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Via Email [REDACTED]

July 31, 2017

The Workplace Safety and Health Advisory Council  
200-401 York Avenue  
Winnipeg, MB R3C 0P8

**Attention: Dennis Nikkel, Chair**

Dear Mr. Nikkel:

**Re: 2017 Review of *The Workplace Safety and Health Act* Submission to the  
Advisor Council on Workplace Safety and Health (Council)**

The Manitoba Employers Council (MEC), established in 1980, is the largest collective of individual employers and employer associations in Manitoba, and represents more than 24,000 individual employers and employer associations. We appreciate the opportunity to provide a submission to the Advisory Council on Workplace Safety and Health regarding the 2017 review of *The Workplace Safety and Health Act*.

Manitoba employers have always placed a high importance on workplace health and safety. An unsafe work environment is a competitive disadvantage, first and foremost in terms of the human costs of injuries, and in terms of decreased productivity. It is for this reason that the Manitoba Employers Council (MEC) has taken, and continues to take, an active role in advocating policies and initiatives that encourage and enhance workplace safety. Improving safety in the Province is the responsibility of employers and workers, not government.

**MEC RECOMMENDATIONS:**

**Education:**

- A greater focus should be placed on educating employers and employees on how to make safer work places, instead of a focusing on enforcement.
  - Programming should be considered for new employees so that they are knowledgeable on how to ensure a safe workplace, and what their requirements and roles/responsibilities are. Programming should be aimed at smaller employers.
  - Another potential option is to explore the potential of having an employer advocate office, similar to the one proposed for WCB. This office could potentially help employers in dealing with WCB and WSH issues, as the two are closely connected. The role of the office would be to educate employers and answer questions they have regarding WSH.

- WSH Safety and Health Officers should work proactively with employers on assisting them in meeting compliance requirements of improvement orders issued to them. The Department of Workplace Safety and Health (the "Department") and its officers need to play a role and should have responsibilities to assist employers in becoming compliant with improvement orders. Safety and Health Officers should act at all times in a professional manner and should demand the same from the employer representatives with whom they interact.
  - Employers should be provided an opportunity to address the issue identified in an improvement order throughout the workplace first, without the need to issue multiple improvement orders.
- The Department should work to improve sharing and coordination of information and best practices with other Canadian jurisdictions. There should be increased focus on improving access to employee assistance programs as a better approach to dealing with workplace violence.

#### **Enforcement:**

- The Department should focus on more efficient enforcement of existing safety regulations as opposed to higher fines, which are an ineffective way of improving safety.
  - Revenues from fines from a violation should be used to implement remedial measures within that workplace to improve employee safety and health.
- Improvement orders written should be based on the hazards that exist and their associated risks, not minor matters. To reduce arbitrariness and the frequency of frivolous improvement orders issued by WSH officers, there needs to be clearer enforcement guidelines for officers to follow.

#### **Innovation:**

- The Department should consider innovative ways of using technology and data tracking to help reduce injuries and incidences of workplace injuries. Data tracked should be publicly available and measured to see if workplaces are becoming safer.
- The Department should ensure that safety associations and their associated programming is developed in the most efficient way possible, and does not unnecessarily duplicate existing offerings or resources that the private sector may already offer.

#### **Reporting:**

- The Department should issue an annual report measuring the effectiveness of compliance strategies including effectiveness in contributing to injury reduction. The report should include feedback from employers on the impact of the strategy.
  - The Department should then communicate more proactively its compliance strategy to employers and industry, as well as employees.

#### **Responsibilities:**

- The Department should hold employees responsible in situations where employers have exercised due diligence and the employees have failed to meet their responsibilities under the act. In some Canadian jurisdictions, employees can be ticketed right on the job site for not wearing a hard hat as an example. That is an option the Manitoba government should explore.
  - In addition, and for the same reason, the Department should hold sub-contractors responsible when the safety issue was caused by them, instead of going after the prime contractor.

#### **Staff:**

- It is important to ensure that there is continuity of officers who deal with employers. Employers benefit from having a consistent Safety and Health Officer so they can build stronger relationships which in turn will enhance safety.

- Safety and Health Officers assigned to industries such as construction and manufacturing for example should have experience in those industries. When recruiting Safety and Health Officers, a requirement should be there for experience in priority industries such as construction, manufacturing, trucking, health care etc.
- Improve training of Safety and Health Officers to reflect the above.
- As well it is imperative that safety and health officers focus on the primary or high-risk health and safety dangers of job sites, instead of more minor non-life-threatening matters such as the amount of hand sanitizer.

#### **Standards:**

- Key stakeholders should be involved in the consultation process on any proposed changes being considered to safety and health regulations. These stakeholders should include industry employers who work in the area and are directly affected by regulation changes. These consultations should take place before regulations are implemented, and continue after implementation to ensure that no unintended consequences occur.
- When using third party standards, (such as those developed by CSAM and ANSI) it is imperative that a review be done in partnership employers before implementation, to ensure that those standards are still relevant. As well it is important to look at what other Canadian jurisdictions do before implementing third party standards.
- Clear definitions of regulations and guidelines are required. An example would be the definitions of what constitutes a confined space. Ontario has documents for employers that clarify the interpretation of regulations.
  - Improve the clarity around guidelines and their enforceability. Currently guidelines are published, but those guidelines are not enforceable regulations, which creates uncertainty within the employer community about their requirements and duties. Could look at integrating guidelines into the regulations. Doing so would make it easier to change guidelines to adjust to changing circumstances. As well it would provide more clarity for employers, as guidelines would officially be part of the safety regulations then. Before and after guidelines are implemented though, consultations need to happen with affected employers.
- Ensure that there is a timely appeals process in place for both employers and employees to access. In addition there needs to be a more open, transparent and simplified process for disputing improvement orders. This would prevent more improvement orders from going before the Manitoba Labour Board, which is a much more complex, lengthy and costly process for those involved.

#### **Proceedings Involving Alleged Discriminatory Treatment**

- Provisions regarding the ability of Safety and Health Officers to order the reinstatement of workers who allege discriminatory treatment should be revisited. While well-intentioned, these provisions are cumbersome and expensive. Employees who present with performance or discipline problems use the legislation as a shield. Duplication of proceedings, particularly parallel complaints to Workers Compensation and/or the Human Rights Commission can arise on the same set of facts. Representatives of Workplace Safety and Health, particularly Safety and Health Officers, lack the training and expertise to make decisions regarding the validity of employer decisions which affect the employment status of a worker who alleges discriminatory treatment. In one infamous case, *Pagnotta Industries*, a Safety and Health Officer actually created a hazard at the workplace by ordering the reinstatement of a dismissed employee who had been guilty of initiating workplace violence. Accordingly, a streamlined process should be developed whereby complaints regarding failure to reinstate or alleged discriminatory action arising from *The Workplace Safety and Health Act*, should be referred directly to the Manitoba Labour Board for decision, after a vetting process to screen out non-meritorious complaints.

All of which is respectfully submitted.

Yours very truly,

**Manitoba Employers Council**

Per:



**William S. Gardner**  
**Chairperson**

cc. MEC Members