
Experience Rating Revolution: Answers to Frequently Asked Questions about the WSIB's Overhaul of How Employers Fund the System

By: Ryan Conlin

The Ontario Workplace Safety and Insurance system is about to undergo one of the most important changes in decades. The Workplace Safety and Insurance Board (“WSIB”) is preparing to completely eliminate the current experience rating programs (NEER, CAD-7 and MAPP) for Schedule 1 employers. The WSIB is proposing to implement a completely new system which eliminates the practice of imposing surcharges or providing refunds. Although nothing is set in stone, it is very unlikely that the WSIB will back away from overhauling the system and employers should take steps to prepare for a completely new system.

The WSIB has indicated that the earliest the new system will be up and running is January 1, 2019 and has publicly committed to publishing the written policy framework one year prior to the implementation of the new system. Therefore, it appears that we are less than three years away from the implementation of a radically different system for funding the WSIB.

We have set out below answers to frequently asked questions about the proposed new system. It is important to appreciate that the WSIB’s consultation process with various stakeholders is still on-going and there will likely be changes to specific aspects of the proposed new experience rating system before it is implemented.

Q: Can you please provide a “high level” overview of what the WSIB is proposing?

A: *The WSIB is proposing to adopt an entirely new classification structure which would eliminate 155 rate groups and classify employers into one of 34 different rate “classes”. Each rate class will be assigned a “projected premium rate” which is based on the collective experience of all employers within a respective class, their allocation of administrative costs, and apportionment of the past claim costs for each class in Schedule 1.*

Each rate class will be assigned what are known as “risk bands”. Risk bands represent a range of premium rates that an employer can be assessed based on the company’s accident history and other actuarial factors (i.e. amount of insurable earnings). In each class, risk bands are subject to certain limits, such as the premium rate of the minimum risk band (\$0.20), and the maximum risk band will not exceed about three times the average premium rate for each industry class.

Under the WSIB’s proposal, each rate class will have between 40 and 80 separate risk bands into which an employer could be placed with other employers that have a similar claims experience as determined by the new system. Risk bands increase in 5% increments in premium rate and employers cannot go up or down more than 3 risk bands in one year (i.e. 15% increase or reduction per year) based on performance.

Q: Could you list the proposed new rate classes?

- *A1 Agriculture*
- *A2 Mining, Quarrying, & Oil and Gas Extraction*
- *B Utilities*
- *C Public Administration*
- *D Food/Textile & Related Manufacturing*
- *E1 Non-Metallic/Mineral Manufacturing*
- *E2 Printing, Petroleum/Chemical Manufacturing*
- *F1 Metal/Transportation/Furniture Manufacturing*
- *F2 Machinery/Electrical/Other Manufacturing*
- *F3 Computer/Electronics Manufacturing*
- *G1 Building Construction*
- *G2 Infrastructure Construction*
- *G31 Foundation/Structure/Building Exterior Contractors*
- *G32 Building Equipment Contractors*
- *G33 Specialty Trade Contractors*
- *H1 Petroleum/Food/Vehicle/Other Wholesale*
- *H2 Personal/Building Materials/Machinery Wholesale*
- *I1 Vehicle/Building Material/Food & Beverage Retail*
- *I2 Furniture/Home/Clothing Retail*
- *I3 Electronics/Appliances/Personal Care Retail*
- *J Specialized Retail & Department Stores*
- *K1 Rail/Water/Truck & Postal Service Transportation*
- *K2 Air/Ground/Pipeline/Courier Transportation & Warehousing*
- *L Information & Culture*
- *M Finance*
- *N Professional, Scientific & Technical*
- *O Administrative, Waste & Remediation*
- *P Hospitals*
- *Q1 Nursing & Residential Care Facilities*
- *Q21 Ambulatory Health Care*
- *Q22 Social Assistance*
- *R Leisure & Hospitality*
- *S Other Services*
- *T Education*

Q: What about Employers with multiple business activities that are currently classified in more than one rate group?

A: The WSIB has emphasized that one of the major reasons for the elimination of the rate groups was to make it easier to administrate the classification system. Further, there is the reality that many employers have engaged in protracted litigation to be classified in a rate group with the lowest premium rate assigned to it. The “general rule” under the proposed new system is that each employer will be assigned to a single rate class on the basis of the employer’s pre-dominant business activity.

In response to concerns from employer groups, the WSIB has publicly stated that it “...is interested in further exploring some exceptions to this general rule for separate classification and multiple rates for a single employer, if an employer engages in more than one business activity, and a business activity is not dependent on the other activity(ies).”

In other words, it appears that there will be some leeway for employers with clearly distinct business activities to be assessed in multiple classes. However, the policy framework for multiple classifications has not yet been developed so it remains to be seen how it will work in practice.

Q: Is there any chance that NEER and CAD-7 will be continued in their current form?

A: Anything is possible, but the chances of that happening are very low in our view. The WSIB has invested considerable time and resources into this process.

Q: How will staffing agencies be classified?

A: The WSIB has proposed that staffing agencies will have a separate WSIB account for each industry class they serve and be subject to the risk bands for each rate class they serve. This represents an important exception to the WSIB’s general preference for each employer to have a single rate.

Q: Are the changes designed to raise more revenue for the WSIB?

A: The WSIB has stated that the changes are designed to be revenue neutral.

Q: Does the proposed system differentiate between smaller and larger employers?

A: Yes. The WSIB has proposed a system which essentially makes larger employers responsible for a larger percentage of their own claim costs than smaller employers.

Q: How long is the proposed experience rating window?

A: The WSIB is proposing that the experience window will be open for 6 years. Accident costs would be weighted to allow newer claims to have a more significant impact on an employer’s premium level. The WSIB has proposed a process that values the most recent three years at two thirds (66.6%), and the remaining three years at one third (33.3%) The apparent reason for the

weighting process is to ensure that the employer's premium rate reflects the employer's more recent claims performance.

Q: Are projected accident costs part of the proposal

A: No. Under the current system, the calculation of a refund or surcharge includes costs that the WSIB projects will be spent over the life of the claim which have not yet been incurred (and may never be incurred). The proposed system only deals with costs which have actually been incurred.

Q: What about the Fatal Claim Adjustment Policy?

A: The Fatal Claims Adjustment policy currently withholds a refund from employers who have a fatal claim. As a practical matter, the actual cost of a fatality claim can vary widely (depending upon the number of dependents, an employee's earnings etc.). The WSIB has proposed that an account be assessed an amount which is consistent with the rolling average of the cost of a fatality claim regardless of the actual cost of the individual fatality claim. It appears the WSIB wishes to maintain the spirit of the current policy and ensure that fatalities have a significant financial impact on employers. This represents an exception to the general approach of only charging actual accident costs.

Q: Will the SIEF cost relief program be continued?

A: Apparently the answer to this question is yes, although it is not clear what form it will take. SIEF is a program which currently provides an employer with cost relief on a percentage scale when an employee with a pre-existing condition is injured at work. The percentage of cost relief is determined on the basis of the severity of the pre-existing condition. The WSIB had initially proposed to discontinue this program, but backed off after pressure from various stakeholder groups. The nuts and bolts of how SIEF will work in the future has not been determined, but it appears that it will continue to be part of the system in some form.

Q: Will there be a special surcharge for very bad performers?

A: Most likely yes. However, it appears likely that an employer with an accident history which is consistently far worse than the norm of the rate class for a number of years will be subject to a surcharge. It appears clear that this surcharge will be confined to employers with a number of years of very bad performance compared to others in the rate class. As a practical matter, this surcharge would likely impact a very small number of employers.

Q: Will the special rate for executives and partners in construction be continued?

A: No. Currently, there is a special rate group for executives and partners in construction companies who are acting in a senior executive capacity and do not perform work on projects. The WSIB will not be continuing this special exemption. This is not surprising as the WSIB is trying to keep the number of rate classes low. We expect that this decision will not be popular in the construction industry.

Q: What has been the reaction to the WSIB's proposal amongst trade unions and injured worker groups?

A: Many representatives of organized labour and injured worker groups took the position that experience should have nothing to do with assessing premium rates. Many of these groups argued that experience rating incentivizes employers to force injured workers back to work before it is medically safe to do so. This argument is not new and has been consistently rejected by workers' compensation boards across the country. There is virtually no chance that the WSIB would adopt a system which does not involve experience rating.

Breakfast Briefing Experience Rating Revolution

Thursday, February 18, 2016 from 8:30 am to 10:30 am at the Toronto Airport West Hotel

The wheels are in motion for the WSIB to completely overhaul the experience rating system in Ontario. This breakfast briefing will help position your organization to respond to these important changes.

Topics Include:

- What the proposed new classification system will look like and how it will impact employers with multiple classifications
- How the WSIB determines how much of an employer's own claims record will impact the employer's premium rate
- How the proposed risk band system will work in practice
- The new graduated cost per claim limit
- The new 6 year experience rating window and how the weighting process for claims works in practice
- And much more!

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