

Operational
Policy

Section
Experience Rating

Subject
Adjustments to NEER Refunds and Surcharges

Law

s.83(1)

The Board may establish experience and merit rating programs to encourage employers to reduce injuries and occupational diseases and to encourage workers' return to work.

s. 83(2)

The Board may establish the method for determining the frequency of work injuries and accident costs of an employer.

s. 83(3)

The Board shall increase or decrease the amount of an employer's premiums based upon the frequency of work injuries or the accident costs or both.

Policy

In the case of an error by the WSIB, the WSIB adjusts the final NEER refund or surcharge for a given accident year for a period of one year after the final review.

The WSIB also adjusts the final NEER refund or surcharge as required as the result of:

- a retroactive adjustment
- a court judgement
- a reversal of entitlement to a claim.

Guidelines

General

The WSIB's Experience Rating (ER) section calculates the final NEER refund or surcharge for a given accident year at the time of the final review, i.e., September 30 of the **fourth** year following the accident year.

In most cases, revisions to cost or premium data not available on or before September 30 for the final review do not result in an adjustment to the final NEER refund or surcharge. The following guidelines explain exceptions to this rule.

NOTE

For details on how NEER refunds and surcharges are calculated, see policy 13-02-02, NEER (New Experimental Experience Rating). For details on how cost relief affects experience rating, see policy 14-05-03, Second Injury Enhancement Fund.

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WSIB errors

WSIB errors are defined as clerical (i.e., typographical); data processing (i.e., computer generated); or as omission (i.e., failure to process or act upon a decision).

The WSIB adjusts the final NEER refund or surcharge for an accident year if:

- a WSIB error occurred on or before September 30 of the **fourth** year after the accident year, and
- the ER section is aware of the error on or before September 30 of the **fifth** year after the accident year.

The WSIB does not adjust the final NEER refund or surcharge after September 30 of the **fifth** year following the accident year.

The WSIB makes adjustments on its own account when an error meeting the above criteria is identified. However, it is the employer's responsibility to ensure that any request for adjustment based on WSIB error meets the specified deadlines.

Example

SIEF was authorized on a 2008 claim in August, 2012, but the revised cost data was not available when the ER section conducted the final review for the 2008 accident year (September 30, 2012).

The employer brought this omission error to the attention of the ER section in November, 2012 and the WSIB adjusted the final refund or surcharge for the 2008 accident year.

Retroactive adjustments

The WSIB adjusts the final NEER refund or surcharge for a given accident year in accordance with retroactive adjustments affecting classification and insurable earnings. Retroactive adjustments to non-compliance charges or interest amounts do not affect the calculation of NEER refunds and surcharges. See policy 14-02-06, Employer Premium Adjustments.

Lack of full disclosure

If the employer does not disclose necessary information to the WSIB, the WSIB may, at its discretion, make a retroactive debit adjustment for up to five prior premium years.

In these cases, the WSIB adjusts the final NEER refund or surcharge for the accident years affected by the retroactive adjustment.

Example

In April 2013, the WSIB discovers that an employer did not disclose information about a business change in 2008 that would have meant a reclassification of the employer's

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operation and a higher premium. The WSIB retroactively adjusts the reconciled premiums for the years 2008, 2009, 2010, 2011 and 2012.

The deadlines for the final reviews for the 2008 and 2009 accident years are September 30, 2012 and 2013, respectively. These deadlines are extended and the final refund or surcharge is adjusted. Changes to the 2010 and subsequent accident years are made at the next review of refunds and surcharges in the fall of 2013.

Unlimited adjustments

The WSIB adjusts the final NEER refund or surcharge as far back as required by the retroactive adjustment in the following cases:

- adjustments recommended by the WSIB's Regulatory Services or the Legal Branch, for an offence or for a fraudulent act
- adjustments to provisional premiums levied when the WSIB did not receive the year-end reconciliation.

Court judgements

The WSIB adjusts the final NEER refund or surcharge as required by the terms of a court judgement, or as the result of data adjustments generated by a judgement (see policy 14-05-02, Removal of Costs).

Reversal of entitlement

At the employer's request, the WSIB adjusts the final NEER refund or surcharge as required when the WSIB or WSIAT reverses a decision to allow entitlement to a claim.

Adjustments before final review

When revisions to cost or premium data for a given accident year are available before the final review, the WSIB usually incorporates the revised data in the next annual review of refunds and surcharges.

At its discretion the WSIB may, instead, adjust the most recent refund or surcharge for the accident year.

Example

The WSIB authorizes SIEF on a 2010 claim in July, 2011 but the revised cost data was not available by September 30, 2011, for the calculation of refunds and surcharges. Usually, the revised data would then be reflected in the 2012 calculation of refunds and surcharges.

The employer notifies the WSIB of the omission in November 2011, and the WSIB agrees that the revised data should have been available for the 2011 review. The ER section adjusts the refund or surcharge for the 2010 accident year calculated at the September 2011 review.

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Application date

This policy applies to all adjustments to NEER refunds and surcharges decisions made on or after July 15, 2011 with respect to claims with injury dates of January 1, 2008 and later.

Policy review schedule

This policy will be reviewed within five years of the application date.

Document History

This document replaces 13-02-07 dated July 09, 2004.

References**Legislative Authority**

Workplace Safety and Insurance Act, 1997, as amended
Section 83(1), 83(2), 83(3)

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