

EXPLANATORY NOTES

BILL

No. 165

An Act to amend *The Workers' Compensation Act, 2013* and to make consequential amendments to *The Freedom of Information and Protection of Privacy Act*

Clause of Bill

1 *The Workers' Compensation Amendment Act, 2018*

2 *The 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 practise 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 Part VI of *The Saskatchewan Employment 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:

- (i) the director of occupational health and safety appointed pursuant to section 3-3 of *The Saskatchewan Employment Act*; and
- (ii) the employees of the ministry presided over by the member of the Executive Council responsible for the administration of *The Saskatchewan Employment Act* to whom the director mentioned in subclause (i) has delegated any powers or responsibilities;

(cc) **“occupational health and safety program”** means an occupational health and safety program carried out pursuant to *The Saskatchewan Employment Act*;

(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*;

(ff.1) **“psychiatrist”** means a psychiatrist as defined in *The Mental Health Services Act*;

(ff.2) **“psychologist”** means:

- (i) an individual who is a member of the Saskatchewan College of Psychologists and who holds a licence to practise issued pursuant to *The Psychologists Act, 1997*; or
- (ii) an individual who is practising as a psychologist outside Saskatchewan and who is recognized as a psychologist by the licensing body of the jurisdiction in which the person practises;

(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, unless otherwise specified, 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; 2016, c33, s.3.

(a) Explanation

Clause 2(1)(ee) is amended to facilitate the new subsection 18(5.1).

(b) Explanation

Clause 2(1)(jj) is amended to change the syntax – “workers’ advocate” instead of “worker’s advocate”.

4 Existing Provision

Board continued

9(1) The Workers’ Compensation Board is continued.

(2) The board is a corporation.

(3) The board is to consist of a maximum of five members appointed by the Lieutenant Governor in Council as follows:

(a) a full-time chairperson; and

(b) an even number of full-time members, half of whom represent employers and half of whom represent workers.

(4) The Lieutenant Governor in Council shall appoint:

(a) each representative of employers from a list of names submitted by employer associations; and

(b) each representative of workers from a list of names submitted by labour organizations.

2013, c.W-17.11, s.9.

(1) Explanation

Subsection 9(3) is amended to change the composition of the board to include three full-time members and up to four part-time members. Currently the Act provides for up to five full-time members.

(2) Explanation

Subsection (5) establishes the responsibilities for the members of the board.

Subsection (6) establishes that the board is to meet at least quarterly.

5 Existing Provision

Power of board to delegate and appeal of delegate's decisions

18(1) In this section:

(a) **“applicant”** means a person who applies pursuant to subsection (4);

(b) **“delegate”** means an employee of the board to whom the board has delegated any of its powers or functions pursuant to subsection (2).

(2) The board may delegate any of its powers or functions to any of its employees.

(3) The board may impose any terms and conditions on a delegation pursuant to subsection (2) that the board considers appropriate.

(4) Any employer, worker or dependant of a deceased worker affected by any act or decision of a delegate in the exercise of any delegated power may apply to the board to have the act or decision of that delegate reviewed, set aside, amended, stayed or otherwise dealt with.

(5) For the purposes of hearing and deciding applications pursuant to this section, the board shall establish policy directives respecting applications, including the manner of making applications and the hearing and determination of applications.

(6) On an application pursuant to subsection (4), the board:

(a) shall hear and determine the application in accordance with its policy directives; and

(b) for the purposes of clause (a), may exercise the powers and perform the functions of the board with respect to the delegated power in issue as if the delegate had not acted or made that decision.

(7) As soon as possible after determining the application or reviewing the act or decision, the board shall provide a written notice to the applicant of its decision.

2013, c.W-17.11, s.18.

Explanation

Subsection (5.1) has been added to clarify the Board's authority to make policy directives respecting any matter governed by the Act.

6 Existing Provision

Presumption of certain occupational diseases re firefighters

28(1) In this section and in section 187:

(a) **"fire department"** means a fire department as defined in *The Fire Safety Act*;

(b) **"listed disease"** means:

(i) a primary site brain cancer;

(ii) a primary site bladder cancer;

(iii) a primary site kidney cancer;

(iv) a primary non-Hodgkins lymphoma;

(v) a primary leukemia;

(vi) a primary site ureter cancer;

(vii) a primary site colorectal cancer;

(viii) a primary site lung cancer;

(ix) a primary site testicular cancer;

(x) a primary site esophageal cancer; or

(xi) an injury to the heart that manifests within 24 hours after attendance at an emergency response.

(2) Subject to subsection (3) and unless the contrary is proven, if a worker who is or has been a firefighter suffers a listed disease, that disease is presumed to be an occupational disease, the dominant cause of which is the employment as a firefighter.

(3) The presumption mentioned in subsection (2) applies:

(a) only to a worker who:

(i) has been a full-time member of a fire department for the minimum period of employment prescribed in the regulations; and

(ii) has been regularly exposed to the hazards of a fire scene, other than a forest fire scene, throughout the period mentioned in subclause (i); and

(b) in the case of primary site lung cancer, only to a worker who has been a non-smoker before the date of injury for the minimum period prescribed in the regulations.

2013, c.W-17.11, s.28; 2015, c.F-15.11, s.68.

Explanation

Subclauses (x.1) through (x.6) have been added to expand the list of occupational diseases covered by the rebuttable presumption for firefighters.

7 Existing Provision

Surviving dependent spouse

81(1) If the worker is survived by a dependent spouse, compensation in the form of a monthly allowance is payable to that spouse for a period of five years in an amount equal to the greater of:

- (a) in the case of a worker:
 - (i) who sustained an injury before September 1, 1985, 75% of the deceased worker's average weekly earnings multiplied by 4.33; or
 - (ii) who sustained an injury on or after September 1, 1985, 90% of the deceased worker's average weekly earnings multiplied by 4.33; and
 - (b) 50% of the amount equal to the average weekly wage as of June in the preceding year multiplied by 4.33.
- (2) If a surviving dependent spouse has dependent children of the worker, the compensation payable pursuant to subsection (1) is to be extended until the youngest child:
- (a) reaches the age of 16 years; or
 - (b) if any dependent child is in full-time attendance at a secondary or post-secondary institution, reaches the age of 18 years.
- (3) If compensation is paid to a surviving dependent spouse pursuant to subsection (1) for a period exceeding 24 consecutive months:
- (a) the board shall set aside an amount equal to 10% of the compensation paid during the 24-month period and of the future compensation to be paid after the expiry of the 24-month period; and
 - (b) the amount mentioned in clause (a), together with accrued interest, must be used to provide an annuity for the surviving dependent spouse at age 65.
- (4) If compensation is paid to a surviving dependent spouse pursuant to subsection (2):
- (a) the board shall set aside an amount equal to 10% of the compensation paid; and
 - (b) the amount mentioned in clause (a), together with accrued interest, must be used to provide an annuity for the surviving dependent spouse at age 65.
- (5) In addition to any compensation payable pursuant to subsection (1), the board may provide to the surviving dependent spouse the same counselling and vocational assistance as would be provided to a worker in order to enable the dependent spouse to enter the labour force and become self-sufficient.

(6) On and from the expiration of entitlement to compensation pursuant to subsection (1) or (2) and subject to section 101, a surviving dependent spouse of a deceased worker is entitled to compensation, until the surviving dependent spouse reaches the age of 65 years, equal to the difference between:

(a) the amount of the monthly allowance that would be payable pursuant to subsection (1) if the surviving dependent spouse were entitled to that allowance; and

(b) the earnings that the surviving dependent spouse is earning from employment.

(7) For the purposes of subsection (6), the definition of “earnings” in clause 2(1)(k) applies, with any necessary modification.

2013, c.W-17.11, s.81.

(1) Explanation

Housekeeping – subsection (1) is amended due to the addition of a new subsection (1.1).

(2) Explanation

A new subsection (1.1) is added which clarifies that dependent spouse benefits are to be indexed to the Consumer Price Index.

8 Existing Provision

Payments from fund

115 The board may expend moneys from the fund for any expenses incurred in the administration of this Act and, without restricting the generality of the foregoing, the board may expend moneys for:

(a) the payment of compensation to a worker or the worker’s dependants;

(b) administrative expenses of the board, including salaries and other remuneration;

(c) any medical aid provided pursuant to this Act to injured workers and any specialized treatment or other medical aid that the board considers necessary and that is not provided for in this Act;

- (d) the cost of any autopsy that the board considers necessary;
- (e) any grant with respect to any costs of rehabilitation related to any injured worker re-entering the work force or to assist in lessening any hardship caused by the worker's injury;
- (f) any costs that the board considers necessary or expedient to assist dependent spouses of deceased workers to become self-sufficient;
- (g) the cost of administration of the occupational health and safety program;
- (h) the expenses, including salaries and remuneration, of worker's advocates;
- (i) the expenses of any committee of review established pursuant to this Act; and
- (j) any other purposes that the board considers necessary to carry out the intent of this Act.

2013, c.W-17.11, s.115.

Explanation

Clause (h) is amended to change the syntax – from “worker’s advocate” to “workers’ advocate”.

9 Existing Provision

Appointment and duties

161(1) Persons to be known as worker’s advocates may be appointed in accordance with *The Public Service Act, 1998*.

(2) A worker’s advocate may assist any worker, or any worker’s dependant, with respect to any claim being advanced by the worker or dependant for compensation.

(3) A worker’s advocate shall consider claims that are brought before the worker’s advocate but may decline to provide services with respect to any claim if the worker’s advocate is of the opinion that:

- (a) the claimant is not eligible for compensation; or
- (b) the claimant has failed to pursue the claim for an undue length of time having regard to the circumstances of the case.

(4) A worker's advocate may examine all files, records and other material of the board that relate to the injury or death with respect to which the claim is made.

(5) The minister shall provide any technical, clerical and other assistance that a worker's advocate may require in carrying out the duties of the worker's advocate pursuant to this section.

2013, c.W-17.11, s.161.

Explanation

The section is amended to change the syntax – from “worker’s advocate” to “workers’ advocate”.

10 Existing Provision

Committee of review

162(1) At least once every four years, the Lieutenant Governor in Council shall appoint a committee of review consisting of at least five persons to review and report on all matters concerning this Act, the regulations and the administration of this Act and the regulations.

(2) The Lieutenant Governor in Council shall:

- (a) designate one of the members of the committee to be chairperson of the committee and another member to be acting chairperson; and
- (b) specify the number of members that constitutes a quorum.

(3) The membership of the committee of review must include equal representation by employers and labour organizations.

(4) The members of the committee of review, other than those who are members of the public service, are to be paid any compensation for their services that the Lieutenant Governor in Council may determine.

(5) The members of the committee of review are entitled to be reimbursed for their expenses at rates payable to members of the public service of Saskatchewan.

(6) The minister shall provide any technical, clerical and other assistance that the committee of review may require.

(7) The chairperson of the committee of review, or in the chairperson's absence the acting chairperson, has the powers of a commissioner pursuant to *The Public Inquiries Act*.

(8) The committee of review is not bound by the rules of evidence and may receive and accept any evidence and information under oath or by affidavit or otherwise that it considers proper.

2013, c.W-17.11, s.162.

Explanation

The new subsections (1) and (1.1) change the time period for reviews of the Act and regulations from at least every four years from appointment of a committee to five years from receipt of the last committee's report.

11 Existing Provision

Worker's access to information

173(1) In this section and in section 174, "**worker's representative**" means a person whom a worker has authorized in writing to be his or her representative.

(2) Subject to subsection (4), the board shall allow access to information respecting a worker collected or otherwise gathered pursuant to this Act by the board if a written request for that information is made by:

(a) the worker;

(b) any worker's representative; or

(c) in the case of a deceased worker, any of the worker's dependants.

(3) A person receiving information pursuant to subsection (2) shall use that information only for the purposes of a reconsideration or review of a decision of the board.

(4) The board shall provide any medical report that the worker, worker's representative or worker's dependant has requested pursuant to subsection (2) to the worker's or worker's dependant's physician instead of providing it to the worker, worker's representative or worker's dependant if the board is of the opinion that the medical report:

(a) contains information of a sensitive nature; and

(b) if provided directly to the worker, worker's representative or worker's dependant, would cause harm to the worker or any other person.

(5) If a physician receives information pursuant to subsection (4), the physician shall explain to the worker, worker's representative or worker's dependant, as the case may be, the contents of the medical report to assist the worker, worker's representative or worker's dependant in the request for reconsideration of or application for a review of the decision of the board.

2013, c.W-17.11, s.173.

Explanation

Subsection (3) is repealed as it restricts the workers' access and use of information contained in his or her claim file.

12(1) *The Freedom of Information and Protection of Privacy Act*

(2) Existing Provision

Confidentiality provisions in other enactments

23(1) Where a provision of:

(a) any other Act; or

(b) a regulation made pursuant to any other Act;

that restricts or prohibits access by any person to a record or information in the possession or under the control of a government institution conflicts with this Act or the regulations made pursuant to it, the provisions of this Act and the regulations made pursuant to it shall prevail.

(2) Subject to subsection (3), subsection (1) applies notwithstanding any provision in the other Act or regulation that states that the provision is to apply notwithstanding any other Act or law.

(3) Subsection (1) does not apply to the following provisions, and those provisions prevail:

(a) *The Adoption Act, 1998*;

- (b) section 31 of *The Archives and Public Records Management Act*;
- (c) section 74 of *The Child and Family Services Act*;
- (d) section 14 of *The Enforcement of Maintenance Orders Act, 1997*;
- (e) *The Health Information Protection Act*;
- (f) section 91.1 of *The Police Act, 1990*;
- (g) section 13 of *The Proceedings against the Crown Act*;
- (h) section 15 of *The Securities Act, 1988*;
- (i) sections 40.1, 97 and 283 of *The Traffic Safety Act*;
- (j) section 61 of *The Trust and Loan Corporations Act, 1997*;
- (k) Part VIII of *The Vital Statistics Act, 2009*;
- (l) sections 172 to 174 of *The Workers' Compensation Act, 2013*;
- (m) any prescribed Act or prescribed provisions of an Act; or
- (n) any prescribed regulation or prescribed provisions of a regulation.

1990-91, c.F-22.01, s.23; 1997, c.T-22.2, s.90;
 1999, c.H-0.021, s.66; 2004, c.A-26.1, s.36;
 2004, c.T-18.1, s.300; 2004, c.5, s.3; 2005, c.25,
 s.37; 2008, c.V-7.3, s.16; 2009, c.32, s.4; 2013,
 c.W-17.11, s.192; 2014, c.29, s.31; 2015,
 c.A-26.11, s.42; 2015, c.33, s.21; 2017, c.12,
 s.11.

Explanation

Clause 23(3)(l) is repealed to remove the exemption for *The Workers' Compensation Act, 2013* from *The Freedom of Information and Protection of Privacy Act*.

(3) Existing Provision

Interpretation

24(1) Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) **Repealed.** 1999, c.H-0.021, s.66.

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual's health services number as defined in *The Health Information Protection Act*;

(e) the home or business address, home or business telephone number or fingerprints of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

(1.1) "Personal information" does not include information that constitutes personal health information as defined in *The Health Information Protection Act*.

(2) “**Personal information**” does not include information that discloses:

- (a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a government institution or a member of the staff of a member of the Executive Council;
- (b) the salary or benefits of a legislative secretary or a member of the Executive Council;
- (c) the personal opinions or views of an individual employed by a government institution given in the course of employment, other than personal opinions or views with respect to another individual;
- (d) financial or other details of a contract for personal services;
- (e) details of a licence, permit or other similar discretionary benefit granted to an individual by a government institution;
- (f) details of a discretionary benefit of a financial nature granted to an individual by a government institution;
- (g) expenses incurred by an individual travelling at the expense of a government institution.

(3) Notwithstanding clauses (2)(e) and (f), “**personal information**” includes information that:

- (a) is supplied by an individual to support an application for a discretionary benefit; and
- (b) is personal information within the meaning of subsection (1).

1990-91, c.F-22.01, s.24; 1999, c.H-0.021, s.66;
2001, c.50, s.5.

Explanation

The amendment to subsection (1.1) and the addition of subsection (1.2) establishes that personal health information within the possession of the Workers’ Compensation Board is personal information.

13 Existing Provision

None.

Explanation

This amendment will come into force on proclamation.