

WHAT INJURED WORKERS NEED

**A community response to WSIB's
\$2.5 billion gift to employers**

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<https://injuredworkersonline.org/wp-content/uploads/2024/12/What-Injured-Workers-Need.pdf>
or scan the QR code below.



INTRODUCTION

On November 21, 2024, the Ontario government and WSIB announced another **\$2.5 billion of gifts and giveaways to employers**, which they are calling “rebates” and “rate reductions.” They are providing these corporate handouts despite the fact that injured workers continue to struggle in poverty due to their work acquired injuries and illnesses, along with WSIB’s overly restrictive benefit policies.

For years, injured and ill workers have been presenting the WSIB and the government with evidence of the systemic poverty and pain they experience, along with productive solutions for building a full and fair compensation system. And for years, injured workers have been told to wait while the WSIB gets its financial house in order. Now that the Compensation Board has racked up an enormous surplus on the backs of benefit cuts to injured workers, the WSIB responded by offering an astounding **\$18.6 billion in handouts to employers since 2017**, without any meaningful change in the quality of life or poverty injured and ill workers face every day.

This is unacceptable. Before the WSIB can consider itself to be “overfunded” and hand out billions of dollars of injured workers’ money to the employers that hurt and sickened them, the adequacy of benefits to those who are harmed must be improved. **The recent round of reckless payouts to employers must be cancelled until every injured worker’s basic needs are met.**

The demands in this dossier are meant to serve as a starting point for that conversation.

There is no surplus until there is full compensation.

This community-sourced document was created in December 2024 with contributions from:

*Disability Without Poverty
IAVGO Legal Clinic
Injured Workers Action for Justice
Injured Workers Community Legal Clinic
Occupational Disease Reform Alliance
Ontario Network of Injured Workers’ Groups
South Asian Women’s and Immigrants’ Services
Thunder Bay and District Injured Workers Support Group
Windsor/Essex Injured Workers Group
Workers Comp Is A Right
Workers’ Health and Safety Legal Clinic
and others*

END DEEMING

DEMANDS

- End the practice of deeming.
- One way to do this would be by passing Bill 57, the “Respecting Injured Workers Act.”¹

BACKGROUND

"Deeming" (also called "determining") refers to a practice used by the WSIB in which they pretend an injured worker has a job that they do not actually have. The Board then uses the "phantom job" as an excuse to cut benefit payments.

For example: A construction worker is permanently injured while making \$25 per hour and receives full wage loss benefits from the WSIB for a short period of time. The WSIB agrees that the injured worker cannot return to construction, but decides they could be a minimum wage ticket taker at a movie theatre, or a gas station attendant. The Board then reduces the injured worker's benefits by the equivalent of \$17.20/hour (minimum wage), *even if they are unable to find work after applying for hundreds of jobs*. This forces injured workers into severe poverty.

The sole purpose of deeming is to reduce injured workers' benefits, which systematically leads to poverty. This forces people onto publicly funded systems like Welfare (OW) and Disability Benefits (ODSP).²

¹ Bill 57 was introduced in Ontario Parliament on 7 December 2022. It would eliminate deeming except in cases where a worker turned down a suitable job. The Bill could be debated and passed today, if the Ontario Government desired to do so.

² WSIB is funded exclusively by employer premiums. This means when an injured worker receives proper wage loss and healthcare benefits, there is *zero* cost to taxpayers. However, when injured workers are cut-off WSIB benefits and end up on Welfare, ODSP, EI, or CPP-D, and need to get OHIP funded healthcare, they are creating costs for taxpayer funded systems.

AN INJURED WORKER STORY

S. was employed as an oil change technician when he cut his hand and was told by his employer not to go to the hospital. This resulted in a severe injury and even after multiple surgeries, one of his hands is left without much useful function. As a result, S. has developed severe depression and great difficulty managing stress.

The WSIB deemed S. first as a forklift driver, which he was physically unable to do, and then as an electronics assembler, which requires fast paced two-handed work that would be extremely difficult for this injured worker. Even though he knows it would be difficult or impossible to do these jobs, he continues to look for work in these fields and others every day. The Board cut his already low benefits to almost nothing, claiming S. should be able to earn money in the occupations it has deemed suitable, despite the fact that S. has shown the WSIB that he has applied for literally thousands of jobs in many different fields without success, and has never turned down a job offer.

MORE INFORMATION

- *Ending deeming* has been a core demand of the Workers Comp is a Right campaign. More information on this and the other demands (listen to injured worker's doctors and stop cutting benefits based on pre-existing conditions) can be found at <https://injuredworkersonline.org/wp-content/uploads/2017/09/WCIAR-Report-2017.pdf>
- *Bill 57, the Respecting Injured Workers Act:* <https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-57>

BILL 118 – INJURED WORKERS DAY ACT

DEMANDS

- Pass *Bill 118 – Injured Workers Day Act* before June 1st, 2025.

BACKGROUND

Injured and ill workers first began gathering in front of the Ontario Legislature at Queen’s Park on June 1, 1983. For the last 41 years we have continued to meet on this date to bring awareness to the challenges injured workers face after a workplace injury or illness.

On the 40th anniversary of Injured Workers Day on June 1, 2023, Sudbury MPP Jamie West introduced Bill 118, asking that “June 1 in each year is proclaimed as Injured Workers Day.”

The Bill came up for second reading on May 30th of this year. During the debate, Ajax MPP Patrice Barnes (Labour Minister Piccini’s parliamentary assistant) said,

Our government recognizes the importance of working to keep workers healthy and safe, as well as supporting the individuals who have been injured at work or who have suffered illnesses because of their work. Injured Workers Day would provide another opportunity to bring awareness to issues around workplace injury and illness. As we continue to demonstrate our commitment to workplace injury prevention and compensation, we want to say to the injured workers, “We see you and you are not forgotten.”

Whether MPP West’s private members bill is passed, or the government opts to include it in forthcoming Working for Workers legislation, its passage would be a simple but meaningful symbolic action for injured and ill workers in the Province of Ontario.

On June 1, 2025, injured and ill workers will once again gather at Queens’ Park. Our community would love to celebrate its 42nd Injured Workers Day

knowing that the Province has officially recognized our longstanding declaration of solidarity and strength.

All MPPs would be welcome to join us in acknowledging the challenges injured workers face.

MPP Barnes concluded on May 30th:

We will always keep working to support and protect workers... We on the government side are proud to support Bill 118, the Injured Workers Day Act.

All that is left now is the action.

MORE INFORMATION

- *Bill 118 – Injured Workers Day Act:* <https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-118>

LISTEN TO OUR DOCTORS

DEMANDS

- The WSIB must listen to an injured worker's treating healthcare team.
- The WSIB must refer workers to specialists for assessments and ensure workers receive a timely diagnosis and treatment plan.

BACKGROUND

Some work injuries – like a sprain or a broken bone – can resolve quickly, easily, and on a predictable schedule. When that is the case, an injured worker may need to see a doctor just a few times before they are able to smoothly return to work and carry on with a normal life.

Other injuries can lead to a cascading series of health impacts that may result in complex medical outcomes. Injured workers may end up with a range of physical and psychological conditions that are best understood by people who have treated them directly – such as their family doctors. However, the WSIB regularly overrules the advice of family doctors or specialists who have examined injured workers in person by ending treatment or pushing worker's back to work against the advice of those treating healthcare professionals.

WSIB continues to find ways to reduce or eliminate injured worker entitlements against the advice of an injured worker's healthcare team. This includes the use of nurse case managers and other staff who have never met the worker, but simply declare them healed based on usual healing times, when no medical evidence exists to support that conclusion. Worker representatives have reported cases where case managers seem to want to help the worker based on the advice from their family doctor, but are overruled by their superiors (who have no medical training and have never met the injured worker).

The ignoring of medical evidence is particularly prevalent in Return to Work cases, where family doctors and specialists have said an injured person is not ready to return to employment, but the WSIB forces that person back against medical advice by threatening to cut off their benefits. This can result in tensions at work, psychological impacts, and serious risk of re-injury.

COSTS TO TAXPAYERS

WSIB is funded 100% by employer premiums, and medical expenses for injured workers are supposed to be paid for by the compensation system, not Ontario's public health insurance plan (OHIP).

When the WSIB refuses to provide healthcare that an injured worker's doctor recommends, they will either end up without treatment or, if they are lucky, then their treatment may be paid for by OHIP. The burden of that cost falls on every taxpayer in the province, instead of to the employers who are responsible for the injury. Likewise, when an injured worker is cut-off benefits because they are unable to return to work when the WSIB demands it, they may end up on Welfare, Disability, EI sick, or CPP-D, which are all publicly funded systems that all Ontarians must pay for through taxes and payroll contributions.

MORE INFORMATION

- *Listening to doctors* is a core demand of the *Workers Comp is a Right* campaign. More information on this and the other demands (end deeming and stop cutting benefits based on pre-existing conditions) can be found at <https://injuredworkersonline.org/wp-content/uploads/2017/09/WCIAR-Report-2017.pdf>
- *No Evidence: Decisions of the WSIB* - by IAVGO Legal Clinic: Available at <https://www.fairnessforinjuredworkers.org/>
- *Bad Medicine* - by IAVGO Legal Clinic and Anthony Singleton: Available at <https://www.fairnessforinjuredworkers.org/>
- *Prescription Overruled* - by ONIWG and Ontario Federation of Labour: <https://ofl.ca/wp-content/uploads/2015.11.05-Report-WSIB.pdf>

INCREASE LOSS OF EARNINGS (LOE) BENEFIT RATE

DEMANDS

- Immediately increase the Loss of Earnings benefit (LOE) rate to *at least* 90% for all injured and ill workers.
- Make retroactive LOE payments to all injured and ill workers who have experienced the 85% LOE rate from January 1, 1998 to the present.
- Over time, increase the LOE rate to 100% for all injured/ill workers, with retroactive payments.

BACKGROUND

Ontario's LOE rate is a nationwide outlier. The LOE rate is 90% in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, and Prince Edward Island, while the LOE rate is 85% in Ontario, Newfoundland and Nova Scotia. Ontario is the most populous and wealthiest province, yet what it offers to injured and ill workers for wage-loss benefits is among the lowest.

To say this another way: Workers who are injured or made ill by the companies at which they work receive an *immediate 15% pay cut* once they are unable to work. Even if an injured worker manages to receive benefits long term, most will lose out on any raises they would have received while gaining seniority in the workforce.

As a result, many low income permanently injured and ill workers are left in poverty. Many have lost their homes and are forced to use food banks and other public services just to get by on a meagre existence.

In 2022, injured and ill workers were heartened when PC Minister of Labour Monte McNaughton announced that the government would explore the possibility of increasing the LOE rate to 90%. However, despite this promise and numerous meetings with injured workers and allies, there has been no increase in injured workers' already low benefit rate, while the

employers who injure them have received billions of dollars in gifts from the WSIB.

The position of the injured/ill worker movement is clear:

- The government must immediately increase the LOE rate to 90% and make retroactive payments to those disadvantaged by the 85% system.
- Over time, the provincial government must commit to increasing the LOE rate to 100% of take home pay, with arrears payments.

MORE INFORMATION

- *Toronto Star op-ed about the need to increase the LOE rate to 90%, with retroactive pay:*
https://www.thestar.com/opinion/contributors/ontario-must-increase-pay-to-injured-workers/article_39500ba8-047b-509f-b031-8441d248c979.html
- *Timeline of Changes to WSIB Benefit Policies. 2021.*
<https://injuredworkersonline.org/wp-content/uploads/2021/07/IW-benefits-timeline.docx>
- *WSIB website with information about LOE benefits:*
<https://www.wsib.ca/en/loss-earnings-benefit>

MENTAL HEALTH

DEMANDS

- Stop discriminating against workplace mental health injuries: use the same standards for adjudicating mental health claims as all others
 - Amend all laws and policies that set arbitrary standards for mental health workplace injuries
- Support the mental health of injured workers with appropriate treatment
 - Proactively offer mental health supports following workplace injury
 - Allow ongoing therapy as an appropriate form of maintenance treatment for mental health injuries
- Ensure the WSIB treats injured workers with respect and without stigma

BACKGROUND

The WSIB treats mental health injuries differently than it does physical injuries, and that needs to stop. Workers with mental injuries already shoulder a serious burden of stigma and social disapproval. The WSIB not only contributes to this, it makes it worse by placing additional burdens on workers with mental injuries in order to “qualify” for compensation. As a result, they are denied compensation, return to work support, and health care, at an alarming rate.

The Workplace Safety and Insurance Act and existing WSIB policies place higher legal burdens on workers who suffer mental injuries in the workplace. Evidence of this can be seen by comparing approval rates of physical versus mental workplace injuries. Between 2009 and 2019, the WSIB approved an average of roughly 78% of annual claims. However, as of June 2022, the WSIB had only approved about 54% of PTSD claims, 36% of traumatic mental stress claims, and only about 6% of chronic mental stress claims.³

Adding arbitrary requirements for claims relating to mental injuries amounts to discrimination against workers who are the most vulnerable – those in distress because of workplace mental illnesses.

Furthermore, the WSIB needs to drastically improve its support of injured workers both by increasing the availability of therapy, and by ensuring that WSIB staff treat injured workers with respect and without stigma.

³ Calculated by using data provided directly from the WSIB, but not publicly posted (number of claims as compared to number of those claims approved)

AN INJURED WORKER STORY

M. was a labourer in her 40s in a male-dominated industry. As one of the only women in the workplace, M. was repeatedly subjected to sexually explicit comments, references to her sexuality, pornographic material, and physical harassment and intimidation, including being grabbed and followed into the women's washrooms.

The tipping point was being swarmed and verbally attacked by members of the public while working at an event, after which she went on sick leave and was subsequently diagnosed with anxiety, depression and post-traumatic stress disorder.

Despite there being no documented cause for the M.'s mental health diagnoses other than work-related stressors, the WSIB denied the claim under both the chronic mental stress and traumatic mental stress policies because of the overly restrictive nature of the policies. "My career is gone now, a career I loved. I was really proud of what I did for a living. Losing that has been a tremendous loss." To add insult to injury, M. was not supported by the WSIB through that loss, and instead slipped into poverty. If the WSIB had applied the same criteria to M.'s claim as it did for physical injuries, she would have been supported.

MORE INFORMATION

- *Injured Workers Online – Mental Health Summary:*
<https://injuredworkersonline.org/issue/mental-health/>
- *Poor interactions with case managers linked with risk of mental illness –* Institute for Work and Health. March, 2022: <https://www.iwh.on.ca/plain-language-summaries/poor-interactions-with-case-managers-linked-with-risk-of-mental-illness-later-on>
- *Injured Workers Online – Surveillance and Stigma Summary:*
<https://injuredworkersonline.org/issue/surveillance-and-stigma/>

INCLUDE ALL MIGRANT WORKERS IN DEEMING REVIEW

DEMANDS

- The WSIB must include all deemed migrant workers in its injured migrant worker deeming review and retroactively restore their Loss of Earnings (LOE) benefits.
- Reinstate full Loss Of Earnings for all injured migrant workers while they wait for their review

BACKGROUND

“Deeming” is an unjust practice that is spoken about in more detail elsewhere in this package. In short: If an injured worker is unable to return to their pre-injury job, WSIB often deems the worker capable of working another job. WSIB then cuts the worker’s Loss of Earnings (LOE) benefits, whether the worker is able to find work or not.

Moreover, the WSIB deems injured migrant workers capable of taking on jobs in Ontario, even if they are unable to live or work in the province. To make things worse, the WSIB uses Ontario based rates of pay, as opposed to the pay that would be available where the injured worker is actually living. As a result, these migrant workers are left without any means to support themselves and their families due to their work injury and the WSIB’s benefits cuts.

Thanks to injured migrant workers’ landmark victory in 2023 at Ontario’s Workplace Safety and Insurance Appeals Tribunal, WSIB President and CEO Jeffery Lang apologized for the WSIB’s unfair practice of deeming migrant workers in May 2024 and committed to fixing the issue. Accordingly, WSIB initiated a review of deemed migrant workers’ cases.

However, WSIB is *arbitrarily* excluding many deemed migrant workers from this review, only looking at a handful of the many cases where this practice was used (only migrant workers in one specific program). They are denying a remedy to those injured migrant workers of its self-admitted unfair practice.

AN INJURED WORKER STORY

Delmark is an injured migrant farm worker from Jamaica. He has three children: a 13-year-old son, a 10-year-old son, and a 7-year-old daughter.

In 2022, he was working in Ontario and suffered a workplace injury while lifting three heavy boxes. After his injury, Delmark was sent home to Jamaica. His injury prevents him from not only returning to work in Ontario but also from working in Jamaica. Even

though Delmark lives in Jamaica with no ability to live or work in Ontario, the WSIB determined he could be a customer service worker in Ontario and ended his LOE benefits in January 2023.

The WSIB is arbitrarily refusing to reconsider Delmark's LOE benefits because he is still receiving treatment for his injury. Even though his injury has prevented him from working since 2022, the WSIB will only reconsider his benefits if his condition reaches a point where it won't improve in the future. This is not acceptable!

In the meantime, Delmark is unable to support himself and his family. His brother and mother have to help pay his children's school fees – but even with their help, he is still short on the payments. His children are falling behind in school because he cannot buy school books for them. Delmark skips meals to feed and support his children. Additionally, He goes without necessary medications for his injury since he cannot afford them.

The WSIB's exclusions, delays, and lack of transparency are unacceptable. Every day that goes by while WSIB fails these workers is another day that they are suffering extreme poverty, ill health, and discrimination. It is harmful and unjustifiable.

These workers have waited long enough. The WSIB is one of the largest government institutions in the Province and has the resources to help these workers immediately. It is unconscionable that it is taking this long, and that injured migrants continue to face the burdens of the WSIB's delays.

In addition to the above demands, WSIB must immediately:

- In all cases – including non-Seasonal Agricultural Workers (SAWP) and workers without Non-Economic Loss (NEL) awards – review LOE based on the local labour market where a worker is legally able to work.
- Communicate case status and delays to workers transparently and in a timely way so that they know what to expect.

MORE INFORMATION

- *Injured migrant workers seeking more compensation receive tribunal ruling in their favour.* CBC News, September 2023: <https://www.cbc.ca/news/canada/windsor/migrant-workers-compensation-1.6982949>
- *WSIB Press Release and Apology.* May 2024: www.wsib.ca/en/news-release/wsib-review-leads-change-how-injured-foreign-agricultural-workers-are-treated
- *Injured Workers Action For Justice.* Facebook Group: <https://www.facebook.com/justiceforinjuredworkers/>

OCCUPATIONAL CANCERS & DISEASE RECONGITION

DEMANDS

- Recognize and compensate clusters of occupational cancers and disease through workplace patterns exceeding levels in industrial communities.
- Expand the list of occupational cancers and disease presumed to be work-related (same as the presumptive list for firefighters).
- Compensate and accept that multiple exposures to carcinogens and toxins combine to cause cancers and disease.
- Use the proper legal standard for causation, not scientific certainty.
- Re-introduce and pass private member *Bill 125 - Justice for Victims of Occupational Disease Act 2022*.

BACKGROUND

Ontario's industrial history has resulted in countless victims of occupational illness. These work related illnesses often remain hidden, and only come to light when workers and their families share their stories.

Grassroots groups such as the Occupational Disease Reform Alliance (made up of workers who became sick and their family members, as well as health and safety advocates) have come together to provide a forum for the collection of these stories, and to push for solutions.

However, after endless research and government reports, decades of meetings with Ministers of Labour, and the relentless sharing of the tragic stories of occupational illness, ill workers and their families are still consistently denied fair and just compensation across many clusters of disease.

INJURED WORKER STORIES

Many stories of workers made ill by their employers (and the stories of their families) can be found at ofl.ca/advocacy-groups-odra/. This includes powerful narratives from Chemical Valley (Sarnia), General Electric (Peterborough), Paper Mill RB4 (Dryden), Steel Mills (Sault Ste Marie), Rubber Workers (Kitchener-Waterloo), Pebra/Ventra Plastic (Peterborough, ON), and Neelon Castings (Sudbury).

MORE INFORMATION

- *Bill 125 - Justice for Victims of Occupational Disease*: <https://www.ola.org/en/legislative-business/bills/parliament-42/session-2/bill-125>
- *Town of Widows*. Documentary, 2019: <https://townofwidows.com/>
- *Hidden asbestos: Hundreds of homes in Peterborough suspected of containing toxic material from GE Plant*. CBC News, 2019: <https://www.cbc.ca/news/business/asbestos-peterborough-general-electric-cleanup-1.5283683>
- *Lethal Legacy*. Toronto Star, 2016: https://www.thestar.com/projects/lethal-legacy/article_8fcab9da-b7dc-58ce-9cdf-3bed3deb2f66.html

OLDER INJURED WORKERS' RIGHTS

DEMANDS

- Eliminate the age 65 limits on WSIB Loss of Earnings Benefits
- Restore the WSIB's contribution to the Loss of Retirement Income benefit to at least 10% of LOE.

BACKGROUND

Age 65 limits to benefits: Since 1990, workers compensation has ended wage loss benefits at age 65 (or 2 years after a *new* injury if the worker is over age 63 when they are injured). There are also limits to awards for permanent impairment (called Non-Economic Loss or NEL benefits) based on age. An older worker who receives a permanent injury award at age will get less of an award than a younger worker also decreases by age, even if their injuries are identical.

The mandatory retirement age in Ontario used to be age 65, until the Supreme Court of Canada ruled that mandatory retirement is age discrimination and contrary to the Charter of Rights and Freedoms. The Ontario Human Rights Code was amended in 2007 to prohibit mandatory retirement. The WSIB was granted an exemption because, it was said, it would be too complicated to remove the age limits. Seventeen years have passed to iron out the “complications” of removing mandatory retirement, but nothing has changed at the WSIB. Legislative change has occurred elsewhere, but the age-related limits on benefits remain in Workplace Safety and Insurance Act, without legitimate explanation.

If injured under age 63, a worker's wage loss benefits end at age 65, regardless of how long the worker had planned to work. If over age 63 when injured, wage loss benefits end 2 years after the date of injury, even if the worker planned to work beyond those 2 years. If a worker is working and has a recurrence of a prior workplace injury after age 65, no wage loss benefits are payable because the law does not recognize this as a *new* injury.

The realities of today's economy have shifted, and retirement age has continued to increase. About half of Ontario workers are working past 65, and it seems likely that this trend will continue.

Due to WSIB's discriminatory age 65 cut-off, a workplace injury can leave injured workers in financial ruin in their golden years. Ontario seniors who plan to work past age 65 should have the protection of WSIB wage loss benefits up to their planned retirement age. Alberta and British Columbia Worker's Compensation

Boards have removed the age 65 restrictions, and Ontario injured workers should expect no less protection than workers get in other provinces.

Loss of Retirement Income Benefit: WSIB benefits do not count as earnings for the purposes of the Canada Pension Plan (CPP). This means that injured workers who receive WSIB benefits cannot contribute to CPP, which greatly reduces the amount of retirement income that is available to older injured workers. The purpose of WSIB's Loss of Retirement Income (LORI) benefit is 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 LORI, to approximate CPP premiums. However, in 1998, the WSIB reduced its contribution to 5% of the wage loss benefits. As a result, injured workers face an even larger risk of poverty after age 65.

Restoring the WSIB LORI contribution to 10% of the wage loss benefits would partially ameliorate the poverty that injured workers face when they turn 65. However, even a restoration of the 10% contribution from the WSIB would still not be sufficient to match CPP contributions of non-injured workers.

The ideal contribution to LORI would see the WSIB's portion be the value of the CPP premiums paid by workers and employers, based on gross earnings (around 12%). The WSIB's contribution to the LORI should be equal to this value, with no required contribution from the injured worker.

EXAMPLE

A worker was badly injured at age 64 in 2022, making him unable to work. Their plan had been to work past age 70, and the worker has a mortgage until then. However, Loss of Earnings benefits will end in 2024 because of the 2 year limitation in the Act, leaving the worker and his family with no means to make the payments on the mortgage.

MORE INFORMATION

- *Retirement pension poverty among injured workers with long-term workers' compensation claims.* Academic Research by Ellen MacEachen et al, 2023: doi.org/10.1017/elr.2023.43

Anyone interested in learning more about the problems and solutions related to older injured workers can contact: Ontario Legal Clinics Worker's Compensation Network, c/o Injured Workers Community Legal Clinic / Telephone: (416) 461-2411, Toll free: 1 (833) 461-2411 / info@iwc.clcj.ca

PROTECT PRECARIOUS WORKERS

DEMANDS

- Conduct forensic audits of employers and temp agencies, then properly investigate and prosecute those who engage in WSIB claim suppression.
- Better ensure precarious workers can easily access representation for their WSIB claims that is free, prompt, and high quality.
- Better regulate temporary staffing agencies to ensure they are not being used in ways that reduce health and safety and access to WSIB benefits.
- Provide precarious workers who are employed through temp agencies with a process for filing complaints about health and safety/claim suppression without risking their livelihood.

BACKGROUND

Precarious employment refers to a range of practices that prevent workers from being able to achieve stable employment with decent wages, including the overuse of temporary staffing agencies, permanent part-time jobs, non-permanent jobs, contractual or seasonal work. Precarious work has gradually expanded from low-wage, survival jobs like manufacturing, warehousing, and administration, into sectors previously considered to be stable employers such as construction/trades, education, childcare, healthcare, human services, technology, finance, banking, and more.

Precariously employed workers (a majority of whom identify as women, youth, immigrants/newcomers, and/or racialized individuals) are often unable defend themselves against these practices, as they are not unionized and unable to access third-party support. This can be further complicated by their employment status, immigration status, financial insecurity, and lack of awareness/information about employment rights and workers' compensation.

Precarious workers can face significant trouble accessing the benefits that are supposed to be provided by WSIB, because some temp agencies and employers participate in legal and illegal predatory practices that suppress compensation claims and benefits. These practices include (but are not limited to):

- Use of staffing agencies and temporary help agencies to avoid hiring full time workers, meaning workers lack the stability required to be comfortable asserting their rights.
- Misclassifying workers as contractors or self-employed when they should be classified as employees, which can leave them responsible for providing their own unaffordable insurance (or getting nothing once they are injured).
- Workers who become injured or made ill are often immediately reassigned to a different jobs without any time off, which further confuses the claims process and potentially aggravates their injuries and illnesses.
- Temp agencies are often not held accountable for occupational and long-term injuries or illnesses. When they do get in trouble, agencies are able to disappear or go out of business and reopen elsewhere with a clean record.
- Temp agency workers are often forced to “jump in” to a new job without adequate health and safety training. This can create life-threatening workplace injuries, and has resulted in the death of multiple temp agency workers in Ontario.
- Precarious workers faced a disproportionate amount of COVID related risk during the pandemic, including significantly higher death rates compared to other parts of the working population.
- Precariously employed workers are much more susceptible to intimidation and punishment or job loss than workers with stable jobs. They are often intimidated or manipulated out of filing or pursuing WSIB claims with threats of termination, reassignment, or other bullying tactics.
- Precarious workers who are unable to have their WSIB claims approved have trouble accessing healthcare, rehabilitation, and return to work supports.
- It is easier for employers who overuse temp agencies to avoid having to provide suitable modified work to the workers who are injured in their workplace.

AN INJURED WORKER STORY

I have been working in a textile factory temporarily for many years. One day, I fell and hit my head and was unconscious for more than a minute. After I regained my consciousness, I was taken to the office, told to sign some papers that I did not understand, and then was sent home in a taxi. I was extremely sick and my doctor said I had an untreated head injury and helped me complete the WSIB forms. I was contacted by my employers who told me that I would be promoted and hired directly if I canceled my application. I had been working at this job for so long and needed pay and stability, so I agreed. But I kept getting sick, and two months later I was fired because I was slow. I wanted to apply for WSIB, but it was too late. Because of my deteriorating health, I had to apply for ODSP.

MORE INFORMATION:

- *Ontario's 'essential' workers in manufacturing accounted for more workplace COVID deaths than any other sector — even health care.* Toronto Star, October 2022.
https://www.thestar.com/news/investigations/they-made-doors-gum-and-jerry-cans-ontario-s-essential-workers-in-manufacturing-accounted-for/article_177ab792-b162-59ee-a0fb-49d4106c6a3c.html
- *Working and Hurting in Little Bangladesh: Precarious work, health, and return to work.* Academic research by Stephanie Premji, 2022.
https://www.mun.ca/safetynet/media/production/memorial/administrative/safetynet/media-library/projects/nl-dialogue-on-rtw/SPremji_Report-WorkingHurtingLittleBangladesh.pdf
- *Workers' compensation claims for precariously employed workers in Ontario: employer resistance and workers' limited voice.* Academic research by Ellen MacEachen et al, 2021:
<https://journals.openedition.org/pistes/7173>

Anyone interested in learning more about the problems and solutions related to precarious work in the South Asian community can contact South Asian Women and Immigrants' Services by visiting sawro.org.

STOP WSIB PREMIUM RATE REDUCTIONS AND REBATES

DEMANDS

- Repeal *Schedule 6 of Bill 27* that permits rebates to employers when there is a so-called surplus at the WSIB.
- Cancel current premium rate reductions for businesses and pause future reductions until injured and ill workers' basic needs are met.
- Future "surplus" funds must not be gifted to employers until injured and ill workers' receive full and fair compensation.

BACKGROUND

Workers' Compensation was established over 100 years ago in Ontario. The system is premised on the Meredith Principles: 1. No fault compensation; 2. Security of benefits; 3. Collective Liability; 4. Independent Administration; and 5. Exclusive Jurisdiction.

The workers' compensation system is funded by premiums charged to employers based on their total payroll so that workers can receive benefits for as long as they are unable to work due to injury or illness. In exchange for this, workers gave up the right to sue their employer for a work-related injury or illness. This is known as the historic compromise.

Over time, successive provincial governments and the WSIB have chipped away at these founding principles by underfunding injured workers' benefits, while slashing premium rates for business and gifting billions of dollars in "surplus funds" to corporations.

The outcome of this process is clear: a transfer of wealth from working people to big business.

Since the early 1990s, injured and ill workers have faced rounds of austerity and legislative and policy limitations on their benefits that have contributed to the WSIB's current financial "surplus". This includes, but is not limited to:

- Reduction of inflation protection for WCB benefits in 1994 through the Friedland formula (and again in 1998 through the modified Friedland formula).
- Reduction in the Loss of Earnings (LOE) benefit rate from 90% to 85% in 1998.
- Reduction in the WSIB's contribution to the Loss of Retirement Income (LORI) from 10% of wage loss benefits to 5% of wage loss benefits in 1998.
- The termination of workers compensation benefits at age 65 or two years after the date of injury for those injured when 63 years of age or older for injuries since 1990.

- First the absence and then the creation of a discriminatory Chronic Mental Stress policy with an abysmal acceptance rate of around 6%.
- Low acceptance rates for occupational disease as compared to other types of injuries due to barriers constructed by the WSIB.
- Deeming countless injured and ill workers into “phantom jobs” they do not have, causing the Board to reduce or terminate their LOE benefits.
- Systematic reduction in Non-Economic Loss (NEL) awards for Permanent Impairments.⁴
- Limiting entitlement based on non-symptomatic pre-existing conditions and ignoring the advice of injured and ill workers’ treating doctors.

It is easy to see from this list WSIB’s so-called “surplus” has been built on the backs of injured and ill workers.

In 2022, the Ontario Government passed *Bill 27* that required the Board to distribute money to employers when the funding sufficiency ratio is equal to or greater than 115% and less than 125%. As a result, billions were returned to Employers in 2022 and 2023, and a recent announcement stated another \$2.5 billion will be gifted to Employers in 2025. The total payout to employers has now reached almost **\$19 billion** since 2017, while we know that many injured workers struggle with poverty.

In concert with these billion dollar gifts, WSIB Premium rates have been slashed, seeing a 61% drop between 1993 and 2025. While there is no objection to fair premiums for employers, record low premium rates must not be achieved by forcing injured and ill workers into long term debilitating poverty.

The WSIB was established to provide benefits and supports to injured and ill workers, not to line the pockets of corporations. The current system already incentivises employers to suppress claims by tying premium rates to claims costs. Financially rewarding the very same employers who try and prevent their injured employees from getting compensation is unacceptable.

MORE INFORMATION

- *Thunder Bay and District Injured Workers Support Group report on injured worker poverty (Presentation to Parliamentary Committee on Finance & Economic Affairs. January, 2022: https://injuredworkersonline.org/wp-content/uploads/2022/01/TBDIWSG_Presentation-Committee-Finance_-2022.pdf*
- Injured Workers Online – Experience Rating Summary: <https://injuredworkersonline.org/issue/experience-rating/>

⁴ In 2008, Schedule 1 NEL payments totaled \$129.4 million for injured workers, but by 2021, the NEL payments dropped to \$65.6 million.

REAL HEALTHCARE FOR INJURED WORKERS

DEMANDS

- WSIB must fund treatments and medications that injured workers' doctors prescribe and recommend.
- WSIB must increase its rate of pay for community health care providers treating injured workers, to more closely match market rates
- WSIB must provide injured workers with adequate mental health support.

BACKGROUND

The importance of listening to injured workers' doctors – particularly as it relates to physical and psychological restrictions and Return to Work processes – is covered elsewhere in this document. But there are other areas in which this is also of vital importance, including prescription medication and mental healthcare.

In the 2017 report *Bad Medicine: A report on the WSIB's transformation of its health care spending*, it was shown that from 2010 to 2015, WSIB's overall payment for medication benefits decreased 35% (from \$96 million to \$63 million), even while the total number of claims stayed the same. During that time, about 18 thousand workers were eliminated from the drug benefits plan without adequate explanation. For many injured workers who have their drug benefits denied, the physical, psychological, and financial impact can be devastating. It would take only a tiny fraction of the \$2.5 billion dollars the WSIB intends to gift employers this year to pay for all of the medications injured workers' doctors prescribe for their related injuries and illnesses.

Injured workers sometimes have trouble accessing healthcare for their work-related injuries, because the WSIB requires a burdensome amount of paperwork, yet pays rates far below market rates to community health care providers, for example physiotherapists. There are health care providers who refuse to take on injured workers as clients because of these hassles, which the WSIB can and should correct.

Whether a worker is dealing with a physical or psychological injury/illness, we know there can be devastating impacts on mental health. Losing your livelihood and identity – often while fighting for basic justice with the WSIB – can have significant impacts on things like mood and anxiety. Workers struggle to gain access to all healthcare, but psychological services have proven the most difficult to access. Many mental health cases continue to be flat out denied by WSIB. The WSIB must increase the availability and duration of mental health supports for injured workers.

MORE INFORMATION

- *Listening to doctors* is a core demand of the *Workers Comp is a Right* campaign. More information on this and the other demands (end deeming and stop cutting benefits based on pre-existing conditions) can be found at <https://injuredworkersonline.org/wp-content/uploads/2017/09/WCIAR-Report-2017.pdf>
- *Bad Medicine* - by IAVGO Legal Clinic and Anthony Singleton: Available at <https://www.fairnessforinjuredworkers.org/>

UNIVERSAL COVERAGE

DEMANDS

- Ensure all injured workers in Ontario have access to workers' compensation
 - Specifically, pass legislation amending ss. 11 and 12 of the WSIA plus associated provisions and O. Reg. 175/98, to be replaced by universal coverage for all workers in Ontario, regardless of industry or immigration status

BACKGROUND

Ontario has one of the lowest rates of workers' compensation coverage of any province, with almost 25% of workers not covered. The lack of universal coverage disproportionately affects racialized, low income and precariously employed workers (for example, those working in the "gig economy"), who are often newcomers and women.

There is no consistency or clear rationale around the covered versus non-covered industries, particularly where workers do the same kind of work. For example, depending on which company employs them (i.e. a public or private employer), some couriers, daycare workers, and personal support workers are covered, and others are not.

This puts those who are not covered at serious physical, mental, and financial risk. It also means the public pays huge costs for work injuries, as workers without any social safety net fall onto social assistance programs and their medical costs are carried by OHIP. Fully covering all workers in Ontario would save hundreds of millions of dollars in public money. There is no economic downside to universal coverage, as evidenced in the research linked below. Every worker deserves to have a safety net to protect, prevent, and provide during workplace injuries.

AN INJURED WORKER STORY

I suffered from a work related massive spinal cord injury as an early childhood educator in my 30s, and was left without any compensation coverage because it was a private rather than public daycare. As an Early Childhood Educator at a private school in Toronto, I had a physically strenuous job. The arduous task of managing an autistic child, along with groups of young children, took a physical toll on me, ultimately leading to a massive spinal cord injury. I suffered from immense pain and depression, sleepless nights, complete loss of my financial assets, and I faced poverty. I lost my identity, and my dignity. The cost of all my surgeries, years of rehab, and weeks of hospitalization for sleep deprivation was on tax payers and OHIP, not my employer. Unlike workers whose employers are covered by Ontario's worker's compensation system, I was not eligible to continue receiving wages or any other form of compensation.

MORE INFORMATION

- *WSIB Cover Me Campaign:* <https://covermewsib.ca/>
- *Injured Workers Online – Universal Coverage Summary:* <https://injuredworkersonline.org/issue/universal-coverage/>