

RATE FRAMEWORK MODERNIZATION UPDATE

August 2016

Since publishing the latest of its Rate Framework Modernization Consultation Updates in September 2015, the WSIB has continued to engage stakeholders on the Rate Framework Modernization initiative. Working group sessions continued to be a key method to both provide information to and obtain feedback from stakeholders.

At this point in our multi-year journey, dating back to both the Arthurs Funding Fairness (2012) and Stanley Pricing Fairness reports (2014), we wanted to highlight some of the progress made along the way and highlights our next steps.

- During the March 2015 – October 2015 consultation period, the WSIB participated in approximately 80 working group sessions with various stakeholder groups and received [57 formal submissions](#). These sessions and submissions provided valuable feedback on the Proposed Preliminary Rate Framework.
- On December 1, 2015 the WSIB hosted a stakeholder session attended by approximately 160 stakeholders. This session provided an opportunity for the WSIB to present the updated Rate Framework which highlighted updates and revisions that incorporated suggestions and recommendations from stakeholders, and analyses undertaken by the WSIB.
- Following the December 1, 2015 stakeholder session, the WSIB posted premium rate information for each of the proposed 34 industry classes, in addition to the Rate Group & Risk Disparity analysis that provides greater detail on rate implications and classification structure.
- The WSIB opened a subsequent consultation period from December 1, 2015 to March 31, 2016. The purpose of this consultation period was to obtain feedback on the updated Rate Framework. During this consultation period the WSIB participated in approximately 40 working group sessions and received [19 formal submissions](#). The feedback received during this period will also be considered when finalizing the Rate Framework.

The next step in the Rate Framework Modernization initiative will be seeking approval of the Rate Framework from the WSIB's Board of Directors in the fall of 2016. Following approval, the WSIB will continue to engage stakeholders through education and outreach efforts to ensure stakeholders are fully prepared for the target implementation date of January 1, 2019, at the earliest. More details on these efforts will be communicated to stakeholders and published on the Rate Framework Modernization [webpage](#). Please continue to send any questions or comments via email to consultation_secretariat@wsib.on.ca.

The sections below identify some of themes that that were highlighted in our engagements with stakeholders or the WSIB's own analysis, and the WSIB's updated approach moving forward in developing the Rate Framework.

Themes from Stakeholder Submissions and Working Group Sessions

Multiple Business Activities

Stakeholder Feedback

Feedback from stakeholders suggested that the WSIB should consider allowing multiple rates for employers who operate two or more unrelated and independent business activities, where neither business activity is ancillary or necessarily associated with the other(s), nor is either necessarily dependent on the other(s).

Updated Approach

The WSIB recognizes the need for some form of multi-rating for certain employers meeting certain conditions. Further to analysis undertaken by the WSIB and engagement with other jurisdictions on similar practices the WSIB has determined that it will allow employers to have multiple rates by demonstrating that they meet the identified requirements.

To be considered for a separate classification and rate calculation, the business activity must not form an integrated operation with the employers other business activity(ies), and the business activity must be significant (i.e., a sufficient share of the payroll).

The same criteria would be used to determine when Associated employers (where control is exercised between legal entities), that would form an “integrated operation” if they were performed by a single employer, will be considered a single employer for classification and premium rate setting.

These rules will be further detailed in regulation and/or policy.

Rate Group 755: Non-Exempt Partners and Executive Officers in Construction

Some construction sector stakeholders reiterated their concerns about removing the concept of Rate Group 755 for executive officers (EO) and partners in construction, where a reduced rate was established with the introduction of Bill 119 by the Government of Ontario. Suggestions were received to either maintain the concept of Rate Group 755 or create a separate “administrative” group for workers and executives in construction.

After careful consideration, the WSIB is maintaining its original proposal of removing Rate Group 755 as it would create an unnecessary exception from the standard NAICS approach that underpins the rate setting process under the Rate Framework and establish a misalignment with the treatment of other industries, countering one of the established Key Goals.

The current approach to setting a standard rate for all employers in a particular Rate Group does not reflect that individual employers may have very different operations or roles that bring very different risk. With such an approach and the introduction of Bill 119, the construction sector raised a concern that existing Rate Group rates would not reflect the actual risk associated with EOs or partners in construction who do not perform actual construction work, ultimately leading to the creation of Rate Group 755. The Rate Framework will set an employer centric premium rate for each employer that better reflects the actual risk of the operation, recognizing that there are various components or roles that might not bring the same risks, as

may be the case with some EOs or partners in construction, in addition to other administrative or sales workers.

As noted above in the section on *Multiple Business Activities*, this does not preclude an employer from having business activities classified separately for rate setting purposes, by demonstrating that they meet the identified requirements.

Maximum Premium Rate

Stakeholder Feedback

Small employers support the insurance protection and premium rate stability offered in the Rate Framework. There is general agreement that the Rate Framework should be responsive to an employer's experience, while ensuring that it is not overly sensitive to one-time occurrences.

Updated Approach

The WSIB further analyzed the distribution of employers by risk band and by actuarial predictability scale and concluded that applying the same maximum premium rate to all employers regardless of their actuarial predictability created too much volatility for very small employers. Employers in the lower end of the actuarial predictability scale should have a lower maximum premium rate.

The WSIB developed a premium rate approach that would set a new maximum premium rate and limit any future increases for employers with 2.5% actuarial predictability (average annual payroll of approximately \$40,000) to not exceed 6 risk bands from the Class Average Premium Rate, or approximately 30%, while employers with 5% actuarial predictability (average annual payroll of approximately \$295K) would not exceed 9 risk bands from the Class Average Premium Rate, or approximately 45%.

Mechanism for Greater Employer Accountability

Stakeholder Feedback

A number of stakeholders have expressed their support for a special surcharge mechanism for employers who are above the premium rate cap on a sustained basis. This would result in greater employer responsibility for those claims costs, rather than have the industry as a whole bear that responsibility. Other stakeholders wanted to know how it would work and suggested that the WSIB wait until a new Rate Framework has been implemented and reassess the need for a special surcharging mechanism at a later time.

Updated Approach

The WSIB undertook a further review to develop a specific approach to attribute greater employer responsibility for those claims costs, rather than have the industry as a whole bear that responsibility. The intent is to identify a set of employers that may benefit from engagement with the WSIB and system partners with respect to health and safety and return to work (RTW). Depending on those outcomes, some employers may warrant greater accountability for costs they bring to the system – however, greater premium costs would not be issued automatically without some opportunity, over the course of some time, to take steps to address discrepancies in their performance.

The WSIB modeled a set of criteria to identify a set of employers who would benefit from supports and services to address poor claims cost performance, which includes:

- Employers who 'ought' to be paying a premium rate (i.e. 'projected employer premium rate') that is greater than the Maximum Risk Band identified for their industry; or
- Employers who have a difference between their projected risk band and their actual risk band that is greater than 20 risk bands (approximately 100%).

In addition, to ensure the list of employers was further refined to respond to sustained and material performance based on the following criteria:

- The employer must have more than two claims and each claim's total costs for the review period must be greater than \$500 (to ensure that employers with limited experience are not captured).
- No single claim can be greater than 90% of the total weighted claim cost (after the per claim limit) (to address the concern that a single, large claim could be the driver for their poor experience).
- For employers whose actuarial predictability is 2.5%, their actual predictability must be above the average predictability of all 2.5% employers in the model year (to ensure that very small employers that are less predictable are removed).
- When comparing the Class Projected Premium Rate to the employer's starting point, the change must be less than 100% (to adjust for employers whose starting point is too low because of a classification change from current structure to the Rate Framework).

A gradual approach to greater accountability will provide an opportunity for employers to take steps to address some of the drivers of their claims costs experience. This proposed gradual approach would be structured as follows:

- **Year 1 - Awareness:** The employer would be informed of their position to ensure they understood the extent that their experience is out of step with their industry, or their current rate.
- **Year 1 - 2 - WSIB H&S services engagement:** If the employer does not make improvements or demonstrates worse performance than year 1, the employer would be offered support from the WSIB and system partners.
- **Year 3 - Risk band increases:** If the employer continues to not make improvements or demonstrates worse performance than in prior years, or based on the consideration of other occupational health and safety (OHS) factors (e.g., potential leading indicators, or compliance outcomes under the *Occupational Health and Safety Act* or the *Workplace Safety and Insurance Act*) they would see progressive increases in their risk band and rates.

Labour/Injured Worker Groups' Perspectives

Some labour groups and injured worker community stakeholders reiterated their on going concerns regarding the use of claims experience in the determination of premium rates for employers as it relates to negative employer behaviours, generally defined as claims suppression or reporting issues, spurious RTW efforts by employers, aggressive claims management approaches regarding adjudication, appeals and engagement with workers, among others.

These stakeholders suggested there are no links between claims costs and health and safety performance and that the use of health and safety leading indicators as a better measure of risk adjusted premium rates, e.g. # of accommodated workers, # of near miss injuries, resource-levels for Joint Occupational Health and Safety Committee (JOHSC), # of certified trainers, compliance with legislative obligations, CEO declarations on OHS valued as equal to productivity, etc.

They expressed the view that the Rate Framework is inconsistent with the *Workplace Safety and Insurance Act, 1997* (WSIA) and ignores the Dean Expert Panel and Harry Arthurs' recommendations.

They also suggested that embedding OHS principles within procurement and supply chain processes could provide significant advantages from a workplace health and safety perspective. This specific point is consistent with the perspective from a variety of employer stakeholders that procurement considerations would be a more significant driver to the potential for claim reporting issues.

In addition, perspectives were shared to better align *Occupational Health and Safety Act* (OHSA) inspections and OHS/WSIB compliance efforts, and consider the potential to revisit Workwell surcharges.

As part of specific working group sessions with labour and injured worker groups, the WSIB has engaged in more fulsome discussions on these points, among others. As part of these discussions, the WSIB has identified that injury costs and claims experience form the basis of setting a premium rate for the workers' compensation system as whole with the Schedule 1 premium rate, in addition to premium rates for industry classes, to ensure that the system recovers what it needs to meet the obligations to provide sustained and secure benefits to injured workers.

As such, the WSIB, and all leading workers' compensation boards, consider injury costs and claims experience in various forms to set an employer premium rate that is reflective of risk compared to their peers in an industry, providing an incentive for sustained occupational health and safety efforts to reduce workplace injuries and return workers to productive work, in line with the specific provisions under s.83 of the WSIA.

That said, the WISB is sensitive to the fact that certain design features of rate setting approaches may contribute to certain undesirable behaviours as defined above. As a result, the Rate Framework was purposeful in addressing some of the design features in the current rate setting and experience rating programs, many which were specifically highlighted in the Stanley Pricing Fairness Report (2014). The proposed Rate Framework;

- Addresses the hyper-sensitivity of the existing retrospective programs, eliminates the rebate and surcharges that would adjust employer premiums nearly two years later, and promotes more sustained efforts in OHS to see positive premium rate implications;
- Extends the period of review of injury experience to a consistent six years, to address the gap with the existing 72-month lock in period, and in support of extended return to work efforts;
- Extends the consideration of injury experience to all employers, including nearly 140,000 currently excluded to bring greater OHS consideration to all employers;
- Considers the risk associated with all claims, not just lost time injuries, but also no lost time injuries to address the potential misreporting of certain claims currently excluded from rate setting consideration; and
- Recognizes a distinct approach in setting rates for temporary employment agencies to address the potential of transitioning higher risk work to vulnerable workers through temporary arrangements to avoid premium rate implications.

The WSIB is mindful that it must make concerted and continuous efforts to assess any compliance risk associated with its rate setting approaches. The WSIB's recent investments in RTW Specialists to support the return to work process with employers and injured workers, has been an important contributor and building block for the WSIB. Continuous efforts to explore new avenues to support compliance and better OHS outcomes is a critically important activity for the WSIB.

It is important to remain mindful that the WSIB Rate Framework is only part of a larger OHS system. This OHS system includes the Ministry of Labour (MOL), and Ontario's Health and Safety Associations (HSAs). These partners and associated programs must be part of a broader dialogue to encourage compliance with the existing legislative, regulatory and policy frameworks in place, while also supporting the proper efforts and investments in occupational health and safety.

The MOL's Chief Prevention Officer (CPO) is currently finalizing a review of prevention based programs, including the WSIB's programs (e.g., Workwell, Safety Groups). The review will ensure on-going alignment with the expert Advisory Panel's (Tony Dean) recommendations on OHS (specifically voluntary prevention programs); and programming of the CPO's integrated Health and Safety System Strategy.

The WSIB is committed to assessing its own OHS programs, in collaboration with the Ministry of Labour and its stakeholders to engage in a constructive dialogue on OHS prevention-based programs in the system to encourage proper focus, effort and investment in occupational health and safety.

Temporary Employment Agency's (TEAs) Concerns

To ensure alignment of classification with their client employers, TEAs have requested a simple method for TEAs to independently verify a client employer's classification.

Through the WSIB website, TEAs are now able to access the classification information for their client employers that are registered with the WSIB.

As a new Rate Framework would have administrative implications for the industry, they have requested additional consideration for transition, and have expressed their perspective on carrying forward experience when involved in multiple industries.

The reporting requirements for TEAs are unique to other industries under the Rate Framework. In 2017, the WSIB will engage stakeholders, including the TEA industry on a comprehensive transition plan to support stakeholders towards its implementation.

Monitoring Mechanism

Stakeholders continued to recommend that the WSIB develop an internal monitoring mechanism to monitor the Rate Framework following implementation, this includes specifically calling out that the monitoring should include:

- regular monitoring of the risk disparity analysis within each of the proposed classes and the NAICS classification scheme every five years;
- reviewing the features of the Rate Framework to ensure they are working as contemplated, and making adjustments as necessary every five years; and
- stakeholder engagement and that the results of the monitoring be widely shared and used to update/amend the Rate Framework in a timely fashion, if the monitoring indicates updates/ amendments are needed.

The WSIB is committed to developing a monitoring mechanism for the Rate Framework that will include regular reporting to stakeholders as well as review and consider amendments at least every five years aligning with Statistics Canada's NAICS updates.

The risk disparity analysis would continuously monitor the need for any further changes to the classification structure.

Employer Online Tool

Stakeholders reiterated their strong support for the WSIB to develop an employer tool similar to Worksafe BC's Employer Safety Planning Tool Kit.

Stakeholders recommended the tool be developed to provide employers with high quality and timely information on injuries and claims that impact safety performance and the resulting rate setting process.

Stakeholders also indicated they would like to be engaged with the WSIB on the development of this toolkit to ensure it meets their needs.

The WSIB recognizes the value in providing workplaces with actionable information to promote active participation in health and safety. The WSIB is committed to the development of an online tool similar to the Worksafe BC Tool Kit and will be engaging with stakeholders in its design.