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Via Email (policy@worksafebc.com)

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Dear Ms. Kim

Re Submission on adding COVID-19 to Schedule 1 of the *Workers' Compensation Act*

The B.C. Government and Service Employees' Union represents more than 80,000 workers in many sectors and occupations in more than 550 bargaining units across British Columbia. In March 2020, tens of thousands of BCGEU members were designated as essential workers and have continued to work throughout this pandemic. Our members serve in healthcare (community health, public health, residential care facilities, and beyond), community social services including childcare, the BC Public Service (corrections, child and family services, social development, transportation, etc.), the BC Liquor Distribution Branch, highways maintenance, local governments, credit unions, education and other essential sectors.

In recent weeks, dozens of BCGEU members have contracted COVID-19 at work. Daily, our members have risked their health and the health of their families to continue to deliver critical services to British Columbians. This risk has weighed heavily on our members. Work-related pressures and intense anxiety have affected both their home lives and their mental health.

Ensuring timely, straightforward access to compensation for workers that fall ill from COVID-19 because of their employment is a top priority for BCGEU members and their families. As such, we appreciate the opportunity to make this submission with respect to adding COVID-19 to Schedule 1 of the *Workers' Compensation Act*.

Proposed Amendments to Schedule 1: Overall Comments

Our members that are required to remain at work need clear coverage as soon as possible. Thus, the BCGEU is pleased that the Board has resolved to take this step, and to do it in an expedited manner.

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Amending Schedule 1 to include COVID-19 and other viral diseases sends a critical message to workers that if they get sick, the workers' compensation system will fully support them. Once in place, BCGEU members that fall ill from the virus will not have to worry about whether their claim will be accepted or having to jump through extra hoops to access compensation.

Not only will this change benefit essential workers, it also serves to streamline the Board's claims process. In our view, this may result in cost savings for the Board. Just as the Board's discussion paper notes, "adding a presumption to Schedule 1 of the Act would ensure WorkSafeBC would not be required to produce or analyze similar evidence of work-relatedness in every case" (p.3). Indeed, despite concerns raised by employers' organizations in the media, the Policy, Regulation and Research Division's (PRRD) discussion paper does not anticipate an increase in allowed claims or costs as a result of the presumption being added to Schedule 1.

Finally, any concern that this change will wrongly afford coverage to workers that did not contract the virus at work is addressed by the fact that the presumption is rebuttable. If evidence is produced to prove the worker's employment did not cause the occupational disease, the claim would not be accepted.

Specific Comments: Column 1 – Description of Disease

Schedule 1 of the *Workers' Compensation Act* includes two columns. Column 1 describes the disease, and Column 2 outlines the industry or activity that is presumed to cause the disease. As outlined in the PRRD's discussion paper, if an occupational disease is one identified in Schedule 1, and a worker was employed in the corresponding process or industry described in the Schedule, then work causation is presumed unless the contrary is proved.

Rather than specifically identifying COVID-19, the PRRD's proposed amendments to Schedule 1 describe the disease in Column 1 as infection that is "caused by a communicable viral pathogen." Along with the BC Federation of Labour, the BCGEU strongly supports this description of the disease because it establishes a broad framework that can be applied to other communicable viral diseases beyond the current pandemic. Experts agree that the world – including British Columbia – is at high risk of experiencing more intense and tragic viral outbreaks like COVID-19 in the future. This language prepares the Board to quickly and effectively support workers going forward, regardless of the specific virus at hand.

The second part of the description of the disease in Column 1 requires that the infection be the subject of a public health, provincial or local emergency. While the BCGEU accepts this limitation as a way to address the exceptional circumstances of a serious disease outbreak, we echo the concern articulated by the BC Federation of Labour that it risks excluding workers that get sick before the state of emergency is declared as well as those that contract the virus after the emergency is ended. Further, it excludes workers infected during outbreaks that are never subject to a formal declaration of emergency.

As such, we support and reiterate the BC Federation of Labour's recommendation that infection caused by "a novel virus" be added to the description of the disease in Column 1 of Schedule 1 without it being subject to a declared state of emergency. In this case, the presumption should be applicable in Column 2 when the disease is presumed to have been present at the worker's workplace. This recommendation ensures that workers are covered when they face the potential significant health risk of a new virus in their workplace for which no immunity or treatment has developed.

Column 2 – Description of Process or Industry

The PRRD's discussion paper proposes to amend Column 2 to include the following requirements for the description of the process or industry:

- There is a risk of exposure to a source or sources of infection significantly greater than the public at large;
- The risk of exposure occurs during the applicable notice or emergency under Column 1; and,
- The risk of exposure occurs within the geographical area of the applicable notice or emergency under Column 1.

The BCGEU has a number of concerns about these proposed amendments. Most importantly, the requirement that the risk of exposure is "significantly" greater than the public at large seriously restricts the contexts to which the presumption would apply and adds to the burden of evidence workers would be required to provide to support their claim. In practice, this language could make the presumption essentially meaningless for workers. Instead, the BCGEU echoes the BC Federation of Labour that the presumption should simply apply to all workers working outside of their home during the state of emergency.

As noted previously, provision should be included in Column 2 to allow the presumption to apply outside of a declared state of emergency. In this case, infection caused by "a novel virus" described in Column 1 should be presumed to be work-related where "the virus is presumed to be present in the worker's workplace" (Column 2).

Finally, the BC Federation of Labour's submission noted that the restriction on infection occurring within the specific geographical area could exclude workers that were required to travel and contracted the virus outside of B.C. Thus, we support and echo their recommendation that the description in Column 2 should recognize a geographic area in a jurisdiction outside British Columbia that was at the time subject to a state of emergency with respect to the communicable viral pathogen under the law applicable to that jurisdiction.

Conclusion

We urge the Board to move ahead with adding COVID-19 and other communicable viral pathogens to Schedule 1. Specifically, Option 1 in the PRRD's discussion paper - continuing with the status quo – must be rejected. Instead, we submit that the amendments proposed in Option 2 of the PRRD's discussion paper should be revised as outlined in our submission above, and then adopted as quickly as possible.

Again, we appreciate the opportunity to make this submission.

Sincerely,



Stephanie Smith
President