

# RATE FRAMEWORK POLICY CONSULTATION SUMMARY

Since the launch of the rate framework policy consultation on August 14, 2017, the WSIB has received feedback from stakeholders on all seven draft policies. The sections below identify several overall themes and specific points that stakeholders have raised, as well as the changes the WSIB has made to respond to them.

Stakeholders recommended the WSIB should approach the policies with the following in mind:

- Policies should be clearly aligned to the overall objectives of the rate framework or a specific issue that needs to be resolved
- Policies should be made simpler and should not change existing policy language unless there is a clear intent in doing so
- Policies should not be designed to target non-compliance, but rather be designed for the majority of employers who regularly comply
- Language in the policies should not be vague, specifically for:
  - Tests for determining if an employer with multiple business activities should have separate premium rates for those business activities, or a combined premium rate
  - Tests for associating two or more employers

The WSIB reviewed all seven draft policies to ensure that appropriate changes were made to address stakeholder recommendations. Across all the policies, minor changes were made (e.g., to clarify content, remove unnecessary detail etc.) and key changes were made in the following areas:

## **A. Eligibility for Single and Multiple Premium Rates Policy: Test of Significance**

Stakeholders wanted to maintain the concept of multiple premium rates. However, they raised concerns that the “test of significance” – the size of the business activity – that an employer is required to meet for each of its business activities in order to qualify for separate premium rates is too high.

They explained that a larger firm could have very significant amounts of insurable earnings (IE) in separate business activities that may not each be 25% of the firm’s total IE, resulting in the employer not meeting the criteria for multiple premium rates, even though each business activity is very large.

Concerns were also raised that a very small employer with very different business activities that fall under very different class risk profiles may not be able to meet the criteria for multiple premium rates because each business activity on its own may not meet the five times the maximum IE ceiling criteria – (in 2018, five times the maximum IE ceiling - \$90,300 equals: \$451,500).

**WSIB Action:** The WSIB adjusted the test of significance by:

1. Modifying the percentage of IE threshold - The draft policy had a threshold of 25%. The final policy has a threshold of 20%.
2. Removing the requirement to meet both criteria - Instead of requiring employers to meet both a 25% threshold (now 20%) for each business activity AND the five times maximum IE ceiling threshold, employers would only be required to meet one condition to be eligible for multiple premium rates.

## **B. Associated Employers Policy: Test of Cooperation**

Stakeholders raised concerns that the rules in the draft policy regarding associating employers were too broad and not sufficiently clear, resulting in unintended impacts to employers who are determined to be associated.

**WSIB Action:** The WSIB streamlined the criteria for association to improve clarity and ensure it was not overly broad. For example, the test of cooperation was reduced in scope to focus on associating employers when the operation of one employer is primarily ancillary or integrated with the other employer's operation.

## **C. Associated Employers Policy: Common/Successor Employers**

Stakeholders requested clarity on the "common/successor employers" section of the draft policy and wanted to ensure it did not have an overly broad impact. The section was intended to address circumstances where an employer closes and re-opens, but is essentially the same business entity. The draft policy intended to have the employer carry their experience with them in the event they reconstitute their business.

**WSIB Action:** The WSIB renamed the section to "transferring experience" to better convey its intent and specified that experience may only be transferred when the same employer closes and re-opens and certain other criteria are met. The section is not applicable when an employer sells or transfers their business to an affiliated employer.

## **D. Associated Employers Policy: Compulsory Coverage in Construction**

A specific concern was raised about the "associated employers in construction" section of the draft policy that applied the compulsory coverage in construction rules to associated employers. This would have resulted in pulling businesses into compulsory coverage in construction rules when they are not actually engaged in construction.

**WSIB Action:** The WSIB removed the section of the policy. Independent operators and executive officers outside of construction would therefore not be brought into compulsory coverage through association.

## E. The Classification Structure Policy: Ancillary Operations Scope/Definition

The definition of a business activity in the draft policy provided that: A business activity is an activity of the employer that produces a product or provides a service for revenue. Ancillary operations do not receive a separate classification because they support an employer's business activity and are not a separate business activity.

Stakeholders requested greater clarity around the scope and definition of ancillary operations. They were concerned that the proposed definition of ancillary operations leaves too much room for interpretation and therefore would lead to inconsistent WSIB decision-making and greater uncertainty for employers, compared with the current definition in policy.

**WSIB Action:** The WSIB revised the ancillary operations section to add greater clarity for stakeholders while maintaining the general intent of ancillary operations. To achieve this, the WSIB reverted to an inclusive list of ancillary operations, similar to what currently exists in policy.

## F. Employer Premium Adjustments Policy: Adjustment Window

Stakeholders commented that the draft policy was overly complex and the seven prior year adjustment window, for certain types of adjustments, was too long.

**WSIB Action:** The WSIB simplified the policy and moved to a three prior year adjustment window for most adjustments.

## G. Health and Safety

Stakeholders presented key concerns regarding the impacts of premium rate setting features on workers, and in particular, emphasized the need to better integrate health and safety in the policies. It was also noted that the proposed policy framework for temporary employment agencies and for associated employers contain some positive features for workers.

**WSIB Action:** The WSIB improved how health and safety was integrated into the policies. For example:

- The rate framework includes a mechanism for greater employer accountability, aimed at ensuring that employers that are "poor performers" are held more accountable for their experience, resulting in greater premium rate increases for them. The WSIB revised the section of the draft Employer Level Premium Rate Setting policy that describes the mechanism for greater employer accountability to better articulate the link to health and safety and return to work efforts, while also simplifying the wording of the policy.

# Next Steps

## Temporary Employment Agencies

The government recently proclaimed Schedule 5 of the Stronger Workplaces for a Stronger Economy Act, 2014 (Bill 18), which amended the *Workplace Safety and Insurance Act, 1997* to enable the development of a new regulation that would impact temporary employment agencies and the employers they supply workers to. If such a regulation is developed, we may be required to revisit the Temporary Employment Agencies policy. As a result, we have not yet finalized the policy.