

**Written submission on Bill 27,
*An Act to amend various statutes with respect to employment
and labour and other matters***



November 17, 2021

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The United Steelworkers union (USW) is the largest private-sector union in North America with more than 225,000 members in Canada and more than 75,000 members in Ontario. The USW is Ontario's most diverse union, representing workers in every sector of the economy.

When Minister McNaughton introduced Bill 27 on Oct. 25, he claimed the government was "rebalancing the scales to lift people up and put workers in the driver's seat of Ontario's future." Unfortunately, the proposed legislation falls short of that stated goal. In fact, when looking at the changes the government is proposing to six different acts of law, it would have been more accurate for the minister to have said the government is, at best, leaving workers to spin their tires, and in one case, effectively throwing them and their families under the bus.

Proposals on non-competition language, improving access to jobs, regulating predatory recruiters, providing access to washrooms, and helping workers "disconnect from work" are all positive initiatives in principle. The legislation doesn't provide the necessary detail, nor does it appear to contemplate enforcement to a great enough degree that workers can feel assured the promise of the legislation will ever result in actual help in their workplace.

Still, flawed though they may be, it is fair to suggest those proposals could belong in a bill advertised as, "Working for Workers."

This submission will focus on the sixth proposed change.

The government's proposal to grant the Workplace Safety and Insurance Board (WSIB) the power to hand out refunds to employers while workers go without the help they deserve and need would open the door to privatization with the support of this government.

This proposal is the next step in a long push by this government to write cheques with workers' money and hand out the giveaways to businesses. It has no place in a bill that is being sold as remotely helpful to workers. If this committee is unable to make the necessary changes, as outlined below, to this portion of the bill, we recommend it be defeated, or at the very least that Schedule 6 be removed from Bill 27.

A stacked consultation and ignored responses

In August, the government accepted submissions as part of a consultation called "Workplace Safety and Insurance Board Insurance Fund Surplus Distribution Model Consultation." Despite proposing changes on this very topic in Bill 27, there is nothing in the legislation to suggest the government even considered any of the recommendations by the USW or anyone in labour. This is disappointing but not surprising.

As we noted in our submission in August, the premise of the three questions the government used to frame that so-called consultation, precluded any consideration for directing the "surplus" funds to implement the vast majority of the recommendations from the WSIB Operational Review Report written by Special Advisors, Linda Regner-Dykeman and Sean Speer (Speer/Dykeman report).

Despite having commissioned and released that report, it was immediately clear the government had already decided to limit the scope of this consultation and that the "surplus" funds should be distributed amongst the Schedule 1 employers.

When faced with a sudden surplus in the WSIB fund, instead of asking how they could improve access, fairness, or common sense within the program to ensure that every worker or family who should be eligible for WSIB support could access it, the government was focussed on asking how they could best distribute the funds to businesses.

It was our recommendation that the government reconsider its reports and address the 22 recommendations it had thus far ignored but could help improve WSIB for workers

The changes in this legislation make it clear that that recommendation – along with the majority of the report – was ignored.

At the very least, all recommendation in the report this government commissioned itself on WSIB should be carefully considered and – ideally – consulted on.

The WSIB - Insurance is in the name

Ultimately, ensuring workers have support if they suffer an injury or contract a disease while at work, is a direct benefit to those workers and their families, but it also benefits employers and the rest of society.

That said, WSIB was never intended to be used to directly fund businesses. On Nov. 1, however, Minister McNaughton showed his hand when he talked about the impact of the pandemic and said the WSIB “surplus” would help employers. There are other programs for employers that were designed to help them. WSIB is not one of them and should not be used for COVID-19 relief. Nevertheless, the minister suggested yet another way for employers to get access to WSIB money, in addition to the proposed amendment which would allow for two legislated rebate programs as well as the existing WSIB voluntary rebate program called "Health and Safety Excellence program." It is hard to imagine an insurance scheme that provides rebates for employers, but this government seems intent on providing employers with three ways to take workers’ money and add it to their own bottom line.

Money that was saved at the expense of injured workers or saved by freezing budgets for the organizations funded by the WSIB should not be passed on to employers. The government’s desire to simply distribute this money amongst employers shows a complete disregard for the impact on injured workers and organizations dependent upon the WSIB funding.

An example of a WSIB-related program that needs more funding – not less – would be the Occupational Health Clinic for Ontario Workers (OHCOW). The current method of quarterly transfer payments is no way to hire and keep experts to support clusters of people in need.

This is workers’ money

Across the province, we are seeing increasing poverty rates among persons with disabilities - including occupational disease victims and other injured workers. While these workers and their families are left in poverty by a system that is increasingly stacked against them, on the surface, it is unconscionable for this government to champion rebates to businesses.

While the government and WSIB would like to suggest the new “surplus” is the result of better management and efficiencies, the facts (including three independent audits of the WSIB) show it

came at the expense of injured workers both in under-compensation for those with claims and in outright denial of claims based on outdated science and inappropriate decision making, including policies such as the massive denial rate of workplace mental health claims that were addressed after a charter challenge and continue to face unreasonable denial rates.

Despite having the same number of claims, WSIB payments to injured workers have been slashed from over \$4 billion annually to around \$2.4 billion.¹ Out of the 3,000 occupational cancer cases in Ontario every year, WSIB has only recognized around 170 of them, and budgets for organizations funded by the WSIB and relied upon by workers have been effectively cut. While all of this has been happening, for five years in a row, employer WSIB premium rates have been cut.

Instead of giving a break to employers, WSIB should have been investing in the program and putting money aside for new trends in science, changes to presumptions, and currently identified clusters (the majority of which include USW members in the thousands) as well as under-identified clusters as noted in the Paul Demers report such as those related to workers with cancers.

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From the Centre for Research in Occupational Safety and the Occupational Cancer Research Centre to OHCOW, WSIB-related programs need more funding – not less – to deliver for Ontario workers.

The funding OHCOW has received is a fraction of what is required to address the worker cohorts and has been given on a piecemeal basis. Multi-year funding is necessary to properly and efficiently deal with stabilizing staffing levels and the work being done on the occupational disease cluster projects by OHCOW for the workers and families across the province.

¹ <https://news.ontario.ca/en/release/1000930/ontario-providing-financial-relief-to-employers>

OHCOW submitted a proposal last August that included trying to address the needs of approximately 4,400 workers and 20 occupational disease clusters and has not even had a response back from the ministry. The WSIB has ignored three audits, all taking place since 2018 and have no capacity to address the surveillance of clusters or the science relating to policy around clusters. The new proposed scientific panel's focus seems to be on a scientific basis rather than a legal basis as is required by legislation.

As for programs that help workers get back on the job, we've also seen more and more workers pushed back to work too soon and frequently to inappropriate jobs. This has become true across the board for almost all benefit categories.

This surplus has nothing to do with efficiencies. It's all about promising to hand out cheques to businesses by helping fewer workers and offering less.

The only people with a legitimate claim on this money are injured workers.

Selling out another private program?

Another troubling aspect of the proposed amendments is the addition to section 159 stating, "the Board may enter into an agreement with any person or entity for the purpose of administering Part VII." Despite the minister's denial, the current wording is so broad it would allow for the privatization of payment collection. If the government is genuinely only interested in streamlining the process for employers to remit payroll deductions for WSIB through the Canada Revenue Agency, that needs to be more clear. Before moving forward, the government must also be transparent about the impacts of any changes on the workers who currently process WSIB payments.

We can still put workers first

Even as we enter an increasingly partisan period in the electoral cycle, we cannot forget who should be at the centre of both WSIB and the discussion on this legislation: workers.

Workers – particularly victims of workplace injury and disease and their families – need us to remember for whom WSIB was created. It happens to be the same people the minister claimed he wanted to help when he presented this legislation.

With that in mind, any discussion about WSIB should be centred around one basic principle: No money should be handed to employers, until no Ontarians are denied the compensation they deserve.

When this piece of legislation is looked at through that lens, it becomes obvious that it cannot be passed in its current form.

Recommendations

Members of the Standing Committee on Social Policy, you can still make this bill about helping workers.

Here are the changes we are asking you to consider while amending this bill to benefit injured workers:

1. Reinstate full indexing for injured workers' benefits.
2. Eliminate the practice of "deeming." If an injured worker cannot find suitable work, they should not be assumed to have found work anyway and have their benefit deducted based on this false premise.
3. End the discriminatory practice regarding chronic stress claims by repealing sections 159(2)(a.1), (a.2), (a.3), (b), and (2.1).
4. Restore WSIB loss of retirement income contributions to 10%.
5. Increase the non-economic loss (NEL) base amount and eliminate the discriminatory age adjustment factor.
6. Return loss of earnings benefits to 90% of net average earnings.
7. Change the maximum insurable earnings section of the Workplace Safety and Insurance Act (WSIA) to only apply to premium calculations and not benefit payments (section 54).

It's also worth noting that we also support the Occupational Disease Reform Alliance's (ODRA) demands.

We thank the committee for the opportunity to participate in this consultation and look forward to future discussion on this and other important topics.