



Manitoba Federation of Labour Brief on Return to Work Issues

for the
Manitoba Workers'
Compensation Board Consultation

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Introduction:

The Manitoba Federation of Labour is pleased to present its views on the issue of Return To Work (RTW). The MFL is Manitoba's central labour body representing the interests of some 95 thousand working women, men and their families. Our policies, including those related to Workers' Compensation, have been determined by General Convention which is held every three years and attended by elected delegates representing the workers who are members of our affiliated unions. We have also partnered with the disability community to establish inclusive methods of gaining true equality for persons with disabilities.

When workers are injured, they go to a doctor to seek help for recovery, treatment and then return to their workplace and jobs. It has long been recognized that part of healing is a need to return to work in a timely manner. In some workplaces, this is not that difficult and occurs as soon as the worker is healthy enough. In others, there is a great deal of difficulty and we have identified many barriers to effective return to work.

There are three main areas to discuss: managing the disability; managing the WCB claim; and managing return to work. The key element is having the best interest of the worker in a return to health and work in a safe and timely manner. Responsibility for managing the disability rest with the injured worker and their personal physician. Managing the WCB claim is the responsibility of the WCB case manager and other support staff. The responsibility for a establishing a workplace Disability Program rests with the employer and requires the participation of many.

Managing the disability - *Workers and their physicians.*

Workplace injuries can result in temporary disabilities or permanent disabilities. Some injuries may result in the loss of eyesight, hearing, mobility or use of limbs or organs. There are many community organizations that support persons with disabilities through peer counseling and information for the worker who becomes permanently incapacitated.

One of the first issues that workers have to deal with is the identification of their new disability - what has been lost and for how long. Temporary disabilities are easy to identify and the doctors usually request their patients stay away from areas that don't support healing. Permanent disabilities from a severe injury are easily identified, but when they involve a portion of the body such as the back, it takes some time for a worker to accept that they won't be getting better. In fact, in some cases they may even get worse.

The doctor will prescribe a treatment plan that may include prescriptions, physiotherapy or rest to aid healing. The outcome of the treatment plan will be affected by the injured worker and how far they try to push themselves or do the exercises. Often, some will try to return to a job that injured them in the first place and re-injure that part of their body and delay the healing process.

The intent of every worker is to return to the job they were doing when they were injured. The doctor is not likely to dispel this notion when the disability is temporary. However, in the case of a permanent disability it is not wise to allow the worker to feel they have suffered no permanent damage and there is a need for them to accept their disability.

Health Care issues:

One of the most difficult positions that workers find themselves in is when they are thrust into the health care system as a result of an injury while at work. In some cases, this is the first time a worker has seen a doctor. Depending on their age and their previous health, many people do not have a "family doctor".

In cases involving a disability, either temporary or permanent, the WCB has direct influence on treatment and surgery decisions. They base decisions on information that they receive from doctors or specialists who have seen the injured worker. They also receive advice from WCB medical advisors who have reviewed the information in the worker's medical file. This system sometimes leads to lack of trust by the worker.

In some cases workers have not had a chance to establish a relationship with a doctor and may not understand what they are going through. Sometimes they feel that no progress is being made in their healing and become impatient to see results or go back to work.

Some feel that the case manager is holding back on a suggested surgery by their doctor by relying on advice from the WCB medical advisor. In some cases, the WCB medical advisor has only reviewed the information in the file and has not done a physical examination. In the past, call-in examinations were done by the WCB to assess benefit entitlements and claim duration only. In other cases, surgery may not be the solution or in the best interest of the injured worker.

Whenever a worker is caught in the middle of two different medical opinions, their doctor versus the WCB doctor, it usually relates to the type and extent of work restriction related to their injury. This could be from the amount of weight

that they can lift or even if they should be going back to work. If this occurs, they generally wind up in the appeal system which delays a return to work.

Some workers who distrust the system are recent immigrants to Canada. They prefer to deal with doctors in their birth language, but if that is not possible they tend to have little trust that personal information not related to the injury will remain confidential.

GP's refer injured workers to specialists to get the proper diagnosis and treatment for the worker. Many specialists have little or no knowledge of industrial workplaces especially in the manufacturing sector. What information they do possess comes directly from the injured worker and may not be complete. Descriptions of the workplace, tools, weights, body positions and physical demands are passed on by the worker and may not be fully understood by the doctor.

In some instances, appointment time slots to see some physicians last only 10 to 15 minute. In that amount of time it is very difficult for some workers to completely explain their workplace and to allow for sufficient time to fill in the workplace forms for return to work and receives only cursory attention from the doctor. All this is included in the time allowed for their visit to discuss their injury and the healing.

Confidentiality of personal information not related to the injury is always of great concern to a worker. Their privacy is at risk when this information is included with their file. Employers have asked for files containing non-relevant personal information for return to work purposes and, in some cases, have acquired it.

Managing the Case - *Workers and the WCB case manager.*

Following a workplace injury, a worker sees a doctor, files a claim with the WCB and when the worker loses time from work this establishes the need for a return to work plan. WCB policies have a hierarchy of return to work protocols. They are:

1. Return to the same work with the same employer
2. Return to the same work modified with the same employer
3. Return to different work with the same employer
4. Return to similar work with a different employer
5. Return to different work with a different employer
6. Retraining or re-education.

This hierarchy may be adjusted and the elements combined to address a unique work situation or disability. Some communities outside of Winnipeg and some industries may make it difficult for the hierarchy to be applied and there will be other measures taken to establish a working relationship based on the individuals involved.

Policy #43.20.20 was developed by the Workers Compensation Board to address all issues of modified or alternate work during a return to work. Problems arise when this policy is not applied. In many cases, this happens when WCB case managers are not involved in planning the return to work. When they do become involved it is usually after a problem is beyond a simple solution or transition that the policy was intended to address.

Other problems occur whenever a medical opinion is written in adjudicative terminology. For instance, when a leg is broken a prognosis of how long it will take to heal and when will the mended leg be able to support the person at work is a medical opinion. The kind of work the person should do or if the workplace caused the leg to break is an adjudicative decision.

Workers sometimes get conflicting direction from their personal doctor and a WCB case manager relating to the appropriateness of an alternate work assignment. If they do not do as their case manager directs they will lose entitlement to benefits, yet they have great difficulty acting in a manner which is contrary to what their doctor has advised. This is compounded when English is not the first language of the injured worker.

Injured workers will generally attempt to perform the alternate work. However, when they report they are having problems with the work, their comments are often ignored. If they don't participate in the assigned work they may lose entitlements to benefit. Consequently, they continue working until their condition worsens to the point where they can no longer function.

Some problems stem from the workloads of the case managers. With an average reported claims level of 45,000 it is difficult for the WCB staff in short term claims to monitor each and every file as to the progress and suitability of return to work.

Medical research is far behind the needs of the worker and the case manager when it relates to return to work decisions. Very little research has been carried

out on medical intervention and return to work and what does exist is rarely useful for the benefit and support of the worker.

Prior to the recent changes to the Manitoba Act, the WCB was only a "facilitator" of the return to work and would get involved only when asked by either the employer or the worker. In most workplaces the injured worker has returned to their job when the recovery is one or two weeks. Whenever a claim goes beyond 3 weeks in recovery and the RTW process has not begun, difficulties increase significantly.

In some workplaces there is a process that is followed for returning injured workers to their jobs. The WCB system does not ensure that case managers are involved in the process and knowledgeable about worker's restrictions and what job is available. They need to be involved at all times until the worker's doctor has declared the worker's injury to have stabilized.

Managing the Return to Work - *Workers and their workplace.*

The return to health and work may require the injured worker to begin going back to work before they are completely recovered. In some instances the sooner the worker can re-enter the workplace, the more successful they will be. But this is not always the case. RTW may require an accommodation where alternate jobs can be found or by making modifications to the existing job.

Work that injured a worker should be addressed as a hazardous situation and prevention of further injury or injury to other workers must take place prior to the worker re-entering the workplace. If no preventative measures have taken place then they should not be back.

When a worker is in the process of healing, doctors must be informed of the type of work and physical demands at the workplace for both alternate and modified situations so they can decide on the best time for RTW to begin.

As with all other components of return to work, problems are made worse when language and cultural barriers exist. Many workers who are new to Canada are attempting to enroll in English as alternate language or English as second language programs but are finding that these programs are full with lengthy waiting lists.

Alternate Work Issues:

Some workplaces will refuse to allow people to be in the workplace if they are under the influence of prescribed medication. In most instances the side effects of prescriptions on a workers ability to perform a task in a safe manner is not taken into consideration prior to returning the worker to the workplace.

Some alternate work that is provided is not meaningful, or that contributes to the workplace processes – these tasks amount to counting paper clips or waiting to answer a telephone that never rings.

Alternate work at times becomes punitive, such as jobs on different shifts or the least desirable jobs where injured workers feel they are put on display. In some workplaces a cell system or teams are used and injured workers are placed back into the cell/team with other members required to do extra work. This can cause some team members to resent injured workers and subject them to hostile scrutiny by other co-workers. This scrutiny sometimes creates a poisoned workplace where the workers healing process is negatively impacted.

Some employers use a quota system that only allows a certain percentage of the workforce to be in alternate or modified work. In this situation, other injured workers must "make do" at their regular jobs until suitable alternate or modified work for their restrictions becomes available.

In some workplaces, alternate work is non existent but the employer insists that the worker return to work and alternate work will be provided. They are sometimes instructed to perform work that is beyond their restrictions. In some cases, the alternate work is actually their original job and they become re-injured or suffer a more debilitating injury.

Modified Work:

Quite often we find an employer will present a job modification that is temporary in nature to allow the worker to heal on the job. When the temporary modification of the job reverts, the worker may not have fully recovered or the disability may be permanent.

When the doctor outlines restrictions that the worker is to stay within, the work should be modified to accommodate those restrictions. What has happened is the duties of the worker are changed to reflect the restrictions and it results in the modification of the worker's role, not the work.

Sometimes, workers in a modified job may aggravate the injury or re-injure themselves. This was usually not addressed by the doctors or the WCB to ensure that the work assigned is safe or appropriate.

Functional capacity evaluations (FCE) of injured workers have proven to be of great value when used to assist the RTW. But in many cases, particularly with slowly progressing injuries, they are not utilized to properly assess a modification or alternate work arrangement. Most workplaces rarely do an ergonomic assessment of the worksite or a job demands analysis to use with the FCE.

Another problem is the placements are not flexible enough to accommodate the needs of the worker. They rarely maximize abilities or recognize restrictions and fail to inform front line supervisors and co-workers of the necessary changes and supports.

Solutions - *Workers and health care providers, WCB staff and Unions.*

The single most important point for any successful return to work plan is that it be worker-centered, and that it includes the worker in all aspects and discussions.

All injured workers must be treated as whole people when planning and assigning alternate or modified work. This will ensure that relevant issues such as childcare, transportation and the worker's concerns are recognized and respected throughout the process.

Cultural and language barriers need to be removed with the use of interpreters from cultural associations.

To achieve a successful return to work strategy it is imperative that a multi-disciplinary team be established, led by the WCB case manager, which includes a Union or workers representative. Success lies with using a Workplace Disability Program.

The return to work should start on the day after the injury by beginning an investigation with measures put in place to prevent injury to others and re-injury to the worker. When it is felt that the worker is ready for either a graduated or full return to work, it must be monitored by the WCB case manager to detect unforeseen problems and issues.

There should be a formal process in place with a documented plan that identifies the type of work and those who are involved. This plan is strengthened by including the injured worker in all discussions and decisions. There must be joint responsibility between management and workers to provide successful solutions.

Functional capacity evaluations, ergonomic assessments and a job demands analysis must be done on the worker and the job and then melded together to find the best fit for injured workers and their restrictions.

In order to make the program work, a job bank of suitable positions must be created and shared with WCB, doctors and physiotherapists so that this goal can be achieved. There needs to be a job safety evaluation on every RTW alternate or modified job that is also kept in the worker's file at WCB.

Doctors must be more familiar with the actual work that the injured worker is going to be doing, whether alternate or modified. This is more important for the WCB medical advisor. Actual on site visits are the best, but may not be feasible. When this is so, videos, pictures and web site access should be created for the health care professional's use.

In Manitoba, we now have the ability to find out the qualifications, and other information, of specialists on the College of Physicians and Surgeons website. Prior to this, family doctors and patients sometimes had no information about the specialists they were seeing, beyond a name and address. This now allows for injured workers to gain a level of confidence in the person they are being referred to and helps to establish a relationship. Since most specialists are based in Winnipeg, this is doubly important for rural Manitobans who must travel to keep appointments.

WCB staff need to be actively involved in the return to work and the monitoring of any placement while a worker is still injured. Following recovery workplaces should also be monitored for re-occurring injuries due to unsafe conditions and steps taken to correct the situation.

Biggest Problem in Return to Work - *The proverbial Catch 22!*

In order for workers to qualify for workers compensation benefits they must prove they have a disability. But to return to their job they must prove they have the ability. The effort to straddle this particular fence can result in the worker being looked at with suspicion and undeserving of WCB benefits.

Should Some Employers be Excluded from RTW Obligations?

The short answer is no. In the MFL's view, all injured workers are entitled to return to work after they recover or have been retrained or rehabilitated. All employers have the obligation to participate in this.

The only circumstance that may justify a variance from this obligation is when the worker in question is a student temporarily placed in the workplace by a school or other place of learning and is not a paid member of the employer's workforce. This does not mean that the worker should be denied and other benefits.

There should not be an exclusion based on the number of full-time or regular part-time workers.

There should not be exclusions from this obligation in the Act's regulations.

Conclusion:

RTW issues are integrated and complex but not impossible to solve – however, there is no single solution that can be described as a “fix all”. There are many roles and responsibilities that overlap. But with a clear understanding of the challenges and their solutions, this can and should be a seamless process. Our experiences thus far have found inconsistencies in success that need to be addressed as the provisions of the Act come into force.

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