

**EXPLANATORY NOTES
BILL**

No. 39

An Act to amend *The Workers' Compensation Act, 2013*

**Clause
of Bill**

1 *The Saskatchewan Workers' Compensation Amendment Act, 2016*

2 *The Saskatchewan Workers' Compensation Act, 2013*

3 **Existing Provision**

Interpretation

2(1) In this Act:

- (a) **“average weekly earnings”** means the average weekly earnings as determined pursuant to section 70;
- (b) **“average weekly wage”** means the average weekly wage of the industrial composite for Saskatchewan as determined by the board for a year from information published by Statistics Canada;
- (c) **“board”** means the Workers' Compensation Board continued pursuant to section 9;
- (d) **“business day”** means a day other than a Saturday, Sunday or holiday;
- (e) **“chief executive officer”** means the chief executive officer of the board appointed pursuant to subsection 16(1);
- (f) **“child”** includes any child to whom the worker stands in the place of a parent;
- (g) **“chiropractor”** means a chiropractor who is registered pursuant to *The Chiropractic Act, 1994*;

(h) “**compensation**” means compensation payable pursuant to this Act with respect to an injury;

(i) “**Consumer Price Index**” means the weighted average of the all-items Consumer Price Indices for Regina and Saskatoon, as released by Statistics Canada, where the weights to be used are those used by Statistics Canada in constructing the all Canada Consumer Price Index at the time of the release;

(j) “**dependant**” means a member of the family of a worker who:

(i) is wholly or partly dependent on the worker’s earnings at the time of the death or injury of the worker; or

(ii) but for the worker’s incapacity due to the injury, would have been dependent within the meaning of subclause (i);

(k) “**earnings**” means, subject to subsection (3):

(i) in the case of a worker who sustained an injury before September 1, 1985, the worker’s gross earnings from employment; or

(ii) in the case of a worker who sustained an injury on or after September 1, 1985, the worker’s gross earnings from employment less the probable deductions for:

(A) the probable income tax payable by the worker calculated by using only the worker’s earnings from employment as his or her income, and using only the worker’s basic personal exemption, exemption for dependants and employment-related tax credits, as at the date of the worker’s injury and each anniversary date, as the worker’s deductions;

(B) the probable *Canada Pension Plan* premiums payable by the worker; and

(C) the probable employment insurance premiums payable by the worker;

(l) “**employer**” includes, subject to subsection (4), any person, association or body having in its service any worker engaged in any work in, about or in connection with an industry and includes:

(i) a trustee, receiver, liquidator, executor or administrator of an employer or any person who is appointed by a court or a judge to carry on the employer’s business;

(ii) the Crown in right of Saskatchewan and in right of Canada insofar as the latter in its capacity as an employer submits to the operation of this Act;

(iii) any board or commission of the Crown in right of Saskatchewan;

(iv) a municipality;

(v) a school board and the conseil scolaire;

(vi) commissions and boards having the management of any work or service operated for a municipality; and

(vii) any person who authorizes or permits a learner to be in or about an industry;

(m) **“employer association”** means an organization of employers, whether or not they are employers within the meaning of this Act, formed to address common concerns and achieve common goals of employers;

(n) **“employment”** means employment in the service of an employer whether the worker’s duties are performed at, near or away from the employer’s place of business;

(o) **“fund”** means the Injury Fund continued pursuant to section 114;

(p) **“health care professional”** means a physician, dentist, chiropractor, optometrist, psychologist, occupational therapist, physical therapist, nurse or any other person who is registered or licensed pursuant to any Act to practice any of the healing arts;

(q) **“industry”** means an industry to which this Act applies and includes an establishment, undertaking, trade and business;

(r) **“injury”** means all or any of the following arising out of and in the course of employment:

(i) the results of a wilful and intentional act, not being the act of the worker;

(ii) the results of a chance event occasioned by a physical or natural cause;

(iii) a disabling or potentially disabling condition caused by an occupational disease;

(iv) any disablement;

(s) **“labour organization”** means a labour organization as defined in *The Trade Union Act*;

(t) **“learner”** means a person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry similar to the hazards an employee in that industry faces for the purpose of undergoing training or probationary work as a preliminary to employment;

(u) **“maximum wage rate”** means the maximum wage rate as set out in section 37;

(v) **“medical aid”** means the provision of medical and surgical aid, of hospital and professional nursing services, of chiropractic and other treatment and of prosthetics or apparatus;

(w) **“medical review panel”** means a medical review panel constituted pursuant to section 62;

(x) **“member”** means a member of the board;

(y) **“member of the family”** means, with respect to a person, the person’s spouse, father, mother, grandparent, step-parent, child, grandchild, stepchild, brother, sister, half-brother and half-sister;

(z) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

(aa) **“occupational disease”** means a disease or disorder that arises out of and in the course of employment and that results from causes or conditions that are:

(i) peculiar to or characteristic of a particular trade, occupation or industry;
or

(ii) peculiar to a particular employment;

(bb) **“Occupational Health and Safety Division”** means the Occupational Health and Safety Division mentioned in section 68 of *The Occupational Health and Safety Act, 1993*;

(cc) **“occupational health and safety program”** means the occupational health and safety program carried out pursuant to *The Occupational Health and Safety Act, 1993*;

(dd) **“physician”** means a person registered pursuant to *The Medical Profession Act, 1981*, other than a person registered pursuant to section 42.1 of that Act, whose registration is not under suspension;

(ee) **“policy directives”** means the policy directives established pursuant to subsection 18(5);

(ff) **“post-secondary institution”** includes a regional college, institute, private vocational school, university and any other educational institution that is not administered pursuant to *The Education Act, 1995*;

(gg) **“spouse”** means, with respect to a worker:

(i) the legally married spouse of the worker; or

(ii) a person who is or was cohabiting with the worker as a spouse as at the date of the worker’s death or injury and:

(A) the person has or had cohabited with the worker as a spouse continuously for a period of at least one year; or

(B) the person and the worker are parents of a child;

(hh) **“vocational rehabilitation”** means rehabilitation that is intended to return injured workers to suitable employment, and includes counselling, assessment, career planning, educational upgrading, education, training, on-the-job training, assistance with job searches and assistance with job placement;

(ii) **“worker”** means a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes:

(i) a learner;

(ii) a member of a municipal volunteer fire brigade;

(iii) an executive officer of an employer, if that executive officer is carried on the employer’s payroll; and

(iv) any other person who, pursuant to this Act or any direction or order of the board, is deemed to be a worker;

(jj) **“worker’s advocate”** means a person appointed as a worker’s advocate pursuant to section 161.

(2) The board shall cause the average weekly wage as determined by the board in accordance with clause (1)(b) to be made public in any manner that the board considers appropriate.

(3) For the purposes of clause (1)(k), the board shall annually establish a schedule setting out a table of earnings and probable compensation from employment.

(4) For the purposes of clause (1)(l), if the services of a worker are temporarily let or hired to another person by the employer of the worker, the latter employer continues to be the employer for the period that the worker is working for that other person.

2013, c.W-17.11, s.2.

(a) Explanation

Clause 2(1)(s) is amended to change the reference from *The Trade Union Act* to *The Saskatchewan Employment Act*.

(b) Explanation

Clauses 2(1)(bb) and (cc) are amended to update the definitions of the “Occupational Health and Safety Division” and the “occupational health and safety program” to be consistent with *The Saskatchewan Employment Act*.

(c) Explanation

Two new clauses [(ff.1) and (ff.2)] are added to define “psychiatrist” and “psychologist” for the purposes of establishing who is authorized to diagnose psychological injuries.

(d) Explanation

Clause 2(1)(ii) is amended by adding **“unless otherwise specified”** after **“means”**. This change ensures that there is no conflict between this definition of worker and the one set out in section 28.1.

4 Existing Provision

None.

Explanation

Section 28.1 is added to create a rebuttable presumption for psychological injuries for workers exposed to traumatic incidents. The term “psychological injury” is used so as to capture all form of psychological injuries, not just post-traumatic stress disorder.

5 Existing Provision

Regulations

187(1) After consultation with the board, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) for the purposes of subsection 4(3), prescribing the amount of the annual earnings of a reeve or councillor;
- (c) for the purposes of subsection 7(3) and section 45, prescribing other means of serving or sending orders;
- (d) for the purposes of subsection 19(3), respecting reporting by the board to the minister;
- (e) for the purposes of section 28:
 - (i) prescribing periods of employment and, for that purpose, may prescribe different periods of employment for different listed diseases; and
 - (ii) prescribing a minimum period for a worker to have been a non- smoker;
- (f) for the purposes of clause 122(2)(a), respecting payroll statements employers transmit to the board;
- (g) for the purposes of section 152, prescribing a percentage of the unpaid amount mentioned in that section as a penalty;

(h) for the purposes of clause 166(3)(b), governing the manner of calculating the cost of complying with an attachment;

(i) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;

(j) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

(2) The Lieutenant Governor in Council may make regulations setting out guidelines for the making of decisions by the board, and a regulation made pursuant to this subsection supersedes any policy directive of the board that conflicts with it.

2013, c.W-17.11, s.187.

Explanation

Subsection 187(1) is amended to add clause (e.1). The new clause allows for regulations to:

- prescribe additional occupations covered under the presumption; and
- establish the edition of the *Diagnostic and Statistical Manual of Mental Disorders* that is used for diagnosing purposes.

6 Existing Provision

None.

Explanation

The legislation comes into effect on proclamation.