

Council of Ontario Construction Associations

A Submission

In response to

The Workplace Safety and Insurance Board Rate Framework Modernization Consultation

October 2, 2015



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Council of Ontario Construction Associations
180 Dundas Street West, Suite 2001
Toronto, Ontario M5G 1Z8
WSIB Rate Framework Modernization Submission

Introduction

The Council of Ontario Construction Associations (COCA) is a federation of construction associations representing more than 10,000 general and trade contractors operating in the industrial, commercial, institutional and heavy civil segments of the construction industry and who work in all regions of the province and employ approximately 400,000 workers. COCA is committed to working with the senior management of the WSIB and with officials in the Ministry of Labour and the provincial legislature to ensure that Ontario's workers' compensation system is sustainable, addresses the needs of both employers and workers effectively and efficiently and serves as a competitive advantage for attracting new business investment and jobs to the province. COCA is the largest and most representative voice for the non-residential construction industry in Ontario.

Since its formation in 1975, COCA has been continuously and very actively engaged in issues that could be broadly classified as "WSIB Reform" and these matters have been always been among this organization's very highest public policy priorities. In the conduct of this work, it is COCA's practice to work with our own members to develop solutions that support success in the construction industry and also to work with other industry associations to ensure the alternatives that we develop on our own fit into a more holistic approach that meets the needs of the broader economy. With regard to WSIB issues, COCA is an active and leading member of the Ontario Business Coalition (OBC) and we support the submissions made by that organization.

COCA is supportive of the general direction of the WSIB's Rate Framework Modernization proposals and we are pleased to provide the following submissions.

North American Industry Classification System (NAICS)

With regard to the classification of employers in Ontario's workers' compensation system, we concur that the current Standard Industry Classification system (SIC) is out dated and should be replaced with the North American Industry Classification System (NAICS). NAICS is already being used by ministries of our provincial government and departments of our federal government, it's used by several other provincial workers compensation schemes, it's widely used by state and national governments throughout North America for a variety of purposes and it's updated every five years to account for changes in economic activities and the emergence of new types of businesses. Because it's so widely used among governments and their agencies at all levels across the continent, sharing and comparing of data among jurisdictions for a wide variety of purposes is made much easier. We agree that the WSIB should migrate to a new employers classification system built around NAICS.

Number of Classes

The WSIB's original proposal recommended that there would only three classes for the construction industry, Classes G1, G2 and G3. However, further study and analysis by the WSIB concluded that Class G3 could be broken out into three separate classes, G3.1, G3.2 and G3.3 for a total of five construction classes. Classes G3.1, G3.2 and G3.3 are fully credible and do not have the broad risk disparity that was present in the original Class G3. Further study of risk disparity present in classes G1 and G2 may conclude that those classes too should be further subdivided into actuarially credible classes with tighter risk disparity profiles. We recommend that this work be undertaken.

Multiple Business Activities

While classifying employers according to their predominant business activity, determined by the relative amounts of insurable payrolls attributable to an employer's various business activities (the largest amount determining the predominant business activity) is by no means a perfect solution, it may be the simplest, easiest to understand and perhaps the best available option. The proposed risk adjusted premium rate setting should take into account the aggregated risks of all the various business activities that an individual employer may bring to the system which should be reflected in the employer's experience and blended into its premium. The various business activities of an employer and their risks should be blended into that employer's premium rate.

There are currently approximately 15,000 employers in the system that are multi rated. Most of these employers will be involved in two or more business activities that are complimentary in nature and the risks associated with these complimentary activities are not widely disparate. However among these 15,000 multi rated employers, there may be a small number that are engaged in two or more totally unrelated, widely dissimilar business activities with widely disparate risks. Consideration should be given to offering special rules or some form of multi rating for such businesses or providing them with assistance to reorganizing their dissimilar business activities under separate corporate banners.

In order to determine an employer's predominant business activity, the WSIB should carefully examine several years of payroll information. The WSIB should review an individual employer's payroll data with a view to determining what is most likely to be the predominant business activity in the next year and in the years ahead. Trends may be evident from the payroll analysis that would identify a shift in payroll from one activity to another. Examining only one year's payroll data will not provide an accurate picture of what an employer's predominant business activity will be moving forward. Several years of payroll information must be used to appropriately determine an employer's predominant business activity.

Temporary Employment Agencies

A good case can be made for some form of multi-rating for TEAs. A solution that deters cost avoidance should be developed through discussions with representatives of that industry. However, as a principle of insurance, claims costs must be assessed against the employer that paid the premium for the affected worker.

Per Claim Limit

Applying the current per claim limit of 2.5 times the maximum insurable earnings ceiling which is currently applied at the Rate Group level, on an individual small employer would be overly burdensome. To provide protection for small employers, we support the implementation of a graduated per claim limit. This would protect the small employer who experienced a single large claim. Large employers are better positioned to absorb. Consideration should be given to expanding the number of incremental steps, determined by employers' predictability, beyond the four in the proposed graduated per claim limit.

Long Latency Occupational Disease

In general, we believe that LLOD claim costs should be excluded from an employer's experience and should be accounted for at the Class level.

There may, however, be rare circumstances where a single employer is clearly responsible for the working conditions that caused an LLOD. Such a situation could involve a worker who worked for only one employer over a long period of years, an employer who knowingly refused to comply with the regulations or legislation of the day which if followed would have eliminated the causes of the LLOD. Under such circumstances, it is justifiable to assess the costs of the LLOD against the employer. This matter may require further examination.

Experience Window for Experience Rating

If the experience window remains at six years, then COCA supports giving greater weight to the more recent years within the six year time period. The more recent years take into account changes that could have been made in an employer's business processes and management systems. One year does not give a sharp enough picture to be predictive of future performance but here or four years would be. An alternate and simpler approach would be to shorten the window to four years.

Second Injury Enhancement Fund

There is near unanimous agreement in the construction industry that some form of cost relief must continue to be available in the new system to construction employers for their workers who bring injuries with them from previous employment. It is absolutely necessary in the construction industry to provide cost relief because of the high mobility of construction workers, especially in the unionized sector.

We acknowledge that there is a cost borne by employers for the SIEF program; it is not free. SIEF cost relief doesn't come from a magical fund that fell out of the sky. Cost relief for injuries inherited from workers' previous employment is paid for through employer premiums at the class level. In some provinces, the cost of SIEF is broken out by Class and industries have the ability to review and assess those costs and make a collective industry-wide determination to opt in or out of the SIEF program. This approach should be studied and considered for Ontario. That said, we believe the construction industry, given the choice, would opt in.

Self-Sufficiency of Classes

Classes should stand on their own and be accountable for the costs bring to the system. Costs determined to be “catastrophic” should be spread over a number of future years for rate stability.

Actuarial Predictability

In setting employer level premium rates, the WSIB should determine an employer predictability factor using insurable earnings, claim costs, number of claims, lost time injuries. the level of protection an employer needs from large rate fluctuations?

Experience Adjusted Premium Rates for Small Employers

The introduction of experience adjusted premium rates for small employers that are excluded from experience rating in the current system is a change that is welcomed by smaller contractors. Experience adjusted premium rates provides smaller employers with the opportunity to reduce their premium rates by improving their health and safety performance. That said however, under the proposed scheme, the ability of smaller firms (smaller firms have little credibility) to significantly reduce their premium rate is highly restricted and the rate they will pay is to the greatest degree influenced by the class average.

Risk Banding

As proposed, each of the five classes for the construction industry will have more than sixty risk bands or price points with a five percent price difference from one risk band to the next. The premium rates that employers will pay in the new system will be determined using of their net premium rates (net of CAD 7 adjustments) over the last three years. This is a reasonable approach to use to transition to the new Framework.

Employers

The 5% increments between risk bands provide more sensitivity to small changes in experience and avoid large premium rate swings that would be caused by larger increments between risk bands. This is a positive feature.

One of the important challenges faced by the WSIB in the development of a new rate setting process is balancing the need for rate stability with the need for responsiveness or put another way balancing collective liability and individually accountability. The WSIB’s proposals in this regard are reasonable. Where experience dictates it, an employer will be moved up to three risk bands or 15% in either direction (an employer’s rate will be increased as a result of poor experience or reduced as a result of good performance) in a year. An employer’s ability to move will be dependent upon its credibility. Small employers have less credibility than large employers and as a consequence they will have limited ability to make significant movements within the range of risk bands in their class. Small firms will find themselves clustered around the class target rate. Despite the fact that some independent and confident contractors would prefer a more responsive system, in the main, the system as proposed

offers smaller firms the protection they need with stable premium rates and a limited ability to improve their rates.

New Employers

There is no way of predicting the performance of an employer that is new to the system because they have no history in the system. Therefore it is reasonable to assess them the class target rate. As experience is developed they should have the ability to move to a rate that is reflective of their experience.

Surcharging Employers

It is absolutely reasonable to surcharge employers that consistently display poor health and safety performance, bring unacceptably high costs to the system and who are unwilling to improve. These bad actors must be held accountable for their poor performance. They must not be subsidized by the better performers in their class.

The WSIB should develop metrics to identify poor performers at the earliest opportunity and engage them in a step by step process to guide them to improvement. It has been suggested that employers with claims that are three times the class average should be considered for surcharge. The WSIB should consider ongoing reviews of employers' performance that would enable the identification of employers who are on the track to becoming poor performers at the earliest possible stage in order to make corrective interventions.

Consistent poor performers are not employers who experience a negative incidental "blip" in their performance. Consistent poor performers are those that show predictive evidence that they will inflict on the system disproportionately high costs relative to their class average in the years ahead. With regard to health and safety, the best predictor of future performance is past performance. However the WSIB must be careful not to interpret one year of poor performance as being consistent; there must be an established pattern.

The first step in the process would be for the WSIB to identify employers who appear to be on the track of consistent poor performance. The next WSIB would engage an identified employer, examine the causes of their poor performance to determine there is a pattern of poor management and then to provide guidance and encouragement about how they can improve. This is where a tool such as WorkSafe BC's Employer Safety Planning Toolkit could be used to help employers improve their health and safety performance and find their way into the mainstream. If the employer then procrastinates or refuses to take corrective action, there would then be a discussion about accountability and consequences of not taking steps to improve. The final phase in the process would be the assessment of a series of increasing financial penalties on the employer.

Consistently poor performing employers who, after a program of counselling similar to what we have outlined above, do not take steps to alter the course of their health and safety journey must be held

accountable. They cannot be allowed to inflict the costs of their poor health and safety management practices on other employers in their class. Subsidization of consistent poor performers, who after counselling fail to take steps to change, must not be abided in the system.

Fatal Claims Policy

The current fatal claims policy will be inoperable in the proposed Rate Framework because the policy is tied to the current experience rating programs which will cease to exist in the new Framework. This raises the question of how fatal claims costs should be addressed in the new system where the current policy is inoperable. The costs of fatal claims can vary greatly depending largely upon the circumstances of the deceased and the number of his or her dependants. While there are several options including the full cost method and the graduated claim limits method, it is our view that the fairest approach in assessing the cost of a fatal claim against an employer is to use the average cost of all fatalities. This is the practice followed in British Columbia where the average cost is \$210,000.

Conclusion

Before closing, it should be noted that COCA has been extremely impressed with the WSIB's stakeholder outreach program on the RFM file. In particular we recognize the WSIB's Executive Director of Strategic Revenue Policy, Mr. J. S. Bidal, and his team for their responsiveness, their willingness to listen, their openness to different points of view and ideas, their patience, their thorough explanations and their follow-up. Their work has created better informed stakeholders which will no doubt produce higher quality stakeholder input and advice.

The opportunity to provide these submissions with regard to the proposed Rate Framework Modernization is greatly appreciated and we look forward to working with the WSIB on this initiative and others to ensure that Ontario's workers' compensation system is sustainable, addresses the needs of both employers and workers effectively and efficiently and serves as a competitive advantage for attracting new business investment and jobs to the province.