July 20, 2020

Honourable Harry Bains
Minister of Labour
Government of British Columbia
Room 342
Parliament Buildings
Victoria, BC V8V 1X4

Submitted via Email: Harry.Bains@gov.bc.ca

Dear Minister Bains:

Re: Bill 23, Workers Compensation Amendment Act, 2020 – Business Community Response

We are writing to express significant and serious concerns with Bill 23, *Workers' Compensation Amendment Act, 2020*, which you tabled in the legislature on July 14.

The provincial government engaged Mr. Jeff Parr, a former Alberta Deputy Minister of Labour, to undertake focused consultations earlier this year with representatives of the Employers Forum (and other stakeholders) on possible changes to the *Workers Compensation Act*. These limited consultations took place **before** the onset of COVID-19, and Mr. Parr's report was released publicly just **after** Bill 23 was tabled in the legislature on July 14.

In general, we note that Bill 23 goes well beyond the scope of Mr. Parr's consultations and, over time, will destabilize WorkSafeBC (WSBC) by adding considerable costs to the workers' compensation system. Far from being "modest and measured", core precepts that kept WSBC financially stable over the last two decades are now being unwound.

The business community worked collaboratively with your government throughout the COVID-19 crisis. During the emergency period and now in the fragile recovery, we urged your government to **"do no harm"** and set aside any measures that increase costs, add to the regulatory burden or create further uncertainty for BC employers. As you know, many firms were forced under provincial health and emergency orders to close or curtail business operations to help flatten the pandemic curve. We fully understand the need for these measures, but businesses are now simply trying to survive, recover and, hopefully over time, return to pre-COVID-19 operating levels. In Bill 23 you are ignoring the advice of BC's business leaders, owners, operators and those responsible for employing most British Columbians. During the COVID-19 crisis period, 95% of job losses occurred within the private sector. Tabling this Bill adds more uncertainty in the recovery period and long-term costs to WSBC which is paid for through employer premiums. These added costs will impact businesses of all size, and their ability to re-start, re-hire, and

contemplate new investment in the province. Ultimately, additional costs through Bill 23 will harm people from all walks of life who have lost, or are on the brink of losing, their livelihoods.

On June 17, Premier Horgan advised British Columbians he would consult broadly to build an economic recovery plan. That plan is still unknown. There was no consultation on Bill 23 measures in the context of COVID-19, calling into question the sincerity of your government's commitment to listen to British Columbians, particularly small, medium and large employers. Minister, this has been a recurring challenge with your approach. Bill 23 also contradicts the Premier's intention with COVID-19 recovery consultation and planning to not add costs for BC businesses as evident in his advocacy for a federally-funded sick pay program.

We also note Bill 23 was tabled the same day your colleague, Honourable Carole James, provided a financial update with a record $12.5 Billion deficit for the current fiscal year. You should agree this is a staggering – if understandable – deficit required to address the unprecedented economic contraction due to COVID-19 and expected shortfalls in provincial revenues. Minister James made clear that your government's deficit is largely due to lost personal and corporate income taxes arising from restrictions imposed by the government on business operations. Fully $6 billion in provincial revenue losses are the result of declining payroll, income, and corporate taxes, fees and royalties as the employer community continues to confront the worst economic downturn in a century. WorkSafeBC is also a victim of these circumstances as the agency experiences lower premium revenue due to widespread business disruptions and consequent unemployment caused by COVID-19.

Under these circumstances surely you can appreciate the harm Bill 23 poses through the imposition of additional long-term costs to employers who fund the workers' compensation system as they continue to cope with difficult operating decisions, reopening challenges, and other considerations surrounding whether they will survive. Simply put, now is not the time to add more cost and uncertainty to BC's workers' compensation system.

The proposed changes must also be viewed in light of the competitive landscape in other Canadian jurisdictions and globally. In efforts to attract greater investment and create more jobs, the Government of Alberta recently "doubled down" on their efforts to restore Alberta's competitive advantage versus British Columbia and other provinces. Prominent among recent changes in Alberta is the reduction of the corporate tax rate **now** to 8 percent versus British Columbia's 12 percent. Instead of "holding the line" on further business costs and regulatory enactments, you are "doubling down" on increasing fixed and variable business costs and adding uncertainty to BC's investment climate. It is concerning that rather than support Premier Horgan's efforts to consult British Columbians on economic recovery measures, you are tabling substantial changes to workers' compensation legislation with major anticipated impacts on employers. In effect, you are working at cross-purposes with Premier Horgan.

We urge you to review the current fact base arising from the COVID-19 crisis. Recent BC unemployment rates and business recovery sentiments should provide you with an appreciation for the stark realities facing BC's employer community and how your Bill will undermine employers trying to survive and rehire people. According to Statistics Canada's most recent labour force survey, BC's current unemployment rate is 13 percent, and fully 235,000 jobs have been lost

since the onset of COVID-19 in February. The unemployment rate for young people stands at dismal 29.1 percent. And most of the recent 102,000 job gains are part-time, reflecting the slow reopening and tenuous nature of the current economic recovery.

The BC Chamber of Commerce, Greater Vancouver Board of Trade, and Business Council of BC have undertaken regular "pulse surveys" throughout the COVID-19 crisis and recovery period. In survey results released July 16, fully 65% of businesses confirmed they are using some form of government support and expect a substantial 'second wave' of negative impacts should these measures end too soon. And about 30 percent of businesses expect to return to normal once government support programs end. Of the remainder, 32% expect to reduce employee hours, 27% expect to layoff or terminate employees, and 24% expect to take on debt. Of note, 10% will have to close temporarily or permanently.

We know from this pulse survey, which was shared with the government, that all employers are experiencing higher operating costs as they face lower revenues due to COVID-19 restrictions. In fact, over 50 percent of medium and large employers – up from just 20 percent in April – are experiencing higher operating costs due to WorkSafeBC measures that appropriately assist with keeping workers and customers safe from COVID-19 transmission risk.

Against the backdrop of these sobering indicators, the Bill doesn't consider the significant challenges that employers face as they struggle to cope with the economic fallout from COVID-19. The government's extension of public health and emergency orders and the cautious and incremental approach to "reopening" the economy following the recent COVID-19 crisis – while understandable and accepted by the business community – should also underscore for you that our province is not back to "normal". Instead, with Bill 23, the legislation assumes everything is fine with BC's economy and employment circumstances. This could not be further from the case.

With the forgoing as context, we now turn to our specific and serious concerns with Bill 23:

- Finality of Adjudicated Decisions: Section 11 of Bill 23 seeks to amend Section 123 of the Act and will provide the Board with the authority to reconsider a decision, at any time, if the decision contains "an obvious error or omission". While "an obvious error or omission" would seem easy enough to understand, it is not codified as such in the amendments addressing Workers Compensation Appeal Tribunal (WCAT) authority (Section 307). Workers need to know their benefits are secure and not subject to an "obvious" error correction, while employers need certainty to determine costs and not be subject to revisionism. While not as broad as the provisions existing before 2003, this will erode a key principle of the compensation system – surety of payment. This amendment gives rise to a series of questions that require clarification:

    - What would constitute an "obvious" error or omission. Would this only apply to administrative type errors or omissions; or could it also extend to substantive decisional errors or omissions?
    - If it was intended to apply only to administrative type issues, why not use the same language used in Section 307 (a) regarding WCAT's reconsideration authority – i.e., to correct a clerical or typographical error; an accidental or inadvertent error,

omission or similar mistake; or an arithmetical error made in a computation? By using different language in the two provisions, the presumed intent would be that the Board's reconsideration authority over an "obvious error or omission" is different than WCAT's.

- If the proposed revision could extend to correct an obvious "decisional error or omission", isn't that the role that is intended to be played by the review and appeal processes? And would there be no time limit about how far back the Board could go to correct an "obvious" decisional error or omission?
- Could the proposed revision apply to a decision involving the exercise of a discretionary authority – or the decision not to exercise the discretionary authority. For example, if one Board Officer decided not to exercise a discretionary authority concerning a vocational rehabilitation issue, could another Board Officer determine that the first Officer made an "obvious" error or omission in not exercising that discretion?

- Reopening of Reviews and Appeals: Another key principle of the reforms undertaken to the system is to prevent the churn of reviews and appeals. Section 29 of Bill 23 (repeals Section 268 (2) (i) of the Act), requires that an application to re-open or not re-open a claim be brought to the review division before WCAT which will add to the number of proceedings.

- Health Care Services and Supplies: The proposed amendments in Section 15 (amending Section 156 of the Act) of the Bill will provide the Board with the authority to pay for health care services and supplies to a worker BEFORE the worker's entitlement for compensation under the Act has been determined in circumstances where "the worker is at risk of a significant deterioration in health" without such services or supplies. This is a preventative measure which the Board, to date, has not accepted as falling within its mandate under the Act. Opening up the door to such preventative measures, before entitlement is determined is more of a societal health care issue, rather than a workplace/employment issue. Such a focus is inconsistent with the "historic compromise" underpinning the BC workers compensation system where the right to sue for workplace injuries was exchanged for employers funding a no-fault insurance scheme for workplace injuries.

  Providing prophylactic care is laudable and in many circumstances is critical in assisting injured workers. We believe this is best accomplished through other social programs, but the net effect of this provision will be employers paying for non-compensable health care costs. While WSBC accepts 95% of claims, the remaining 5% are not. Some portion of the money spent will not be paid towards work related injury, meaning employers are subsidizing the health care system. Given the complexity of psychological illness and the much lower acceptance rate of these claims, employers will be funding a large percentage of psychological injury care and treatment with no relation to the workplace. This is unacceptable. A more meaningful approach would be for government to assume responsibility for early treatment and then bill WSBC for reimbursement when work causation is clearly shown.

Return to the Dual Pension System: Section 7 amends Section 196 of the Act and is a return to a process that forced WSBC into a financially unsustainable situation in the late 1990's, and was the primary driver for reforms required to restore the system to solvency in the early 2000's. Characterized as a 'return to the dual pension system', the effect of this provision will be to significantly and substantially increase long term disability costs, especially for mental disorder claims. This amendment will open the door for small loss of function awards leading to massive loss of earnings awards. A dual system will ensure that the system becomes unsustainable, inevitably leading to disruptive reform when the financial stability of the workers compensation system falters. In our view, it is irresponsible for the provincial government to return to provisions that have a demonstrated track record of bringing about significant financial instability. As noted earlier, Minister, many employers will face difficult economic circumstances over the next few years (or more) due to the impact of the COVID-19 pandemic. It's simply not responsible for the provincial government to increase employers' WCB assessment costs (which over time will become significant increases) in the current economic circumstances.

Retirement Age: Section 18 relates to the determination of retirement age. Currently, the Act requires periodic payments of compensation to cease when the worker reaches age 65 (subject to the Board being satisfied that the worker would retire after the age of 65). The proposed revision will result in deferring the Board's determination of the worker's date of retirement until after a worker reaches age 63. There seems to be a notion that assessing retirement closer to an age will give a more accurate result. As noted above, this again strikes at the heart of finality. How can costs be managed and projected, given that perhaps in 10, 20 or 30 years "retirement" dates will move? How can an injured worker plan for the future when their "retirement" age may, or may not, change in the future? Are BC employers in 2050 expected to fund injuries that occurred in 2020? This provision creates more – not less – uncertainty. This proposed revision will have a significant impact on both the number of workers who are provided compensation benefits beyond age 65, and the average length of the extension.

We are also very concerned about the transition provision once it comes into effect on January 1, 2021. Pursuant to Section 36 of Bill 23, the revised Section 201 (3) will apply "whether or not a determination has been made under section 201 (1) of the Act before the date Section 18 comes into force". If we understand this transition provision correctly, all workers receiving WCB benefits will be entitled to have their age of retirement determined once they reach the age of 63, notwithstanding the worker may well have already had a "final" determination made by the Board (and dealt with on review at the Review Division and appeal at WCAT) on this issue. In other words, this revision will have retroactive effect on all previously "final" claims where workers are still receiving benefits from WSBC after the age of 63

- Unpaid Assessments and Directors Liability: Section 25 creates a new tool for WSBC to pursue collection of assessments which is problematic because the Board is not required to first attempt to collect from the employer owing the debt. We caution that it may be easier for WSBC to engage large 3rd party enterprises rather than small debtors, and in the pursuit of payment WSBC may focus energies on payment from stable third parties. This is not a

speculative concern; the same situation has arisen in the past with payment of assessments between contracted parties. While we take no issue with the intent of the provisions, we suggest that amendments should be made indicating such a process should be pursued when other processes to collect have failed.

The government should consider the impact this measure is going to have on small business and small non-profit and social service agency boards. It is adding another requirement that is going to make it more difficult to recruit and retain directors for small non-profits and social service agencies.

- COVID-19 Schedule 1 Presumption, National Coverage for Sick Pay and "Waiver of 90-day Period": Leading business associations supported Premier Horgan's pursuit of a national sick pay program for COVID-19 through the federal Employment Insurance (EI) program and/or Canada Emergency Response Benefit (CERB). Program parameters are being finalized and the federal government has dedicated $19 billion dollars to this (and other) recovery initiatives. Indications are that a national sick pay program will be implemented this fall. When the program is in place, it will remove the putative need for a COVID-19 presumption under Schedule 1 of the Workers Compensation Act. We also note that WSBC is adjudicating and, in some cases, accepting claims for COVID-19 following existing review processes. The forthcoming national plan should fill existing "gaps' in sick pay coverage, following representations to the Prime Minister by Premier Horgan and the BC business community.

  At the same time, in Section 23 of the Bill (amending Section 238 of the Act), you signal to the WSBC Board of Directors your support for a COVID-19 (Schedule 1) presumption by enshrining in the Act the option to "remove in relation to a regulation relating to an occupational disease caused by a communicable viral pathogen, the requirement for a minimum of 90 days between deposit (with the Registrar of Regulation) and effective date". This effectively can make a WSBC COVID-19 presumption immediately applicable once the Board takes a decision. This statutory intervention is contrary to your own statements recently in the Ministry of Labour Estimates process that WSBC alone is considering a COVID-19 presumption. It also signals your support for a manifestly flawed policy measure that has no scientific or medical evidence to support it; it ignores the fact that 92 percent of recent submissions received by WSBC during the COVID-19 presumption consultation were from employers and don't support the measures precisely because of the lack of scientific and medical evidence based on WSBC's own epidemiological information; and, as noted above, it duplicates and is likely misaligned with the forthcoming national sick pay program which Premier Horgan enlisted assistance from the BC and national business community in his efforts to secure funding from the Prime Minister. This is unacceptable.

  In other words, the provision to waive the 90-day period (as outlined above) amounts to government pre-judging WSBC's independent policy decision making authority and signals your expectation that such a provision will soon be enacted by the WSBC's Board of Directors. We are disappointed the government would take a position contrary to all

scientific and medical science. Such a position, regrettably, mirrors the disastrous approach taken by the administration in the United States.

In summary, BC's workers' compensation system has worked well over the past 20 years evidenced, in part, by a 95 percent claims acceptance rate. At the same time, the general accident rate has dropped and is one of the lowest among Canadian provinces. The workers' compensation system is also financially sustainable. Bill 23 will add significant costs to BC employers who pay for WSBC. Bill 23 is ill-timed, ill-considered, and ignores broad-based and repeated requests from the business community to "**do no harm**" as we all focus on COVID-19 recovery and getting British Columbians back to work safely.

We urge you to set Bill 23 aside as the Premier undertakes his consultations to address the unprecedented fallout from COVID-19 and the highly tenuous economic recovery underway. Bill 23 – tabled during the recovery period and juxtaposed to dramatic and ongoing tax and regulatory changes in nearby jurisdictions – calls into question whether you are interested in facilitating a lasting economic recovery for the benefit of all British Columbians.

Sincerely,

EMPLOYERS' FORUM

Doug Alley
Managing Director

Business Council of British Columbia
Est. 1966

Greg D'Avignon
President & CEO

BC Chamber of Commerce
Know what's on BC's mind.

Val Litwin
President & CEO

GREATER VANCOUVER BOARD OF TRADE

Bridgitte Anderson
President and CEO

CFIB
CANADIAN FEDERATION OF INDEPENDENT BUSINESS.

Samantha Howard
Senior Director, B.C.

ICBA
BC BUILT. BC STRONG™

Chris Gardner
President

CEPA
canadian energy pipeline association | association canadienne de pipelines d'énergie

Chris Bloomer
President & CEO

COCA
Council Of Construction Associations

Dave Baspaly
President & CEO

RCC RETAIL COUNCIL OF CANADA

Greg Wilson
Director,
Government Relations, BC

Restaurants Canada
The voice of foodservice | La voix des services alimentaires

Mark von Schellwitz
Vice President,
Western Canada

Ingrid Jarrett
President & CEO

Walt Judas
CEO

Dave Earle
President & CEO

Mike Leonard
President & CEO

Susan Yurkovich
President & CEO

Michael Goehring
President & CEO

Caroline Andrewes
President & CEO

Anne McMullin
President & CEO

Reg Ens
Executive Director

Andrew Wynn-Williams
Divisional Vice
President, BC

Alex Rueben
Executive Director

CC: Honourable John Horgan, Premier of British Columbia
Honourable Carole James, Minister of Finance
Honourable Michelle Mungall, Minister of Jobs, Economic Development and Competitiveness
Honourable Bruce Ralston, Minister of Energy, Mines and Petroleum Resources
Mr. Geoff Meggs, Chief of Staff to the Premier
Mr. Don Wright, Deputy Minister to the Premier, Secretary to Cabinet and Head of the Public Service

Mr. Trevor Hughes, Deputy Minister of Labour
Ms. Lori Wannamaker, Deputy Minister of Finance
Ms. Christine Kennedy, Deputy Minister, Jobs, Economic Development and Competitiveness
Mr. Fazil Mihlar, Deputy Minister, Energy, Mines and Petroleum Resources
Mr. Andrew Wilkinson, Leader of the Opposition
Mr. Adam Olsen, Interim Leader, Green Party of BC