

THE WORKPLACE SAFETY & HEALTH ACT

MFL SUBMISSION // JULY 2017

The Manitoba Federation of Labour (MFL) represents more than 100,000 unionized workers from the public and private sectors and the building trades, and we welcome this opportunity to provide input into Manitoba's five year review of The Workplace Safety and Health Act (the WSHA).

Every worker has the right to a safe and healthy workplace, and every family has the right to expect that their loved ones will return home safely at the end of each shift.

Workplace tragedies don't have to happen. With the right laws, policies and investments, we can ensure that all workers stay safe on the jobs.

The approach taken by our provincial government to workplace health and safety – including focus on injury prevention, the strength of laws and regulations to protect workers, and commitment to enforcement activities – has a big impact on whether or not working families can count on their loved ones to be safe at work.

For decades, the MFL has been the leading voice for Manitoba workers in promoting safe and healthy workplaces. Occupational health and safety is a major concern and focus for MFL affiliates and activists. To support the importance of workplace health and safety, the MFL:

- Holds an annual Health and Safety Conference to train and upgrade workers in important health and safety topics, from a worker's perspective;
- Nominates labour representatives for the Minister's Advisory Council on Workplace Safety and Health, the Workers Compensation Board, and the WCB Appeals Commission and prevention committee;
- Works closely with the MFL Occupational Health Centre and SAFE Workers of Tomorrow to promote awareness of workers' health and safety rights;
- Has active committees of health and safety activists working together to promote safe and healthy workplaces and a fair WCB system; and
- Lobbies the provincial government and the WCB for stronger workplace safety and health rules and practices.

There have been significant advances made both on the prevention side and the legislative/regulatory side of occupational health and safety over the last number of decades, including:

- A bold new Five-year Plan for Workplace Injury and Illness Prevention;
- Creation of a Chief Prevention Officer position and SAFE Work Manitoba;
- Enshrinement in law of the four, essential workplace safety and health rights: the right to know, the right to participate, the right to refuse unsafe work, and the right to work without being subject to discrimination;
- Stricter fines for employers who refuse to comply with health and safety rules;

- Expanded requirements for health and safety programs and representatives in more workplaces;
- Paid educational leave for joint health & safety committee members, and clearer requirements for employers to respond to committee recommendations;
- Amendments to the Highway Traffic Act to better protect road workers on construction sites;
- New rules for tackling violence, harassment and bullying in the workplace;
- Stronger rules around the right to refuse unsafe work, increased penalties for employers that discourage injured workers from filing WCB claims, and stiffer rules around employers who take discriminatory action against workers (e.g. reverse onus);
- Expansion of the ground-breaking Safe Workers of Tomorrow program; and
- Presumptive WCB coverage for all workers for post-traumatic stress disorder (PTSD).

Despite these improvements, there are still far too many cases of worker illness, injury and death on the job. In 2016, for instance, almost 29,000 Manitobans were injured at work, and 24 workers died from occupational injuries or illnesses. These are sobering statistics, which compel us to redouble our efforts.

The MFL offers the following recommendations to strengthen and improve the WSHA:

1. BETTER TRAINING FOR JOINT HEALTH AND SAFETY COMMITTEE MEMBERS, AND WORKER REPRESENTATIVES

When the WSHA was amended to provide health and safety committee members and representatives with the right to two days of paid educational leave annually [Section 44(1)], the intent was for this training to be taken by all committee members (including worker and employer members) and representatives annually.

However, the language in the current provision is not strong enough and many health and safety committee members and representatives are not receiving the training contemplated when this provision was added. This applies not only to worker members and representatives, but also to employer members, whose lack of training can be a serious impediment. All members need to be trained properly to ensure a properly functioning committee.

Section 44(1) also needs to be merged or better aligned with Section 40(13) of the WSHA, which states that: “The employer or prime contractor must ensure that committee members are trained to competently fulfill their duties as committee members.”

It’s important to note that the WSHA clearly recognizes the need for training to support competent fulfillment of duties. And it should be recognized that proper training may vary due to a variety of factors in today’s workplaces:

- The drive to efficiency and productivity means work processes are changing very rapidly, often without regard to the impact on workers’ health and safety;

- The continual introduction to the workplace of a dizzying array of new chemical and biological agents, as well as nanotechnologies, are placing growing and complex demands on joint committees;
- Committee members and representatives change over time and have different levels of health and safety training and experience coming in; and
- Workplace safety and health is a large and growing field of research, generating large amounts of potentially useful information for joint committees.

Section 40(13) and Section 44(1) need to be read together. Paid educational leave should not be read as being capped at two days; it should be read a minimum requirement of two days, and if more training is required to ensure competent fulfillment of duties, then employers should be required to provide it, as per Section 40(13).

The MFL recommends:

- That Sections 40(13) and 44(1) be merged and/or more clearly aligned;
- That Section 40 (13) be strengthened to acknowledge that training requirements for competent fulfillment of duties by committee members and representatives may vary by workplace and by committee member; and
- That Section 44(1.1) be clarified to describe the current two days of paid educational leave as being a minimum requirement for each committee member (worker and employer), which may need to be supplemented as per Section 40(13) to ensure competent fulfillment of committee member duties.

2. FULL ACCESS TO INFORMATION FOR HEALTH AND SAFETY COMMITTEE MEMBERS, AND MORE INCLUSIVE INVOLVEMENT OF UNIONS TO SUPPORT WORKER PRIORITIES

All too often, employers fail to share important information with health and safety committee members, which is required under the WSHA, such as meeting minutes, log books, assessments, inspection reports and investigations. Similarly, committee members are supposed to be provided with copies of health and safety orders, such as improvement orders and stop work orders, but this often does not occur. Withholding such information undermines and compromises the ability of committees to perform their vital health and safety functions and should not be allowed under any circumstances. Much stricter enforcement is required to ensure that committees are able to function properly and unimpeded by employers withholding important and relevant information.

Unions should also be provided with committee materials. Unions are often formed due to the need for protection of workers' basic workplace rights, such as health and safety. Unions representing workers are often included in many health and safety related concerns and grievances, however, they do not have access to committee information. Unions are also included in virtually every aspect of the workplaces they represent so there is no reason why the WSHA should not include unions as "interested parties", thereby granting them access to information. This is especially important when it is the union that registers a concern or complaint on behalf of workers. Ensuring that unions are

provided with all committee materials will also help unions better support worker committee members, especially when there is turnover in membership.

Another example of where unions should be recognized as “interested parties” relates to the complicated process of appeals. When a worker from a unionized workplace appeals a decision under Section 37 of the WSHA, unions often support the appeal and make representation on their own behalf, but lack of formal recognition under the WSHA can make effective representation more challenging.

Unions should also be included in the list of “interested parties” that must be provided with copies of stop work and improvement orders. Given that unions play a central role in advocating for health and safety in the workplace, this omission should be corrected and unions should receive copies of all health and safety orders.

Navigating the WSHA and Regulations can be complex and challenging – it’s only fair that unions be empowered to properly support workers in the workplace.

The MFL recommends:

- That unions and associations be considered interested parties under section 36.1 (communication of orders), 36.3(1) (communication to workplace committees) and 37(2) (appeals);
- That policy be changed to be stricter with administrative penalties for employers failing to provide required information under The WSHA and Regulations; and
- That the department administer a zero-tolerance policy for employers withholding information from health and safety committees and interested parties.

3. PSYCHOLOGICAL HAZARD IDENTIFICATION

As per Section 2(2) e of the WSHA, every worker in Manitoba has the right “to know about the safety and health hazards in their workplaces”. Current research clearly demonstrates that workplace psychological hazards can be identified and that they cause significant physical and psychological harm to workers. Across Canada, thirteen psychosocial factors are well-known to promote or inhibit these hazards and it takes a concerted effort to properly assess them in the workplace.

The WSHA currently recognizes the importance of preventing workplace harassment and violence through Regulation [see Sections 18(1) aa and 18(1) bb]. It also stipulates in Section 18(1) d that regulations must “prescribe minimum standards of welfare facilities at workplaces”. Such standards may meet the physical needs of workers, however, there is no explicit language in the WSHA that acknowledges the broad range of detrimental psychological hazards that can exist in workplaces and must be controlled for.

The MFL recommends:

- That a new section be added to the WSHA respecting the establishment of a standardized 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. Development of this new Regulation should be led by the Minister's Advisory Council on Workplace Safety and Health, with additional input from mental health experts.

4. ESTABLISHMENT OF A PROVINCIAL ASBESTOS REGISTRY

Last year, the Canadian labour movement celebrated the federal government's announcement banning asbestos, and establishing a registry of federal-owned buildings containing asbestos. This positive federal action followed on the heels of Saskatchewan's early leadership, having been the first province to establish an asbestos buildings registry.

It is estimated that 2,000 people die every year in Canada from diseases caused by exposure to asbestos, like mesothelioma, lung cancer and asbestosis. It is the number one cause of occupational death, accounting for approximately one third of workplace deaths recognized by workers compensation boards across the country. In Manitoba, a majority of occupational disease deaths recognized by the WCB are related to asbestos.

The MFL recommends:

- That the Province establish a registry of all provincially-owned buildings containing asbestos, including schools, health facilities and buildings owned by Crown corporations, as a critical step in compliance with safety and health legislation and proper remediation. It is our hope that municipalities can also be engaged to allow for inclusion of municipal properties;
- Create a registry of people afflicted with asbestos-related diseases, to allow for more accurate tracking and to inform a more comprehensive health response; and
- Work cooperatively with other provinces and territories to strengthen and harmonize regulatory standards for asbestos remediation and disposal.

5. MANDATORY, TIMELY AND PREVENTION-ORIENTED INVESTIGATIVE PROCESSES FOR FATALITIES AND CRITICAL INCIDENTS

Last year, 12 Manitoba workers were killed by acute hazards in the workplace, and another 12 died from accepted occupational diseases. These were preventable tragedies, and our thoughts go out to the families, friends and co-workers of these victims. All workers have the right to come home safe and healthy at the end of each shift – no one should have to worry whether their wife or husband, son or daughter, mother or father will make it home from work in one piece.

The MFL recommends:

- That when a workplace fatality or serious injury occurs, the WSHA should require a mandatory investigation to determine what happened, to identify how it could have been prevented, and to make recommendations to prevent similar fatalities/injuries in future.

This investigative process should be timely – timely in the sense of taking place as quickly as possible after the incident, and timely in the sense that it should aim to produce recommendations that could prevent future fatalities/injuries as soon as practicably possible.

This investigative process should be prevention-oriented in that its focus should be on understanding what happened and identifying ways to prevent similar incidents. To borrow a slogan used in the movement to reduce medical error in health care, this process should be about “learning, not blaming.” To be sure, the enforcement arm of the WSH Division and police should be enforcing penalties, fines and criminal sanctions that may be warranted, but this prevention-oriented investigative process should be separate and complementary, focusing in on what can be learned to prevent repeat tragedies.

This investigative process should also be structured to involve the families of victims of workplace tragedies. These families should have a right to participate in the process, to be kept abreast of its progress, and to have access to its final report and recommendations.

The reports and recommendations produced by this investigative process should be made public and submitted to the Minister’s Advisory Council on Workplace Safety and Health:

- To prepare a plan, where appropriate, to disseminate the recommendations to workplaces across Manitoba; and
- Where legislative or regulatory changes are required, to make recommendations about these changes.

6. STRONGER ROLE FOR THE MINISTER’S ADVISORY COUNCIL ON WORKPLACE SAFETY AND HEALTH

Mandate / roles and responsibilities

The Minister’s Advisory Council on Workplace Safety and Health (the Advisory Council) was established under the authority of the WSHA to advise the Minister responsible on matters pertaining to workplace safety and health.

The MFL recommends:

- That the mandate/roles and responsibilities of the Advisory Council be formally reviewed as part of the 5-year legislative review of the WSHA.

Frequency of Council meetings

Council meetings are currently called at the discretion of the Chair; the WSHA requires only one meeting per year. In practice, very few meetings have been called over the last number of years. An increased frequency of meetings would better enable the Advisory Council members to be engaged and to ensure mandates are being met.

The MFL recommends:

- An increase to the minimum number of meetings per year to at least one per quarter, if not more.

Hearing of appeals

The integrity of the administrative penalty system is supported by the independent, tripartite appeal body. The credibility of the administrative penalty system would facilitate acceptance by employers and workers and promote addressing health and safety issues by focusing on and re-establishing compliance with regulatory requirements.

The MFL recommends:

- That the Advisory Council be empowered to hear appeals of administrative penalties. Employers and workers may appeal an administrative penalty to the Advisory Council within 30 days from the date that the notice of penalty was issued.

Hearing of variances where there isn't a union or association

Where by an application for exemption orders under Regulation Part 1.8(1) or committee exemption under Regulation Part 3.1.1(1), the process would be supported by the independent, tripartite appeal body.

The MFL recommends:

- That Council be empowered to hear applications for “variances”.

Workplace Safety and Health Act and regulatory review

Varied approaches to reviewing the WSH Act and Regulations have been utilized in the past. A defined approach would provide for clarity and consistency. The current review process has been scheduled so that public consultation is limited to a two-month period over the summer, which will almost certainly reduce public participation.

The MFL recommends:

That Council establish a defined and consistent review process that includes appropriate timelines for public consultation, adequate meetings of the Advisory Council to review and deliberate on submissions, and a suitable timeline to complete recommendations to the Minister.

Young worker / vulnerable worker expertise

We know that young workers, new workers, recent immigrants and older workers re-entering the labour force suffer from workplace injuries at a much higher rate than other workers.

The MFL recommends:

- That Council be expanded to include at least one representative with special expertise in workplace health and safety for young workers and other vulnerable workers.

7. CHIEF PREVENTION OFFICER (CPO)

The establishment of a Chief Prevention Officer (CPO) was intended to create a dedicated champion for workplace injury and illness prevention in Manitoba. Recently, the position was reduced to a part-time position only, which has impeded its effectiveness. So too has a lack of enforcement on annual reporting timelines under the WSHA. It's critical that this position be strengthened to ensure a strong, dedicated, versatile standalone position that can reliably offer a fair and objective assessment of Manitoba's prevention initiatives, and produce regular and informative public reports.

The MFL recommends:

- That the CPO be appointed by the Minister as a full-time position, on the basis of joint recommendation from the Minister's Advisory Council;
- That fixed dates be established and adhered to for CPO reporting;
- That the CPO be empowered to independently initiate investigations where he/she identifies threats to workplace safety and health, and to produce public reports on these investigations; and
- That the CPO build formal relationships with bodies like the MFL, the Minister's Advisory Council, Fairness Commissioner, WCB prevention committee and SAFE Work Manitoba.

8. ENSHRINE SAFE JOURNEYPERSON-APPRENTICE RATIOS

A cornerstone of the apprenticeship system, as work-based post-secondary training program, is one-to-one mentorship and supervision between journeyperson and apprentice. Manitoba's standard of 1:1 apprentice to journeyperson has stood the test of time because it has proven effective for training skilled tradespeople and for keeping apprentices safe at work.

While apprenticeship ratios are often viewed solely through the lens of training and mentorship, they also are vitally important from an occupational health and safety perspective. This is all the more true in light of the fact that many apprentices are vulnerable workers, including many young workers and new workers.

The MFL recommends:

- That the WSHA be amended to enshrine 1:1 journeyperson-apprentice ratios in recognition of the strong health and safety imperative of one-on-one training.

9. PROPERLY DEFINE "REGULARLY EMPLOYED"

The WSHA sets out a number of important requirements that take effect based on the number of workers who are "regularly employed", such as the requirement for joint health and safety committees and documented health and safety programs. However, the term "regularly employed" is defined in a number of different and inconsistent ways though out the WSHA – for example, it is sometimes defined as averaging over a 90-day period, a one year period, and sometimes there is

simply no reference to total, per shift, or timeline. Given the importance of the “regularly employed” threshold, this inconsistency should be corrected.

The MFL recommends:

- Addressing the current inconsistencies in the WSH Act by defining “regularly employed” as “on average, the total number of workers present each working day (24 hour period)”.

10. STRONGER ADMINISTRATIVE PENALTIES

The administrative penalty is a compliance tool intended to encourage efforts to comply with the WSHA to reduce the risk of workplace injuries and illness. As Manitoba continues to build-up its health and safety compliance structure, it is critical to apply penalties fairly across the province in the cases of non-compliance. The following proposed amendments would have no impact on employers who follow the workplace health and safety rules.

The MFL recommends:

- That Manitoba raise the higher maximum amount for administrative penalties through the adoption of applying administration penalties on the basis of employer payroll, rather than on the basis of a flat sum¹; and
- That Manitoba automatically and immediately apply administration penalties following non-compliance with administrative tools (Improvement Orders, Stop Work Warnings, Stop Work Orders).

These two changes would allow for an equalization of weight and gravity and would streamline the process in terms of the enforcement, encouraging compliance in a manageable timeframe without over extending valuable enforcement resources.

11. EVALUATION FRAMEWORK FOR HEALTH AND SAFETY COMMITTEES

An effective health and safety committee provides a way for the employer and workers to work together to identify and find solutions to safety and health concerns. An evaluation framework will provide guidance on how an effective committee will meet its legal requirements, as well as suggestions for continued improvement. The province of BC requires regular committee evaluations to be undertaken.

The MFL recommends:

- That, in the spirit of continuous improvement, the WSHA be amended to require committees to conduct a written evaluation of their work and performance on an annual basis, and that

¹ Other provincial jurisdictions calculate the basic amount of a penalty by multiplying the penalty payroll by 0.5%, with a minimum of \$1,250 and a maximum of half of the statutory maximum. Additionally, some jurisdictions set a maximum amount of an administrative penalty at \$10,000 for a contravention; and if the contravention continues for more than one day, a maximum of \$10,000 for each day.

this evaluation be shared with the WSH Branch, all members of the committee and the union (where applicable).

12. ENGINEERED LABOUR STANDARDS

Engineered Labour Standards (ELS) are becoming more common in many different sectors, from health care to meat processing. Such standards are driven by employer efforts to increase production while holding the line on unit labour costs. This is starting to become extremely problematic as time standards given to workers are not realistic. Workers are being forced to work within these dangerous systems where they are not being given enough time to safely and properly perform tasks in the time allotted.

For example, in warehousing, workers are required to bend over and lift a 50 pound bag of onions from the ground, and then transfer it over to a pallet in just three seconds (and sometime in just two seconds). This time standard is fundamentally inconsistent with safe lifting techniques, which workers are often taught, but then prevented from using by the ELS. Workers who choose to lift safely cannot make the time standard and then face discipline, including, sometimes, termination.

Part 8 of the WSHA Regulations speaks to Musculoskeletal Injuries (MSI). This regulation is to provide for risk assessments when MSI risk factors are present. In the case of warehousing, the risk of an MSI is very high as workers are making thousands of movements in one shift that require handling of product of much different size and weight. Safe lifting techniques versus unsafe techniques, and their impact on the human body are well documented and studied. SAFE Work Manitoba has a number of resources outlining the importance of safe lifting techniques and also a number of resources outlining the importance of controlling MSI's.

Employers with ELS systems are well aware of what they are forcing workers to do. However they choose to increase time standards and injuries to workers in order to increase profit. Employers are in complete control of these ELS systems. This is not a question of whether or not an ELS can be controlled, it's a question of why the employer arbitrarily chooses to enforce a system where workers cannot exercise safe lifting techniques. These employers know they are hurting workers and this can be easily fixed by increasing time to properly, safely perform tasks.

The MFL recommends:

- A new Regulation be created regarding ELS systems, with a focus on time to perform tasks safely. Development of this Regulation should be led by the Minister's Advisory Council;
- Regulation 8 be more strictly enforced for employers whom have complete control over the prevention of MSI's, yet choose to develop systems where they knowingly put workers at risk of injury;
- Employers with ELS systems be required to provide risk assessments proving that time to safely perform tasks has been given;
- All discipline issued to a worker in a ELS system that does not allow proper time to safely perform tasks be removed from the workers file and treated as discriminatory action; and

- Joint committees be involved in every aspect of an ELS system. This includes, development, implementation, interaction with WSH or a review committee and any other interaction with regards to the ELS system.

13. AUTOMATIC ADOPTION OF OCCUPATIONAL EXPOSURE LIMITS

Recently, we were very disappointed to learn that the Minister responsible for the WSHA had ordered yet another review of Manitoba's current process for automatically adopting Occupational Exposure Limits (OELs), which exists to protect workers against seriously harmful exposure to chemicals and other environmental occupational hazards. This issue has been considered several times before by the Minister's Advisory Council and, each time, the professional/technical and worker representatives have raised serious safety and health objections with shifting away from the current practice of automatic adoption.

The MFL recommends:

- That Manitoba maintain the current requirement for automatic adoption of OELs, as recommended by the American Conference of Governmental Industrial Hygienists, in order to protect workers from serious known workplace hazards.

14. IMPORTANCE OF PREVENTION

Manitoba Five-Year Plan for Workplace Injury and Illness Prevention, released in April 2013, after broad consultation with the public and with worker and employer representatives, committed government to the goal of "making Manitoba a nationally recognized health and safety leader".² The MFL recommends that this goal be enshrined in legislation.

In 2014, Bill 65 came into force, formally establishing a consolidated arms-length prevention entity, SAFE Work Manitoba, as well as a prevention committee of the WCB Board of Directors – both positive steps. A lot of progress has been made on the prevention side of the health & safety equation, but much more remains to be done.

SAFE Work Manitoba is currently in the process of developing a new workplace health and safety 'certification standard' (SAFE Work Certified), using Industry-Based Safety Programs as the delivery vehicle for health and safety services (training, consulting, program verification/auditing, etc.).

Labour has two fundamental concerns about this approach: (1) there is no formal worker representation on any of the existing Industry-Based Safety Associations (though we note favourably that worker experience and input has been established as an integral part of the auditing framework for SAFE Work Certified), and (2) there are only five industries presently represented by Industry-Based Safety Associations, and therefore the number of workplaces that are eligible to seek certification is very limited.

² Five-Year Plan for Workplace Injury and Illness Prevention (2013), Message from the Minister, page 3.

We note also that all five industries have heavily male-dominated workforces, and Safety Associations have not yet been established for female dominated workforces, including health care, where the injury rate has remained persistently high. As of 2015, only 22% of WCB covered employers had access to an Industry-Based Safety Program. SAFE Work Manitoba is targeting to grow that percentage to 60% by 2020, but even this target will leave a lot of workplaces unable to access a full range of health and safety services, including certification.

The MFL recommends:

- That SAFE Work Manitoba continue to promote workplace health and safety prevention through broad public awareness and marketing campaigns;
- That Manitoba complete implementation of the current Five-Year Workplace Injury and Illness Prevention Plan, and that the WSHA be amended to require five-year prevention plans (incorporating prevention, enforcement and legislative/regulatory framework);
- That SAFE Work Manitoba see through to completion the new SAFE Work Certified standard and prevention incentive initiatives, including a comprehensive evaluation component to assess their effectiveness;
 - Worker views and experience with health & safety should remain integral components of the standard.
 - Employer incentives should be based on recognized health and safety programs, with no links to WCB claims experience.
- That SAFE Work Manitoba actively pursue expansion of the new SAFE Work Certified program into all sectors, with priority given to expansion into the health care sector, where government/regional health authorities are major employers and injury rates have been persistently high; and
- That the ground-breaking SAFE Workers of Tomorrow program be adequately resourced to expand their youth-focused workplace health and safety presentations and outreach to ALL high school students in the province.

15. CLAIM SUPPRESSION – ENFORCE THE BAN

As a result of WCB experience rating, and despite the current legislative ban, Manitoba continues to have a very serious problem with claim suppression. Claim suppression and aggressive return to work practices hurt injured workers and deprive them of the supports that should be available to help them recover and return safely to meaningful work, thereby undermining the fairness, effectiveness and integrity of the WCB system. Workers in Manitoba experience cases of their employers:

- Discouraging or flat-out preventing injured workers from reporting injuries and filing WCB claims;
- Aggressively fighting and appealing many or all WCB claims made by injured workers, increasingly with the aid of paid third-party “claims management” consultants;

- Filing appeals as a means of gaining access a worker's medical information in a "fishing expedition" to try to find 'fault' or 'cause' to have the claim dismissed;
- Adopting and following policies that require management to appeal any claims over a prescribed value, irrespective of the circumstances;
- Establishing incentives (like financial bonuses, or workplace celebrations) for injured workers not to report injuries or file claims – these often involve group incentives, creating additional peer pressure not to report or file a claim;
- Punishing workers for reporting an injury and filing a claim (e.g. dismissal, re-assignment, shift changes, assignment to meaningless work);
- Pressuring workers to re-start their jobs before they're healthy enough to work, or failing to provide appropriate accommodations to make post-injury work safe and meaningful; and
- Pressuring workers to accept private insurance benefits, instead of filing a WCB claim, encroaching on what should be WCB's exclusive jurisdiction.

The MFL's strong preference would be to abandon experience rating in the WCB rate model. Government has chosen a different path: changes to the rate model to reduce (but not eliminate) experience rating, the creation of a new SAFE Work Certified standard to support strong workplace prevention programs, and a new WCB prevention rebate for employers achieving a high standard in prevention. The MFL is cautiously optimistic that these measures may help address some of the problems with experience rating. In addition,

The MFL recommends:

- That the WCB/SAFE Work Manitoba step-up employer and worker education and public awareness around existing prohibitions against claim suppression and aggressive return to work practices;
- WSH Branch/WCB step-up enforcement of current prohibitions against claim suppression; and
- That the WSHA be amended to require public reporting on employers who are found guilty of claim suppression and aggressive return to work activities.

There is also a growing trend in Manitoba workplaces to provide cash or prize incentives to groups of workers that go a certain amount of hours or days without a lost time injury. While on the surface such incentive programs would appear to reward workers for preventing injuries, the reality is that such programs create a workplace climate of peer pressure to not report incidents/injuries or take needed time off to recover. Workers reporting an injury or missing work due to an injury risk disqualifying themselves and their co-workers from receiving available incentives. Such programs are a form of indirect WCB claims suppression. They also point blame for injuries solely at workers without considering why the workplace hazards were there in the first place.

The MFL also recommends:

- That the WSHA be amended to ban the provision of cash or prize incentives to workers for not reporting injuries or missing time from work as a result of injuries.

16. WESTRAY: ENFORCE THE LAW

On May 9, 1992, an explosion at the Westray Mine in Pictou County Nova Scotia killed all 26 miners working underground. It was one of the deadliest mining disasters in Canadian history and led to new Criminal Code provisions – known as the Westray Law – that finally made it possible to prosecute corporate criminal negligence.

Justice K. Peter Richard, who led the public inquiry into the Westray disaster, uncovered what he called “a complex mosaic of actions, omissions, mistakes, incompetence, apathy, cynicism, stupidity, and neglect.”

Despite years of police investigations and public inquiry, no one was ultimately held responsible for the 26 miners’ deaths.

The United Steelworkers lobbied for years and won changes to the Criminal Code so that employers could be convicted of criminal negligence.

But across the country, and even since the Westray law was enacted in 2004, many workplace fatalities are still never properly investigated, and only a handful have resulted in criminal charges – none in Manitoba.

When criminal negligence results in a worker’s death, it is not an accident – it is a crime.

Manitoba’s WSH Branch has taken some action to support enforcement of the Westray law, including hiring in 2011 a dedicated “Director of Investigations” with extensive experience in conducting criminal investigations to supervise, coordinate, and direct the activities of WSH’s Investigation Services Unit and interact with Manitoba’s Crown Prosecutor assigned to prosecute workplace injuries/fatalities incidents. Despite these efforts, however, investigations have been severely delayed and no charges have been brought. Clearly, Manitoba’s existing efforts are not working, and more needs to be done.

The MFL recommends:

- Training and directing Crown prosecutors to apply the Westray provisions of the Criminal code;
- Appointing more dedicated prosecutors for workplace health and safety fatalities;
- Training and directing police to apply the Westray provisions of the Criminal Code and consider the possibility of criminal negligence whenever a worker is killed or seriously injured on the job – other provinces have stronger and more formalized relationships in place for cooperation with police;
- Ensuring coordination among regulators, police and Crown attorneys so health and safety regulators reach out to police when Westray charges may be warranted; and
- Training WSH officers to view every workplace fatality under Provincial jurisdiction as a potential crime scene. That includes coordinating with police in their investigations.

17. DOMESTIC VIOLENCE AS A WORKPLACE HAZARD

Although often overlooked as a workplace issue, domestic violence pervades a victim's life, and often follows her/him to their workplace. The effects of domestic violence in the workplace include everything from tardiness, absenteeism, and decreased productivity to serious injury or even death. In 2012, the Canadian Labour Congress (CLC) partnered with researchers at the University of Western Ontario to conduct the first ever pan-Canadian [survey on domestic violence in the workplace](#). Among their findings, of those who reported experiencing domestic abuse, over half reported that it continued at the workplace. When domestic violence impacts the workplace, it becomes workplace violence, putting not only victims but their co-workers at risk.

Current violence prevention regulations in Section 11 of the WSHA do not specify domestic violence. As a result, workplace assessments tend to focus on the risk of violence to workers from clients and coworkers, but overlook the risks posed by domestic violence.

The MFL recommends:

- That Manitoba follow the lead of Ontario and include domestic violence in their WSHA Regulations, requiring employers to take precautions to protect workers against domestic violence.