



Association of Canadian Search,  
Employment and Staffing Services

Association Nationale des Entreprises en  
Recrutement et Placement de Personnel

April 4<sup>th</sup> 2016

Diane Weber  
Director  
Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front St. West, 17th Floor  
Toronto, On  
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Dear Ms. Weber

**RE: Submissions of the Association of Canadian Search, Employment & Staffing Services on the “WSIB Rate Framework Reform Consultation”**

### **Introduction**

The Association of Canadian Search, Employment & Staffing Services (ACSESS) is the only association representing the staffing industry in Canada. ACSESS represents over 1000 staffing service offices across Canada. ACSESS members provide placement and executive search services, and temporary and contract staffing to the public sector and virtually every type of business.

The mission of ACSESS is to promote the advancement and growth of the employment, recruitment and staffing services industry in Canada. It also serves as Canada's only national advocate for ensuring professional ethics and standards in this industry. All member companies pledge annually to uphold the Association's Code of Ethics and Standards which promotes ethical treatment of employees and clients, and adherence to all applicable laws including human rights and occupational health and safety legislation.

ACSESS members have worked closely with OHS and Workers' Compensation boards across the country to improve worker safety and to reduce accidents. More specifically, ACSESS is active in the WSIB safety group program which encourages sharing of best practices amongst employers of all sizes in similar industries. ACSESS had the distinction of receiving the highest

achievement score amongst all provincial safety groups in 2014. Further, ACSESS has been actively involved with senior representatives of WSIB in shaping policy which improves the performance of the staffing industry as a whole.

ACSESS has made two previous submissions to the WSIB Rate Frame Reform Consultation and wishes to make the following additional submissions arising out of the WSIB's recent Technical Briefing and information release. These submissions are a result of a number of consultations with ACSESS members and involved the assistance of experienced legal counsel.

### ***1. Initial Starting Rates for Staffing Agencies Should be Based Past Performance***

The WSIB has released information about how each rate group would be treated under the proposed new system. Conspicuously absent from the information released by WSIB is an analysis of how Rate Group I-929-01 "*Supply of Non-clerical Labour Operations*" and Rate Group I-956-45 "*Supply of Clerical Labour Operations*" would be treated under the new system.

The WSIB has recently advised an ACSESS member that any staffing agency which begins supplying to a new rate class it has no previous history supplying to, will be treated as a new employer for that specific class and will pay the class average. However, staffing agencies have not been advised how they will be treated under the new system for rate classes which they have historically worked in.

It would be **grossly unfair** for many staffing agencies to pay the class average where the agency has an established history of strong performance and it is **frankly absurd** for an agency with a bad record to obtain the competitive benefit of paying a lower rate. Surely, the WSIB does not wish to set up a system which rewards bad performing staffing agencies with lower rates.

ACSESS recognizes that transitioning staffing agencies to the new system represents a challenge from an actuarial perspective. Obviously, the WSIB did not require staffing agencies to maintain records of the various industries that were historically served beyond the distinction between clerical and non-clerical operations. It is neither practical nor desirable for the WSIB to try and set a starting rate for each class based on a staffing agency's historic performance.

Staffing agencies with a historically good record should obtain the benefit of their past performance and perhaps more importantly bad performers should not be rewarded by the WSIB by being allowed to pay the same rates as their better performing competitors. The Rate Framework review should not have the unintended consequences of making life easier for those agencies that have historically shown that they have higher accident costs.

ACSESS asks the WSIB to provide a clear direction on how it intends to address the concern of ensuring historically bad performers do not get preferred rates. ACSESS requires a detailed explanation of how initial rates for staffing agencies will be calculated in order to meaningfully comment on this issue.

## ***2. SIEF and Cost Transfers***

ACSESS is pleased that the WSIB appears to agree that SIEF should remain part of the system. However, ACSESS submits that the WSIB should provide a detailed description of how SIEF will work under the new system to allow all stakeholders to comment on this important issue. It is clear from the volume of submissions on this issue that SIEF is a critical part of the system and stakeholders ought to have the opportunity to make meaningful comment about it.

ACSESS also supports maintaining the cost transfer system essentially as it currently exists. Cost transfers are a crucial mechanism to insure that negligent employers are held liable financially for the consequences of accidents they have caused to workers employed by other companies. This is an issue of particular importance to staffing agencies who believe that cost transfers are an important mechanism to ensure worker safety.

## ***3. Surcharge for Bad Performers and Return to Work Enforcement Issues***

ACSESS **supports in principle** a mechanism to impose surcharges on employers that consistently perform badly compared to the rest of the rate class. However, ACSESS believes that it is critically important for the WSIB to clearly spell out how the surcharge would work to allow stakeholders to meaningfully comment on the issue, including whether it might make sense to wait for the system to be up and running for a reasonable period before addressing this issue.

ACSESS also recommends that careful attention be paid to enforcement of return to work obligations. The actuarial protections built into the new system for smaller employers will provide very little financial incentive for smaller employers to return workers to the workplace. ACSESS recognizes that these employers are subject to *Human Rights Code* and other legal obligations to accommodate injured workers.

However, the WSIB should ensure that it vigorously enforces the return to work provisions of the Workplace Safety and Insurance Act to ensure employers cannot easily ignore their return to work obligations. In *Maxwell v. Cooper-Standard Automotive Canada Limited*, [2013 HRTO 1482 \(CanLII\)](#), the Human Rights Tribunal heard evidence from a lawyer qualified as an expert in workers' compensation matters. He testified that in his experience, an employer's position is usually accepted if it asserts that it has no suitable work for an injured worker. He also indicated

that the WSIB will not impose much resistance if an employer takes the position that there is nothing it can do to return the injured worker to employment, or the cost would be too expensive.

The Human Rights Tribunal accepted this evidence. It is the position of ACSESS that the WSIB should ensure that it vigorously enforces “return to work” obligations and should not simply “rubber-stamp” an employer’s position that suitable work is not available.

#### **4. *Implementation Time-Frame***

The WSIB has suggested that the new system could be fully operational in 2019. It is the position of ACSESS that this does not allow sufficient time to allow stakeholders to prepare for and understand the new system. The proposals made by WSIB amount to one of the biggest changes in the history of the workers’ compensation from an employer perspective.

The challenge is particularly acute for staffing agencies that will now have to segregate and report earnings over potentially dozens of rate classes and adjust to a radically different and frankly uncertain economic environment. ACSESS submits that implementation of the new system should be delayed until 2022 or alternatively that staffing agencies should be given an additional three years to transition to the new system in order to allow sufficient time for staffing agencies to prepare for this dramatic change.

#### **5. *Fatal Claims Adjustment Policy***

It is the position of ACSESS that the fatal claims should be assessed in the same manner as all other claims for cost purposes. It is a fundamental principle of the workers’ compensation system that all claims are assessed on a “no fault” basis. There should be no special exception for fatality claims and employers ought not to be subject to an additional penalty for a claim which may very well not be the “fault” of the employer.

Employees who are legally responsible for fatal claims are already subject to fines under the *Occupational Health and Safety Act*, the *Canada Labour Code*, and the *Criminal Code*. Employers facing criminal or regulatory charges for a workplace fatality have a right to a trial. The WSIB ought not to be charging to what amounts to an additional administrative penalty for a fatality with no assessment of the employer’s responsibility for the accident.

#### **6. *Notification of a Company’s Rate Class***

Under the proposed new rate framework, staffing agencies will have to report wages on the basis of the rate class which their customers have been assigned. In order to ensure that staffing agencies are reporting under the correct rate class, there needs to be a simple method for staffing agencies to independently verify a customer’s classification.

ACSESS recommends that every employer's rate classification be listed on the **clearance certificate issued by the WSIB**. It is the position of ACSESS that the clearance certificate is by far the simplest way for a staffing agency to determine a client employer's rate class and to ensure that wages are reported correctly.

I wish to thank you for the opportunity to make these submissions and look forward to receiving the additional actuarial information we have requested.

Yours Very Truly,

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