



Canadian Centre for
Policy Alternatives
Manitoba Office

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Why we still fight

The Day of Mourning, more than any other day in the labour movement's calendar, brings home why we must remain vigilant in the area of workers' rights. As reported by the Canadian Labour Congress, more than 1,000 workers are killed on the job or die as a result of workplace conditions. As we commemorate another National Day of Mourning for workers killed or injured on the job, we are reminded of some of the issues that played a role in workers' health and safety in 2013-14. The release of two independent reviews of claims suppression and the passage of Bill 31 – the Workplace Safety and Health Amendment Act – in October, shed light on how and why many workers are forced to put their health and lives on the line just because they go to work. It shouldn't be this way.

Bill 31

As reported in our October 1, 2013 Work Life written by Jean-Guy Bourgeois and Kevin Rebeck, one year ago today the Manitoba government, to its credit, introduced a new Five Year Workplace Injury and Illness Prevention Plan, with the laudable goal of making our province the safest work-place jurisdiction in North America. Bill 31 was the vehicle that brought the plan into action. It had been developed in consultation with employer, labour and technical representatives. Far from making radical changes, it strived to strengthen three areas: workers' fundamental health and safety rights; tools to enforce safety rules; and, transparency and accountability for workplace health and safety. Difficult as it is to imagine what anyone, employee or employer, could find wrong with improving these areas, the Official Opposition went to great lengths to stall the bill's passage and water it down. This opposition to a reasonable piece of legisla-

tion that simply recognized fundamental workplace safety and health tenants showed just how fragile workers' rights are, especially in the light of the increased attacks on the labour movement.

Claims Suppression

Worker advocates hope that Bill 31 will make some difference in workers' lives, but we know that workplace injuries will not disappear. When workers are injured on the job, the Workers Compensation Board (WCB) is available to assist injured workers and to hold employers accountable. As reported by the Errol Black Chair one year ago, 'claims suppression' (employer interference in an injured worker's attempt to report an injury to WCB), puts workers at risk of further injury and prevents them from receiving compensation.

Unfortunately some employers find it cheaper to prevent their injured or sick workers from making a WCB claim, or to force them back to work before they're ready, than to create a safe work environment. Both practices are known as claims suppression and it is a tactic used overtly and covertly. Furthermore, some companies invest considerable resources into figuring out how to game the system. "Loss management" or "disability management" are terms used euphemistically to describe claims suppression strategies offered by consulting firms so that employers can keep their WCB costs down. Whether used on the recommendation of these consultants, or simply as part of a company's normal practice, claims suppression includes:

- Actively discouraging injured workers from reporting injuries;
- Blatantly preventing injured workers

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IN LABOUR ISSUES

from reporting injuries or filing WCB claims;

- Encouraging injured workers to accept cheaper and less comprehensive private insurance compensation rather than going through WCB;
- Pressuring injured workers to return to work before they are fully recuperated;
- Punishing workers for filing WCB claims and/or reporting injuries;
- Establishing incentives for injured workers not to report injuries, including rewards for going so many days without a workplace injury.

The Petrie Report, released last April, and titled Fair Compensation Review recognized the growing problem of with the ‘experience rating’ system used by WCBs across Canada. Experience rating schemes determine the rate at which employers will pay into the WCB, with premiums tied to the number and amount of the claims received by the Board. The more claims, and the higher their amount, the higher the premium the employer must pay. Rational employers see the economic value in running a safe workplace so there are fewer claims; less scrupulous employers will simply look for ways to beat the system.

A report released in March 2014 by the WCB, prepared by PRISM Economics and Analysis, confirms that claims suppression is alive and well in Manitoba. Claim Suppression in the Manitoba Workers Compensation System found that overt suppression occurs in six per cent of reported workplace injuries. While this percentage may seem low, it pertains to approximately 1,000 injuries per year.

The other problem highlighted in this newest report is that of misreporting – a more subtle form of claims suppression. Misreporting refers to the employer practice of submitting an Employer Incident Report (EIR) to WCB stating that the employee did

not take time off because of her injury, when in fact she did have to stay off the job. When employers misreport, employees potentially are denied Lost Earnings Benefits (LEB) and the incidence of lost-time injuries appear lower than they are, shifting the cost burden to those scrupulous employers who don’t try to game the system. Misreporting can also detract resources from situations that should be receiving more preventative measures.

Responses to survey questions answered by workers who had submitted no-lost-time claims to the WCB indicate that up to 40.6 per cent of respondents lost at least 1 day of working time and more than 45 per cent of them had been advised by a medical practitioner to take time off. The report concluded that “Misreporting should not be regarded as a statistically insignificant phenomenon” and that “The core conclusion, therefore, is that misreporting is a material occurrence . . .”.

Much more needs to be done about claims suppression before injured workers will get the benefits they need. Better yet, let’s continue to strengthen workplace health and safety legislation so that fewer workers are injured or killed on the job in the first place.

As we pause in memory of injured and killed workers, we also need to reflect on the surprisingly negative response to Bill 31, and the insidious practice of claims suppression; both are grim reminders of why we gather to mourn every April 28th, and why we still fight.

Lynne Fernandez hold the Errol Black Chair in Labour Issues at the CCPA-MB

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