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IN UNITY THERE IS STRENGTH



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September 13, 2023

Monte McNaughton
Minister of Labour
400 University Avenue
Toronto, Ontario

Delivered by E-mail

Dear Minister McNaughton,

Re: Injured Worker Cost of Living Adjustments

We read the Toronto Star article “‘We screwed up:’ WSIB to pay out \$42M after coding error shortchanged 100,000 injured workers — for 20 years”. As you know because of a 2019 WSIAT decision, the Workplace Safety & Insurance Board determined that there was a coding error with respect to the calculation of cost-of-living increase. They corrected the error and as a result injured workers will get approximately \$42 million dollars. This is a wonderful outcome, and we applaud the Workplace Safety & Insurance Board’s decision to admit to their error and rectify it.

We are writing you with respect to another situation where the Workplace Safety & Insurance Board is making a significant error with respect to the calculation of the annual cost of living increase.

In 2006 the Workplace Safety & Insurance Board changed its method of calculating the annual cost of living increases. Prior to this change the WSIB would use the percentage change in the Consumer Price Index from October of the previous year to October of the current year. After this change the WSIB decided to calculate the average Consumer Price index for the entire year and based the cost-of-living increase in the change in the average Consumer Price index from the current year to the past year.

There was no change in the legislation regarding indexing in 2006 that enabled such a change.

The indexing provisions of the Act are contained in section 49 of the Workplace Safety & Insurance Act which states:

49 (1) Subject to subsection (2), on January 1 of every year, 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. 2015, c. 38, Sched. 23, s. 2.

(2) The indexing factor calculated under subsection (1) shall not be less than 0 per cent.
2015, c. 38, Sched. 23, s. 2.

The plain language of the Act clearly indicates that the Workplace Safety & Insurance Board's change in its method of calculating the cost-of-living increase was contrary to the Act.

From a practical point of view from 2006 until 2021 the difference in methods did not have a large impact on injured workers benefits. During that time, the difference in benefits was .61% in favour of injured workers; that works out to \$7.82 for every thousand dollar of benefits that an injured worker receives.

2021 and 2022 was characterized by rapidly increasing inflation. Between January 2021 to June of 2022 the inflation rate increased from 1.0% to 8.1%; since then, the inflation rate has dropped to 3.3% in July 2023.

This rapid increase in inflation has had a significant impact on the difference between the Board's method of calculating the cost-of-living increase and the Workplace Safety & Insurance Act's method of calculating the cost-of-living increase. In 2022 the Board's method resulted in a 2.7% increase in benefits whereas the Act's method mandated that the benefits should have increased by 4.7%; in 2023 the Board's method resulted in a 6.5% increase in benefits whereas the benefits should have increased by 6.9%. This has resulted in injured workers getting 2.3% less in benefits than what the Act requires; this means that for every \$1000 of benefits that an injured worker received in 2021, they receive \$25.49 less in benefits than what the Act mandates them to receive.

There was no lawful basis for the WSIB, in 2006, to change the method of indexing. Therefore, we ask that you intervene in this to ensure that the Workplace Safety & Insurance Board follows the law and retroactively adjusts the cost-of-living increases to conform with the requirements of the Act.

Thank you very much for your time in this matter. Once again, we are requesting a meeting to discuss the concerns of injured and ill workers across Ontario as soon as possible. If you have any questions regarding this, you can contact Andrew C. Bomé who is a staff lawyer at Hamilton Community Legal Clinic and can be reached at (905) 527-4572 at extension 26.

Respectfully submitted,



Janet Paterson

Cc: Grant Walsh, Chair of Board of Directors, WSIB
Jeffery Lang, President and CEO, WSIB
Joshua Workman, Chief of Staff, Minister of Labour

Injured & Ill Workers and Allies Demand Help With Skyrocketing Cost Of Living

I/we are writing you to express support for ONWIG's holiday demands.

People from all sides of the political spectrum agree that there is an affordability crisis in Ontario, and this holiday season nearly everyone is experiencing the crunch. Injured & ill workers – along with many of our marginalized allies – have spent years feeling a disproportionate amount of the pressure from austerity, cuts to services, and of inflation, making this a particularly difficult time of year for us.

The Ontario Network of Injured Workers' Groups (ONIWG) wants to take this opportunity to remind the Government of Ontario of some of the basic steps they could easily take to ease the awful poverty experienced by those who have been hurt on the job. **The easiest thing the government could do is simply honour its election promise of raising Loss of Earnings benefits to 90% of pre-injury wages, as a first step.** Additionally, the government must remember and act on the core demands of ONIWG's *Workers' Comp Is A Right* campaign:

- **End Deeming** – No more phantom jobs. Stop cutting injured and ill worker benefits by pretending they have a job when they are unable to work or to find suitable work. The previous legislature sat on a private members bill that would end deeming (Bill 119) for years without even calling it for a vote. A new version of the bill will be introduced soon and the government must do the right thing and pass it, or introduce anti-deeming legislation of their own.
- **Listen to our doctors** – Stop ignoring the advice of workers' treating physicians in favour of the clearly flawed opinions of "paper doctors" who never meet or examine the injured or ill worker.
- **Stop cutting benefits based on asymptomatic pre-existing conditions** – This practice – imported from the insurance industry – cuts workers off benefits by blaming so-called "pre-existing conditions" for workers' injuries, even if the condition never caused the worker to feel any pain or miss a single day of work for their entire pre-injury life.

The current Government of Ontario often speaks about their fiscal concerns and constraints, and preaches the need to be financially responsible. We would like to remind you that in the last few years alone, the WSIB has simply handed billions of dollars in refunds to employers, all while cutting workers benefits by deeming, ignoring workers' doctors, and blaming unrelated pre-existing conditions. When the WSIB uses these excuses to cut compensation benefits, injured & ill workers often end up in the publicly funded health system, and on OW/ODSP, creating a cost to taxpayers and unnecessarily depleting public resources, rather than being cared for by the employer funded workers' compensation system.

Year after year, the Ontario Government, Ministry of Labour, and WSIB just keep giving generous gifts to Ontario's wealthy employers. **Don't you think it's time to give injured workers their rights this year?**

For more information, visit: injuredworkersonline.org/workers-comp-is-a-right-campaign