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Dear Ms. Hynes:

Thank you for the opportunity to comment on the Discussion Paper on Treatment of Principals.

I am responding on behalf of COCA, which represents 16 construction associations, with members from all parts of British Columbia, from every sector and from every size of company.

COCA requested a review of the policy on Treatment of Principals because we believe that a principal should be able to pay a dividend to himself without having to pay WSBC assessments on that dividend.

The principal would continue to pay assessments based on any wages or salaries paid to that principal.

The current WSBC policy is that dividends "may be considered as part of payroll if the dividends are paid as remuneration for activity in a company."

In addition, compensation policy provides that "where a principal's average earnings are determined for a claim, WorkSafeBC may consider dividends as earnings in cases where the amount received by the principal represents payment for the principal's labour." (Discussion Paper, page 6)

WorkSafeBC further states: "An officer, director or shareholder active in the operation of a limited company is presumed to be a principal of that company." (Discussion Paper, page 6)

With respect, we do not believe that the current policy is fair, reasonable or administratively efficient.

We believe that dividends paid to the principal for activity in the company should not be assessable.

In other words, a principal's T4 and T4A amounts would be assessed, up to the maximum wage established for that year. T5 amounts (dividends) would not be assessed.

Under this option, any compensation payment would be based on the principal's T4 and T4A amounts and would not include any dividend amounts.

This would avoid any inconsistency and the risk that WorkSafeBC may have to pay compensation in excess of assessments paid. Dividends would not be included in the calculation of average earnings.

Dividends paid to principals are significantly different from salaries and wages paid, in the following ways:

The dividend may vary significantly from year-to-year, depending on the circumstances of the company and the principal.

Dividends represent a reward to the principal for operating the business and taking risks by investing both human and financial capital.

The decision of whether or not to pay a dividend is based on a number of business and tax factors – and WorkSafeBC should not intrude into this business process.

Revenue Canada recognizes the major difference between income earned and dividends and this is reflected in its tax structures.

The option recommended in COCA's initial request for the review of this issue is the option described as Option 4: "Dividends would not be included in assessable payroll. Under this option, policy would be amended to delete the reference to dividends being included in assessable payroll." (Discussion Paper, page 13)

We support Option 4 for the following reasons:

The principal would be able to choose the appropriate salary level. The value that resides in the company could, at the principal's discretion, be paid as dividends if and when the principal decides to pay a dividend.

For the sake of clarity, the policy should state that the level of assessment paid by the principal for himself would determine the level of compensation benefits. If the principal decided to take no assessable income, then the principal would not be eligible to receive any workers' compensation benefits.

The exclusion of dividends would make it easier for WorkSafeBC to conduct audits. There would be no need for the WorkSafeBC auditor to determine the principal's activity level in a firm or the value of that labour. Such calculations are very difficult to determine and verify. The principal's level of activity may vary from time to time and the "value" of their labour may be impossible to quantify given the myriad factors that comprise the "value" of that principal for the company.

The policy proposed by COCA would have the benefit of providing greater clarity and simplicity for stakeholders and Assessment Department and Audit Section staff.

This COCA option would eliminate reviews and appeals with respect to the assessment of dividends. The WorkSafeBC auditor would no longer have to make decisions concerning this issue.

This issue has no impact whatsoever on worker benefits. Its only impact is upon the principal of a company.

We note that the WorkSafeBC Discussion Paper itself states that:

"This option would be easier for WorkSafeBC to administer and would reduce the workload of employers who would no longer be required to apportion dividends between profit and labour." (page 19)

Dividends are payments from profits that are accumulated and retained in a business over time. Payments for labour, on which the WorkSafeBC assessments should be based, are expenses to a business in a particular fiscal period. There should not be an apportionment of dividends between these two distinctly different aspects of business cycles.

This option would also reflect the approach taken in most Canadian jurisdictions.

We therefore recommend that Option 4 be chosen.

Thank you for consulting with us.

Yours truly

Grant McMillan