

Council of Construction Associations

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WorkSafeBC Announces Work Plan for Policy Reviews

WorkSafe has issued a Work Plan for policy review for the years 2009-2011. These policies ultimately affect costs.

I have excerpted below the issues that will be of interest – and will have a potential financial impact on Construction Industry.

I will be monitoring the review and the discussion papers closely and will make recommendations to you regarding an appropriate response.

Please contact me if you have any questions.

Policy and Research Division 2009 – 2011 Policy Priorities Compensation and Occupational Disease Policy Workplan

1. Claims Management Solutions (“CMS”) Project – 2008/2009

The CMS project is designed to refocus core claims-related business to increase the efficiency of adjudication, improve delivery of claims services, and enhance systems and financial control. The aim of CMS is to facilitate improved timeliness of claims-handling and payments, and earlier identification of workers requiring return-to-work assistance.

It is anticipated that policy issues will be identified during the development of the CMS project which will require policy guidance and policy development in order to ensure the effective implementation of the project.

2. Medical Assistance, Re-write of Chapter 10 of the *RS&CM* – 2008/2009

This project involves a review of the 87 policies contained in Chapter 10. The re-write of the Chapter 10 policies consists of putting the policies into the new format and addressing various issues that have been raised, such as:

- . Other Health Care Providers – re-writing policy to reflect changes to health care services provided to workers, such as physiotherapy, acupuncture and massage therapy.
- . The Prescription of Narcotics and Other Drugs of Addiction – review of the current policy to ensure that it reflects the latest medical and scientific information.
- . Respite Care – guidance on the provision of respite care is required.
- . Review of discretionary allowances and benefits provided to injured workers, such as:
 - (i) those provided to seriously injured workers;
 - (ii) those regarding travel expenses and subsistence, related to workers' receipt of health care; and
 - (iii) those related to childcare and homemaker services.

Considerable work has been undertaken on this project and it is anticipated that draft proposed policies will be released for stakeholder consultation in the summer of 2009.

3. Variable Shift Workers – Policy Item #65.01 of the *RS&CM* – 2008/2009

Consultation on this issue occurred during the summer of 2008. Based on stakeholder feedback, further work is being undertaken and a revised discussion paper with draft policy will be released for consultation in the fourth quarter of 2008.

4. Reopenings Over Three Years – Policy Item #70.20 of the *RS&CM* – 2008/2009

Section 32(1) of the *Workers Compensation Act* (“*Act*”) provides that, where there is a recurrence of a temporary disability after a lapse of three years following the occurrence of the injury, WorkSafeBC may calculate the compensation as if the recurrence was the happening of the injury.

This project involves a review of policy item #70.20 to ensure it is consistent with the wording of section 32(1) of the *Act* along with a review of the appropriate date to use to determine the application of the policy. Work has begun on this project and it is scheduled to be referred to the Board of Directors for approval to consult in 2009.

5. Enhancement/Devaluation – 2008/2009

This policy project will involve a review of policy items #39.12 and #39.13 of the *RS&CM* to determine whether policy amendments are advisable to ensure consistency of application. In particular, consideration will be given to clarifying the approaches/methods to calculate devaluation and enhancement.

6. Aggravation of a Disease – Policy Item #26.55 of the *RS&CM* – 2008/2009

Policy item #26.55 provides guidance with respect to compensability for a disability resulting from an aggravation of a pre-existing disease by a work activity.

7. Notification of Decisions – 2008/2009

Policy item #99.20 of the *RS&CM* sets out when WorkSafeBC is required to provide written notification of a decision. Written notification is currently provided where a decision is adverse to the worker or an employer has protested a decision to allow a claim. Where a claim is allowed and there is no protest from the employer, the policy provides that no written decision is required.

At issue is whether a decision has to be documented and/or communicated to the affected parties in some form before it can be considered to have been “made” for the purposes of the reconsideration and appeal provisions of the *Act*. A secondary issue is the distinction between the

terms “reject” and “disallow”, which has created some confusion among officers and has led to incorrect coding of claims.

Consultation on this issue occurred during the summer of 2008. Based on stakeholder feedback, further work is being undertaken.

8. Chronic Pain – Policy Items #22.35 and #39.02 of the RS&CM – 2009

The policies with respect to chronic pain have been in effect since January 1, 2003. A review of these policies is proposed in order to evaluate their effectiveness and to improve consistency in the adjudication and management of chronic pain.

9. Compensation for Lung Cancer in Asbestos Exposed Workers – 2009

Schedule B item #4(a) provides a presumption of work causation in favour of a worker who has developed a primary site lung cancer which is associated with either asbestosis or bilateral diffuse pleural thickening, or fibrosis measuring a specified size.

At issue is whether these descriptions are current and supportable based on the most current medical science. Another issue is whether WorkSafeBC should consider the recognition of primary site lung cancers in workers who have had significant exposures to asbestos in British Columbia, but who do not display radiographic evidence of benign asbestos-related pleural or lung disease. This second issue has arisen out of recent studies and reports including the “Report by the Industrial Injuries Advisory Council” (United Kingdom) dated July 2005.

10. Carpal Tunnel/Cubital Tunnel Review – 2009

The Research Secretariat is funding a systematic review on the causal relationship between work-related activities and the development of upper limb nerve entrapment disorders such as carpal tunnel and/or cubital tunnel syndrome. the *RS&CM*.

11. Experience Rating Exclusions for Subsequent Non-Compensable Incidents – 2009

At issue is whether an experience rating adjustment under section 42 of the *Act* should be given to employers whose workers’ disability from a compensable injury is aggravated, or recovery is delayed, by a subsequent non-compensable incident.

12. Room & Board – Policy Item #68.22 of the RS&CM – 2009

At issue is a review of policy item #68.22 to ensure that it is consistent with section 96(5) of the *Act* which provides that the Board may not reconsider a decision or order if more than 75 days have elapsed since the decision or order was made.

This policy provides guidance on when to include the dollar value of room and board in average earnings. Situations have arisen where the provision of room and board changes during the claim and after 75 days has elapsed from the date of the original wage loss decision. This is creating adjudicative problems as workers seek a reconsideration of the original wage loss decision.

13. Tinnitus – 2009

Policy item #31.00, *Hearing Loss*, of the *RS&CM* provides that tinnitus alone is not considered a condition for which a permanent disability award can be granted. However, tinnitus in combination with a permanent degree of hearing loss may have an impact on a worker’s employability and affect the amount of the resulting award.

At issue is a review of the current medical and scientific literature related to this condition to determine whether the current policy is appropriate.

14. Permanent Disability Evaluation Schedule (“PDES”) – 2009/2010

At issue is the ongoing review of the percentages listed on the PDES to ensure that the PDES remains current with emerging medical and scientific knowledge.

15. Average Earnings Chapter 9 of RS&CM

- . Review of policy item #65.02, *Workers with Two Jobs*, to determine if clarification is required with respect to calculation of wage rates for persons with two jobs. In addition, a review of policy item #35.22, *Calculation of Earnings for Workers with Two Jobs*, is required to ensure that the two policies are consistent.
- . Consideration of whether additional policy guidance is required with respect to calculation of long-term average earnings for workers with multiple employment where more than one of the average earnings exceptions appears to be applicable.

16. Skin Cancer – 2009/2010

Skin cancer is the most commonly diagnosed form of cancer. Schedule B item #4(g) provides a presumption of work causation in favour of a worker who has developed a primary site skin cancer where there is prolonged contact with coal tar products, arsenic or cutting oils or prolonged exposure to solar ultraviolet light.

At issue is whether this description is current and supportable based on the most current medical science.

17. Osteoarthritis of the First Carpo-Metacarpal Joint in Physiotherapists – Policy Item #26.02 of the RS&CM – 2009

Not relevant to Construction.

18. Suspension of Benefits – 2009/2010

Sections 57(2) and 57.1(2) of the *Act* give WorkSafeBC the authority to reduce or suspend compensation to a worker in certain situations of worker noncompliance. Current policy does not provide sufficient guidance to determine whether the resumption of full benefits (after a suspension is lifted) includes retroactive entitlement to the benefits that were reduced or suspended.

19. Tendinosis – 2009/2010

It appears that there is a growing acceptance of the condition “tendinosis” in the medical community. As a result, WorkSafeBC is receiving an increasing number of medical reports where the diagnosis is tendinosis. An ‘itis’ condition is characterized by inflammation and typically will heal within 6 weeks. However, tendinosis is considered a chronic deterioration of the tendon and does not necessarily have the same risk factors or treatment protocols as tendinitis.

At issue is whether WorkSafeBC should recognize tendinosis as an occupational disease and whether policy should be developed to provide guidance on the risk factors and treatment protocols for tendinosis.

20. Multiple Sclerosis as a Compensable Consequence – 2009/2010

Policy item #22.31, *Multiple Sclerosis*, of the *RS&CM* includes the following statements, “While the cause of multiple sclerosis is unknown, there has been much medical literature on factors which may precipitate the onset of the disease in an already predisposed person. One of these factors is traumatic injury.”

This policy project will involve a review of the current medical and scientific literature with respect to whether multiple sclerosis may be precipitated by a traumatic injury.

21. Whole Body Vibration – Policy Item #26.50 of the *RS&CM* – 2010

This project will involve a review of the scientific and medical literature on back disorders in workers exposed to whole body vibration. The results of this review will form the basis for a