

Ontario Legal Clinics'

WORKERS' COMPENSATION NETWORK

Réseau d'échange des cliniques juridiques
de l'Ontario sur la loi des accidentés du travail

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November 27, 2023

Hon. David Piccini
Minister of Labour, Immigration, Training and Skills Development

Via Email

Dear Minister Piccini,

I have the privilege to be a co-chair of the Ontario Legal Clinics Provincial Worker's Compensation Network. The Workers' Compensation Network is a group of highly experienced workers' compensation advocates from the community legal clinic system and other injured worker advocate allies. We have, combined, more than two centuries of experience representing injured workers.

Thank you for putting forward Bill 149, the *Working for Workers Four Act, 2023* that contains some provisions to increase the amounts received by injured workers.

You will have recently received a letter from the Ontario Network of Injured Worker Groups asking for some amendments to the Bill, too. ONIWG attached a recent research paper published by Ellen MacEachen entitled "*Retirement pension poverty among injured workers with long-term workers' compensation claims*", which outlines the dire financial straits that many older injured workers face. We support ONIWG's request.

The Network would go further, however, and ask you to include additional amendments to the Bill to decrease the poverty of injured workers:

1. Restore the Loss of Earnings benefits rate to 90% of net pre-injury earnings,
2. Restore the Loss of Retirement Income contribution from the WSIB to at least 10% of Loss of Earnings benefits, without requiring the injured worker to contribute – and ideally to a percentage that matches current values of the CPP contributions from employers and employees, and
3. Eliminate the age 65 restrictions on Loss of Earnings benefits.

Issue #1 – Restore the rate of Loss of Earnings to 90% of net pre-injury earnings

From April 1986 to January 1, 1998, the basis for wage loss benefits was 90% of the injured worker's net pre-injury earnings.

The WSIA 1998 legislation reduced wage loss payments to 85% of net pre-injury earnings. At the time, the government justified the cut on the grounds that the workers' compensation system was facing a financial crisis.

While we could debate whether there ever was an unfunded liability or financial crisis, the plain fact is that there is no financial crisis at the WSIB now. Currently the WSIB has net assets of

more than \$5.8 Billion dollars¹. In 2022, the WSIB distributed \$1.2 Billion dollars to employers in premium rebates.

It is time to restore the basis of wage loss benefits to 90% of net pre-injury earnings so that the injured workers of tomorrow will not face the same financial hardship as the workers who have been injured over the course of the last 25 years.

We are encouraged in this request given that in April 2022, then Minister of Labour Monte McNaughton announced that the government had directed the Workplace Safety and Insurance Board (WSIB) to explore the possibility of increasing wage loss benefits to up to 90 per cent of net pre-injury earnings.

Other provinces have benefits based on 90% of net pre-injury earnings: British Columbia, Alberta, Saskatchewan, Manitoba, Quebec and Prince Edward Island. Ontario should not lag behind these other provinces in providing a more fair system of wage loss benefits for injured workers.

Issue #2 – Restore the WSIB’s contribution to Loss of Retirement Income benefit to 10% of LOE, if not higher

WSIB benefits do not count as earnings for the purposes of the Canada Pension Plan, so injured workers cannot contribute. This greatly reduces the amount of CPP-Retirement income that is available to the worker at age 65, unless the worker can be granted Canada Pension Plan Disability benefits in the interval.

The purpose of the WSIB Loss of Retirement Income (LRI) benefit, introduced in legislation in 1990, was to make up for the loss of CPP retirement income. From 1990 to 1998, the WSIB paid an amount equivalent to 10% of wage loss benefits into the LRI, so long as the worker had been in receipt of benefits for one year.

However, the 1998 legislation reduced the mandatory contribution from the WSIB to an amount based on 5% of the wage loss benefits. The rationale for this reduction back in 1998 was, again, the “financial crisis” at the WSIB. Such a crisis does not exist now, as noted above. While it is true that injured workers could choose to contribute 5% from the wage loss benefits that they received, only 13% were able to do so according to WSIB statistics.

Restoring the WSIB LRI contribution to 10% of the wage loss benefits would be a first step in partially ameliorating a great deal of poverty for injured workers when they turn 65. However, even a restoration of the 10% contribution from the WSIB would not be sufficient to match the CPP contributions, as explained in Professor MacEachen’s paper.

The ideal contribution to LRI would see the WSIB’s portion be the value of the CPP premiums paid by workers and employers, based on gross earnings.

Issue #3 – Eliminate the age 65 limits on Loss of Earnings

The 1990 and 1998 legislation introduced limits to the payment of wage loss benefits to older workers. Wage loss benefits end at age 65, or 2 years after the injury if the worker is over age 63 at the time of injury.

¹ Net assets attributable to WSIB stakeholders on a Sufficiency Ratio basis \$5,893 million” page 32, 2022 WSIB Annual Report https://www.wsib.ca/sites/default/files/2023-08/2022annualreport_20230606.pdf

At the time, the mandatory retirement age was 65. However, in 2005, the Ontario Human Rights Commission ruled the mandatory retirement age as discriminatory, and the law was struck down. Legislative change occurred elsewhere, but the limits remained in the WSIA.

The realities of today's economy have shifted, and many people continue to work past age 65. We would ask for the removal of the age 65 limits on wage loss benefits, and for the Bill to follow the lead of other provinces who have done so. A briefing note on this issue (attached) prepared by Injured Workers Community Legal Clinic shows how Alberta and British Columbia did this. Ontario seniors who continue to work past age 65 should have the financial protection of WSIB wage loss benefits up to their retirement age when they suffer a workplace injury. Ontario injured workers should expect no less protection than workers get in other provinces.

Network members, myself included, would be more than pleased to discuss these issues with you, to answer any questions you may have, and to supply more information that may be required.

We look forward to hearing from you.

Yours truly,



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Cc: Karl Krevar, Chair, Ontario Network of Injured Workers' Groups