

WORKING TOGETHER ON PREVENTION

**Session for Clarification, Questions and Answers
May 11th, 2005
Board Room
Workers' Compensation Health & Safety Board**

PRESENTERS:

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| Kurt Dieckmann | Chair, Director of Occupational Health & Safety |
| Jim Stephens | VP of Operations, YWCHSB |
| Sheila Lilles | VP of Programs, YWCHSB |

PRESENT:

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| Gerry Meier | Acting President, YWCHSB |
| Terry Demianenko | Corporate Health & Safety, Government of Yukon |
| Ralph Shopland | Corporate Health & Safety, Government of Yukon |
| Douglas Rody | Yukon Federation of Labour |

ALSO PRESENT:

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| Becky Striegler | Public Relations, YWCHSB |
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WELCOME AND INTRODUCTIONS

Mr. Dieckmann welcomed everyone to the meeting, and then addressed a number housekeeping details. Following the housekeeping matters, the members of the panel were introduced.

Mr. Dieckmann listed the three areas of consultation: Prevention; Economic Incentives; and Indoor Air Quality/Environmental Tobacco Smoke. He explained that last week they did presentations, and copies of the presentations have been provided.

Today is just to clarify any issues and answer any questions. As direction will be taken from the public and stakeholders, any input is appreciated.

A brief summary of the presentation was requested by Ms Demianenko.

INDOOR AIR QUALITY/ENVIRONMENTAL TOBACCO SMOKE

Ms Lilles explained that it is recognized that indoor air quality is a broad topic. One small aspect of indoor air quality is being particularly focused on, related to the environmental tobacco smoke issue. The presentation sets out some of the trends seen in Canada and Yukon; what has happened in other jurisdictions with respect to legislation or

other approaches that have been taken; and what opportunities there are for employers in terms of dealing with environmental tobacco smoke.

The areas to be determined are: is indoor air quality or environmental tobacco smoke an issue at the workplace; does the workplace have a policy to address these issues; are the policies part of the safety management system; what kind of role, if any, should WCB play?

- Mr. Shopland - Are these the issues that are going to be reviewed at another session?

Ms Lilles responded that the presentations were done last week, so now they are looking for feedback on those questions.

PREVENTION

Mr. Dieckmann explained that there are a number of areas feeding into the prevention strategy. There is a Prevention Committee that makes recommendations to the Board. Meetings like today are meant to receive input from stakeholders with regard to what prevention should look like in the territory.

The Prevention Committee and the Board came up with three strategy areas: incentives; empowerment (people managing safety in their own workplace); and education and communication. The feedback sessions are the beginning of the education/communication part of the strategy, as well as there is also a focus on young workers and other things.

The Board is currently working on their strategic plan, which will form part of how the whole strategy comes together.

What is needed from stakeholders, is what they expect prevention to look like. The small operation is going to look a lot different than the Yukon Territorial Government, and there is a broad spectrum in between. It is important to determine what people need, and what can be done to help them.

INCENTIVES

Jim Stephens explained that there are two main approaches; best practices and cost experience. With regard to rewarding employers for best practices, things to be considered would be having a proper safety committee, and a policy on reintroducing injured workers back into the workplace. Various jurisdictions have bits and pieces of these components in their programs. The jurisdictions that have been referred to in this presentation are Newfoundland, PEI and NWT. All jurisdictions in Canada have some type of incentive program.

The big challenge in Yukon is to try to find something that works for this jurisdiction, which is very small compared to most Boards. Yukon's workforce would fit into one of 90 different rating groups in B.C. Statistically, the smaller you get, the more random fluctuations and volatility you get. This can make it difficult, on the experience rating approach, to try to build something in for small employers, based on their experience. For smaller employers, it probably makes more sense to look at the best practices approach.

Bigger employers would lend themselves more to a combination of experience and incentive. Yukon does not have a lot of big employers. The challenge is to tailor a program that works properly for the sizes of businesses in Yukon.

- Mr. Shopland - In the past, there have been two incentive programs commenced, and just about the time they might become implemented, they were scrapped. How long is it expected this incentive program might last before it is scrapped? It is unlikely the Government of Yukon will participate, as there is no incentive for them to join the incentive program.

Mr. Dieckmann explained that the merit rebate program failed because there was no way to insure the program was actually being administered; it was a high maintenance program that wasn't working. If a best practices incentive program is implemented, it will have to include some sort of system of insuring that the program is being followed.

Ms Lilles pointed out that there is no proposal on the table. The Board is looking for input as to whether there is any advantage to having a program like this; if so, what should the program look like.

Mr. Dieckmann explained that it makes no sense to set something up just to see it fail. The only way to set it up to succeed is if there is buy-in from Labour, from Industry, from Government, from all the stakeholders. However, it must also be something that is measurable, so the success of the program can be measured to insure continued support and continuation of the program.

- Mr. Rody - From Labour's perspective, there will be no support for an incentive program that is financial; i.e. experience rating or merit rebates. For employers, not injuring their employees should be incentive enough.

If the target is safety, and safety training and safety management systems, and a system is achieved that reduces injuries, ultimately injuries will decline and assessments will eventually decline. If the target, initially, is merit rebates, that becomes the employers' focus; not safety.

Ms Lilles asked what would happen if there was no claims/cost experience element to it; what if it was just linked to best practices in relation to safety, which shows that there are policies and practices that permit injured workers to get back to work effectively; policies and practices around appropriate training?

- Mr. Rody - Labour would likely support financial assistance to smaller employers to take part in programs that would assist them in providing training and in buying safety equipment, etc. The target should be safety programs.

If a reward is being considered for introducing best practices, before Labour could comment, they would like to see what it would look like.

- Mr. Rody - Will there be meetings later in June, where employer and employee groups would be at the same meeting? Labour would like to see employers challenged to come up with something more imaginative than just a merit rebate.

Mr. Dieckmann explained that when talking about safety systems, they can't just be paper programs; there has to be some sort of an audit element to it, insuring that the program is working.

- Ms Demianenko - Would the cost of the audit be a cost to the employer?

Mr. Dieckmann indicated that it would be a cost that the employer would incur, but the reality is that it will lower the injury rate, so it will bring down the entire costs over time, and that is the real benefit.

- Ms Demianenko - The last time Government introduced the audit system, there was a paper exercise sent to small businesses, in which they just checked off the appropriate box, and there was not anyone available to provide an audit for a larger organization, and there were not Health and Safety Officers from the Board to provide that service.

The environment is changing, but Government is reluctant to reintroduce audits as a component because of the experiences in the past.

Mr. Stephens agrees that this is a good point; there has to be something that can actually be sustained with the resources available, and produces results and does prevent accidents.

- Mr. Shopland - Some people tend to hide the injured worker by giving them light duty, and that just skews the statistics. This helps with the reintegration component, but it may not truly be reintegration as it is envisioned.
- Mr. Shopland - Government has a manager who knows what it means to be in compliance; he knows what his end goal is. However, due to current legislation and current attitude, there is no flexibility for him to go to his end position because he is bound by the OH&S Act. There is not an ability for him to approach the Board and explain what he is proposing to do, and how he wants to do it, because his proposed route does not meet the criteria as outlined in the OH&S Act.

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If the Board is going to consider best practices, maybe they should consider some ability to flex.

Mr. Dieckmann explained that the OH&S Act and Regulations are the minimum standards; there is no way to get around minimum standards.

If an employer can show an ability to meet or exceed the minimum standards through the introduction of practices which are industry best practices, they are not circumventing anything, they are actually increasing safety, there is not likely anybody that would say that it's a bad idea.

- Mr. Shopland - Government will revisit this issue and see if this is still a problem.

Mr. Dieckmann indicated that the Board would be more than happy to look at the proposal.

The term "best practices" implies more than strict regulatory compliance. Best practices exceed regulatory compliance. Anyone in regulatory compliance, in this day and age, is not meeting their obligations under due diligence. The reality is that, with the changes to the Criminal Code of Canada, a higher duty than mere compliance has been imposed upon workplaces, supervisors, etc. Some of the present regulations do not meet any kind of a standard.

- Mr. Rody - What is planned for June; will there be stakeholder meetings in June?

Ms Lilles explained that there were no additional meetings planned in June. The Stakeholders Advisory Committees indicated the meetings with people need to be concluded as close as possible to the middle of May, because people begin to disappear into the field at that time.

Stakeholders indicated that, after the currently scheduled round of meetings, the stakeholders needed an opportunity to meet with their own interest group and put together their proposal. No meetings have been planned for June.

- Mr. Rody - Labour wanted to know if there was any interest from employers to engage in dialogue about what ideas might work. Labour's difficulty in coming up with proposals for prevention is that it is not Labour implementing the programs, it is the employer, and Labour wants to know what sort of programs the employers want, other than merit rebates and experience rating programs.

Labour wants to see some economic incentives that will help particularly smaller employers.

Ms Lilles explained that more people are expected next week at the feedback sessions, and that might be the opportunity to raise that as a possible course of action, to see if there is an interest.

Mr. Dieckmann pointed out that there is a meeting on Tuesday, May 17th, for workers; and Wednesday, May 18th, will be a meeting for employers.

- Ms Demianenko - Basically everyone is here for a common purpose, and there is agreement with the concept of prevention and prevention strategy. Government is really concerned about measurables. The program does need to be measured, but there is uncertainty as to how effectively the Board can assist employers and workers to measure the system consistently and annually. In order to look at this adequately, there needs to be more meat as to what it is going to look like.

Ms Lilles and Mr. Dieckmann explained that it was deliberate, not to provide too many details of what the program would look like, because they want the input from the interested parties. The Board did not want to predict what they might hear from people; they are more interested in feedback.

If anyone knows of any models that work, introduce them to the panel.

- Ms Demianenko – It is not possible to effectively provide the feedback required by June 24th. In order to do a really informed comment, a month and a half is a very short timeline.

Mr. Dieckmann indicated that that is something that will have to be considered.

- Mr. Rody - With regard to the COR program that the Construction Safety Association has been putting on, what is the feedback from the employers who have taken the course?

Mr. Dieckmann indicated the feedback has been really good from the majority of those who participated. One particular employer was successful in obtaining a contract because he was the only person who qualified because of having participated in the course.

SECONDHAND SMOKE

Ms Lilles explained that the Board's interest in this issue is with respect to creating healthier and safer workplaces. There has been a tremendous reduction in tobacco consumption. Ninety percent of workplaces in the provinces have some form of smoking restrictions.

Things driving the trend are: there is additional information available to people for health considerations; there is a lot of evidence to show that, where smoking is restricted in the

workplace, there is less absenteeism and increased productivity; there has been legislation introduced across the country.

Employee satisfaction surveys have shown that, whether a person is a smoker or not, generally people prefer smoke-free workplaces.

- Mr. Shopland - What is compensable with regard to smoking in the workplace?

Ms Lilles explains that if someone is ill as a result of exposure to secondhand smoke in the workplace, their injury/illness is compensable. There has been a case in Yukon where a person was not able to work as a result of exposure to secondhand smoke in the workplace, and the Board helped the individual find another place to work, which had financial costs associated to it. Those costs could become significant over the next little while.

Another thing driving the issue of smoke-free workplaces is the question of liability. Many employers feel that, if they don't do something to create a smoke-free workplace, they are exposing themselves to future liability.

If demographics are looked at, it is the hospitality and service sector where there is more likely to be smoking; as well as in blue collar occupations and small firms. Young workers tend to work predominantly in the hospitality and service sector, so they are more likely to be exposed to secondhand smoke than some of the older people. This just adds another level of concern to the whole issue.

- Ms Demianenko - If you chose to regulate smoking, would you define a construction site as a workplace?

Ms Lilles answered that that is an issue to be considered. In some jurisdictions they include all worksites; in other jurisdictions, they have specific exclusions. For example, captive workers in remote and isolated situations where they may be living in a camp, smoking is permitted in particular areas. There are other examples of exclusions.

It does not necessarily follow that employers have to be regulated by the Board; they can establish their own smoking policies. The courts have been clear that employers have the right and the authority to establish policies for smoking in their own workplace.

- Mr. Rody - In terms of exposure to liability, there is good reason for the Board to move to address environmental smoke, because there are precedents set in the provinces where claims have been accepted, and the court has ruled that the Board had to accept that claim. There is a potential liability, and it only makes sense to move to mitigate that liability.

Ms Lilles indicated that, whether the Board takes action on this issue, or someone else takes action, it has to have public support.

Research indicates that there is no one solution that is going to resolve everything; it will take a variety of approaches all together to be effective. The Board is interested in to what extent workers and employers think environmental tobacco smoke is a problem in the community and the workplace; and what the role of WCB should be, if any.

There were no further questions, comments or concerns. The Board will provide Government with the information from the Prevention Committee.

(The meeting adjourned at 3:00 p.m.)

Doug Ayers, Court Reporter