

CEC Bulletin

(February, 2006)

ILO Meeting of Experts on Updating the List of Occupational Diseases

A tripartite meeting of experts met in December to examine and adopt an updated List of Occupational Diseases to replace the list of occupational diseases included in the Annex to the List of Occupational Diseases' Recommendation, 2002 (No.194). **Dr. John Cutbill**, Consultant Chief Medical Officer for Canadian Pacific Railway, represented the Canadian Employers' Council at this meeting, where in addition to his role representing the CEC, he acted as Employer Spokesperson. Dr. Cutbill submitted the following report on the meeting. The CEC thanks Dr. Cutbill for his tremendous effort, and CP for lending him to us.

The tripartite meeting of experts that met in December to examine and adopt an updated List of Occupational Diseases to replace the list of occupational diseases included in the Annex to the List of Occupational Diseases' Recommendation, 2002 (No. 194) ended in deadlock. This was due to a great extent to the fact that views differed greatly as to the precise mandate of the meeting. By the end of the meeting, since there was no consensus on an updated list, the report of the meeting will not have a single updated list. The report will have two annexes - one with a list proposed by the Government and Worker experts and one with a list proposed by the Employer experts.

1. General Criteria for Identification of an Occupational Disease

From the outset, the Employer experts firmly believed that it was essential to include on the new updated list general criteria that had to be met for identification as an occupational disease. This, they stated, was all the more called for when the list was being used for compensation purposes, as it included not only a growing number of new diseases for which guidance was required but also diseases which, in the majority of cases, were not of an occupational origin – such as malaria and chronic obstructive pulmonary diseases.

Further, the Employer experts expressed concerns from the first day on the lack of criteria to consider for a disease to be added to the list and a general lack of explanatory documentation (or guidelines) to accompany the list. Para 2 of R194 (2002) stated: "A national list of occupational diseases for the purposes of prevention, recording, notification and, if applicable, compensation should be established by the competent authority, in consultation with the most representative organizations of employers and workers, by methods appropriate to national conditions and practice, and by stages as necessary." It was apparent to us that the List (attached as an Annex to R194) could be taken as a 'stand alone' document with no guidance or explanation - specifically a document that could be considered by some to be a list of compensable diseases.

The Employer experts' concern became greater as the additions to the list during the course of the meeting was changing the character of the list from a list of mostly occupation specific diseases (e.g., cancer by asbestos) to a list of more general diseases that are not exclusively occupational (e.g., stress) and are even endemic in some countries (e.g., HIV, tuberculosis, and malaria). There started to be a discussion of diseases to add that had not been previously raised and not included in the technical backgrounder summary used to consider proposed additions (e.g., malaria).

After the first few days, the Employer experts recommended that no new diseases be considered that had not already been proposed with technical background documentation prepared by ILO. Without the Employers' insistence on this it was becoming apparent that the Worker and Government experts were prepared to introduce a variety of diseases in the expectation they could be added (all with no established criteria to ensure consistency).

2. No Consensus Reached

Another concern of the Employer experts was the 'catch all' phrase after each section of the list that stated "...any other diseases not mentioned where a link is established...". In the absence of some accepted criteria, this statement was too vague and open-ended with the implication that virtually any disease could be included.

The Employers experts convinced the meeting Chair to devote separate time to discuss criteria and provide draft wording for this that was distributed to all. By the Monday, the Employers experts provided suggested wording as shown in the second annex to the report (one brief sentence with 4 bullets). This wording had some criteria statements at the start of the list that at least provided some context for understanding why a disease was on the list. With this wording, it was suggested that there was no longer a requirement for the 'catch all' phrases after each section. To minimize any potential for Worker concern, the wording we chose was taken from an ILO document (Report V (1) used in support of the 90th session 2002). The wording proposed to add to the front of the list was as follows:

All the diseases listed below and any other diseases suspected of being occupational in origin need to meet general criteria for identification as an occupational disease as follows:

- they are in a causal relationship with a specific exposure or agent;
- they occur in connection with a specific work environment and in specific occupations;
- they occur among the groups of persons concerned with a frequency which exceeds the average morbidity of the rest of the population; and
- there is scientific evidence, including the strength of association with exposure to the risk, consistency in laboratory and epidemiological data and the establishment of a clearly defined pattern of disease following exposure and plausibility of cause.

Although agreeing that “when updating the list in the future, criteria along the lines proposed by the employer experts would be useful”, the Worker experts would not accept inclusion of such criteria in the present updated version. Moreover, legal advice from the International Labour Office that “the addition of the new wording would modify Recommendation No. 194 and that such a change was only possible at the International Labour Conference” was challenged by the Employer experts, who firmly believed that, within their mandate to update a List appearing in Annex, it was quite in order to include the criteria being proposed by them. They, therefore, remained firm in their stand that, without endorsement of their proposed criteria, they could not support the amendments to the List. The final position of the Worker experts was that they could not endorse the Employer experts’ recommendation (despite a last attempt by the Government Group which we supported but the Workers did not). Their reason was that they interpreted the ILO legal advisor’s position to be that the wording of the ‘catch all’ phrases (which had been prepared by the Workers a few years ago) could not be changed. The Employer experts questioned the advice provided by the legal advisor - it did not make sense on the last day to say that some of the list could be changed and some of the list could not be changed. After all, the agenda as noted above was to adopt an updated list to replace the previous list.

Despite lengthy negotiations, no consensus could be reached and the meeting ended in deadlock. As no Updated List of Occupational Diseases was adopted, the List currently annexed to Recommendation No. 194 remains unchanged.

3. Conclusion

I am of the opinion that the outcome was the most realistic and appropriate given the circumstances. Although the ILO exerted great pressure on the last day for us all to find a compromise that would result in a final list, our position to the ILO was that this should send a clear message on the requirements to develop criteria and guidance documentation as a priority prior to attempting to just add diseases to the list.

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