WSIB's Rate Framework Reform – The Countdown Is On

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Schedule 1 employers should be aware that Ontario's *Workplace Safety and Insurance Board* ("WSIB") will usher in its new rate framework on January 1, 2020. As we count down toward implementation, my posts will provide quarterly updates and insights to assist Schedule 1 employers with the transition.

The WSIB's new framework is long anticipated, dating back to both Arthurs's *Funding Fairness* (2012) and Stanley's *Pricing Fairness*(2014) reports. It will be the biggest shake-up in the WSIB regime since the early 90s. That means for many businesses, the current regime is the only one they have ever known, and change can be hard. For some, the change may be welcome as the existing system and rating programs are often seen as overly complex and cumbersome.

The WSIB's current classification system will be replaced with the *North American Industry Classification System ("NAICS")*, which is already used by CRA and Statistics Canada and may be familiar to cross-provincial employers. The WSIB has touted the new framework as a more simplified, transparent and predictable structure that will more accurately reflect the respective industry and each individual employer's level of risk to the system.

The new framework will overhaul the existing classification structure, rate setting, and experience rating. In many instances it may affect how your business is currently classified and premium rates commencing next January. To ease the transition, the WSIB has allowed for a process that will enable changes in an employer's rates to be phased in over time.

Notably, the WSIB's current 155 rate groups will drop down to (the NAICS's) 34 classes or subclasses. The new framework will be based on a *Risk Adjusted Premium Rate Setting* process and the existing experience rating programs will be replaced with a prospective, *Employer Level Premium Rate Adjustment* process.

As part of a *Risk Adjusted Premium Rate Setting* process employers will be assigned to a predominant class (generally based on the class that represents its largest percentage of insurable earnings). There will be a class projected premium rate that reflects the estimated collective experience of all of the employers within such class/subclass, and then classes will have a premium rate themselves. In application, if the number of claims and cost of claims for a class increases for a few years, then the corresponding premium rate for that class (and premiums for the employers in that class) will also go up.

In determining an employer's *Employer Level Premium Rate Adjustment* within the predominant class, both collective and individual responsibility will be calculated. The class target premium rate will be adjusted for an individual employer based on the risk that employer brings to the system after having regard for its historical experience or actuarial predictability. The adjustment will result in a premium rate in the upcoming calendar year, but it will no longer be subjected to a surcharge or a rebate later in the following year. Using these calculations, the employer will be assigned to a corresponding risk band. The WSIB will limit an employer's potential rate increase to a maximum of three risk bands per year.

To implement the new framework, the WSIB has drafted six central policies that will supplant 13 policies in the present system. Most notably, the WSIB's current experience rating programs (NEER, CAD-7 and MAP) and policies will be replaced with the new *Employer Level Premium Rate Adjustment* process and the corresponding *Employer Level Premium Rate Setting* policy.

The last NEER and CAD-7 assessments will be issued in 2020, which will review the 2019 injury year and previous years applicable to the plans, whereas the final MAP statement will apply for the 2019 premium year. As alluded to already, this means that, in the new framework, employers will be assessed a premium without a year-end rebate or surcharge as in the current system.

However, a surcharge mechanism will be available. Though not expressly punitive in nature, the surcharge will have a similar effect. Where an employer has consistently high or disproportionate claim costs relative to their class for multiple years or where there is a significant or sustained gap between what an employer is actually paying and what they should pay for premiums, the WSIB can levy a surcharge.

Also, the existing window used to set premium rates will change. Whereas with the current MAP, NEER and CAD-7 programs, there are different periods, the new window will be a "rolling" six years (i.e. six years prior to the rate-setting year) for all Schedule 1 employers regardless of industry. This means, to calculate an employer's 2020 premium rate, the WSIB will consider the years 2013-2018, inclusive, which are the six years prior to 2019, which is the rate-setting year. This six-year expanded window is said to reduce the volatility that a single poor or excellent year can have on a company's premium rate and create a more stable system. Employers will also have the capability of accessing their projected future premium rates (i.e. "prospective" rate setting) which the WSIB says will enhance predictability for employers as compared to the current programs.

What Schedule 1 Employers Should Start Planning For:

With the abolishment of the existing experience rating programs and the ability to obtain a refund, it is highly important to address any outstanding employer reconsiderations, objections and appeals as soon as possible and before the WSIB stops making retroactive adjustments.

As a proactive measure, a thorough evaluation of the workplace and accident history can assist employers. By reviewing your cost statement and claims history to identify types of repeat injuries or diagnoses, and duty- or station-based accidents employers can identify and work toward eliminating sources of injury. This in turn will reduce the number of accidents and claims filed.

Accident prevention and diligent claims management has always been important in the WSIB regime. However, in the new framework, even "no lost time" claims can have an overall impact on premium calculation because rates will be calculated by considering insurable earnings, the number of claims and claims costs.

Given these influential variables, injury prevention, duly managing early and safe return to work to reduce claim severity, and diligently objecting to/appealing unjust WSIB decisions will be paramount in the new system.

To ensure employers are well-prepared for this transition, it is important to seek out legal counsel who specializes in assisting employers with these matters.

What are your company's key concerns as you plan for the WSIB's rate framework reform? I welcome your feedback and questions on this transition. Please post your comments on our LinkedIn page at: Dickinson Wright Canada, on Twitter at @DWrightCanada or on my personal LinkedIn page at: http://linkedin.com/in/tracy-bergeron-lucha-9a1a902a. In the meantime, stay tuned for more information and insights on the WSIB's new rate framework throughout 2019.