

MAINTAINING BALANCE IN WORKSAFE

CFIB submission on potential reforms to the workers' compensation and Occupational Health and Safety

Sam Howard, Senior Director, BC and the North
Muriel Protzer, Senior Policy Analyst BC and the North

In part of the official review of the Yukon Workers' Compensation Health and Safety Board, the Canadian Federation of Independent Business (CFIB) is putting forward its recommendations to preserve a balanced, stable, and sustainable workers' compensation system in the Yukon.

Introduction

On behalf of CFIB and our independent business members across the Yukon, we appreciate the opportunity to present our recommendations for changes to the workers' compensation and occupational health and safety. Thank you for opening up the review to employer consultation. As you will read throughout our submission, we believe balance throughout the review is of the utmost importance in order to ensure the system works for both employees and employers.

Our members in the Yukon are located in every region of the territory, with diversity in activity that closely parallels that of the economy. Our members are regularly surveyed in order to determine their positions and priorities on key issues and policies which affect their business. In addition, CFIB representatives meet with nearly every single member in person at least once a year, providing additional opportunities to take the pulse of Yukon's dynamic small business sector.

This submission is structured as follows:

- Context on the Workers' Compensation System from the employers' perspective with special consideration of small business owners;
- Discussion of the inclusion of Duty to Accommodate into the Workers' Compensation Act;
- An outline of areas of the workers' compensation system where there is room for improvement; and

- A summary of our recommendations for the WCA.

The Current Context

The Need for Balance

The workers’ compensation and occupational health and safety system is based on a historic compromise.¹ The idea behind this compromise is that employers collectively fund a system to compensate workers in the event of a workplace injury. In return, workers revoke the right to sue their employer if they are injured on the job. At its core, this concept is predicated on both sides (employers and employees) making concessions. The system will never be perfect for either party as it is founded on compromise. Employers make concessions by funding the system, while employees make concessions in the benefits they receive.

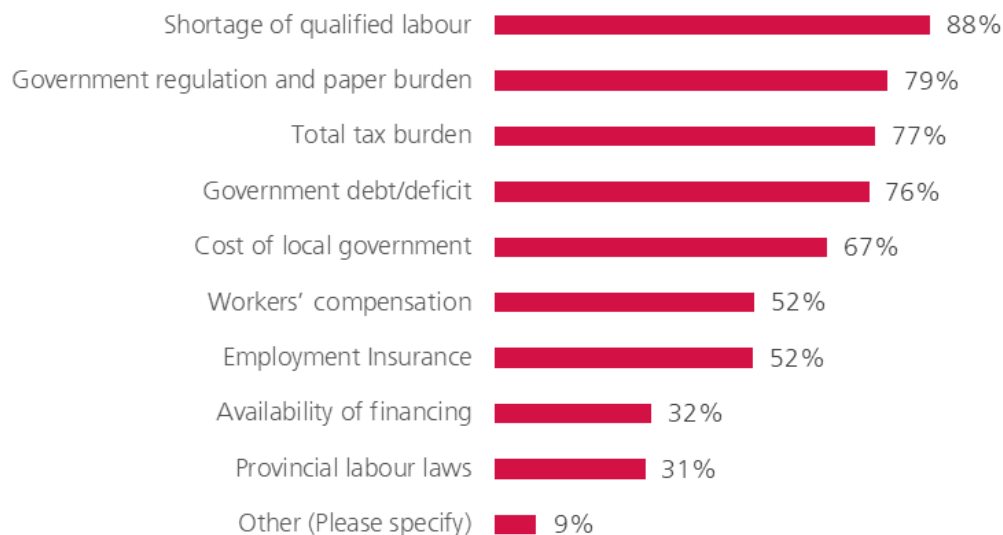
As a result, even in the pursuit of making the system more modern, the reviewers must consider the needs of employers to retain balance. The cost of any changes needs to be measured and reported, and any changes with new costs need to be sustainable. This is a main concern for business owners, and it is vital that the review carefully consider the costs of any changes recommended.

While employers want to ensure their employees are receiving fair compensation if they are injured in the workplace, adopting costly measures is unsustainable in the long run. Simply raising employer premiums to fund additional costs may sound nice in principal, but in practice it creates a significant burden on employers and especially small businesses, as they already operate on razor thin margins. Currently, Workers’ compensation is a serious concern to 52 per cent of small business owners in Yukon (see Figure 1). A further 77 per cent indicate the total tax burden as a serious concern, which would include the costs of Worksafe premiums. The current review needs to look at attaining a balance, not tipping the scales in one direction or the other, as the costs of compensation systems have real implications on business operations.



¹ [Yukon Workers’ Compensation Health and Safety Board, About Us.](#)

Figure 1

Which of the following are a serious concern to your business?

Source: CFIB OMO83 – Yukon, July – December 2018, n=82

Some may believe the system can absorb the costs by passing them down to employers through premiums. However, because premiums are essentially a payroll tax on business owners, increasing premiums will introduce a significant hardship on small business owners, and ultimately be borne by employees. CFIB analysis finds that the total payroll burden on Yukon business owners comes to 9.06 per cent, with 2.05 per cent attributed to Workers' compensation.² For an employee earning \$50,000, that would cost a business owner \$4,531 in payroll taxes. Evidently, raising premiums would increase this already hefty cost.

In response to higher premiums, employers will need to take mitigating measures. These could include reducing the number of hours they provide employees or decreasing investments in their business. This response would be detrimental to both employees and the workers' compensation system itself. Because premiums are based on employee's assessable income, any reduction in the number of hours for employees would pull back the number of hours employers pay premiums on – all happening while YWCHSB would be needing more funds to sustain an expanding and more costly system. For these reasons, funding changes to workers' compensation is not as simple as increasing premiums. In recommending the government make changes to the system, the review must prioritize the changes that are most important and provide the government with a well thought out cost-benefit analysis.

² Total payroll burden includes CPP = 4.47%, EI = 2.27%, and WCB = 2.05%, as calculated by CFIB

Recommendations:

- **Emphasize stability and sustainability** in any recommendations for reform to the government. To achieve this, **consider the cost of those recommendations** to balance the interests of employers and employees.
- In order to ensure any changes **instituted do not put undue strain and costs on the system**, changes **should not be applied retroactively**

YWCHSB’s Funded Position

At the end of 2018 the Compensation Fund’s **surplus position was 132 per cent**, just over the target range of between 121 and 129 per cent of total liabilities. CFIB supports the previous years’ refunding of surplus funds to business owners. It is however important to note the current and previous overfunded position is not primarily the result of changes in benefits for employees. In fact, numerous components have contributed to the funding surplus. In recent years, the largest component contributing to the surplus has been favourable investment returns and decreasing injury rates.³

Injuries, Illness, Domestic Violence and Mental Health

Due to unintended consequences of many pieces of regulation, our members often find themselves put in the position of having to assess an employee’s physical ability or mental capacity to work. This is well outside the scope of most of our members’ practice, and like most small businesses, they do not have a human resources department they can defer this task to. What this means is that they are put in a position of risk and liability, trying to balance the needs of worker with the needs of the business.

Should these references be added to the Act, it will be vital that Yukon WCHSB provide accessible, clear, and easy to use tools for our members to offer their workers. Adding regulatory burden or cost, without supplying means of compliance, creates a precarious position for anyone to operate under, let alone someone who already operates under a large regulatory compliance burden, such as small business owners.

Eliminate red tape

In reference to Figure 1, government regulation and paperburden (i.e. red tape) is the second highest concern for small business owners in Yukon. Employers and employees alike are affected by red tape in their dealings with the workers’ compensation and occupational health and safety system. Without question, rules and regulations are required in order to ensure employers and employees have an understanding of how the system works and what the overall framework requires. When talking about red tape, we are referring to conflicting rules,

³ [Yukon Workers’ Compensation Health and Safety Board. “The Board accepted 997 claims in 2018, compared with 1,045 in 2017. Most of the claims in 2018 were for injuries caused by contact with objects and equipment \(352\), bodily reaction and exertion \(316\) and falls \(198\).” Page 14.](#)

redundant paperwork, or poor customer service from staff who are not able to help guide business owners and employees through the process.

From registering one’s business to submitting a claim after a workplace injury, government rules and paperwork are included in every interaction business owners have with YWCHSB. When complicated paperwork, nonsensical rules, and misinformation happens it ultimately hurts productivity, and takes away from the true goals of the workers’ compensation system. For business owners, red tape diverts their focus away from what they should be doing, which is building their business, creating jobs, and growing the economy. For employees, excess red tape can delay receiving financial assistance and takes their focus away from healing and returning to work. Therefore, eliminating red tape is essential to creating a workers’ compensation system that works for both employers and employees. In this section we will discuss three areas of focus for YWCHSB to minimize red tape. However these are not the only areas with room for YWCHSB improve. Undoubtedly, there are many more.

Communicating with business owners

The first area where YWCHSB can eliminate red tape is in the methods they use to communicate with business owners. The main methods currently used to communicate with employers and employees are frontline staff, forms and paperwork, and the website. In using of all these tools there are opportunities for the YWCHSB to eliminate red tape.

Interactions between staff and business owners

The first area where YWCHSB could eliminate red tape in their communications with employers and employees is ensuring their own employees provide high quality customer service to these two groups. Employers communicate with Board Officers throughout the claim process – often when they need information to fill out forms. However there are concerns about the amount of time it takes for Board Officers to return calls and whether their responses adequately answer business owner’s questions. This is an example of poor customer service that slows down the process of getting claims through the system. This lengthens the claims process and the amount of time for which employees are not receiving benefits.

Paperwork

The second area where YWCHSB could get rid of red tape in their communications with employers and employees is by eliminating duplicate forms. Having duplicate forms represents a great opportunity cost in terms of the employer’s time, in addition to the time of YWCHSB staff who must then read the same form twice. There may be a good opportunity when preparing materials following this consultation to seek feedback on the clarity of paperwork from both and employee and employer standpoint.

Rules and regulations

The third area where YWCHSB could eliminate red tape in their communications with employers and employees is by reviewing rules, paperwork, and online matters to ensure they are written in plain language. This is a small step that could go a long way to making the

system and its processes more easily understood by employers and employees alike. Small business owners often do not have a legal department or HR department to interpret complicated rules, and anything done to simplify the process benefits both the employer and employee. The best way to ensure this can be achieved is by working with both employees and employers when developing the rules and regulations. In other words an additional consultation before implementation should be done.

No new red tape

Finally, in addition to getting rid of red tape currently within the system, the review should ensure that any recommendations made to the government do not unduly increase the amount of paperwork and regulations on business owners. This is especially important when considering the regulations into the act as it would likely lead to changes to the existing appeal and claim process. If this is the case, the review must ensure the changes are made to minimize the impact of the resulting red tape on employers and employees. Redundant processes and conflicting or confusing rules will do no one good and in some cases could negatively impact employees.

Recommendations:

- Place importance on the **customer service employers and employees receive** from Board Officers when they have questions about their claims by improving interactions between YWCHSB staff and business owners, eliminating duplicate paperwork, and putting rules and regulations in plain language;
- Streamline the rate classification process for employers; and
- Ensure that all recommendations to the government **will not increase the amount of red tape faced by business owners.**

Conclusion

We applaud YWCHSB for the excellent and inclusive review that has been conducted. It was great that there were multiple avenues to maximize participation. We understand the need to look at modernization of the act and the way we do things. However, the principles of stability and sustainability, which are vital for the continuation of workers’ compensation and occupational health and safety in Yukon, must be considered in all recommendations the review makes to government. With all of this in mind, CFIB issues the following recommendations to the review:

- **Emphasize stability and sustainability** in any recommendations you make to the government. To achieve this, **consider the cost of recommendations** to balance the interests of employers and employees;

- **Ensure careful** consideration is given when developing rules and regulation regarding **domestic violence and mental health** and work with both employees and employers when developing the process, by having another consultation.
- **Do not** introduce changes to the program that eliminate or even surpass the current surplus so that the premiums paid by employers increase;
- Place importance on the **customer service employers and employees receive** from Board Officers when they have questions about their claims by improving interactions between YWCHSB staff and business owners, eliminating duplicate paperwork, and putting rules and regulations in plain language;
- Streamline the rate classification process for employers; and
- Ensure that all recommendations to the government **will not increase the amount of red tape faced by business owners.**