

**Workers' compensation challenges for the
mobile workforce:
policy and practice in Canadian jurisdictions**

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Policy and practice in return to work after work injury for the precariously employed or geographically mobile workforce: a four province study (SSHRC 895-2018-4009)



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- **Partners**

- Quebec Human Rights Commission
- UTTAM
- CUPE Québec
- Office of the Worker Advisor
- Office of the Employer Advisor
- IAVGO (Ontario)
- Canadian Labour Congress
- Newfoundland & Labrador Federation of Labour

Now: SSHRC 890-2016-3026; CIHR HPW-146002

Outline

- Targeted geographically mobile workforce
- Methods
- Workers' compensation frameworks in Canada
- Challenges to regulatory effectiveness
 - Challenges across the spectrum:
 - Commuting accidents
 - Challenges related to distance
 - Challenges specific to inter-provincial mobility
 - Challenges specific to international migrants
- Conclusions

The geographically mobile workforce

- Commuting between clients on a daily basis
- Short term commute (+-3 hours/day)
- Long commute within province
- Long commute to another province
- International commutes
 - Temporary foreign workers
 - Canadian workers working in another country temporarily
- Double mobility
 - Travelling to access ship, plane, truck, bus
- Mobile workplaces

Poll question 1

- How are you, if at all, connected to mobile work ?
select all that apply
 - I am a mobile worker
 - I employ mobile workers
 - I manage mobile workers
 - I advise mobile workers
 - I provide care for mobile workers

Methods

- Classic legal analysis in 6 provinces
 - BC
 - Alberta
 - Ontario
 - Québec
 - Nova Scotia
 - Newfoundland and Labrador
- Key informant interviews (2015-2018)
 - 20 interviews in 5 provinces
 - 47 people
 - Regulators (OHS/WC)
 - Representatives of employers and unions
 - Legal counsel
 - NGOs
 - Some regulators preferred to answer in writing

Methods: RTW study

- Classic legal analysis of workers' compensation, OHS and human rights law:
 - Alberta
 - Newfoundland & Labrador
 - Quebec
 - Ontario
- Interviews with key informants and workers in those provinces

Regulatory frameworks X 13 + 1

on the move
partnership



- Workers' compensation
 - “no-fault” systems funded by employers
 - Employers protected from law suits by workers
 - Administered by public workers' compensation boards in all Canadian provinces
- Coverage for injury “arising out of and in the course of employment”
 - Commuting accidents?
 - Accidents while on a mission for the employer?
 - Injury while in employer provided housing
- ...

Poll question 2

- Do you have experience with workers' compensation related to mobile work?
- Yes
- No

Challenges for regulatory effectiveness

- Vulnerabilities specific to each category of the geographically mobile workforce and within categories
 - Eg. Temporary foreign workers: ‘deportability’
 - Eg. Gold collar vs blue collar mobile workers
- WC
 - Coverage
 - Benefits
 - Rehabilitation
 - Access to Justice

Fuzzy rules on coverage: home care workers

- Travelling from home to first client or home from last client
 - Not covered
- Travelling between clients
 - Depends on province
 - Depends on contract
 - Depends on invisible rules...





Protections in work-camp facilities? Maybe, maybe not

- Workers' compensation if injured in a work camp or hotel? Fuzzy boundaries

Challenges of interprovincial Mobility



- Jurisdictional issues
 - Which workers' compensation board will compensate?
 - Different rights...
 - Different procedures
 - Who is the employer?
 - Which exposures “count” in determining occupational disease claims?
 - How reliable are compensation board statistics if we want to track mobile workers?

N. Cherry, J-M. Galarneau, M. Haan, K. Lippel,
«Work injuries in internal migrants to Alberta, Canada. Do
Workers' Compensation records provide an unbiased estimate
of risk?, (2019) *American Journal of Industrial Medicine*, DOI:
10.1002/ajim.22981

Challenges of interprovincial Mobility

- Distance issues
 - What if the worker wants to go home while healing from the injury?
 - No longer available for modified work
 - No longer available for medical exams requested by the employer or the compensation board
 - What if the hazards are related to employer-provided housing in a remote workplace?

Problems faced by international migrants



Obstacles attributable to vulnerability

- Concept of deportability and its consequences
 - Fear of exercising rights/claims
 - Basok et al, 2013
- Lack of information on rights, deadlines and procedures (language...but not just language)
- Difficulties in accessing medical services in Canada
- Misinformed Canadian doctors with regard to workers' compensation in general, and workers' compensation eligibility of TFW

Obstacles attributable to **distance:** medical reports after worker leaves

- Compensation boards rely on medical reports to manage claims but...which doctors « count »?
- Debates as to eligibility for benefits if the employer cannot get a second medical opinion from the doctor of its choice

Calculation of benefits: deeming

- Canadian workers' compensation systems are based on a wage loss system.
- Salary replacement indemnity after injury has healed is based on residual earning capacity:
 - (Pre-injury earning capacity – post-injury earning capacity = weekly benefit paid until pre-injury earning capacity restored).
- Earning capacity in which labour market?
 - Québec: *Gmzun et Cirque du Soleil*, 2015 QCCLP 1312
 - Alberta: Policy retains Alberta labour market
 - Ontario: 2017 WSIAT 2962



Policy recommendations: Workers compensation

- Targets
 - Provincial regulators
 - Federal regulator
 - Government employees compensation act
 - Employers
 - Unions
- Jurisdictional problems
- Coverage
 - Fuzzy boundaries
 - Occupational disease
- Determination of Benefits
- Modified work
- Rehabilitation
- Access to justice

Mobility and effectiveness of WC

- Challenges for WC:
 - Invisibility: Under-reporting, quitting job or dropping claim
 - Increased complexity
- Challenges for RTW:
 - To which labour market are we expecting out-of-province/country workers to return?
- Early return to work provisions apply to this workforce with difficulty
 - Subcontractors are expected to supply fully fit workers
 - Workers usually on rotation may be expected to accept modified work assignments that limit their ability to go home
 - Visa restrictions may prevent appropriate application of early return to work provisions for TFW

OTM Policy Brief on WC

The brief can be found here on the On the Move site:

<http://www.onthemovepartnership.ca/wp-content/uploads/2019/06/Policy-Brief-Workers-Compensation.pdf>

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