

NEER is still here and so is CAD-7!

The biggest WSIB news of 2015 was the release of the Rate Reform white paper. The changes proposed by the WSIB with Rate Reform will impact every employer in Ontario (with more than \$25,000 in annual WSIB premiums).

While Rate Reform is coming, it likely won't be implemented until 2019 or 2020. Your company must continue to prevent accidents and manage claims under the current experience rating models (NEER/CAD-7) for several years!

The key changes are:

- The current RETROSPECTIVE (NEER & CAD-7) experience rating programs will be replaced by one PROSPECTIVE program
- Employers will no longer receive rebates or pay surcharges based upon past performance but will pay monthly premiums adjusted by their prior 6 year accident costs
- The number of rate groups will be reduced from the current 155 to 34*
- Companies will no longer be able to contribute to multiple rate groups and all premiums will be due under their dominant business activity (as of this date but may be subject to change)

**The number of proposed new rate groups may change from 34*

The most important of these is the new prospective experience rating plan.

- **RETROSPECTIVE:** Year-end reconciliation with a rebate or surcharge based upon performance
- **PROSPECTIVE:** Premium rate will be adjusted up or down based upon prior performance

Under the new program the experience rating window will be six (6) years, meaning that if the program is launched in 2020 the experience rating window will be 2013-2018. In 2021 the experience window will be 2014-2019 and the window will adjust accordingly with each new year.

Perhaps the most significant change will be how claims costs are charged to a company. The cost of a claim will be charged to the year of the payout within the six year experience rating window. While this is the current practice in the CAD-7 program it will be a paradigm shift for NEER employers. In NEER the cost of a claim has only been charged to the year of the accident.

Employers that have had workers participate in Work Transition (previously known as Labour Market Re-Entry) should pay particular attention to this type of claim. For most companies a work transition likely meant a maximum surcharge (NEER Performance Index of 4.00*) with a fresh start for the next NEER year; this will no longer be the case. If a worker participates in retraining, the employer's premium contribution will be increased for every year the worker is being retrained for up to six years.

NOTE: Using the example of the year 2020 as the starting point for the new program, the years that will determine your company's premium will be 2013-2018. Claims from 2016-18 will carry 2/3 weight in this calculation and 2013-2015 will carry 1/3 weight.

THIS IS WHAT YOUR COMPANY NEEDS TO KNOW ABOUT THE NEW PROGRAM

The program is based on risk bands. Every rate group will have a base premium rate but there will be between 40 and 80 price points within a premium rate. The WSIB will determine a company's starting point in the new program by using their accident cost data from the six year experience rating window (see above). In the new program every company will pay their TRUE premiums with the premiums based upon individual performance. Companies will no longer have to accrue money for a pending/possible surcharge at the end of the year.

In order to reflect improved performance over time, the WSIB will be utilizing the risk bands to adjust a company's premiums in future years. A risk band will represent a 5% change in premiums and company's can move up or down 3 risk bands per year. This will give good performers a significant competitive advantage over those with prior poor performance as the difference between the lowest and highest premium within a rate group could be as much as \$20.00 per hundred dollars of payroll.

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Your Performance (NEER/CAD-7) Will Carry Forward Into The New Program

For companies that receive rebates annually this is great news. Your premiums should be reduced in the new program. However companies that have incurred surcharges will pay increased premiums. This amounts to the WSIB's version of double jeopardy. Your past negative performance results in a future penalty!

WHAT YOUR COMPANY CAN DO TO BE READY FOR THE NEW PROGRAM

At this point there are as many questions as there are answers. The good news is the WSIB has sought input from stakeholders and has made many adaptations to the new programs based upon these recommendations. SE-GA will continue to update the readers of our newsletter as more information becomes available.

Prevention: Preventing accidents will benefit you in both the current experience rating and the new program as well. (Stop money from being spent)

Claims Management: Offering suitable modified work as soon as possible from the date of injury will reduce claim costs. (Limit money being spent)

Cost Recovery: Reducing claim costs through gaining cost relief from existing claims will also improve your next NEER/CAD-7 results but reducing these costs will reduce your premiums "risk band" in the new program. (Get your money back)

Conclusion: The principles you use to reduce claim costs in the current system will benefit your company in the new program.

10 WSIB Tips for a Successful 2016

1) Your company will have a workplace accident in 2016, are you prepared?

While not every company will have a serious accident in 2016 it is a possibility.

Every company should have a clear written Return to Work program that has been communicated to every supervisor and employee regarding their responsibility to participate in safe and suitable modified work.

A few recommendations:

- Have "In Case of Accident" packages always available for the worker, supervisor and healthcare provider stating your organizations commitment and capability to accommodate throughout the worker's recovery
- An Inventory of Modified Work jobs based upon your common injury types so that suitable work can be offered immediately
- Have a strategy to monitor the worker's progress back to their regular duties

2) The Costly 6 day Rule (NEER)

The first five days of a NEER claim have no money held in reserve against future claim costs (also known as Projected Future Costs, or PFC). Lost time days multiplied by the reserve factor result in PFC. PFC's begin on day 6 of a claim and can drive up the total cost of a claim more than 10 to 1 comparing day 5 of a claim to day 6.

Your company should do everything possible to return an injured worker to modified duties before the end of the 5th day of the injury.

3) The Costly 8 day rule (CAD-7)

CAD-7 costs are driven by two factors: the actual cost of a claim to the WSIB and a Frequency (or lost time claim).

A Frequency is charged instead of your CAD-7 when the injured worker receives loss of earnings benefits for the 8th day as a result of their workplace injury. For most companies a CAD-7 frequency will cost a company over \$32,000 over the two year life of the frequency. A claim can cost an employer for up to 5 years if the WSIB continues to pay out on the claim. Your company should do everything possible to return an injured worker to modified duties before the end

4) Avoid allowing Doctors granting injured workers days off, be proactive and have Modified work available immediately

Over the years many employers and their employees are under the misconception that a Doctor determines whether a worker can stay home from work. By being proactive and initially offering safe and suitable modified work, the Doctor on the Form-8 should only advise as to the worker's restrictions. It is then up to their employer to determine if they can accommodate, unless the worker is fully disabled.

Remember only the WSIB can allow a WSIB claim. WSIB Policies dictate that both employee and employer have an obligation to participate in modified work. We have seen many instances where a doctor advises a worker to stay home, and the WSIB agrees that your company has offered suitable work, it is very likely the WSIB will deny the injured worker loss of earning benefits.

5) You can appeal any WSIB decision and remember to "BOOKMARK" your appeals

Both workers and employers can appeal any WSIB decision but there are strict time limits for an appeal. An effective strategy is to file an Intent to Object Form which keeps the opportunity to appeal a decision open indefinitely. This form can be found by searching:

<http://www.wsib.on.ca/cs/groups/public/documents/staticfile/c2li/mdey/~edisp/wsib012685.pdf> or go directly to the WSIB website.

6) Cost Relief is still available BUT it takes a lot of time and expertise

To gain Cost Relief it is necessary not only to show that a pre-existing condition is present but also how that condition was impacted by the current accident.

Increasingly it has become necessary to continue an appeal up to the Workplace Safety and Insurance Appeal Tribunal in order to maximize the degree of cost relief, and in many cases to gain any degree of cost relief.

These submissions often include an Independent Medical Review of the file, citations of WSIAT precedents and a good understanding of how the WSIB/WSIAT policies apply.

7) Apprentices receive the full journeyman's rate when they receive Loss of Earning benefits from the WSIB

In other words, apprentices are paid at the journeyman's rate when they are at home due to their workplace injuries instead of participating in modified duties. This is a large financial incentive to stay at home for as long as possible. You should always offer modified work but you should do so immediately for apprentices.

8) Put every communication in WRITING

Verbal communication is never enough, whether it with the worker or with the Board. Always give the worker a written offer of modified work (and have a place for them to sign that they have accepted or rejected the offer) and send the signed copy to the Adjudicator. This will be particularly valuable in the event of an appeal by your employee of a WSIB decision.

9) Your Workplace Is Not Unique

Every company is obligated to offer modified work. Failure to do so will not only result in costly claims and a probable surcharge but the WSIB can also fine a company 50% of the worker's wages for failure to comply.

10) Focus on PREVENTION!!!

The least expensive accident is the one that didn't occur because of your company's focus on safety training, compliance, personal protective equipment and commitment to keeping your employees safe.

As discussed earlier in this newsletter, the WSIB is looking at a radical restructuring of all experience rating programs. In order to best position your company for whatever comes next the best practices of prevention, claims management and cost recovery will put your company in the best possible starting point, and will produce rebates in the current model as well.

Upcoming Understanding NEER & CAD-7 WSIB Seminars in Ontario

- **Cambridge - April 7th**
Holiday Inn Cambridge, 200 Holiday Inn Drive, Cambridge 519-658-4601
- **Toronto - April 14th**
Travelodge Hotel Toronto Airport, 925 Dixon Rd - Etobicoke, 416-674-2222
- **Hamilton- April 21st**
Admiral Inn, 149 Dundurn Street North, Hamilton, 905-529-2311
- **Ottawa- April 29th**
St. Anthony's Banquet Hall, 523 St Anthony St, Ottawa, (613) 233-1083
- **Thunder Bay - TBA**

Upon request SE-GA will meet with you at your office and provide a no-charge explanation of your NEER/CAD-7 performance and discuss strategies to obtain rebates on a sustainable basis.

If you have NEER/CAD-7 WSIB questions or would like to forecast your September 2016 NEER or August 2016 CAD-7 rebate or surcharge please contact us at 416-463-7342.

As always, everyone's situation is different. The above is not intended to be legal advice for any particular situation and it is always prudent to seek professional legal advice before taking any decisions on one's own case.



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