

April 28, 2021

By Email: [WebWIpolicy@ontario.ca](mailto:WebWIpolicy@ontario.ca)

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

Minister McNaughton:

**Re: PSW/DSW WSIB Coverage Consultation**

Injured Workers Community Legal Clinic (IWC) is a community directed not for profit legal clinic that has been representing injured workers free of charge for over 50 years. We are writing with respect to the above-noted consultation request, to encourage the government to extend the same collective liability WSIB coverage to all workers in Ontario, including any and all those who engage in personal or disability support work.

While we do not believe that any worker should be excluded from WSIB coverage, our recommendation specific to the consultation questions is to include under mandatory coverage all workers currently excluded under Class N (Non-Hospital Health Care and Social Assistance) of O. Reg. 175/98. Including all workers means just that – that ALL workers should be covered, without the creation of artificial thresholds or loopholes.

***Context: All Workers Deserve Protection and Support in the Event of Workplace Injury***

IWC has long advocated for expansion of the *Workplace Safety and Insurance Act* (WSIA) to cover all workers in Ontario.

The Workplace Safety and Insurance Board (WSIB) was established to provide compensation to workers who have experienced workplace illness or injury as a result of their job. Full coverage of all workers has been a fundamental principle of Ontario's workers' compensation system since the

founding report of Sir William Meredith in 1913. Justice Meredith supported the principle that the new workers' compensation system ought to cover all employments: "There is I admit no logical reason why, if any, all should not be included..." (page 9). Justice Meredith chose not to recommend starting with coverage of all employment for reasons of practical and political expediency. On a practical level, to begin a new system that brings in all workers in the province could be too much for any system to handle. Meredith made provisions for bringing in more industries into the system later on. More than 100 years have passed since these fundamental principles were established, and we suggest that Ontario's workers have waited long enough for equal access to justice under our workers' compensation system.

In 1996, the Ontario government report of Minister Cam Jackson noted that Ontario was in an embarrassing last place regarding the percentage of the workforce covered by workers' compensation and recommended expanding coverage. The WSIB commissioned a study by Brock Smith on this, which concluded with the recommendation to expand coverage to all workers in Ontario (Brock Smith report, see resources at [www.covermewsib.com](http://www.covermewsib.com)). In the June 1996 Jackson Report, the government suggested that coverage could be expanded to include all workers in a mere 18 months (page 35).

Unfortunately this recommendation by the WSIB was not implemented. However, it was raised again in the WSIB's Funding Review (2010-2011), chaired by Professor Harry Arthurs. In his report Funding Fairness, Harry Arthurs recommended the adoption of a new regulation under which all employers are covered unless specifically excluded.

Unfortunately, because of the far too expansive list of excluded industries and employers in regulations to the WSIA, some 24 per cent of Ontario workers still do not have WSIB coverage. This leaves 1.7 million workers in Ontario with no WSIB protection in the event of a workplace illness or injury – among the highest percentage of workers across all provinces or territories.

The WSIB is funded by employers, not the public. However, when a worker is not covered by WSIB (or private insurance) the public pays all health care and social assistance costs for injured workers. A century ago, Ontario's workers and employers made a historic compromise to ensure a compensatory system that would work for everyone – injured workers gave up their right to sue employers on the condition that employers would fund a public compensation system. That there are still workers excluded from this coverage is without reason.

The list of excluded industries also creates a situation of gender bias in WSIB coverage. This has been raised in all previous consultations by the labour movement, injured workers advocates, and even the government's own reports. It has been noted by academics and lawyers that the coverage scheme violates the Charter of Rights and Freedoms through its adverse impact on women. While the schedules do not specifically target women for exclusion, they do leave out sectors where women are most heavily employed – including the type of work being considered in this consultation.

### ***Mandatory Coverage for All Employers of PSWs & DSWs Will Help Improve Worker Protections***

The COVID-19 pandemic has highlighted so many structural inequities in our society, including the need for better working conditions of those assisting some of our most vulnerable members. It has exposed the lack of protection and safe working conditions for those such as Personal Support Workers (PSWs) and Developmental Support Workers (DSWs), who are often asked to put their bodies at risk when performing many of their tasks. As it currently stands, many PSW/DSWs do not have any financial support in the event they get sick – no paid sick days from the employer, no private insurance plan for short or long term disability, and no coverage under the public workers' compensation system. Because far too many support workers actually work for more than one employer in order to make ends meet, it is possible that a worker would have some form of coverage in one workplace but not in another.

The recent WSIB Operational Review (the Speer- Dykeman Review) made the recommendation to expand WSIB coverage to these workers, given the precarious and patchwork nature of worker protections in this field. IWC certainly agrees this was a gap that needed to be addressed. However, we believe the same arguments for covering DSW/PSWs applies to lots of other workers. Mandatory workers' compensation coverage is a protection that should be afforded to all essential workers. In fact, every worker in Ontario should be supported in the event of workplace injury.

Mandatory and universal coverage is important to eliminate historical gender and racial inequality when it comes to proper protections from injury at work. Gender bias in WSIB coverage has long been identified as a problem for workers in Ontario. The current list of excluded employers in the health and social services which are majority women from poorer backgrounds (predominantly black, indigenous, and people of colour communities) is a major contributor to this inequality in protections.

Universality in access to WSIB coverage is important given the number of workers who currently lack any access to workplace injury insurance. Expanding mandatory coverage would directly address the structural inequality that currently exists in accessing support in the event of injury or illness.

### ***Benefit of WSIB Coverage Over Private Insurance***

For the most part, comparing private insurance to WSIB coverage is irrelevant and the wrong question to be asking. Far too many frontline and essential workers do not have any form of support in the event of sickness. Their employers have chosen not to provide paid sick days, disability insurance, additional health care, nor optional workers' compensation coverage. Workers' compensation was the first step in building our social safety net, before income tax or medicare. The system remains an important social safety net – especially for those who currently have no form of coverage. It should not be left up to individual employers whether workers are

supported or not. Furthermore, WSIB coverage and private insurance are not mutually exclusive. Several workplaces that care about providing their employees with good benefits provide both.

Coverage under the *Workplace Safety and Insurance Act (WSIA)* is designed to include many benefits, which could include: loss of earnings benefits most likely greater than what would be available via private insurance, retraining in the event that a person is unable to return to their job because of a workplace injury, medication coverage, therapeutic treatment coverage, no co-pay for that coverage, benefits in recognition of a permanent injury, the right to return to their job in the event that they are terminated within six months because of their workplace injury, benefits for their survivors including retraining, protection under the *Human Rights Code* for filing a WSIB claim, an appeal system that is transparent, and for Support Workers without the benefit of a union, the opportunity of free representation via the Office of the Worker Adviser and community legal aid clinics. The fact that the workers' compensation system is publicly run also allows for more accountability and transparency and greater administrative efficiency, without the huge advertising costs related to competition in the private insurance market.

### ***WSIB Coverage for all PSWs & DSWs will help with Recruitment and Retention***

Whether WSIB coverage will assist with recruitment and retention is similarly irrelevant, because the workers' compensation system is about establishing a social safety net – which is an entirely separate question from employers creating positive work environments that retain workers. That being said, mandatory WSIB coverage across all workplaces employing Support Workers certainly makes for fairer and better workplaces overall.

All front-line workers deserve quality workers compensation coverage. The knowledge that you will be supported if something happens on the job clearly positively impacts recruitment and retention of workers compared to those jobs without or with sub-par coverage.

Coverage in the compensation system is not just a benefit for workers. Employers also gain access to programs to assist with improving their health and safety practices at the workplace. Universal coverage will also even the playing field between employers – especially those who do not currently offer protections.

### ***There Should be No Minimum Threshold –ALL Workers in this Industry Should Be Included***

We don't believe that Recommendation 7 in the Speer-Dykeman Report and the analysis of Bill 145 envisioned adding a threshold for coverage. Establishing a threshold would be antithetical to the goal of ending the current patchwork of coverage and uneven treatment among Support Workers. It is also antithetical to the ultimate goal of universal WSIB coverage for all Ontario's workers.

As previously mentioned, since there are PSW/DSWs that traditionally have worked in more than one workplace, we do not want to replicate the current situation where someone may be covered one day or one part of the day and not the next. We should not create financial incentives with unintended consequences that encourage employers to rearrange their business model to use workers from temp agencies to stay within whatever minimum is arbitrarily set.

In any event, compensation coverage is not based on occupation, it is based on the nature of the work. The current classification scheme does not contemplate thresholds. It would be a deviation from the current scheme to implement thresholds for these workers when it is not a requirement in other industries currently covered by the WSIB.

There is no one specific type of employer that covers all Personal and/or Developmental Support Workers. Support Workers are in need of blanket coverage irrespective of their varying workplaces. Accidents can happen at all types of workplaces, including small ones. There are other instances of single employment – such as for single home nanny/care givers – where employers must pay WSIB. There should be no minimum for Personal/Developmental Support Workers.

At minimum, the Government and the Workplace Safety and Insurance Board should eliminate the patchwork of coverage for these workers. The best way to do so is to apply mandatory coverage across all classifications in Class N employers currently excluded, namely:

Class N — Non-Hospital Health Care and Social Assistance

Industries engaged in providing health care services to ambulatory patients, residential care and supervisory or other types of care as required by residents, and social assistance services to clients.

Subclass 1. Ambulatory health care.

Subclass 2. Nursing and residential care facilities.

Subclass 3. Social assistance.

*O. Reg. 175/98 (under the Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A)*

All support workers deserve coverage under the compensation system. We achieve this goal by ensuring WSIB coverage is mandatory for all employers engaged in the services described under Class N.

In summary, we don't recommend a minimum number of employees or threshold for the application of mandatory WSIB coverage. All employers with workers providing Class N services should have mandatory coverage under WSIB. Lack of full coverage for all support workers is a disservice to these front line, essential workers who regularly put their lives in danger to complete their tasks.

We encourage the Ministry to take this opportunity to also consult and implement the other recommendations in the Speer-Dykeman Review relating to coverage, namely, the move toward an exclusionary rather than inclusionary model (Recommendation 6), and consolidating Schedule 2 within the collective liability system (Recommendation 8). We appreciate the opportunity to provide feedback on the implementation of this recommendation of the review, and ask to be consulted on all aspects concerning implementation of the report moving forward.

Sincerely,

**INJURED WORKERS CLC**

A handwritten signature in black ink, consisting of stylized letters 'K' and 'F' followed by a long horizontal stroke that tapers to a point on the right.

Per: Kathrin Furniss