

Council of Construction Associations
#138 - 5751 Cedarbridge Way, Richmond, B.C. V6X 2A8
Telephone (604) 241-7667
email: grant.e.mcmillan@gmail.com
Grant McMillan, President

COCA Update on WorkSafeBC Activities #572 December 4, 2013

WorkSafeBC Invites Comment on 2014-2016 WorkPlan

WorkSafeBC has prepared a draft 2014-2016 Compensation, Occupational Disease and Assessment Policy Priorities Workplan for stakeholder review and comment.

The draft document may be viewed online at:

http://www.worksafebc.com/regulation_and_policy/policy_consultation/assets/pdf/2014-2016Workplan.pdf

The 2014 key priorities for the Policy, Regulation and Research Division include the following:

- Policy review in the Determination of Retirement Date for Permanent Disability Awards project;
- Completion of the Re-write of Chapter 10 Policies on Health Care in the *RS&CM*;
- Workplace Status policy review;
- Permanent Disability Evaluation Schedule (“PDES”);
- Chronic Pain policy review;
- Vocational Rehabilitation Formal Training – Item CC-88.50 of the *RS&CM*;
- Overpayments – Policy Item #48.41 of the *RS&CM*; and
- Re-write of Chapter 9 Policies on Average Earnings in the *RS&CM*.

The complete list of projects on the 2014-2016 Workplan is shown below. Please send any comments or concerns that you may have to COCA by January 20, 2014.

COCA will be responding to the WorkSafeBC proposed Workplan and will circulate a Draft of the COCA response prior to sending it in to WorkSafeBC.

The following summary of the workplan is provided by WorkSafeBC:

APPENDIX A

Policy, Regulation and Research Division

2014 – 2016 Policy Priorities Compensation and Occupational Disease Policy

Workplan

1. Re-write of the Chapter 10 Policies on Health Care in the *Rehabilitation Services and Claims Manual*, Volume II ("*RS&CM*") – 2014

This project involved a review of the 87 policies contained in Chapter 10 of the *RS&CM*. The re-write of the Chapter 10 policies included putting the policies into the new *RS&CM* format and addressing various issues that have been raised.

The key objectives of this project were to: improve decision-making, ensure that health care policies reflect the latest science and latest contracts with health care providers, ensure that WorkSafeBC provides appropriate health care services to aid in recovery and return to work, and improve customer service in the delivery of health care services.

This project also includes policy on WorkSafeBC's authority to reduce or suspend compensation to a worker in certain situations of worker noncompliance. Work on this issue has been incorporated into the Chapter 10 project. The proposed changes to this policy will be included in the final presentation of the proposed Chapter 10 policy package.

External consultation was completed on February 10, 2012. Given the extent and potential costs resulting from changes to the proposed policy Item C10-84.00, *Severely Disabled Workers*, the BOD directed further research and policy development be undertaken on that section of proposed policy, prior to consideration of the package of proposed policies for approval.

The PRD will present the BOD with a discussion paper and options on the development of policy in proposed Item C10-84.00, *Severely Disabled Workers* in the first quarter of 2014.

2. Interest on Compensation – 2013/2014

At issue is a review of the circumstances in which workers are entitled to the payment of interest on compensation benefits. A discussion paper and draft policy was consulted on with external stakeholders. The PRD will present proposed policy changes to the BOD for decision in the fourth quarter of 2013.

3. Determination of Retirement Date for Permanent Disability Awards – Policy Item #41.00 of the *RS&CM* – 2014

The *Act* provides that permanent disability benefits continue until a worker reaches age 65. The *Act* also provides that where WorkSafeBC is satisfied a worker would retire after reaching age 65, permanent disability benefits are payable to the date the worker would retire, as determined by WorkSafeBC.

At issue is whether the policy should be amended to clarify the following:

- When is a worker “retired”?
- What types of evidence should be considered when determining whether a worker would have retired after age 65?
- When should the decision on a worker’s retirement date be made?

External consultation with stakeholders was completed on November 23, 2012. Stakeholder feedback focused on the need for legislative change and concerns about undertaking policy changes in advance of the provincial election.

Accordingly, the BOD chose the status quo option and agreed to leave this issue on the PRD Workplan for further consideration in the first quarter of 2014. The PRD will present the BOD with a discussion paper and options for decision in 2014.

4. Permanent Disability Evaluation Schedule (“PDES”) – 2013/2014

At issue is a comprehensive review of the PDES to ensure that it remains current and effective in practice, and to consolidate and clarify guidance on assessing permanent disability awards under the loss of function method.

This issue is complex and requires considerable research and analysis, including examination of current medical/scientific literature, and significant cross-jurisdictional analysis.

The PRD received substantial stakeholder feedback regarding the proposed revisions to the PDES. It is anticipated that stakeholder response and proposed policy changes will be referred to the BOD for decision in the first quarter of 2014.

5. Nerve Entrapments and Tendinopathies of the Arm, Neck and Shoulder Policy Items #27.32 and #27.33 of the RS&CM – 2013/2014

Activity-related soft tissue disorder (“ASTD”) claims are difficult to adjudicate. Certain ASTDs are recognized under Schedule B of the *Act*, for example shoulder or knee bursitis, while others are set out in policy, such as carpal tunnel syndrome.

At issue is a review of the ASTD policies to ensure that they are consistent with medical science and to improve consistency in decision-making.

The PRD has received a systematic review of the medical and scientific literature on this issue, as well as the peer review reports. A discussion paper and draft policy language was consulted on with external stakeholders and the PRD received substantial feedback on the proposed policy. The PRD anticipates that it will present stakeholder response and proposed policy changes to the BOD for decision in the second quarter of 2014.

6. Minor Consequential Amendments to Policy on Aggravation of a Disease and Recognition of Occupational Diseases by Order Dealing with a Specific Case – 2014

As a consequence of the re-write of the policies for *Compensation for Personal Injury* in Chapter 3 of the *RS&CM*, and the policy project involving Nerve Entrapments and Tendinopathies of the Arm, Neck and

Shoulder, two policies were identified that require minor revisions.

At issue is whether policy item #26.55, *Aggravation of a Disease*, of the *RS&CM* should be revised to clarify that it does not apply when dealing with aggravation of a pre-existing disease attributed to a personal injury. Also at issue is policy item #26.04, *Recognition by Order Dealing with a Specific Case*, of the *RS&CM*. This policy item currently contains process information which is not typically included in policy and is now outdated.

As well, other possible clarifications are currently being reviewed in order to align current policy with practice. Work on this project will continue into 2014.

7. Overpayments – Policy Item #48.41 of the *RS&CM* – 2014

Policy item #48.41, *When Does an Overpayment of Compensation Occur?* of the *RS&CM* distinguishes between recoverable overpayments and excess payments that are not recoverable. It distinguishes erroneous payments on the basis of administrative error, fraud or misrepresentation, decisions not within the statutory authority of WorkSafeBC, and decisions made as a result of decisional errors.

The PRD is conducting a review of the policy, including:

- whether the current distinctions between recoverable and non-recoverable errors are appropriate, and how to classify an error when it appears to contain elements of more than one type;
- how time limits should be applied to WorkSafeBC's policy on recovering overpayments; and
- when claim costs related to overpayments will and will not be charged to an employer for experience rating purposes.

Work on this project has commenced and will continue into 2014.

8. Chronic Pain – Policy Items #22.35 and #39.02 of the *RS&CM* – 2014

The policies with respect to chronic pain have been in effect since January 1, 2003. A review of these policies is required to address a number of issues in order to improve consistency in the adjudication and management of chronic pain. To date, the following issues have been identified for clarification:

- i. whether the current fixed 2.5% loss of function award for chronic pain is appropriate;
- ii. how compensation should be provided when chronic pain occurs at multiple sites on the body;
- iii. whether a Pain Disorder diagnosed under the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* ("DSM-IV-TR") should be adjudicated as a claim for chronic pain, or as a distinct psychological disability, using the permanent psychological disability schedule;
- iv. whether an award for chronic pain includes any restrictions in range of motion due to chronic pain; and
- v. whether the terminology used in the current policies is appropriate.

Work on this project has commenced and will continue into 2014.

9. Average Earnings, Chapter 9 of the *RS&CM* – 2014

This project is part of the overall plan to redevelop the *RS&CM*, on a chapter by chapter basis. This project will involve putting the policies into the new *RS&CM* format, conducting a review of the Chapter 9 policies on

average earnings as a whole, and addressing various issues that have been raised, such as:

- Reviewing 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.
- Considering whether additional policy guidance is required with respect to the calculation of long-term average earnings for workers in multiple employment situations where more than one of the average earnings exceptions appears to be applicable.
- Reviewing policy item #66.00, *General Rule for Determining Long-Term Average Earnings*, to review policy direction on workers covered under the *Government Employees Compensation Act* and whether a 10-week review should be carried out.

Work on this project has commenced and will continue into 2014.

10. Vocational Rehabilitation (“VR”) – Duration of Training – 2014

This policy review will proceed in two phases.

The first phase involves a general clean up of the policies in Chapter 11 to reflect the new operations model in disability awards and to help expedite approvals of VR services.

The second phase will consider the development of a policy that provides employers with an incentive to hire injured workers. It is anticipated that the first phase of the policy review will be presented to the BOD in the first quarter of 2014 for approval to release a discussion paper and draft policy for external consultation.

11. Osteoarthritis of the First Carpo-Metacarpal Joint in Physiotherapists – Policy Item #26.02 of the RS&CM – 2013/2014

Policy item #26.02 of the *RS&CM* addresses the recognition of an occupational disease under section 6(4.2) of the *Act* as a “disease that is peculiar to or characteristic of a particular process, trade or occupation”.

At issue is a review of the scientific and medical literature related to this disease is required to determine whether the heightened recognition in policy is current and supportable.

The PRD has received a systematic review of the medical and scientific literature on this issue, as well as the peer review reports. A discussion paper and draft policy language was consulted on with external stakeholders. The PRD anticipates that it will present stakeholder response and proposed policy changes to the BOD for decision in the fourth quarter of 2013.

12. Cost Relief for Compensable Consequences of Work-Related Injuries and Diseases – Chapter 17 of the RS&CM – 2014

At issue is a review of policy to determine whether cost relief should be provided to employers where a further injury, increased disablement, disease or death occurs as a consequence of an accident during treatment, surgery, a WorkSafeBC-related medical assessment, or claim-related travel, for a compensable injury or disease.

Along with determining whether cost relief should be granted, this project will also look at whether it should be applied to an employer's experience rating alone or to the employer's experience rating and its rate group.

Work on this project has commenced and the PRD anticipates that a draft discussion paper will be referred to the BOD for approval to consult in the first quarter of 2014.

13. Multiple Sclerosis as a Compensable Consequence – Section B of Policy Item C3-22.40 of the *RS&CM* – 2013

Section B of policy Item C3-22.40: 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."

At issue is whether multiple sclerosis may be caused by a traumatic injury.

The PRD has received a systematic review of the medical and scientific literature on this issue, as well as the peer review reports. Consultation was completed on the discussion paper and draft policy language on September 27, 2013. The PRD will present stakeholder response and proposed policy changes to the BOD for decision in the fourth quarter of 2013.

14. Mental Disorders and the *Government Employees Compensation Act* – 2014

The *Government Employees Compensation Act* ("*GECA*") provides direction on the provision of workers' compensation for federal government employees. Under *GECA*, compensation is paid to employees who are caused personal injury by an accident arising out of and in the course of employment or who are disabled by reason of an industrial disease due to the nature of the employment. *GECA* does not include a specific entitlement provision on mental disorders.

At issue is whether specific policy direction is required to guide the adjudication of *GECA* claims for mental disorders.

15. Psychological Disability Awards – 2014

The current table of permanent psychological disabilities has been in place in the PDES since December 31, 2001.

At issue is a review of the adjudication guidelines in the assessment of permanent psychological disabilities and the role of the Psychology Disability Awards Committee ("*PDAC*") in the decision-making process. Policy review is currently underway and will continue into 2014.

16. Skin Cancer – 2013/2014

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, cutting oils or prolonged exposure to solar ultraviolet light.

At issue is whether this description is accurate and supportable based on the most current medical and scientific literature. Another issue is whether specific types of skin cancer should be set out in Schedule B.

The PRD has received a systematic review of the medical and scientific literature on this issue, as well as the peer review reports. A discussion paper and draft policy language is currently out for consultation until January 10, 2014. The PRD anticipates that it will present stakeholder response and proposed policy changes to the BOD for decision in the first quarter of 2014.

17. Firefighters/Paramedics and Cardiovascular Disease – 2014

At issue is whether scientific evidence supports having a presumption in favour of coverage for firefighters and/or paramedics who develop cardiovascular disease. The PRD has commissioned a systematic review of the science on this issue. Subject to the results of the systematic review, policy development may be required.

18. Principals – Composition of Earnings – Policy Item #68.90 of the RS&CM – 2014

At issue is a review the composition of earnings of principals for the purpose of determining compensation. WorkSafeBC has the discretion to include dividends paid to principals in both assessable payroll and average earnings. However, the current review of the treatment of principals may result in the exclusion of shareholder dividends from the assessable payroll of principals. Therefore, a consequential review of the composition of average earnings of principals may be required to ensure consistent treatment of shareholder dividends in assessment and compensation.

APPENDIX B Policy, Regulation and Research Division 2014 – 2016 Policy Priorities Assessment Policy Workplan

1. Treatment of Principals – 2014

Current policy on the treatment of principals of limited companies lacks clarity and consistency in some instances, which can result in inequalities.

At issue is a review of policy in the *Assessment Manual* to address concerns related to: the treatment of principals of limited companies as workers; how to include shareholder dividends in assessable payroll; and how to treat active officers of societies, cooperatives, trade unions and other similar entities, for assessment purposes.

Consultation on the discussion paper and draft policy language was completed in June of 2013. The PRD will present stakeholder response and a discussion paper to the BOD for decision in the fourth quarter of 2013.

2. Workplace Status – 2014

In 2007 the BOD approved changes to the workplace status policies in the *Assessment Manual* that guide the determination of whether an individual is a worker, employer or independent operator. These policy changes were scheduled to come into effect on January 1, 2010.

Employer stakeholders continued to express significant concerns regarding the impact of the policy changes on business relationships and activities. In addition, the Assessment Department raised significant concerns regarding the challenges in implementing the policy changes.

Given these concerns, as well as concerns that assessment policy is not well positioned to address workplace health and safety issues, the BOD decided at their September 15, 2009 meeting to rescind the policy changes. The PRD was directed to undertake additional analysis on the issues and develop a discussion paper and draft policy to address the assessment issues. Specifically, challenges relating to the labour contractor policy are to be addressed as part of this project, as well as an extensive review of other jurisdictions' approaches to this issue.

The PRD anticipates that a draft discussion paper and proposed policy changes will be referred to the BOD for approval to consult in 2014.

3. *Personal Optional Protection ("POP") – Earnings Covered – Item AP1-2-3 of the Assessment Manual – 2013/2014*

At issue is a review of the POP minimum and average amounts for monthly coverage. The current POP minimum is \$1,500 which was last adjusted in 2005. The current POP average is \$2,500 and was set in 1989.

Consultation on the discussion paper and draft policy language was completed on June 28, 2013. The PRD presented the consultation results to the BOD in October of 2013. The BOD has requested that the PRD proceed with further consultation in efforts to receive additional feedback from current POP holders.

The PRD anticipates that this consultation will commence in the first quarter of 2014.

4. *Payroll – Principles for Determining – Item AP1-38-3 of the Assessment Manual – 2014*

The Assessment Department advises that the current policy does not provide sufficient guidance on the assessment of administration and management payroll, and payments made to management companies.

At issue is a review of the policy to review what is included in payroll when considering payments made to management companies or other affiliated firms. Policy clarification is also required, not only for ease of reference but to ensure the language of policy is broad enough to accommodate complex, modern corporate structures.

Policy review is underway. The PRD anticipates that a draft discussion paper and proposed policy changes will be referred to the BOD for approval to consult in 2014.

5. *Allocation of Claim Costs – 2014*

At issue is a review of policy to clarify WorkSafeBC's jurisdiction to withdraw claim costs from a firm and transfer the costs to the firm that was the employer of the injured worker, or to transfer costs between classifications on an employer's account where appropriate. The issue is of significance, as the correct allocation of claim costs affects employers' rates and experience rating calculations.

6. *Transfer of Experience Between Firms* – Item AP1-42-3 of the *Assessment Manual* – 2014

The Assessment Department has raised concerns that there is no specific policy to address the combining of experience rating for affiliated firms acting in concert in business. At issue is a review of Item AP1-42-3, *Transfer of Experience Between Firms*, to address this issue.

7. *Section 4 of the Act and the Fishing Industry Regulations* – 2013/14

Following the review of the Workplace Status policies, a review of the *Fishing Industry Regulations* may be required in order to clarify fishing industry workplace roles and responsibilities, and assessment obligations.

8. *Net Rate Transitioning for Incremental Classification Changes* – 2014

The Assessment Department has requested a review of the current net rate transitioning policy and the criteria used to determine which firms are eligible to receive net rate transitioning. The review will address whether the criteria is applicable to firms with incremental changes to their business operations where the incremental change results in a substantial rate increase.

At issue is a review of Item AP1-42-1(c), *Experience Rating* of the *Assessment Manual*, to address this issue.

9. *Minimum Annual Assessment* – 2014

It has been proposed that WorkSafeBC establish a minimum annual assessment requirement for all accounts for both employers and independent operators with POP coverage with WorkSafeBC.

At present, WorkSafeBC has no policy concerning a minimum annual assessment.