

ONTARIO NURSES' ASSOCIATION

SUBMISSION

ON

Bill 27: Working for Workers Act, 2021

**Ministry of Labour, Training and Skills Development
Health, Safety and Insurance Policy Branch**

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Ontario Nurses' Association

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The Ontario Nurses' Association (ONA) is the union representing more than 68,000 front-line registered nurses and health-care professionals, and over 18,000 nursing student affiliates. Our members provide care in Ontario hospitals, long-term care facilities, public health, the community, clinics, and industry.

ONA appreciates the opportunity to provide stakeholder considerations on the proposed Bill 27: *Working for Workers Act, 2021*.

Schedule 6 of the Ontario government's Bill 27: *Working for Workers Act, 2021* does not benefit workers. There is no "extra" money for the Workplace Safety and Insurance Board (WSIB) to reallocate to employers.

At a time when Ontarians are emerging from the most impactful global health crisis in recent memory, we expect the WSIB will have a vital role to play in the compensation and rehabilitation of the many front-line workers who have sustained mental and physical illness arising out of the pandemic. This is in addition to the WSIB's everyday responsibility to injured workers.

The changes to the *Workplace Safety and Insurance Act (WSIA)* proposed in Bill 27 do not align with the WSIB's historical purpose. The WSIB's function is the administration of its own insurance system, and its insurance fund exists to power the province's workers' compensation system – a system, which is overly complex, increasingly legalistic, and difficult for many workers to navigate. It should not be co-opted into providing economic benefits to employers from the insurance fund; the fund was never intended for employers.

Schedule 6 of the Ontario government's Bill 27: *Working for Workers Act, 2021* does not benefit injured workers in any way. The idea that a surplus exists in the insurance fund is a fallacy. The idea that the WSIB should be permitted to funnel any surplus to employers is offensive.

The government should not seek to empower the WSIB to provide further economic benefits to employers from the insurance fund. The fund was never intended to financially benefit employers. The powers proposed under Schedule 6 of the Bill will empower the WSIB to divert much needed resources away from the system at a time when significant investment is required to promote more effective, efficient, and equitable claims adjudication and administration.

If economic stimulus or relief for employers is the aim of Schedule 6 of Bill 27, it is ONA's position that employers have had their chance. The WSIB has given Ontario employers cost relief for years and employers have already benefitted from existing cost saving mechanisms available within the WSIB framework.

For example, employers who reduce the number of work injuries in their workplaces can participate in the WSIB's Health and Safety Excellence Program which enables them to receive a rebate based on their annual WSIB premiums. Additionally, earlier this year employers enjoyed yet another reduction of their overall premiums. According to the WSIB's website:

“For the fourth year in a row, the WSIB has been able to offer reductions to the average premium rate for Schedule 1 businesses. The average premium rate has been reduced by 17 per cent for 2020. This represents a premium decrease from a Schedule 1 average rate of \$1.65 on every \$100 of insurable payroll in 2018 to an average of \$1.37 in 2020. The total cumulative reduction to the average premium rate since 2016 is 47.1 per cent.”¹

In terms of pandemic-specific cost relief measures², employers were relieved of Construction Industry Plan (CAD-7) and New Experimental Experience Rating Plan (NEER) charges for the 2020 work year and had the option to repay deferred premiums from the beginning of the pandemic interest free. Employers who received the Canada Emergency Wage Subsidy were not required to report the subsidy as insurable earnings, thereby reducing the basis for their premiums.

In addition, costs associated with COVID-19 related claims were not allocated at an employer or class level. Instead, they were allocated on a Schedule-wide basis and there were no changes in premium rates for 2020 or 2021. The WSIB has stated that this “premium rate stability helped Ontario businesses continue to adjust to the ongoing pandemic, while protecting coverage for the people we serve.”

The proposed changes in Bill 27 also create indisputable inequity in that they exclude some employers from the scheme completely. Unlike the other employer-centric cost relief opportunities discussed above, the Bill only provides for distribution of the surplus to some Schedule 1 employers, not all employers in Ontario. Bill 27 also gives the WSIB the right to determine its own criteria for which employers are included or excluded from the distribution process and contains strong language preventing employers from appealing decisions made on how the funds are allocated.

By empowering the WSIB to re-allocate insurance fund monies to employers with little transparency and without the opportunity to appeal its decisions, the government contributes to conditions where claims suppression thrives and employers are encouraged to appeal meritorious claims, to the detriment of all injured workers.

It is ONA’s position that the WSIB’s employer-focused relief policies have created the perception that there is “extra” money in the WSIB’s insurance fund. In reality, there is no surplus; the Board has simply intentionally reduced its revenues from premiums after systematically, disproportionately and chronically reducing its largest expenditure, benefit payments to injured workers.

Having already demonstrated its commitment to assisting Ontario businesses, ONA believes it is time for the government and the WSIB to demonstrate their commitment to injured workers. The arbitrary reallocation of insurance fund monies will be particularly detrimental to workers who have thus far had to contend with poorly investigated claims, and poorly trained frontline decision makers, all leading to increasing denials of claims.

¹<https://www.wsib.ca/en/2020premiumrates#:~:text=For%20the%20fourth%20year%20in%20a%20row%2C%20the,2018%20to%20an%20average%20of%20%241.37%20in%202020.>

² <https://www.wsib.ca/en/financialrelief>

ONA has seen many meritorious mental health injuries and claims with those suffering with post COVID 19 symptoms. Less money in the general fund as a cost saving measure for employers will continue to encourage the WSIB's practices of poor decision making at operations and appeals, and poorly investigating claims rather than remedying these chronic issues that act as barriers to recovery for many Ontarians.

Recommendations already exist for how reallocated funds could be utilized to better "protect coverage" for those served by the WSIB and address some of the chronic, systemic issues faced workers who interact with the system.

For example, Linda Regner-Dykeman and Sean Speer, authors of the Workplace Safety and Insurance Board Operational Review Report have suggested that:

"It is notable that the Workplace Safety and Insurance Appeals Tribunal's rate of overturning Workplace Safety and Insurance Board decisions is high. Evidence provided by the WSIB indicates that the allowance rate for Workplace Safety and Insurance Appeals Tribunal decisions is roughly 55 to 66%; 33 to 38% of appeals are allowed in full and another 20 to 33% are allowed in part. The explanation for such a high overturn rate is multifaceted. It is partly explained by differing interpretations between the WSIAT and WSIB on various issues. Another factor is that by the time a case is heard by the WSIAT, there may be new information (including, for instance, new medical diagnoses) that was not part of the initial adjudication. Whatever the cause, this gap is a source of inefficiency for the Workplace Safety and Insurance Board, Workplace Safety and Insurance Appeals Tribunal and the workers and employers who are implicated."³

A re-allocation of existing funds to optimize occupational disease adjudication was also identified as a priority for investment and would better serve injured workers than employers. For instance, according to the report by Paul Demers released in July 2020 titled "*Using scientific evidence and principles to help determine the work-relatedness of cancer*"⁴ and the KPMG report released in 2019 "*Value for Money Audit Report: Occupational Disease and Survivor Benefits Program*"⁵ the creation of a Scientific Advisory Table on Occupational Disease to support the development of policy and procedure regarding occupational disease was recommended. Given the current challenges many workplaces are facing in relation to pandemic-specific occupational health, this recommendation is especially timely.

Since the pandemic began, ONA has seen many mental stress claims from frontline healthcare workers. As tragic as these claims are, unfortunately, we are not surprised. According to a report from Ontario's COVID-19 Science Advisory Table titled "Burnout in Hospital-Based Healthcare Workers during COVID-19:

³ <https://www.ontario.ca/document/workplace-safety-and-insurance-board-operational-review-report>

⁴ <http://www.occupationalcancer.ca/wp-content/uploads/2020/07/Final-Report-Using-scientific-evidence-and-principles-to-help-determine-the-work-relatedness-of-cancer-Final-April2020.pdf>

⁵ https://www.wsib.ca/sites/default/files/2019-05/wsib_occupational_disease_and_survivor_benefits_program_vfma_report.pdf

“In the COVID-19 pandemic, burnout has increased to levels that pose a threat to maintaining a functioning healthcare workforce. Elevated burnout and other indicators of stress are anticipated to persist long after the pandemic”

“Evidence is consistent across diverse settings that healthcare professionals in intensive care settings have been at higher risk during the pandemic compared to other healthcare settings. Working in a COVID-19 unit or hospital or in an emergency department has also been associated with elevated burnout. During the pandemic, higher levels of burnout have consistently been reported in nurses than in other hospital-based healthcare professionals in Canada and internationally.”

“A marked and sustained increase in burnout is likely to lead healthcare professionals to seek work that involves less direct patient contact, shorter or more predictable hours, or to leave the profession altogether. The likelihood of a workforce reduction is supported by survey data indicating that 43% of members of the 1,716 Registered Nurses Association of Ontario members surveyed in January-February 2021 were considering leaving nursing after the pandemic (27% somewhat likely, 7% likely, 9% very likely).”⁶

In the current climate, the WSIB's allowance rate for mental stress claims is exceptionally low. ONA represents many members who have experienced burnout as a result of working on the front-lines during the pandemic. As we attempt to access workers' compensation benefits for them, many have been denied benefits due to the Board's overly exclusionary adjudication practices.

Unless the worker has a diagnosis of Post-Traumatic Stress Disorder (PTSD), there are limited paths to receiving benefits for COVID related mental stress claims. Investment in improvements to the WSIB's adjudication of all psychological claims would be of enormous benefit to essential workers, especially healthcare workers, during this time.

ONA has also seen an influx of claims from those suffering with long-haul, post workplace-COVID symptoms. The Ontario COVID-19 Science Advisory Table has also produced a report on the strain long COVID will have on Ontario which states in part:

The impact of post COVID-19 condition on families and caregivers of patients has not been well researched to date. However, there is evidence that caregivers of patients who have survived critical illness in general experience high levels of persistent depressive symptoms and may experience physical and psychological morbidity. Being a caregiver who is experiencing mental or emotional strain is also an independent risk factor for 4-year mortality.

These risk factors are barriers for return to work. Essential and front-line healthcare workers need more support, treatment and psychological intervention to aid in reducing these risk factors, thereby allowing them to return to work in a way that is physically and psychologically safe. The Science Table Report also states:

⁶ https://covid19-sciencetable.ca/wp-content/uploads/2021/10/Burnout-in-Hospital-Based-Healthcare-Workers-during-COVID-19_published_20211007-1.pdf

“There are data gaps regarding long-term disability and unemployment for those with the post COVID-19 condition. A study of 150 people with the post COVID-19 condition in France who were treated mainly in outpatient settings found that about 11% were on sick leave 60 days after the onset of COVID-19 symptoms. Half of this cohort were health care workers, who are typically a younger and healthier group at baseline. A patient-led study which surveyed 3,762 individuals with suspected or confirmed COVID-19 found that 45.2% reported requiring a reduced work schedule compared to before illness and 22.3% were not working at the time of survey due to their health conditions. These findings are consistent with previous literature tracking outcomes of patients with [Acute Respiratory Distress Syndrome] (ARDS), which found that 51% did not return to work.”⁷

The WSIB is responsible for retraining and reintegrating workers who are unable to return to the work force because of an injury sustained arising out of or in the course of their work. Some healthcare workers have been so negatively impacted by the pandemic that they may never return to their pre-COVID level of functioning or occupation. The WSIB has a financial obligation to workers unable to return to work due to COVID work-related injuries. Discharging its duties under this obligation requires considerable resources including employment of Board staff, training WSIB adjudicators, payment of benefits and the provision of education and training needed to assist workers with returning to the workforce in a psychologically and physically safe way.

There is no “extra” money in the WSIB system. Allowing the Board to re-allocate proceeds of the insurance fund to some employers is fiscally irresponsible, amounts to misappropriation, and is harmful to workers. We urge the government to reconsider its Bill and remove Schedule 6 from the legislation entirely.

⁷ [Understanding the Post COVID-19 Condition \(Long COVID\) and the Expected Burden for Ontario - Ontario COVID-19 Science Advisory Table \(covid19-sciencetable.ca\)](https://www.covid19-sciencetable.ca)

