

## The WSIB Announces Rate Framework Reform will be delayed until January 2020!

In Mid-August the WSIB released seven draft consultation papers related to Rate Framework Reform.

They are:

- ◆ Employer Premium Rate Setting
- ◆ Employer Premium Adjustments
- ◆ Eligibility for Single or Multiple Rate Groups
- ◆ Temporary Employment Agencies
- ◆ Coverage Status
- ◆ Associated Employers
- ◆ The Classification Structure

The information discussed in this newsletter is based upon the information published in these discussion papers and could change as the WSIB develops the policies related to these papers.

The three most significant of these (to most Ontario employers) are Premium Rate Setting, Adjustments and the ability to contribute to more than one rate group.

### Employer Premium Rate Setting:

There are two steps to determining the premium rate for any employer:

1. The rate group premium rates:
  - a. Every rate group will have a minimum, base and maximum premium rate
  - b. Each rate group is expected to have between 40 and 83 price points
  - c. New companies will enter the rate group at the base premium rate
2. The individual premium for the employer within the rate group:
  - a. Your 2020 premium will be set based upon your direct accident costs for 2013-2018
  - b. Each price point will be referred to as a risk band
    - i. Your premium rate can decrease by a maximum of 3 risk bands per year
    - ii. Your premium rate can increase by a maximum of 3 risk bands per year
      1. There are exceptions and they will be discussed in Employer Premium Adjustments

In Rate Reform competitors will no longer pay the same premium rate. Employer's premium rate (price point) will be determined by their accident histories.

Competitor A who has many accidents but effectively manages those claims is likely to have a lower premium rate than Competitor B who has been accident free until one calamitous claim occurs where the injured worker will never return to their pre-accident employer.

## Employer Premium Adjustments

The WSIB has the ability to adjust a company's premium rate beyond the risk band adjustment for claims cost activity. This type of adjustment would only occur if:

### Debit Adjustments

A debit adjustment of the types discussed below could increase a company's premiums more than 3 risk bands in any given year.

### The Two-Year Rule

If an employer has made an error in reporting for issues such as an instance where an independent Operator is determined to be an employee, the WSIB can recalculate the premiums for the most recent two years for which the premiums should have been paid on those wages. These types of adjustments can be thought of as bookkeeping errors and generally would be reported by the employer to the WSIB.

### The Seven-Year Rule

If the WSIB determines an employer willfully submitted incomplete or inaccurate payroll information then the WSIB can, upon the findings of their audit, recalculate the premiums owed for up to 7 years. An instance where this would apply would be if a construction company declares the owner exempt from WSIB premiums (the owner declared they do not do actual construction work) but is not eligible for that exemption.

### Unlimited Adjustments

The WSIB has the power to adjust premiums for an unlimited number of years if it has been determined the employer committed a fraudulent act or committed an offense under the Workplace Safety and Insurance Act.

### Claim Suppression

The WSIB, when an act of claim suppression is discovered (the employer told their injured worker to say they hurt themselves at home for example) will apply the costs of that claim to the year of the accident.

All of the above will increase the premiums in the affected years and could impact their premium rate in future years as well. However, companies that are diligent in their reporting of payroll, premiums and accidents are unlikely to be affected by these debit adjustments.

## CREDIT ADJUSTMENTS

A credit adjustment of the types discussed below could decrease a company's premiums more than 3 risk bands in any given year.

The WSIB can make premium credit adjustments to an employer's account for up to seven years under the following circumstances:

- ◆ Second Injury Enhancement Fund (Cost Relief)
- ◆ Change in Accident Date
- ◆ Claim Amalgamation
- ◆ Transfer of Costs
- ◆ Transfer of Insurable Earnings to another employer

The good news here is that WSIB has confirmed SIEF Cost Relief and other cost reduction tools will remain in place.

As discussed in prior newsletters SE-GA strongly recommends every Ontario employer consider seeking cost relief on all prior costly claims as the reduction of claim costs will lower your entry point in your new rate group. In Rate Reform *it's all about where you start.*

### Single or Multiple Rate Groups

Rate Reform will use the 6-digit NAICS code to determine which rate groups apply to Ontario's employers.

If a company has one business activity with ancillary operations that support that activity the company will only contribute premiums to the business activity of the predominant business activity.

If a company has more than one business activity, and those activities are not integrated, then the company can contribute to more than one rate group provided:

- ◆ The total annual insurable earnings of that business activity are at least 5 times the maximum insurable earnings for that premium year, AND
- ◆ At least 25% of the total annual insurable earnings

**Company A** is a foundry that has a tool shop for the foundry. In NEER this company has a separate rate group for both business activities. In Rate Reform both parts of the company will contribute to the premium group associated with the predominant business activity of the foundry.

**Company B** manufactures spirits and has their own retail stores throughout the province. Their manufacturing operations will contribute to the food manufacturing rate group while their stores will contribute separately to the retail operations rate group. The premium rates are independent to the claims activity in each rate group.

As new information is released by the WSIB SE-GA will continue to update our readers through this newsletter.

## New Mental Health Policies coming in 2018

The Hot Topic over the summer of 2017 was the announcement the WSIB would begin to allow Loss of Earnings benefits for Cumulative Mental Stress claims and how the WSIB would adjudicate these claims in the new year

Earlier this year we started to hear about PTSD – Presumptive Traumatic Stress Disorder, which applies to First Responders who can show that either a single event or a series of events, within their course of employment, have led to a mental health issue that prevents the worker from being at work.

The WSIB is currently developing a formal policy for both Traumatic Stress as well as Chronic Stress that will become effective for new claims after January 1, 2018.

**Traumatic Stress** – a workplace incident that would not be expected within the normal working conditions of an employee that leads to mental health issues. These type of incidents include Explosions and Accidents to another worker with severe results (fatality, dismemberment). The worker may have suffered or witnessed the event.

The WSIB may grant entitlement to Loss of Earnings Benefits for mental stress under the following criteria:

- ◆ An acute reaction
- ◆ To a sudden and unexpected
- ◆ Traumatic event
- ◆ Arising out of and in the course of employment
- ◆ An employer will be well aware of the traumatic event.

The area of concern for Ontario employers will be the policy involving Cumulative Mental Stress (CMS). Chronic Stress is the outcome of harassment in the workplace. This type of stress can be described as follows:

- ◆ Physical violence or the threat of physical violence
- ◆ Bullying and other forms of harassment by other workers
- ◆ Being placed in a life-threatening or potentially life-threatening situation
  - o Tampering with safety equipment
  - o Causing a worker to do something dangerous
- ◆ Immediate Acute Reaction
  - o WSIB accepts entitlement if a health care professional confirms worker suffering from acute stress disorder, PTSD, adjustment disorder or an anxiety or depressive disorder
  - o Delayed onset or onset due to cumulative effect



◆ A WORKER IS NOT ENTITLED TO BENEFITS FOR MENTAL STRESS CAUSED BY THE DECISIONS OR ACTIONS OF THE WORKER'S EMPLOYER RELATING TO THE WORKER'S EMPLOYMENT, INCLUDING A DECISION TO CHANGE THE WORK TO BE PERFORMED OR THE WORKING CONDITIONS, TO DISCIPLINE THE WORKER OR TO TERMINATE EMPLOYMENT

o A worker cannot claim mental health disorders as a result of normal workplace actions or by the worker violating company policies and the employer taking expected actions.

Recently the SE-GA team attended a presentation by the WSIB on the new Cumulative Mental Stress policy and how the Board will adjudicate these types of claims:

1. There will be a causation test
2. The work-related stressor must be the predominant cause of the CMS
3. The employer has knowledge of the situation or ought to have known about the stressor.

The following must also be considered:

- ◆ Substantial stressor is excessive in intensity and/or duration in comparison to the normal pressures and tensions experienced by workers in similar circumstances
  - o Does not exclude employees in a high stress environment/occupation
  - o A high level of routine stress, combined with significant duration, may qualify as a substantial work-related stressor
  - o Interpersonal conflicts between employees, supervisors etc. could apply to the CMS policy if the conflict results in abusive behaviour

The key item that was presented by the WSIB at this session is that the WSIB is training a dedicated CMS team that will work with the employer and the worker to identify and remove the workplace stressor, and that resolution should be accomplished through regular claims management techniques such as offering modified work and should be monitored as per the company RTW policies and procedures program once the resolution is reached.

The role of the WSIB's CMS team will be:

1. Collaborate with both parties to identify the stressor
2. Support both parties to participate in the solution
3. Promote and Facilitate Return to Work
4. Facilitate timely assessment and treatment if necessary

While the casual factor is different from a physical injury the employer should employ traditional claims management methods and take the approach of "a claim is a claim and my responsibility is to provide a temporary work transition that allows the worker to return to their pre-accident job".

Employers have had significant time to implement their policies in relation to Bill 168 – Workplace Violence. The CMS policy is a natural response by employers who continue to take a laissez-faire approach to preventable and repairable workplace issues.

Normal workplace actions such as discipline, changes to the work environment or performance expectations cannot be the root cause of a CMS claim.

Employers must be prepared to show their due diligence in their implementation and enforcement of these policies. For companies with Human Resources managers we recommend a due diligence audit of any/all complaints that could be considered harassment. Did the company investigate and take corrective action for the instances of workplace harassment? All new complaints must be resolved in accordance to these policies as well.

For companies that do not have Human Resources managers it is recommended (or for companies that do not feel they have met the Bill 168 requirements) that they hire an outside Human Resources consultant to development, implement and monitor enforcement.

Companies that do not take a pro-active approach to resolving CMS claims will find these types of claims to be very expensive in both the current experience rating models (NEER/CAD-7) and the proposed Rate Reform model.

Area of greatest concern: Just as SE-GA represents employers regarding the interpretation of policies to their advantage, these new policies, will be interpreted in different ways. accordingly representation will be paramount but more so all companies should have their Mental Health policies in place and exhibit due diligence on their application. It is imperative employers show a sincere effort at reconciliation for all incidents of CMS, even if the initial submission by the worker is rejected by the WSIB.

Over the coming years we anticipate various interpretation of the policy albeit at the operating level and the Appeals Branch and then the Tribunal. Regardless, of the jurisprudence, employers have to embrace this policy, be diligent in their mental health program and provide a safe and healthy workplace for all staff.

# 2017 Rebate/Surcharge outcomes

NEER: The June NEER statements are out and are an excellent tool (combined with your September 2016 NEER statement) to determine your companies NET rebate/surcharge position for this year.

CAD-7: Ask SE-GA to review your 2017 CAD-7 statement with you. We can discuss strategies to improve these outcomes and how to best prepare your company for the new Rate Reform model for 2020.

If you have questions about these statements, calculations or how the changes to experience rating will affect your company send a note to [info@segaconsulting.com](mailto:info@segaconsulting.com) for a no-charge consultation.

## Understanding NEER & CAD-7 Video's are now here!

### \*NEW\* Understanding the Front Page of NEER Video

If you have often been confused by NEER and how the formulas and calculations work, visit us at <http://segaconsulting.com/videos/> for a complimentary video on understanding the mechanics of page one of your NEER statement.

### \*NEW\* The 6 Keys to Understanding CAD-7 Video

If you find CAD-7 and the costs, calculations and frequencies confusing, visit us at <http://segaconsulting.com/videos/> for a complimentary video on Understanding the 6 Keys to determining the costs on your CAD-7 statement.

As always, for answers to any of your workers' compensation questions please reach us at 416-463-7342.

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