

WSIB's Rate Framework Reform – The Countdown Continues

Prepared by:
Tracy Bergeron Lucha
Dickinson Wright



INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ **Unlimited Live Webinars** - 110+ live webinars added every month
- ☑ **Unlimited OnDemand and MP3 Downloads** - Over 3,800 courses available
- ☑ **Videos** - More than 1,900 available
- ☑ **Slide Decks** - More than 3,000 available
- ☑ **White Papers** - More than 1,900 available
- ☑ **Reports**
- ☑ **Articles**
- ☑ **... and much more!**

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

WSIB'S RATE FRAMEWORK REFORM – THE COUNTDOWN CONTINUES

Written by [Tracy Bergeron Lucha](#)

This is the second part in the series of updates and insights to assist Schedule 1 employers with the transition to the new WSIB Rate Framework (“RF”) which will commence on January 1, 2020.

The last post contained the broad strokes on how the new RF would work and referenced the fact that the WSIB drafted central policies to support the new RF. In this post, I review highlights of two key policies. My next post will highlight a third policy. I’ll also provide some practical recommendations companies can use to prepare for the transition.

The new policies give effect to the RF changes and replace policies that will become redundant in the new system. The WSIB made these policies available in advance to assist employers in understanding and preparing for the RF but they will not be implemented until January 1, 2020, in tandem with the RF. You can view the advance copies on the WSIB website (@ <https://www.wsib.ca/en/rate-framework-policy-consultation>).

Policy 14-02-01 Employer Level Premium Rate Setting

This policy will comprehensively replace the three current policies for the MAP, NEER and CAD-7 programs as they are

ending. In general, it sets out the two-step model for premium rate setting in the ensuing year based on both the class's proportionate responsibility (collective claims experience) and a risk-adjusted premium actuarially determined from the employer's risk and claims experience compared to the class based on the six-year review period (individual claims experience).

The policy also explains how employers are assigned to risk bands within their class, based on their actuarial predictability and adjusted risk profile. The greater an employer's assigned predictability grouping, i.e. the greater an employer's risk to their class, the greater the premium and allocation on the risk band continuum. Likewise, the greater the assigned predictability grouping, the more risk bands that the employer will move above the class average risk band.

Per claim cost limits will be assigned to each employer and redetermined annually based on their calculated predictability grouping.

This policy distinguishes between the employer projected and actual premium rate. It also notes that an employer's *projected premium rate* is the amount it should pay to fund its share of costs, but may not pay in the upcoming year, in particular, years 2020-2022 as addressed in the last policy reviewed below. The projected premium will act as a marker for the rate the employer is heading for if the key factors (i.e. claims experience, insurable

earnings, and class experience) essentially remain consistent. The *actual premium rate* to be paid will be the reflection of risk band limits, previous premiums and class collective costs.

In setting premiums, the WSIB will factor in all approved cost relief, including, without limitation, SIEF relief.

This policy also makes clear that there will be a “mechanism for greater employer accountability”. Employers with poor experience relative to their class (i.e. where their projected risk band is greater than the policy risk band limit or where they have a difference of greater than 20 risk bands between their projected and actual risk bands) will be under the WSIB’s scrutiny and subject to a health and safety and return to work engagement for a one to two year period. If there is no improvement in the third year, the WSIB will make a risk band movement limit and/or risk band adjustment, which will also lead to a higher premium rate. If the WSIB has already engaged with the employer in a one-two year engagement it can proceed with risk band adjustments in year 3 without further engagement.

New employers will be subject to the class average premium rate. Employers who meet certain criteria for multiple operations may be assigned multiple premium rates.

It is possible for an employer’s predominant class to change in an upcoming year due to insurable earnings changes. Where

this occurs, an adjusted prior year risk band is determined to calculate the upcoming year premium rate.

The WSIB has the discretion to apply provisional insurable earnings to employers. This may occur in instances where an employer failed to report actual earnings or other circumstances. This could result in an upward risk band movement. No downward movement will be contemplated until the employer achieves compliance.

Policy 14-02-06 Employer Premium Adjustments

Key highlights of this policy include the circumstances whereby the WSIB will adjust premiums billed, payable or previously paid, the type of premium adjustments it will make and the time limit for such adjustments. It replaces the current policies that address CAD-7 and NEER retroactive adjustments, refunds/surcharges and employer premium adjustments. Adjustments may be initiated by the WSIB or the employer. This policy is relevant to employers who seek adjustments including from appeals, SIEF relief and transfer of costs.

The time limit is a key consideration for most adjustments. It is noted that the WSIB *may* apply premium and premium rate adjustments in the “current year” or back to January 1 of the “third prior year”. For example, applying this principle and using the year the RF comes into force as the “current year”, adjustments could be made to premiums or premium rates in

2020, or as far back as January 1, 2017. This is a significant change for employers familiar with current experience ratings programs who seek refunds/credit adjustments for SIEF relief, change in accident date, amalgamation of claims, entitlement rescission or transfer of costs, as the window to obtain an adjustment will be abridged.

However, this policy informs that in “limited cases” the WSIB may make a premium or premium rate adjustment (debits or credits) “in any prior year” where it would “ensure that an employer’s premium rate is calculated appropriately and that correct premiums have been paid”. Although this enables the WSIB to go back “an unlimited number of years” to make an adjustment, since this will be in “limited cases” only, time will tell what the WSIB will consider as acceptable.

Thus, in the ordinary course, to obtain a potential premium-related credit adjustment from employer-initiated requests, it will be prudent to pursue them in the new three year compressed time period. For decisions made by the WSIB or WSIAT outside of the three-year window that could amount to a retroactive adjustment, a strict application of this policy suggests that related adjustments are at the discretion of the WSIB as a limited case and if it were it would ensure that an employer’s premium is correct and appropriate.

The policy further stipulates that adjustments will be made at the employer’s or the WSIB’s (and presumably WSIAT’s) request. Employers will be wise to take steps to ensure that

allowed adjustments are actually made by closely monitoring the premium statements and as necessary, with follow up letters to the WSIB. Likewise, in the event of adjustments stemming from an error requiring a correction or revision (limited to the list of items in the policy), employers wishing to obtain a premium adjustment are to make a direct request to WSIB describing the issue and reasons.

The WSIB may also make a debit or credit adjustment back to January 1 in the current year in case of a correction or change to the employer's NAICS code or eligibility for multiple premium rates. Debits back to January 1 in the third prior year can be made in instances where an employer has not made full or proper disclosure.

Exceptions to the time limits for adjustments include court judgments, debits for non-compliance under the *Workplace Safety and Insurance Act, 1997* (such as failure to report an accident, claim suppression, underreporting of insurable earnings, etc.)

In addition to help with claims management including entitlement reversals, objections and appeals, employers can engage legal assistance to pursue retroactive adjustments and to initiate adjustment requests.

My next post (later this month) will include an overview of a third policy update, the *Policy 14-01-09 Transition to the Rate*

Framework. I will also provide my key recommendations on what you can do now.

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.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.