

July 26, 2017

Mr. Dennis Nickkel, Chairperson
Minister's Advisory Council on Workplace Safety and Health
c/o Workplace Safety and Health
200-401 York Avenue
Winnipeg MB R3C 0P8
Email submissions: [REDACTED]

Manitoba Government and General Employees' Union

Submission to

Manitoba's Five Year Review of the Workplace Safety and Health Act

Dear Chair,

The Manitoba Government and General Employees' Union (MGEU) is pleased to provide a submission to the five year review of the Workplace Safety and Health Act on behalf of MGEU's 41,000 unionized members. MGEU is Manitoba's largest public sector labour union representing 1000 different work classifications, 16 components, 241 locals and 8 Area Councils located across the province. Our membership includes 13,000 members active in the Civil Service as well as 28,000 members employed in the broader Public Sectors such as healthcare, retail, and service sectors. This diversity in membership equals the diversity of issues and concerns impacting workers in a broad range of workplaces.

We promote a culture of change: a culture in which the needs of workers are satisfied, in particular the conditions required to establish and maintain safe and healthy work. As a partner in this community, MGEU will continue to work together in messaging action toward prevention.

Michelle Gawronsky

MGEU President

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Manitoba Government and General Employees' Union

Review of the Workplace Safety and Health Act

7/25/2017

Blaine Duncan
Workplace Safety and Health Specialist
Manitoba Government and General Employees' Union

On behalf of the Manitoba Government and General Employees' Union (MGEU) and our 41,000 union members, we are pleased to provide recommendations to Manitoba's five year review of the Workplace Safety and Health Act, Workplace Safety and Health Regulations and its administration as announced by the Honourable Cliff Cullen, Minister of Growth, Enterprise and Trade on May 5, 2017.

We thank you for the opportunity to actively participate in the public consultation and review process conducted by the Ministers Advisory Council on Matters related to Workplace Safety and Health. The review of The Workplace Safety and Health Act is a key responsibility of The Advisory Council and was last undertaken in 2012. We believe that regular periodic review of the Act will continue to move the province in a positive direction, improving the safety and health of working Manitobans.

The objective of the Workplace Safety and Health Act is to prevent death, injury or illness caused by working conditions. The Act establishes a framework for preventing or minimising exposure to risk. The importance of the protections entrenched in this legislation cannot be overstated. The Workplace Safety and Health Act and its associated regulations cover approximately 90 percent of Manitoba's workforce, and over 75,000 employers, and 674,000 workers.

Proposed changes outlined in our submission resulted from Union member consultation catalogued since the last review of legislation in 2012. A number of definition, technical and editorial amendments are suggested which assist in clarifying intent and administration of the Act/Regulation. We believe continuing regular review of the Workplace Safety and Health Act, Regulations and Administration of legislation will make a positive difference to the working experiences of Manitobans into the future.

Procedural Recommendations

Prior to commenting on specific recommendations for legislative change, we wish address issues related to the current review process.

Government Priority 1 "Reducing areas of red tape". We have great concern with references by government to Bill 22 - Red Tape Reduction, commonly known as the "2 for 1 Bill", in this review process. There is no place for the term "red tape reduction" when it concerns the safety and health of workers. The limitation of new and removal of existing provisions within legislation that ensure the protection from ill health and death will result in workers being put at undue risk.

RECOMMENDATION: This government, cannot, with good social conscious, apply Bill 22 to the review and administration of the Workplace Safety and Health Act and Regulation.

Government Priority 2 "Identifying areas to improve harmonization of legislation with other jurisdictions". Our obligation to worker safety and health means adopting the best legislative principles from all jurisdictions and being a leader that others aspire to emulate.

RECOMMENDATION: Government honour its previous commitment and continue to be "Leaders in Safety" as prescribed in the SAFE WORK Manitoba 5 year plan (2013).

Government Priority 3 and 4 "Ensuring existing requirements are clear and reasonable; and ensuring adequate protection for the safety and health of workplaces". Worker safety and health must not be compromised in favour of commercial considerations and/or ease of administration.

RECOMMENDATION: Government continue to work toward the previously set goal of making Manitoba a nationally recognized safety and health leader. The overriding purpose of the Act must remain the protection of workers from occupational hazards to their safety and health, above all else.

The processes utilized to review the Workplace Safety and Health Act, Regulations and administration of legislation have not been consistent with each review since 2002. Reviews have varied from province-wide joint Employer/Labour/Technical committee hearings, to written submissions and oral presentations, to the current process being restricted to written submissions only. In addition, the timelines allowed for the process have varied widely from lengthy to the current short-term mid-summer timeline. In past processes, there have been efforts to inform Labour organizations, industry associations, retail councils, Municipal bodies, etc. Attempts to inform potential interested parties of the current review was limited to a media release.

RECOMMENDATION: The Ministers Advisory Council define and entrench within it's Terms of Reference a consistent process for the review of the Workplace Safety and Health Act, Regulations and administration of same.

Numerous issues raised during the review of the Workplace Safety and Health Act in 2012 were set aside for inclusion in a subsequent Regulatory review.

RECOMMENDATION: That the list of items considered to be Regulatory amendments as determined by Advisory Council during the 2012 Act review be addressed as a part of the current review.

Amendments to the Workplace Safety and Health Act

As per the Ministers priority, moving toward harmonization of legislation between jurisdictions the following definitions are cited in other Acts/Regulations. MGEU recommends that these additional definitions be clarified in Section 1 of the Manitoba Workplace Safety and Health Act. Jurisdictions of origin are referenced in parenthesis ().

Section 1 – Definitions

"Accident" – The Manitoba WCB Act defines an "accident" as any "(i) event arising out of, and in the course of, employment, or (ii) thing that is done and the doing of which arises out of, and in the course of, employment," which results in an injury.

NOTE: The definition of an "accident" under subsection 1(1) of the WCB Act is currently under review and it is recommended that it be amended to include any "disablement" that arises out of, and in the course of a worker's employment. (Manitoba WCB Act)

"Administrative controls" means the provision, use and scheduling of work activities and resources in the workplace, including planning, organizing, staffing and coordinating, for the purpose of controlling risk (BC)

"Danger" means any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered (Canada Labour Code)

"Engineering controls" means the physical arrangement, design or alteration of workstations, equipment, materials, production facilities or other aspects of the physical work environment, for the purpose of controlling risk (BC)

"Hazard" means a thing or condition that may expose a person to a risk of injury or occupational disease (BC)

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“Incident” includes an accident or other occurrence which resulted in or had the potential for causing an injury or occupational disease (BC)

“Interested party” means a party directly affected by an order or decision of a safety and health officer or having an interest in a particular administrative process within the Act/Regulation eg. Order, variance, appeal. Including but not limited to employer, supervisor, worker, Union or Association, etc.

“Occupational disease” means a disease or ill health arising out of and directly related to an occupation (AB)

“Occupational illness” means a condition that results from exposure in a workplace to a physical, chemical or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired thereby and includes an occupational disease for which a worker is entitled to benefits under the Workplace Safety and Insurance Act, 1997 (ON)

“Participation” means to be involved a process, whether it be through consultation or active involvement eg. Reviewing and offering opinion on a report vs. actively investigating and writing a report.

"Practicable" means that which is reasonably capable of being done (BC); means possible given current knowledge, technology and invention (ON)

"Qualified" means being knowledgeable of the work, the hazards involved and the means to control the hazards, by reason of education, training, experience or a combination thereof (BC)

“Reasonably Practicable” means practicable unless the person on whom a duty is placed can show that there is a gross disproportion between the benefit of the duty and the cost, in time, trouble and money, of the measures to secure the duty (ON)

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The concept of "Regularly employed" is referenced in multiple Sections of the Act however, in varying cases it is referred to as regularly employed, the number of workers present each working day, the number of workers present each working day averaged over a 12 month period, the number of workers present each working day averaged over a 90 day period, etc. These references should be clarified to consistently have the meaning: number of full-time and part-time workers present each working day averaged over 90 days (ON)

"Risk" means a chance of injury or occupational disease (BC)

"Supervisor" means a person who instructs, directs and controls workers in the performance of their duties (BC)

Moving toward harmonization of legislation between jurisdictions the following concepts are cited in other Acts/Regulations. MGEU recommends that these additional references be amended into the respective Sections of Manitoba Workplace Safety and Health law. Jurisdictions of origin are referenced in parenthesis ()..

The foundational principle entrenched in jurisdictional safety and health law is the Internal Responsibility System.

RECOMMENDATION: Amend Section 2 to include the following...
The foundation of this Act is the Internal Responsibility System which

- (a) is based on the principle that
 - (i) employers, contractors, constructors, employees and self-employed persons at a workplace, and
 - (ii) the owner of a workplace, a supplier of goods or provider of an occupational health or safety service to a workplace or an architect or professional engineer, all of whom can affect the health and safety of persons at the workplace, share the responsibility for the health and safety of persons at the workplace;
- (b) assumes that the primary responsibility for creating and maintaining a safe and healthy workplace should be that of each of these parties, to the extent of each party's authority and ability to do so;
- (c) includes a framework for participation, transfer of information and refusal of unsafe work, all of which are necessary for the parties to carry out their responsibilities pursuant to this Act and the regulations; and
- (d) is supplemented by the role of the Workplace Safety and Health Branch of the Department of Growth, Enterprise and Trade, which is not to assume responsibility for creating and maintaining safe and healthy workplaces, but to establish and clarify the responsibilities of the parties under the law, to support them in carrying out their responsibilities and to intervene appropriately when those responsibilities are not carried out. (NS)

RECOMMENDATION: Amend Section 7.4(1) A written workplace safety and health program must be established and maintained for each workplace that has

- (i) a workforce of 20 or more workers regularly employed, or
- (ii) determined, by risk assessment, to create a moderate or high risk of injury.

In any small operation where the workforce is less than that referred to in section 7.4(1) the employer must

- (a) initiate and maintain a less formal program based on the development of safe work procedures,
- (b) regular monthly meetings with workers for discussion of safety and health matters,
- (c) ensure that meetings are directed to matters concerning the correction of unsafe conditions and practices and the maintenance of cooperative interest in the safety and health of the workforce, and
- (d) maintain a record of the meetings and the matters discussed.(BC)

RECOMMENDATION: Amend Section 7.4(2) reference to averaging over the previous 12 months... insert "regularly employed" (having meaning as the number of full-time and part-time workers present each working day averaged over 90 days) (ON)

RECOMMENDATION: Amend Section 15 to expand the duties of the Advisory Council to hear appeals and variances in accordance with the Act and the regulations to ensure the integrity of the system is supported by the independent, tripartite appeal body. (AB)

ISSUE: Employers may receive WSH Branch communication serviced by personal services, recorded mail or an electronic method. WSH Branch communications to the employer are not always being shared with the Worker Co-chair or Worker Representative.

RECOMMENDATION: Amend Section 36

(1) WSH Branch communication must be posted by the employer and remain posted for at least 7 days, or until compliance with an Order has been achieved, whichever is the longer period.

(2) When a joint committee or a worker health and safety representative is required at a workplace, the employer must produce for the committee or representative a copy of the WSH Branch communication at or before the next meeting of the committee or with the representative.

If a WSH Branch communication contains orders related to joint committees or worker health and safety representatives as covered by the Act, then the orders must remain posted for 12 months.

When an employer is required to provide notification of compliance in response to an Order the employer must ensure that a copy of the notification is posted next to the originating Order until compliance has been achieved.

RECOMMENDATION: Amend Section 36, 37 and other applicable Sections to recognize Unions as "Interested Parties" - defined as a "party directly affected by an order or decision of a safety and health officer" and as an "interested party" including but not limited to an appeal or variance process, providing for a Unions ability to access information and participate in process to adequately represent the interest of its members.

RECOMMENDATION: Amend Section 40(4) – remove reference to averaging over the previous 12 months... Insert "regularly employed" (having meaning as the number of full-time and part-time workers present each working day averaged over 90 days) (ON)

RECOMMENDATION: Amend Section 41(1) – clarify "regularly employed"... Insert "regularly employed" (having meaning as the number of full-time and part-time workers present each working day averaged over 90 days) (ON)

RECOMMENDATION: Amend Section 1 of the WSH Act to include a definition of "danger" to assist in clarifying the type of risk associated with Section 43: the RIGHT TO REFUSE process.

RECOMMENDATION: Amend Section 44(1) "receive as soon as practicable but no more than 6 months after becoming a workplace safety and health committee member or representative, a total of at least 2 normal working days of instruction and training." This would support Section 40(11) with respect to the employer ensuring committee members / reps are properly trained. (BC)

Additionally, the employer must provide the educational leave under this section without loss of pay or other benefits and must pay for, or reimburse the worker for, the costs of the training course and the reasonable costs of attending the course. (BC)

RECOMMENDATION: Repeal Section 44(1.1) which limits the amount of time that a committee member / representative may access for educational leave. This section is not consistent with Section 40(13) and 41(8) which requires that employers ensure committee members and representatives receive adequate training to ensure they can competently fulfill their duties.

RECOMMENDATION: Consider an amendment of Section 53 to increase the maximum amount of an Administrative Penalty for a contravention; and if the contravention continues for more than one day, an additional increased maximum for each day. (AB)

An additional concept to consider is to calculate the basic amount of an Administrative Penalty by multiplying the penalty payroll by 0.5%, with a minimum of \$1,250 and a maximum of half of the statutory maximum. A multiplier(x2) is then applied to the basic amount for each category that applies (high risk, intentional, obstructive, breach) and the results are added together. (BC)

RECOMMENDATION: Amend Section 55 Offences and Penalties to increase the maximum to be harmonious with other provincial jurisdictions (Alberta / Ontario \$500,000.00)

Additional Act and Regulation Amendments

EVALUATION OF JOINT COMMITTEES (BC)

An employer must ensure that, with respect to each of the employer's joint committees, a written evaluation is conducted annually by

- (a) the co-chairs of the joint committee or, with respect to each co-chair, the member or members of the joint committee designated by the co-chair, or
- (b) the employer or a person retained by the employer.

(3) The evaluation must contain, but is not limited to, the following information:

- (a) whether or not, throughout the period of time that is the subject of the evaluation,
 - (i) the joint committee met the membership requirements,
 - (ii) worker representatives on the joint committee were selected without undue influence of the employer and in a manner consistent with the constitution of the Union if one exists as per Section 40(8),
 - (iv) the joint committee fulfilled each of its duties and functions under Section 40(10),
 - (v) the joint committee met regularly as required each calendar quarter,
 - (vi) the employer met the requirements in respect of the written recommendations sent to the employer by the joint committee with a written request for a response from the employer, if any,
 - (vii) each member of the joint committee received the time off from work, pay and benefits the member was entitled to receive,
 - (viii) each member of the joint committee attended the safety and health training courses the member was entitled to attend,
 - (ix) the employer provided to the joint committee the equipment, premises, resources and information the employer was required to provide,
 - (x) the joint committee prepared reports of its meetings and provided copies to the its members, employer, and Workplace Safety and Health Branch,

- (xi) the employer met the requirements of posting and keeping posted committee information, and
- (xii) each member of the joint committee received the instruction and training the employer was required to ensure was provided to the member;
- (b) an assessment of the effectiveness of the joint committee's rules of procedures as established;
- (c) an assessment of the overall effectiveness of the joint committee.

(4) If the employer or a person retained by the employer conducts the evaluation, the employer or person retained by the employer, as the case may be, must, as part of the evaluation, obtain and consider the input of the co-chairs of the joint committee or, with respect to each co-chair, the member or members of the joint committee designated by the co-chair.

(5) The employer and the joint committee must each provide to the other a copy of the evaluation if the other does not have a copy.

- (6) The joint committee must
- (a) discuss the evaluation at the joint committee meeting immediately following
 - (i) receipt of the evaluation, if the employer or a person retained by the employer conducted the evaluation, or
 - (ii) the completion of the evaluation, if members of the joint committee conducted the evaluation, and
 - (b) ensure that the evaluation and a summary of the discussion referred to in paragraph (a) are included in the report of that meeting.

ENGINEERED LABOUR STANDARDS / TIME STANDARDS

Prior to the implementation of an Engineered Labour Standard (warehouse picking / health care task time-lines / line speed in processing plants, etc...) in a workplace/process, there must be an assessment for risk. The time allotted to perform a task must be the minimum to allow the task to be performed safely. Where there is a difference of opinion, the employer must consult the workplace

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safety and health committee / representative and ensure that the circumstance is assessed and an appropriate safe work procedure, including appropriate time allocated to complete a task, is defined.

REPORTING DANGERS and REMEDY WITHOUT DELAY

Whenever a person observes what appears to be a hazard or an act that constitutes a danger the person must report it as soon as possible to a supervisor or to the employer, and the person receiving the report must investigate the reported condition or act and must ensure that any necessary corrective action is taken without delay.
(BC)

NON-SMOKERS HEALTH PROTECTION ACT

Respecting the prohibition of smoking at workplaces, including deeming a contravention of The Non-Smokers Health Protection Act relating to workplaces to be a contravention of this Act for the purpose of issuing an improvement order under section 26. Section 18 of the Workplace Safety and Health Act has provisions for controlling exposure to environmental tobacco smoke, but do not address exposure to emissions from the use of electronic cigarettes ("e-cigarettes").

An e-cigarette is defined as a device containing an electronic or battery-powered heating element which can vapourize an e-substance. An e-substance is a solid, liquid or gas which when heated by the element in an e-cigarette, produces a vapour for use in an e-cigarette.

The BC Ministry of Health recently amended the Tobacco Control Act and the Tobacco Control Regulation to address the use of e-cigarettes, for example, prohibiting the use of e-cigarettes in workplaces. There were also changes to tobacco use laws which includes a non-smoking buffer zone increase from three to six metres. These new laws for use of tobacco and e-cigarettes have been effective since September 1, 2016.

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Definitions – amend to ensure clarity and consistent application of the terms “activated e-cigarette”, “e-cigarette”, and “tobacco”.

Controlling exposure - amend to expand its scope of application to require an employer to control worker exposure to tobacco smoke and e-cigarette vapour. Aside from these exceptions to control worker exposure to tobacco smoke and e-cigarette vapour, the employer must be required to prohibit the activities of smoking tobacco, holding lighted tobacco, using an e-cigarette, and holding an activated e-cigarette in a workplace. Additionally, the minimum distance where smoking is permitted from a doorway, window, or air intake of an indoor workplace must be adequate to ensure that environmental tobacco smoke or vapour is not entrained in the indoor space.

Amended to expand its scope of application to the activities of smoking tobacco, holding lighted tobacco, using an e-cigarette, and holding an activated e-cigarette in a workplace.

PSYCHOLOGICAL WELLBEING

Workplace psychological hazards cause significant physical and psychological harm to workers. Manitoba’s current laws on workplace safety and health may provide for the physical needs of workers, however, there is no explicit language that acknowledges the broad range of detrimental psychological hazards that exist in workplace. Development of a new Regulation should be led by the Minister’s Advisory Council, with additional input from mental health experts to include a regulatory framework, such as the CSA National Standard on Psychological Health and Safety in the Workplace, which will assist in identifying workplace psychological hazards and implementing evidence-based approaches to prevent work-related illness and injury.

DOMESTIC VIOLENCE

Although often overlooked as a workplace issue and relegated to the realm of personal issues, domestic violence pervades an individual’s

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life, inevitably following them to their workplace. It is impossible to completely separate home life from work life. The effects of domestic violence in the workplace include everything from tardiness, absenteeism, and decreased productivity to serious injury or even death. When domestic violence impacts the workplace it becomes workplace violence putting victims and their coworkers at risk.

Ontario has included domestic violence in their Workplace Health and Safety Regulations, requiring employers to take precautions to protect workers if they are aware of domestic violence . Manitoba should follow the example of Ontario and specifically address domestic violence in their Workplace Health and Safety regulations. Current violence prevention regulations in Section 11 of Manitoba Workplace Health and Safety Recommendations do not specify domestic violence. Workplace assessments, therefore, are inclined to assess the risk of violence to employees, from clients and coworkers, overlooking the risks posed by domestic violence.

In 2016, Manitoba Employment Standards were amended to allow victims of domestic violence up to 10 days of paid leave and up to 17 weeks of job protection in every 52 week period, to seek services (medical, psychological, counselling, victim services, or legal), to relocate, or for other prescribed purposes. Specifically addressing domestic violence in the Workplace Health and Safety Act would complement this progressive legislation and better ensure safety from all types of violence at work, by drawing attention to this specific, often overlooked, violence risk.

IMPAIRMENT RISK

Establish a collaborative task force to study workplace safety and health issues associated with the use of marijuana and other pharmaceutical products. Medicinal and non-medicinal usage can impair mental and physical abilities and affect worker safety. The task force can work towards identifying key steps to reducing the impact of impairment on the workplace through appropriate mechanisms in place, to provide clear guidance to all workplace

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parties, and to apply workplace policies and programs using a fair and consistent approach.