

Janet Paterson
President



Willy Noiles
Vice-president

Eugene Lefrancois
Treasurer

May 25, 2022

Mr. Jeffrey Lang – President and CEO, WSIB
Ms. Angela Powell – Vice-President, Policy and Consultation Services, WSIB
200 Front Street West
Toronto, Ontario M5V 3J1

Dear Mr. Lang and Ms. Powell,

Re: 2022 Cost-of-Living Adjustment (COLA)

Thank you for your May 3, 2022 reply to our letter from April 5, 2022 in which we requested that the WSIB increase the COLA from 2.7% to 4.7% for 2022.

We disagree with the WSIB's rationale in limiting injured workers COLA increase to 2.7% for 2022. The COLA for 2022 should be 4.7% based on the plain wording of Section 49(1) of the *Workplace Safety and Insurance Act (WSIA)* and Policy 18-01-14.

Legislation and Policy

Section 49(1) of the *WSIA* states: "an indexing factor shall be calculated that is equal to the amount of the percentage change in the Consumer Price Index for Canada for all items, for the 12-month period ending on October 31 of the previous year, as published by Statistics Canada."

Policy 18-01-14 states: "The indexing factor to be applied every January 1, for all entitlement periods on or after January 1, 2018, is the amount of the percentage change in the Consumer Price Index for Canada for all items, for the 12-month period ending on October 31 of the previous year, as published by Statistics Canada."

When one properly applies these criteria to Statistics Canada data, the CPI percentage change for the twelve months ending on October 31, 2021 is 4.7%, not the 2.7% provided by the Board.

The WSIB uses the 12-month average CPI for Canada for all items, for the period ending on October 31 prior to the January 1 indexing date, but then goes on to compare it to the 12-month average CPI from the period ending the previous October 31. This additional step, going back an additional year, is not prescribed by the Act, nor is there any reference in the Act to averaging the 12-month period.

Canada Pension Plan Indexing

The WSIB's May 3, 2022 letter states: "It also aligns with the approach Canada Pension Plan (CPP) uses to index its CPP disability benefits, which some injured workers also receive." However, the two pieces of legislation have different language; therefore, the two calculations will yield different results.

Section 43(1) of the *CPP Act* states: “Subject to subsection (2), the Pension Index for each year shall be calculated, in prescribed manner, as the *average* [Emphasis added] for the twelve month period ending October 31 in the preceding year of the Consumer Price Index *for each month in that twelve month period.*” [Emphasis added] Unlike the *WSIA* and WSIB Policy 18-01-14, the *CPP Act* explicitly references averaging the 12-month period. The two laws state different things.

Long Term Comparison Between the WSIB and ONIWG’s Calculation Methods

The WSIB letter states: “Looking back over the past several years, prior to 2022, the WSIB approach resulted in larger increases overall than the point-in-time comparison approach by Statistics Canada.”

Our research found that for the 9 years up to 2021, the WSIB’s calculation method resulted in a cumulative amount which was less than 1% greater than ONIWG’s calculation method for the same timeframe. Ultimately, over a 9 year period, this amounts to a miniscule difference in the two calculation methods.

In contrast, for 2022, ONIWG’s calculation method results in 2% more than the WSIB’s calculation method. This difference is significant insofar as the results from one year are more than double and dwarf the results from the preceding nine years combined. This demonstrates the exceptional nature of recent hikes in the inflation rate.

Policy 11-01-03 - Merits and Justice

In a time of heightened economic uncertainty and generationally high inflation, the WSIB should apply the 2022 COLA in line with the Merits and Justice policy.

The WSIB’s interpretation of the law and policy provides an unfair result for injured workers in 2022.

At the very least, the language in the *WSIA* permits a range of possible interpretations. On that note, policy 11-01-03 states:

Role of Policy

“The WSIB develops policies when the Act is silent or ambiguous, or when it permits a number of possible interpretations. Within each policy, the WSIB creates a framework that directs the way decision-makers should act when certain facts and circumstances come before them. If such situations arise, the relevant policies must be followed unless there are exceptional circumstances as described below.”

Exceptions to relevant policies

“There may be rare cases where the application of a relevant policy would lead to an absurd or unfair result that the WSIB never intended. Therefore, a decision-maker may depart from a policy if it can be shown that the case has exceptional circumstances that justify doing so.

The decision-maker must clearly identify the exceptional circumstances and explain in the decision why the relevant policy is not applicable.”

As it stands, the WSIB's interpretation of the law and policy does not account for unprecedented hikes in the inflation rate, which disadvantage injured workers, many of whom are already living in poverty. This leads to an unfair and absurd result (artificially low COLA for 2022) that the WSIB never intended. Furthermore, the 2% difference in the COLA calculation amounts for 2022, combined with the stubbornly high inflation rate (6.8% in April 2022 - 31 year high), constitute an exceptional circumstance that fits within the parameters of the policy. The WSIB should depart from its interpretation of Policy 18-01-14 and apply the Merits and Justice policy.

It's obvious from WSIB financial reports that the organization is in a financially stable position. This is evident, as the WSIB has reduced employer premiums in recent years and is in the process of refunding employers up to \$1.5 billion. The WSIB would have no problem delivering compensation in a financially and accountable way if it were to increase the COLA rate to 4.7% in 2022.

The WSIB Strategic Plan states that its values consist of the following: 1. Be compassionate; 2. Work with integrity; 3. Always be helpful; and 4. Earn people's trust. To follow these values the WSIB should immediately apply a COLA of 4.7% for 2022.

We look forward to meeting with you in the very near future to discuss how the WSIB should correctly apply the law and policy pertaining to the 2022 COLA.

Yours Truly,



Janet Paterson
President