

March 9, 2021

### Deputation Regarding Bill 238

Good afternoon. My name is Kathrin Furniss and I'm here with my colleague Tebasum Durrani, from Injured Workers Community Legal Clinic. However, we are here on behalf of **Ontario Legal Clinics' Workers' Compensation Network**, which is a group made up of legal clinic workers throughout Ontario who work on WSIB claims.

We intend in our brief time to highlight, first of all, who is this bill actually helping? Only big employers. Secondly, who *should* this Bill be helping? Injured Workers. We will in our presentation suggest three better uses of a WSIB COVID relief bill than what has been put forward in Bill 238.

I will start by diving a bit more deeply into who this bill would actually help. As you know, Bill 238 caps WSIB premiums for large employers for 2021 and possibly 2022. Usually, employers pay WSIB premiums based on their payroll, but there is a cap – employers don't have to pay premiums on amounts above 175% of the average industrial wage (AIW). In 2020, COVID-19 led to far fewer low-wage workers being employed. As a result, the average industrial wage increased by 7.8%, rather than a more typical 2% to 3%. It is shocking and disappointing that the government's first response to this change to the AIW was not: "Oh my goodness, so many low wage workers lost their jobs! How can we help them?" But rather "How can we protect employers from the effects of so many low wage workers losing their jobs?"

Bill 238 makes it so that employers who have workers earning above 175% are protected from their premiums reflecting the unusually high AIW this year. ***To be clear, the changes proposed in this Bill would only benefits employers who pay workers above \$97,308.***

So who is this bill really helping? How many small business in Ontario do you know that have workers earning more than \$97,000? In reality, not many! So this bill aims to help big businesses. It doesn't help those who are really struggling with the impact of COVID 19: small business and most importantly, vulnerable workers. And if there are any small businesses that employ people earning above \$97,000, I think it's fair to say that those businesses should not be the priority of government relief bills during a pandemic, when so many businesses and people are truly struggling.

Also keep in mind that the WSIB's premium structure already automatically adjusts to economic downturns, since premiums are based on payroll. With less economic activity, there is less payroll, and hence less premiums. By reducing payroll requirements, you just help those industries that are doing well in a pandemic, like Amazon, and the construction sector (whether big or small businesses) – which are booming in COVID times.

In 2020, for the fourth year in a row, the WSIB reduced the premium rate for Schedule 1 businesses. The 2020 reduction was, on average, 17%, and the total cumulative reduction to the average premium rate since 2016 is 47.1%. Premiums have already gone down by \$2 billion since 2018.

***There is no threat of unreasonably high premium rates which requires legislative action.*** Without this Bill, a small number of businesses will see a slight increase in their premiums, but only for the portion of their payroll relating to workers earning above \$97k. These employers have already had their premiums reduced by almost 50% in the last five years. The impact of this increase in the AIW is, by comparison, very minor.

I'm sure with a few clicks of a button, the WSIB would be able to inform this standing committee of exactly how many and what proportion of employers this bill would affect, and the average number of extra dollars each would have to pay, and the total amount of dollars the WSIB will unnecessarily lose if this Bill is passed. I repeat: ***There is no problem here that is being addressed by Bill 238, as written, that requires the legislature's attention.***

I'm now going to pass it on to my colleague who will talk about what a WSIB COVID relief Bill *should* be addressing.

This Bill should provide relief for workers, and this can be done in a couple of ways. First, we submit that ***the bill should provide a presumption that any frontline worker who has to work with the public and gets COVID, is presumed to have gotten it from the workplace,*** unless there is conclusive proof they didn't.

Currently, there are many frontline workers who have contracted COVID who are fighting with the board for much-needed benefits and assistance, or are waiting to have their claim decided – a delay that is wholly unnecessary and harmful.

According to the WSIB's own statistics, a number of crucial frontline workers still struggle to have their COVID- related claims accepted: Nursing and residential care facilities (denied- 385, pending 34); hospital workers (denied- 382, pending 18); Ambulatory health care (denied- 106, pending- 28).

***Another amendment that would provide much needed financial relief to injured workers is a supplement to those with permanent impairments,*** to acknowledge the extra costs associated with COVID 19 for people who are often at a higher risk of the virus. This would be to address things like the added costs for groceries and food delivery, taking taxis as opposed to public transit, PPE, etc...

This would be in keeping with many other income support programs which have responded to the challenges of living through a pandemic by increasing the financial benefits they provide.

ODSP provided a one-time supplement, Old Age Security and the Guaranteed Income Supplement also provided additional monies to seniors, federal recovery benefits also increased the amount payable to unemployed recipients. The WSIB has instead only focused on providing benefits for employers. The WSIB boasts on its website “We are offering a financial relief package to all Ontario businesses to help reduce the financial burden of the COVID-19 situation. Developed in consultation with the Government of Ontario, the package is worth up to \$1.9 billion and all businesses covered by our workplace insurance are automatically eligible.” And not one penny or peep about relief for injured workers. That needs to change – and this Bill could do that.

Finally, ***another worthwhile amendment this bill could introduce is the elimination of the practice referred to as “deeming,”*** which applies to workers who have permanent injuries and can’t go back to their previous job. Essentially, the WSIB chooses a new job (called a suitable occupation) which it deems a worker able to do, and then proceeds to reduce that workers’ benefits according to what they “could” be earning, irrespective of whether the worker is in fact able to earn that money.

Outside of a global pandemic, the practice of deeming leaves many injured workers in poverty, and often forces them to rely on OW or ODSP. In the midst of a pandemic where we are experiencing high unemployment and economic uncertainty, the WSIB continues to expect that injured workers will go out and participate in retraining programs, and then deems them able to do jobs that they assume are available and suitable. But that simply may not be the case in light of how hard it is generally to find a job, in particular during these pandemic times. The WSIB is assuming that permanently impaired people who may have little or no experience in a particular field are going to be able to successfully get a job after a few weeks of training. That is unrealistic and frankly unacceptable.

In conclusion, the Ontario Legal Clinics’ Workers’ Compensation Network cannot support this bill – a bill that only benefits employers who don’t need your help. ***In order for this to be an effective and acceptable bill, it would require significant amendments to prioritize those that need it most: injured workers,*** and provide them with much needed assistance during this pandemic. Thank you for the opportunity to speak with you today.