related work experience and a ‘bad back’, the WSIB deems Vinay able to work as a parking lot attendant. He is given a little English-as-a-second-language training. The Board says he could earn minimum wage of \$11.40 an hour as a parking lot attendant. Vinay’s benefits are cut to \$726 per month. But Vinay is never able to get a job. His family cannot survive on this and must go on social assistance.

Thousands of Ontario families are forced onto our publicly funded social assistance programs because their workers’ compensation benefits were below the ‘poverty line.’

Injured workers feel cheated out of compensation justly owed

Instead of looking at what the injured worker is actually able to earn in suitable and available employment, the Board deems most injured workers to have returned to full time gainful employment after their injury, Essentially, the WCB dreams up a “phantom” job that it claims the worker could get, takes away wages the worker is deemed to be earning, and leaves the injured worker with little or no compensation benefits, regardless of whether the injured worker is employed or not.

If an injured worker tried to increase his benefits by misstating his earnings as lower than reality, he would be penalized for cheating. However, when the WSIB misstates his earnings as higher than reality, it reduces benefits and keeps the money with impunity.

Who benefits from the practice of deeming? As benefits continue to decrease, they will be downloaded onto our government funded social assistance programs and off the workers' compensation system that is paid for by the employers who caused the injuries.

Unemployment is the reality of most permanently injured workers

A 2009 audit of the WSIB vocational rehabilitation (labour market re-entry) program found that the process was not helping most injured workers. At 18 months after completing a retraining program, more than half of the 'graduates' were unemployed.

These statistics are similar to those in a Statistics Canada 2014 report which found that only 49% of people with disabilities are employed. Quite simply, permanently disabled injured workers are likely to face unemployment. But invariably, the system pretends that they are working and pretends they have a good income and condemns them to suffering and poverty.

Deeming, the Minimum Wage and Bill 148

Although more than 50% of Canadians with disabilities are not employed, the WSIB believes that almost every injured worker can get back to work at minimum wage. The WSIB can review this decision at any time for 6 years after the accident. When the minimum wage goes up to \$14 an hour in January 2018 under Bill 148, Vinay's WSIB benefits will be cut again to \$440 a month and social assistance has to make up the difference. A year later the minimum wage increases to \$15 an hour and Vinay's WSIB benefits will be cut down to \$330 per month, but he is not able to work.

The demand to raise the minimum wage to \$15/hour is of central importance to all workers. But there is a dilemma in how injured workers relate to this demand. Because of "deeming" - one of the WSIB's more insidious mechanisms to cut people off benefits - when the minimum wage goes up, injured worker benefits go down.

What justice calls for from Ontario's government

- Urgent action to prevent all injured workers from being negatively affected by any increase in the minimum wage, due to "deeming."
- Reform to ensure that our workers' compensation system is no longer based on "deemed" or "phantom" jobs and earnings, but based on actual or real wage losses incurred by permanently disabled injured workers.