

# Submission to the 2017 Review of *the Workplace Safety and Health Act*

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## Improving Workplace Safety and Health for Manitoba Small Businesses

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### Introduction

#### Background about CFIB

The Canadian Federation of Independent Business (CFIB) is a non-partisan, not-for-profit political action organization, representing 109,000 independently owned and operated businesses across the country, including 4,800 in Manitoba. Our members are located in every region of the province, and across sectors that closely mirror the provincial economy.

At CFIB, we are passionate about small business. Due to their massive contributions to our economy, employment and communities, entrepreneurs deserve a strong voice in government decisions. CFIB provides a reasonable, credible and effective way for small business owners to participate in the political process - just like big businesses and unions do.

Small businesses are the backbone of the Manitoba economy. Employing over 250,000 Manitobans, small- and medium-sized firms account for one quarter of Manitoba's provincial GDP and 98 per cent of all registered businesses. When entrepreneurs are confident in the provincial economic climate, businesses expand, jobs are created and all Manitobans prosper.

Workplace Safety and Health (WS&H) undoubtedly plays a significant role in the day-to-day operations of small businesses across the province. It is important the department helps foster safe working environments, while employing practices that help foster growth in Manitoba's economy. CFIB is therefore pleased to provide this submission for the 2017 Review of *The Workplace Safety and Health Act (The Act)*. CFIB has participated in WH&S reviews in the past and welcomes the opportunity to provide our members' views.

This submission gathers research from CFIB member surveys, members' comments, and thousands of one-on-one meetings with Manitoba small business owners each year. It will cover our members' views and concerns with WS&H and *The Act* regarding excessive red tape, a lack of fairness for small employers and the necessary improvements to customer service, while still ensuring that appropriate protections remain for the safety and health of workplaces.

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## Small business takes safety very seriously

In meeting with numerous small business owners throughout the province, it is clear that safety and a safe work environment are primary concerns. Business owners realize the people they employ are their most valuable resource, and that a safe employee is also a productive employee. Unfortunately, there are some in society who characterize business owners as individuals that do not care about the safety of their employees, and this could not be further from the truth.

### Responsibility for safety

CFIB members believe they, as employers, play a critical role in safety – in fact the most important role. Therefore, it is incumbent upon government to ensure employers' voices are heard in discussing these important issues. In order to improve safety, employers must “buy into” the government's approach, and view it as viable and workable. It is also important to place a balanced emphasis on the workers' responsibility for safety. Employers feel that, together, they and their employees play key roles in safety and reducing accidents. This spirit must be embraced and translated into a workplace safety culture where the two parties involved play essential roles. Safety cultures cannot be fostered in “command and control” regulatory approaches to workplace safety.

## Reducing red tape

### Overview:

CFIB has been a leading force in cutting red tape for small businesses across Canada for over a decade, and was pleased to be a member of the province's *Red Tape Reduction Task Force*. The annual costs of all regulations on Canadian businesses is pegged at \$37 billion per year, with close to one-third (\$11 billion) of that unnecessary red tape, according to a 2015 CFIB report. In Manitoba, federal, provincial and municipal regulations cost businesses \$1.2 billion, of which \$360 million is considered red tape.

Therefore, red tape reduction is a significant, affordable tool to help improve the small business climate in Manitoba. We commend the Manitoba government's recent action to pass Bill 22, establish the Red Tape Reduction Task Force, and consult Manitoba businesses on their red tape headaches.

Manitoba small business owners have identified that WS&H and the Workers Compensation Board as the second most burdensome regulations (see Figure 1).

Figure 1:

**Which provincial government regulations are the most burdensome in terms of how much time you and your staff spent on compliance in the past 12 months? (Select as many as apply)**



Source: CFIB, 2017-18 Manitoba Budget Survey, November 2016, n=285.

Make no mistake; red tape is not to be confused with necessary regulation. Small business owners have no issue complying with common sense rules and policies that protect consumer safety, the environment and their employees. But red tape is something else – inconsistent information, confusing forms, duplication of rules, bad customer service or simply getting the run around. In short, they are spending time away from growing their businesses and helping the economy.

In past years, CFIB has worked with the WS&H department to create the Safety & Health Guide for Manitoba Farmers, and resources to help firms with less than 20 employees understand their requirements under *The Act*. We also helped develop templates for the written program to help make compliance much simpler. The section below outlines further areas for red tape reduction and improvement that the province's small business owners believe are important to a growing economy.

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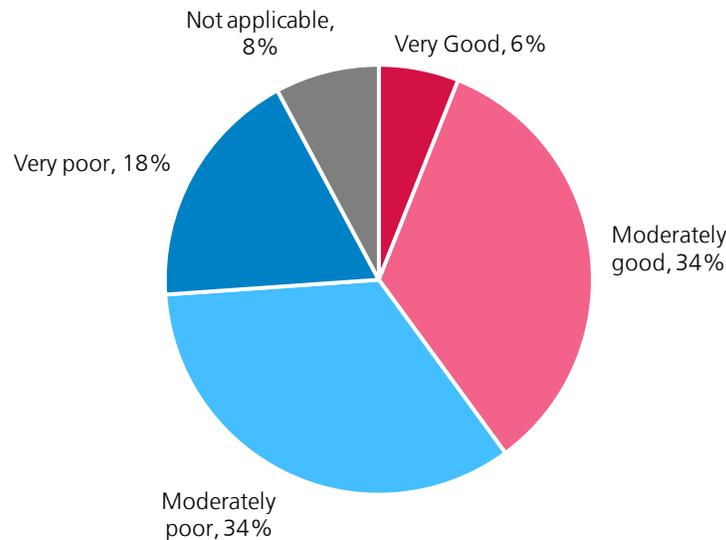
### **WS&H material must be easy read and understand:**

Many small business owners have identified that current WS&H regulations and supporting material are very difficult to understand. In fact, when surveyed, 52 per cent believed that the WS&H department has done a poor job creating readable, simple information (see Figure 2). Just six per cent believe that WS&H does a very good job in this regard.

Figure 2:

How would you rate Manitoba Workplace Safety and Health on each of the following? (Select one for each line)

**Readability and simplicity of information.**



Source: CFIB Manitoba Budget Survey, October 2014, n = 384.

CFIB encourages the department to review all existing material and regulations to ensure they are written in plain language. Furthermore, all future regulations and material should also be vetted to ensure that they are simple and easy to read, because businesses will be better able to comply with regulations if they are easy to understand.

In addition to much of WS&H's material being complicated, the existing regulations and definitions are too vague to be easily followed by employers. This lack of clarity causes significant problems for employers, and leaves gaps in safety practices for employees. Furthermore, confusing rules can, in part, deteriorate relationships between employers and inspectors.

**One disgruntled small business owner described the following:**

***"Many of the government safety auditors are too uneducated or do not understand their own set of rules they are to enforce. This is because too many of the rules are too vague and only left up to the discretion of the government, not the companies."***

Source: CFIB, Mandate 255 Survey, July, 2014, n = 308.

For example, there is no concrete definition in place for what constitutes a "confined space." In contrast, Ontario has documents in place for employers to clarify their requirements under the rules.

### Improve alignment with other jurisdictions:

Workplace Safety and Health must also ensure that its regulations and definitions are consistent with the best practices from other Canadian jurisdictions. Not only will this alignment improve the

quality of WS&H in Manitoba, but it will also reduce unnecessary and redundant red tape for Manitoba businesses operating in other provinces.

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### Legislated one-for-one law:

CFIB believes the one-for-one law is an important mechanism to safeguard against over-regulation and strongly advocated for Bill 22. We are pleased the *Regulatory Accountability Act* will extend to WS&H, however it is essential that government continues working with employers to ensure they are removing significant red tape headaches, which maintaining the safe work environments that Manitobans rely on. CFIB members have identified several red tape issues within WS&H, including drivers' abstracts and hazardous waste transport requirements.

#### According to CFIB members:

***"Why do I have to get a drivers' abstract every year for my drivers? What a waste of time for when you hire a new forklift operator; if he has a training certificate it is not valid. You have to train in-house or send them to another training session, which is just a repeat of what they already have taken," and;***

***"Notification requirements under the Manitoba Hazardous Waste Transport regulations are burdensome and take a tremendous amount of labour to comply with. The requirement to provide mailed copies of documentation, instead of e-docs (such as manifest copies of haz waste movement) are both a waste of time and resource, but also a large generator of waste paper, stamps and envelopes."***

Source: CFIB, 2017-18 Manitoba Budget Survey, November 2016, n=285.

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### Improve public communication and information sharing:

In addition to the one-for-one and two-for-one rules, Bill 22 establishes the Regulatory Accountability Secretariat, which will provide essential oversight and public communication of regulations being developed and removed. Workplace Safety and Health should be an important area of focus for the Secretariat; as WS&H regulations are constantly being added and defined, it is essential to communicate all changes with employers in clear language, in an accessible format, and on a regular basis.

#### According to one employer:

***"WS&H rules are changing so fast it is impossible for small business owners to keep up with the reading - never mind implementing change. Small businesses cannot afford to hire safety officers. What are the solutions for these businesses? Can they subscribe to instant alerts and instant printable regulations to adopt instead of having to create their own SOP's, etc.?"***

Source: CFIB Manitoba Budget Survey, October 2014, n = 384.

**Many small business owners believe that they should be notified when laws and new rules are passed for WS&H:**

***"(Implement) notifications when laws and new rules are passed, so we are sure we are compliant. Workplace Safety and Health is getting out of control. It makes it hard to run a business when there are so many rules in place."***

Source: CFIB, 2017-18 Manitoba Budget Survey, November 2016, n=285.

CFIB suggests that one possible solution is to publish all of WS&H's new and amended rules on the (expected) website of the Secretariat. Furthermore, implementing rules on a regular basis (i.e. quarterly) can help provide valued dependability that employers are in full compliance.

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### Improve communication between WS&H and WCB:

CFIB members have voiced concerns that there are significant communication problems between Manitoba WS&H and WCB. These deficiencies come in many ways: not reporting serious accidents for follow-up, or reporting only minor incidents, for example. As one member described:

**As one CFIB member described:**

***"Flaw: an accident report to WCB is not forwarded to workplace safety and health or vice versa. Ridiculous, and then they get all wound up. WCB's poor parameters on what to report: i.e. officially even the tiniest scratch must be reported immediately or else."***

*Source: CFIB, Mandate 258 Survey, May, 2015, n = 237.*

Furthermore, there are apparent problems recognizing member compliance among the organizations. To ensure that both organizations are operating as effectively and efficiently as possible, WS&H and WCB staff must do a better job of coordinating and sharing information. In this way, they will not only save time and money for their respective departments, but also save time and money for employers.

**A CFIB member noted:**

***"(A WCB representative) dropped a manual on the production manager's desk and said you have three months to initiate this. Also, send in Safety Committee Meeting minutes every three months. We have had a Safety Committee for many years and sent minutes to the government after each meeting. This person knew nothing of the minutes. She was amazed."***

*Source: CFIB, Mandate 258 Survey, May, 2015, n = 237.*

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### Seek stakeholder opinions for policy development and implementation:

Key stakeholders, including small business owners, should play an important role in the development and implementation of new WS&H policies. Their involvement will help ensure that businesses will be able to comply with regulations, to the benefit of the workplace safety and economic growth. Furthermore, when using third party standards, it is also essential that small business owners are consulted, to ensure that those standards are still relevant.

### Improving support for small businesses

When surveyed, 66 per cent of CFIB small business members in Manitoba believed that WS&H staff members are accessible<sup>1</sup>. However, in general, WS&H customer service has significant room for improvement in many areas including training, consistency, and the appeals process. Addressing these deficiencies is key to ensuring that businesses can grow and thrive while still maintaining safe work environments for their employees.

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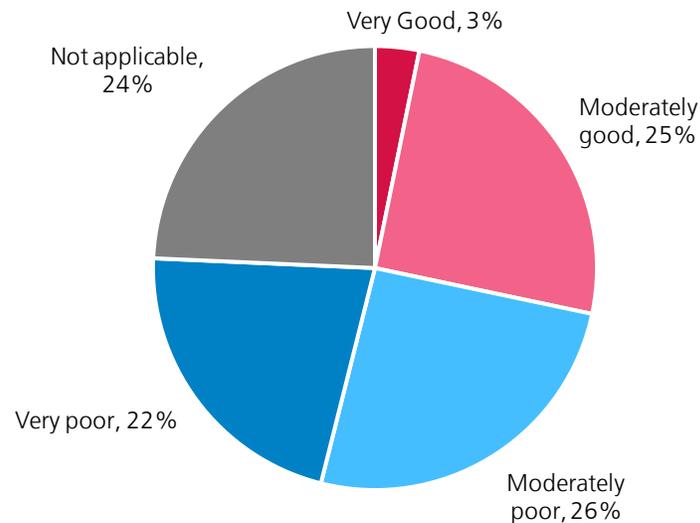
<sup>1</sup> Source: CFIB Manitoba Budget Survey, October 2014, n = 384.

## Improve staff training and consistency:

Many CFIB small business members have voiced concerns there is a significant lack of consistency within inspections. When surveyed, just three per cent of members believe that WS&H inspectors do a very good job with consistency of their rulings (see Figure 3).

Figure 3:

**How would you rate Manitoba Workplace Safety and Health on each of the following? (Select one for each line)**  
**Consistency of rulings.**



Source: CFIB Manitoba Budget Survey, October 2014, n = 384.

This problem has become so significant that 80 per cent of small business members agree a review of Manitoba Workplace Safety and Health should be conducted to ensure there is consistency across inspections<sup>2</sup>. Some small business owners believe that inspectors are inadequately trained before beginning the job, and systems should be created so that inspectors are using consistent information.

### A CFIB member stated:

***"I think Manitoba Workplace Safety and Health inspectors need much better training than they receive. They are consistently inconsistent with their inspections and interpretations when it comes to hazards in the workplace. They should be using a checklist system instead of basing their lists on their memory of the codes. I regularly see a variety of missed hazards during inspections as well as some just ridiculous demands for very minor issues. Right now the process is far too subjective."***

Source: CFIB Manitoba Budget Survey, October 2014, n = 384.

<sup>2</sup> Source: CFIB, 2017-18 Manitoba Budget Survey, November 2016, n=285.

Consistency of inspections will not only reduce red tape for employers, but it will make it easier for small businesses to comply with regulations and should ultimately lead to work environments that are safer.

In this regard, CFIB believes the underlying principles of customer service standards should include: respect, accessibility of information, consistency of information, clarity of information, timeliness of information and accuracy of information. We therefore recommend that systems be established to ensure that all inspections are conducted by knowledgeable, trained staff using consistent rules and measures.

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### Develop a small business mindset:

To further help improve customer service, CFIB encourages WS&H front-line staff to receive training about the realities of small businesses. If staff better understood the challenges of running a small business, the working relationship will be stronger. On this matter, CFIB would be pleased to participate in delivering this training. For example, we have previously conducted sessions with CRA auditors titled: "*A day in the life of a small business*," to help foster a better working relationship and understanding of the realities of running a small business.

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### Improving dispute resolution and appeals processes:

As many WS&H requirements remain vague, and inspections have been inconsistent, it is not surprising that many small business owners have also voiced concerns that existing processes to dispute improvement orders, stop work orders, and penalties are ineffective and inefficient.

**According to one member:**

***"Lots of letters and time required to have the decision reviewed and overturned if applicable... can never say why previous inspection was compliant and now it is not."***

*Source: CFIB, Mandate 255 Survey, July, 2014, n = 308.*

Stop work orders can be an effective tool in the cases of gross misconduct and where there is extreme risk to employee health and safety. However, some features of this rule are problematic because of the subjectivity some inspectors may use in issuing a stop work order. CFIB therefore recommends there be improved systems in place to reduce red tape for employers who disagree with inspectors.

### Workplace Safety and Health oversight:

In CFIB's recent submission to *The Workers Compensation Act* Legislative Review Committee 2016, we highlighted the need to establish an Employer Advocate, as many other provinces have already done. For WCB, employer advocates or advisors can be very helpful to employers. Their role is to provide one-on-one confidential assistance and advice without a direct fee to an employer on issues such as claims management or appeals.

CFIB believes that creating a similar position to help small businesses work with WS&H could be a possible solution to problems with interpreting rules, rulings and submitting appeals. Such a position could help businesses develop a better working relationship with Workplace Safety and Health.

Regarding the Chief Prevention Officer, CFIB voiced concerns in the last Workplace Safety and Act review that the appointment was duplicating the role of WCB. Although we value data on the components of Manitoba's injury rate as part of the strategy to improve workplace safety and

health, we are concerned this investment could be better served elsewhere as such data is readily available.

**As one member alluded:**

***“Provide us an opportunity to work with WS&H proactively rather than reactively. It all depends on the inspector’s mood that day, and we don’t actually know what half the rules are so it is very difficult to make the improvements they would want to see on an ongoing basis.”***

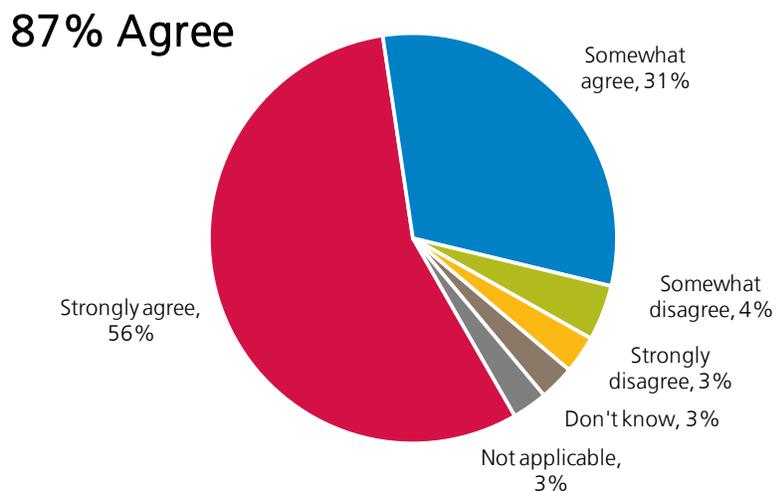
*Source: CFIB Manitoba Budget Survey, October 2014, n = 384.*

## Achieving fairness for employers

It is paramount that a positive working relationship exists between Workplace Safety and Health and employers. Such a relationship stems from mutual efforts to provide safe work environments, while allowing a climate where businesses can thrive and grow. Importantly, employers must believe that they are being treated fairly while building safe workplaces. However, CFIB members have voiced significant concerns that WS&H is not being run as fairly or efficiently as possible. When surveyed, 87 per cent of members agreed a review of Manitoba WS&H should be conducted to ensure the organization is being run in a fair and efficient way (see Figure 4).

Figure 4:

**A review of Manitoba Workplace Safety and Health should be conducted to ensure the organization is being run in a fair and efficient way.**



*Source: CFIB, 2017-18 Manitoba Budget Survey, November 2016, n=285.*

## Recognition of employers' safety-related knowledge and experience:

Manitoba small business owners are frustrated that Workplace Safety and Health too often ignores their safety-related knowledge and experience, as well for their employees. Inspectors are also often criticized for their lack of recognition that there can be multiple strategies to create equally safe workplaces.

**As two CFIB members stated:**

***"My employees are frustrated that people with no real knowledge of the actual work, are setting ridiculous safety requirements for outside work areas in an industry where we have not had an accident related to those concerns in over 50 years," and;***

***"With Work Place Safety, they are not willing to look at alternate solutions to problems; it is either their way or the highway."***

*Source: CFIB Manitoba Budget Survey, October 2014, n = 384.*

For example, one member complained that a WS&H inspector issued an improvement order for a table saw that lacked a guard, despite the member's protests. The member had invested a significant amount of money into cutting-edge technology that immediately stopped the blade from spinning upon contact. This technology is equally, if not more effective, than a guard. However, despite a demonstration of the equipment and protests from the employer, no recognition was provided for the employer's effective alternative.

CFIB believes that small business owners and employees have valuable industry-specific knowledge that can supplement the best practices WS&H uses. By incorporating these additional ideas, WS&H can create more practical rules to improve the safety of all workplaces.

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### Addressing the imbalance of employer-employee accountability

CFIB members believe they, as employers, play a critical role in safety – in fact the most important role. However, it is also important to place a balanced emphasis on the workers' responsibility for safety. Employers feel that, together, they and their employees play key roles in safety and reducing accidents. This spirit must be embraced and translated into a workplace safety culture where the two parties involved play essential roles. Safety cultures cannot be fostered in a "command and control" regulatory approach to workplace safety.

Many members have voiced concerns that WS&H regulations place too little emphasis on the role of workers in maintaining safe work environments. For example, one member shared their experience regarding a WCB case where no responsibility was placed on the employee following an accident:

**A CFIB member shared their experience:**

***"Our company worked diligently to prepare a safety manual and ultimately become COR certified. One of our employees was in breach of our safety policies and procedures, she attending a construction work site in high heels and ultimately tripped on a step and hurt herself. Our policy clearly stated the need for closed toe steel enforced shoes, she was trained to the requirement, and we had her signature on the appropriate documentation to this effect. WCB approved her claim, and had her on benefits for nearly 4 months with incessant paperwork and follow-up required. We felt, this was an employee error, in fact grounds for dismissal, and never should have been approved for a claim."***

*Source: CFIB, Mandate 258 Survey, May, 2015, n = 237.*

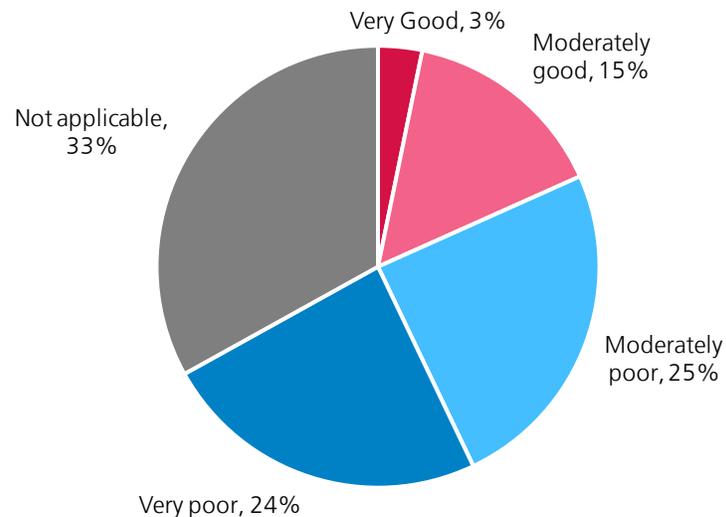
CFIB therefore recommends employees be held responsible in situations where employers have exercised due diligence and employees have failed to meet their responsibilities under *The Act*. Alberta and Saskatchewan have moved to a model where a WS&H officer can ticket an employee right in the workplace for not wearing a hard hat, for example. However, those officers need to be trained as peace officers to give out tickets.

## Fair penalties and fines:

CFIB members also believe that WS&H penalties are unfair. When surveyed, 49 per cent believed WS&H did a poor job in terms of the fairness of penalty levels (see Figure 5). Just three per cent believed that WS&H did a very good job in this regard.

Figure 5:

**How would you rate Manitoba Workplace Safety and Health on each of the following? (Select one for each line)**  
**Fairness of penalty levels.**



Source: CFIB Manitoba Budget Survey, October 2014, n = 384

CFIB believes that penalties must be a reasonable financial measure of an infraction. Importantly, penalties must also act as an effective motivator to encourage safe workplaces. However, many small business owners believe that current penalty levels are too high, and WS&H should focus penalties more on the most significant risks, not minor matters.

### As one member described:

***“Manitoba Workplace Safety and Health seems to believe that all they should do is go and give out fines to businesses instead of working with business to provide a safer workplace.”***

Source: CFIB Manitoba Budget Survey, October 2014, n = 384.

CFIB therefore recommends that WS&H should also consider innovative strategies to improve the effectiveness of penalties. For example, the use of all or a portion of a fine for a violation to implement remedial measures within that workplace can help improve safety and health, as well as compliance.

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## Conclusion

It is clear that Workplace Safety and Health plays an important role in helping provide safe working environments where Manitoba's small businesses can still thrive and grow. We are encouraged by the provincial government's leadership to reduce red tape for businesses across the province, and are confident the recommendations provided in this submission will help further reduce barriers to growth in this same light, while maintaining the safe workplaces that employers and employees rely on.

Further improvements to customer service and ensuring fairness for employers will help strengthen the relationship between WS&H and employers, and increase the efficiency and effectiveness of the department.

CFIB appreciates the opportunity to present our members' views and concerns to the 2017 Review of *The Workplace Safety and Health Act*. We look forward to providing our feedback and comments on the Review's final report, once released, and sharing the results with our members.