

September 4, 2019

Negar Jalali

Senior Policy and Legal Advisor
Policy, Regulation and Research Division
WorkSafeBC
P.O. Box 5350, Stn, Terminal
Vancouver, B.C. V6B 5L5

Dear Ms. Jalali:

Re: Feedback on Discussion Paper – Vocational Rehabilitation and Cost Relief

On behalf of the Chartered Professionals Human Resources Association of BC and Yukon (“CPHR BC & Yukon”), we write to provide stakeholder review and comments on proposed policy amendments, CPR cost relief recommendations and employer support for return to work.

Background

CPHR BC & Yukon represents over **6,200 human resource professionals and their service providers and advisors in BC and the Yukon**. Many of our members work every day for BC employers and so are not only directly affected by any changes to WorkSafeBC policy but offer a wealth of practical experience on the topics addressed below. We are thus uniquely positioned to provide insights into the practical impact of proposed changes. Our members, the **more than 2,650 organizations they work for**, and the employees our members serve within those organizations will be directly affected by changes to WorkSafeBC Vocational Rehabilitation Policy.

Overview

The Compensation Policy Review ("CPR") contains a number of recommendations, along with the Policy, Regulation and Research Division ("PRRD") proposals that are supported by CPHR BC & Yukon and a few that we would like to provide feedback and recommendations.

The CPR has proposed to amend VR policies for ensuring a worker-centered approach to VR and return to work, particularly because BC's Workers Compensation Act ("Act") does not require employers to accommodate or reinstate injured workers.

CPR Vocational Rehabilitation Recommendations:

Appendix A - #5.

Excerpt: "The Board is committed to timely intervention to assist the worker and the employer [to] achieve a successful return to work with the injury employer wherever possible including provision of accommodation supports and services where needed."

"Where return to work with the injury employer is not possible, the Board will provide the necessary supports and services to assist in restoring the worker to suitable and available employment at the pre-injury earnings wherever possible"

...

"The Board recognizes that there is a "duty to accommodate" injured workers under the BC Human Rights Code"

The challenge for injury employers is that one of the key goals of vocational rehabilitation from the Rehabilitation Services & Claims Manual Volume II, is maximizing earning capacity up to the pre-injury wage rate, which is not always possible within the injury employer as the worker's maximum earning capacity may only be found outside the employment of the injury employer.

For injury employers who recognize their obligations under the Code and offer safe, modified work at the highest hourly rate they have available, but less than the pre-injury

rate to accommodate a worker with permanent restrictions, it is not that a return to work with the injury employer is not possible or that the duty to accommodate has not been met. The accommodation simply may not pay as much as the pre-injury rate and we believe this distinction is important. Workers may be moved to Phase III (new job, new employer) based on the goal of maximizing pre-injury even though the injury employer has offered reasonable accommodation under the Code in the form of lower-paying work.

CPR Cost Relief Recommendations:

CPR recommendations #16 and #19 aim to encourage employer support for return to work by providing cost relief. The PRRD's analysis suggests implementing these recommendations would not create an effective financial incentive for employers and are inviting stakeholders to provide feedback on what policy changes would incentivize employers to support return to work.

The PRRD's analysis appears to only include the effect of relieving current VR costs to determine the impact on premiums, however the significant costs that impact premiums are the wage-loss costs during the period before VR is even considered. Therefore, the real cost savings for employers is not in getting relief from the current VR costs but the reduced VR costs if they accommodate early, safe return to work much sooner so that less wage-loss costs impact their experience rating.

Also, the injury employer's duty to accommodate under the Code not only offers cost savings on premiums but is a legal requirement, therefore the policy changes suggested from the CPR Vocational Rehabilitation Recommendations should also help "encourage" injury employers to accommodate sooner.

The most impactful way to encourage injury employers to support early, safe, durable return to work is to ensure that they have access to timely abilities information from healthcare practitioners. The availability of timely access to a worker's abilities, restrictions or limitations is essential for the injury employer to match to available work. Healthcare practitioners providing advice about time off work without the benefit of understanding the possibilities of modified work in the workplace, as commonly occurs, are a huge barrier for the injury employer trying to accommodate the worker in their

workplace. The Board should look at incentivizing healthcare practitioners to provide current abilities, restrictions and/or limitations to the injury employer on the worker's first visit and to provide timely updates on these during recovery. Healthcare practitioners should be incentivized to have discussions about the benefits of early, safe, return to work with their patients and to encourage them to work with their injury employer throughout accommodation. This builds on the trust they have with their healthcare practitioner rather than creating an adversarial situation where they are being encouraged to return to work from the injury employer through their offer of modified work but have advice from the healthcare practitioner that they are to be off work, many times without any understanding of what work is available.

Appendix B - #19.

This recommendation considers continuing wage-loss payments to the worker while their reasonable concerns about whether an offer of modified work is investigated to determine whether it is appropriate and in accordance with the Act and policy requirements. It further recommends that where a successful accommodation is achieved after investigation, the wage-loss payments are charged to the Accident Fund rather than the injury employer.

If wage-loss payments are continued before or during an investigation, it is imperative that injury employers not be charged for these costs, as the offer of safe, modified work is their obligation and the goal. Timely investigation is a key concern for employers. Due to limited Board staffing, many weeks can pass before a Case Manager is even assigned to the claim for this purpose. Also, the lack of understanding or incentive of healthcare practitioners to allow the injury employer to match available work by providing good, timely abilities, restrictions and/or limitations, rather than taking an immediate off work approach.

The challenge in the recommendation as proposed for cost-relief is the proposed condition that such cost shifting to the Accident Fund only be available "where a successful accommodation is achieved". There are many reasons that a return to work may not succeed or be significantly delayed through no fault of the injury employer, as described

above including a worker not proving able to sustain the accommodation work requirements to stay on the job. Relief from costs should be available:

a) where a successful accommodation is achieved or tried in good faith for the period worked;

or

b) any period when current abilities and restrictions information was not available to the injury employer;

or

c) the period of delay before WorkSafe commences investigation of whether the accommodation offer is appropriate.

Thank you for your invitation to submit and consideration of our concerns and the feedback that we have provided.

Regards,

Chartered Professionals in Human Resources, B.C. & Yukon



J. Geoffrey Howard, CPHR

Director, Board Member and Chair, Public Policy Committee, CPHR BC & Yukon



Robin Clarke, CPHR



Cheryl Pelletier, CPHR

CPHR BC & Yukon Public Policy Committee Members

c.c. S. Ryan, Board Chair, CPHR BC & Yukon

Anthony Ariganello, President & CEO, CPHR BC & Yukon