



Ref: 64138

January 16, 2023

Chris Atchison  
President  
British Columbia Construction Association  
Email: [chris.atchison@bccassn.com](mailto:chris.atchison@bccassn.com)

Dear Chris Atchison:

Thank you for your letter sent to the Honourable Harry Bains, Minister of Labour, regarding changes to the *Workers Compensation Act* (Act) contained in Bill 41—*Workers Compensation Amendment Act (No. 2), 2022*. As Deputy Minister I am pleased to respond on behalf of Minister Bains.

Minister Bains and Government very much appreciate your comments on Bill 41.

As you will be aware, the amendments in Bill 41 respond to recommendations from several expert reports received by Government since 2017. These amendments support Government's priorities for the workers' compensation system to:

- Enhance worker and employer confidence in the system;
- Ensure fair compensation for injured workers and surviving dependants; and
- Have a worker-centric focus that also considers employers' interests.

Bill 41 received Royal Assent on November 24, 2022. This legislation makes the following improvements to the workers' compensation system:

- Establishes a Fair Practices Commissioner with a mandate to investigate and make recommendations on complaints about fairness from workers and employers regarding their dealings with WorkSafeBC, as well as on systemic fairness issues. The amendments ensure a reporting structure that will enhance the Commissioner's independence from the rest of WorkSafeBC.
- To support the return of injured workers to productive employment, establishes a duty for workers and employers to cooperate with each other and with WorkSafeBC on the return to work, and establishes a clear employer duty to maintain the injured worker's employment—including accommodation to the point of undue hardship.
- Expands access to independent health professionals by allowing workers and employers to request them as part of an appeal to the Workers' Compensation Appeal Tribunal (WCAT).

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- Requires interest to be paid on compensation benefits awarded in a decision by a WorkSafeBC review officer or WCAT and determined to be owing to a person for 180 or more days.
- Adds explicit provisions against employers dissuading workers from filing a claim for compensation, which will help create a level playing field for employers who do not engage in claims suppression.
- Improves the fairness of annual inflation adjustments to workers' compensation benefits by removing the existing one-percentage-point reduction to the annual Consumer Price Index (CPI) change and authorizing WorkSafeBC to make an adjustment above 4 percent when the annual CPI change is above 4 percent.
- Authorizes WorkSafeBC to increase the maximum compensation for non-traumatic hearing loss where there is no loss of earnings.

Together, these changes improve British Columbia's (BC) workers' compensation system for workers and for employers, responding to concerns raised by workers and employers over the years and through the several recent expert reviews. The improvements also bring the province in line with other Canadian jurisdictions since BC was lagging in these areas.

Minister Bains appreciates that some employer representatives have questioned the timing and the need for these legislative changes, as well as the potential cost impacts on their WorkSafeBC premiums. Minister Bains has made it clear that one of the principles that was important to him in developing these improvements was the financial impact as measured by the status of WorkSafeBC's Accident Fund and the premiums to be paid by employers.

Over the past few years, the status of the Accident Fund, the management of which is the exclusive authority of WorkSafeBC, has grown well above the target funding level of 130 percent of assets over liabilities. The amount of this excess surplus was in the order of \$3.5 B (on a smoothed accounting basis) at the end of 2021. The Accident Fund has been very well managed by WorkSafeBC and has benefitted from exceptional investment returns, particularly in the last portion of the previous decade.

Importantly, WorkSafeBC has advised that current forecasts project that the Accident Fund will remain fully funded (above the 130 percent smoothed funding target level) at the end of 2022, after the one-time liability adjustment related to the Bill 41 changes is accounted for.

WorkSafeBC has been able to keep the average premium rate paid by employers below the average cost rate for 17 consecutive years due to the excess surplus, but it has no authority to access the excess surplus to improve benefits for injured workers without legislative amendments. The discount to employer premiums amounts to over \$2 B over the last decade, including over \$1 B since 2017. Further, WorkSafeBC has recently confirmed that the average base premium rate for 2023 will remain unchanged at 1.55 percent of employers' assessable payroll for the sixth year in a row.

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As Minister Bains noted in the committee stage for Bill 41 in the Legislature, WorkSafeBC has estimated that, taken together, the amendments will likely increase the average cost rate by 7 cents per \$100 of assessable payroll in future years. As you know, many factors go into determining the final premium rate to be charged to employers. Premium rate increases and decreases are driven by provincial injury rates, return-to-work performance, and the resulting cost of claims, as well as being impacted by the performance of Accident Fund investments.

WorkSafeBC has indicated that the change which will have the most significant cost implication is improving the fairness of annual inflation adjustments. However, this amendment is important because workers and surviving dependants saw a significant erosion in the value of their benefits over time while the one-percentage-point-reduction was in place from 2002 until now. The change ensures that annual cost-of-living increases better support the long-term financial well-being of injured workers and their families. No other Canadian jurisdiction makes a similar one-percentage-point reduction when adjusting workers' compensation benefits for inflation.

Minister Bains has expressed confidence that WorkSafeBC continues to be well funded and well positioned to maintain stable premium rates for employers across the province. Minister Bains has also noted that the important changes made in Bill 41 will help ensure fair compensation for injured workers and their families, support positive return to work outcomes, promote fair practices at WorkSafeBC, and improve access to independent health professionals to address medical issues in an appeal.

Thank you again for writing and sharing your concerns.

Yours truly,

A handwritten signature in black ink, appearing to read "Trevor Hughes". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Trevor Hughes  
Deputy Minister

pc: Honourable David Eby, KC  
Premier