

Ministry of Agriculture
BRIEFING NOTE FOR DM FOR INFORMATION FOR MEETING WITH BC FOOD & BEVERAGE CEO ABOUT CHANGE TO SCHEDULE 1 OF THE WORKERS COMPENSATION ACT

Ref: 192683

Date: August 11, 2020

Title: WorkSafeBC Board of Directors adding diseases like COVID-19 to list of items in Schedule 1 of the *Workers Compensation Act*

Issue: BC Food & Beverage and other stakeholders oppose change made by WorkSafe BC Board of Directors to add diseases caused by communicable viral pathogens, including COVID-19, to Schedule 1 of the *Workers Compensation Act* (WCA).

Background:

On July 22, 2020, the WorkSafe BC Board of Directors approved a [resolution](#) that amends Schedule 1 of the WCA, effective October 26, 2020. On July 30, 2020, James Donaldson, CEO of BC Food & Beverage emailed AGRI's DM and ADMs to express BC Food & Beverage's opposition to the change and to request a meeting.

WorkSafeBC released a [discussion paper](#) dated May 29, 2020 outlining proposed changes to Schedule 1 of the WCA.

The WCA provides compensation to workers for occupational diseases where certain requirements are met. It requires, among other things, that

- the worker has an "occupational disease" (the occupational disease requirement), and
- the occupational disease is due to the nature of any employment in which the worker was employed (the work causation requirement).

The occupational disease requirement is met if the disease is listed in Schedule 1; and the work causation requirement is presumed if the worker's employment meets the corresponding description of process or industry criteria in Schedule 1, unless the contrary is proven.

Currently, there is no presumption for COVID-19 in Schedule 1 of the WCA. Claims for COVID-19 are being adjudicated based on the specific facts of each case under existing policy relating to contagious diseases. The May 2020 discussion paper included options, Option 1: Status Quo and Option 2: Amend Schedule 1 and add a work-related presumption that would apply to COVID-19 and other diseases caused by communicable viral pathogens.

Stakeholders were invited to comment on the proposal and their feedback is summarized [here](#). Stakeholders include those from many industries including the food and beverage industry. BC Food and Beverage's comments are number 409 in the stakeholder submissions summary document. They oppose the change due to the difficulty establishing the virus was contracted in the workplace.

On July 14, 2020, the Minister of Labour tabled [Bill 23](#), which proposes to eliminate the mandated 90-day waiting period in the WCA before a WorkSafe BC regulatory amendment comes into effect, in relation to an occupational disease that is an infection caused by a communicable viral pathogen. If Bill 23 is passed prior to October 26, 2020, the effective date of the Schedule 1 amendment and consequential amendments will be adjusted accordingly.

Discussion:

The WorkSafe BC Discussion Paper (Discussion Paper) indicates that COVID – 19 is part of the coronavirus family and is a new and highly contagious disease that impacts both workers and the public. The discussion paper notes that rapid reviews of expert medical and scientific research were completed to determine whether or not workers in any occupation are at a greater risk of a COVID-19 infection.

In order to expedite decision-making a rapid review was done to determine whether workers in a specific occupation are at a greater risk of COVID-19 infection. Because COVID-19 is a novel disease and the expert medical and scientific information is limited, rapid reviews were also conducted on similar viruses SARS and H1N1. While it is understood that the highest risk of transmission of SARS-CoV-2 virus that causes COVID-19 occurs in close contact in indoor spaces, a review of the literature on workplace transmission did not highlight specific occupations at increased risk, particularly where layers of protection are put in place to prevent transmission.

The rapid review concluded while workplace transmission can occur, one's job title/occupation is insufficient information to conclude that work was the underlying cause of transmission without further investigation as to the risks and protections at a specific workplaces as well as the risks of contracting COVID-19 in the community. Conclusions may change over time as expert medical and scientific evidence for COVID-19 emerges.

The discussion paper noted that in exceptional circumstances where one or more BC emergencies have been declared some workers may be at a significantly greater risk of exposure than the public at large who may be limiting community contact. The results of the rapid reviews were used to inform the development of the description of the disease outlined in Schedule 1 of the Act. Appendix A provides a copy of Schedule 1.

It is important to note that the addition to Schedule 1 includes criteria that also have to be met in order for COVID-19 to be presumptive, namely that there is a state of emergency or a health emergency notice, and contraction must be within B.C. Further the analysis in the discussion paper, using information from current case by case adjudication could not find any proof of rapid/large increases to insurance premiums to employers. As of May 27, 2020 COVID-19 Claims Data show:

- Agriculture – 25 Allowed out of 25 total
- Manufacturing – Food and Beverage Products – 2 Allowed, 1 Disallowed, 1 Pending out of 4 total

The discussion paper notes that no Canadian jurisdiction has legislation, policy or regulation that establishes a presumption specific to COVID-19 claim.

A total of 434 stakeholders (both employees and employers) provided feedback on the discussion paper and the options presented. A copy of the response provided by the BC Food & Beverage is attached in Appendix B. Worksafe Policy and Regulatory team note that the employee feedback was very strong towards making the Schedule 1 changes very broad, and the fact that the decision was to not make any modifications to Option 2 was a positive step towards providing balance to both stakeholder groups.

Stakeholders shared a number of comments with changes to Schedule 1, some of which included the following:

- Concern that it is not reasonable to presume that COVID-19 was contracted in the work place without first completing an investigation.
- Concern that if it cannot be proven where COVID-19 was caught, how can an employer be held responsible.
- Concern it assigns the costs to companies for a disease that could have been caught somewhere other than the workplace.

- Note that only a small number of claims have been made and that could continue with current adjudication process (i.e. case by case basis).
- WorkSafe BC premiums could increase due to claims for missed work due to COVID-19. Changes to Schedule 1 would shift public health costs onto employers through WorkSafeBC premiums.
- Note was made that there is insufficient evidence for proposed changes to Schedule 1 as the Board policy limits listing diseases in Schedule 1 to situations where the medical evidence establishes that there is greater incidence of a particular disease in a particular employment than there is in the general population and the discussion paper does not provide this evidence.
- Amendment of Schedule 1 is not consistent with what is happening in other jurisdictions in Canada as no other jurisdiction has a presumption at this time.

Suggested Response:

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Contact: Anna North, A/Director, Policy 778-698-7941

A/ED AN ADM JLM A/DM JLM

REGULATION OF THE WORKERS' COMPENSATION BOARD

The Workers' Compensation Board orders that, effective October 26, 2020, Schedule 1 of the Workers Compensation Act, R.S.B.C. 2019, c. 1, is amended by adding the following item as indicated:

Item	Column 1 Description of Disease	Column 2 Description of Process or Industry
20	<p>Infection that is</p> <p>(1) caused by communicable viral pathogens, and</p> <p>(2) the subject of one or more of the following:</p> <p>(a) notice given under section 52(2) of the <i>Public Health Act</i>;</p> <p>(b) a state of emergency declared under section 9(1) of the <i>Emergency Program Act</i>;</p> <p>(c) a state of local emergency declared under section 12(1) of the <i>Emergency Program Act</i>;</p> <p>(d) an emergency declared under section 173 of the Vancouver Charter.</p>	<p>Where</p> <p>(a) there is a risk of exposure to a source or sources of infection significantly greater than that to the public at large,</p> <p>(b) the risk of exposure occurs during the applicable notice or emergency under column 1, and</p> <p>(c) the risk of exposure occurs within the geographical area of the applicable notice or emergency under column 1.</p>

Stakeholder Submission Summary – BC Food and Beverage

In response to Worksafe BC's request for feedback on the discussion paper relating to possible changes to Schedule 1, BC Food & Beverage conducted outreach to gather feedback from industry, as well as encouraged each of them to respond individually. The discussion paper evoked a great deal of concern from the dozens of companies we heard from, and there was absolute consensus in recommending Option 1 as outlined in the paper.

The consideration to add COVID-19 and other communicable diseases to Schedule 1 is fundamentally flawed as it works with an assumption that employees would have contracted it at their place of employment. It is implausible for WorkSafe BC to suggest that it is logical and practical for an employer to be held accountable for the prevention of communicable viruses like COVID-19 (in addition to the common cold, flu) given that it would be extremely difficult to establish that the source of the virus was born in the workplace.

An Occupational Disease is described as a "disease or disorder caused by the work or working conditions". This means that the disease must have developed due to the exposure in the workplace AND the correlation between exposures and furthermore is a disease that is well-known in medical research. As COVID-19 is still a new illness with very little consistent, known medical data, it is just not reasonable to presume that the illness would have been contracted while on the job. The food and beverage processing industry strongly opposes any consideration of amendments proposed for the above reasons and reiterate our recommendation for Option 1 – Status Quo.