

Report

by the

Ontario Federation of Labour

**The Perils of Experience Rating:
Exposed!**

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THE PERILS OF EXPERIENCE RATING: EXPOSED!

For many years the Ontario Federation of Labour (OFL) has called for the elimination of experience rating programs in Ontario.

Experience rating adjusts premium rates based on an individual employer's claims history. In theory this provides an incentive for safety and injury prevention in the workplace. In theory, employers receive rebates on their premiums for good claims records and are penalized for poor claims records.

Experience Rating is touted as a major incentive to improve workplace health and safety by its employer advocates. To date there is absolutely no evidence to support this claim.

But there is evidence that experience rating promotes many negative practices. Premium costs can be reduced by covering up or misreporting accidents, by forcing workers back to work before they are ready, by paying sick employees wages rather than have them receive benefits, or by simply contesting all claims, including the most well-documented and well-founded cases.

Experience Rating has a very negative effect on injured workers. It undermines the basic principles underlying the compensation system. It weakens the collective liability system; burdens smaller employers for the gain of the bigger ones, effectively denies injured workers their legitimate benefits; produces nightmares instead of peace of mind for injured workers and their families; and increasingly makes the system more and more adversarial.

Tens of millions of dollars are drained out of the WSIB's accident fund each year by employers who have learned how to play the game of experience rating. In fact, according to WSIB figures, rebates have exceeded penalties by more than **half a billion dollars** in the last four years alone – \$114 million in 2006, \$124 million in 2005, \$115 in 2004 and \$169 in 2003, for a total of \$522 million. That is not the total amount of rebates, but the amount by which rebates exceeded penalties!

Wayne Samuelson, President of the Ontario Federation of Labour, raised the alarm about this lavish boondoggle for large employers at the expense of injured workers at the Standing Committee on Government Agencies on February 27, 2007. He tendered the challenge to anyone in the government to provide analytical data that supported the theory that experience rating programs in any way contributed to workplace investment and improvement of health and safety practices. The response has been a deafening silence.

Undaunted the OFL continued its own research on the effectiveness of experience rating programs. First they obtained financial records from the two most recent years available for individual firms participating in the WSIB's experience rating programs. Remember that the WSIB claims that these programs pay rebates or impose surcharges (penalties) based on the firm's health and safety record.

Next, law students from the Advocates for Injured Workers student legal clinic (associated with the University of Toronto Faculty of Law and the Industrial Accident Victims Group of Ontario) obtained Ministry of Labour press releases regarding prosecutions under the *Occupational Health & Safety Act* that affected the rebates and surcharges contained in the financial records.

The results confirmed what the OFL had already known a shocking disconnect between the declared goals of experience rating and the way that bad performing employers were taking advantage of the program.

The press releases referred to a total of 88 incidents in workplaces covered by WSIB experience rating programs which lead to the injury or death of a worker and resulted in a guilty plea or conviction for one or more offences under the *Occupational Health & Safety Act* by the end of May 2007.

In reference to the 88 incidents and the firms involved, 63 or 72% of the firms received a rebate in at least one of the two years covered by the financial records. 20 incidents or 23% related to firms that received rebates in both years.

Of the 88 incidents noted, 40 cases involved convictions which lead to fines of \$100,000 or more; a certain indicator of the seriousness of the health and safety violations. Yet in the two years covered by the financial records obtained by the OFL nearly one third of these employers received experience rating ***rebates that exceeded the amount of their fines.***

Let us examine some specific examples:

INCO

- The death of a worker at INCO's Copper Cliff site led to a fine of \$375,000 for failing to provide adequate information and/or instruction and/or supervision to a worker regarding the operation and/or testing of valves on the oxygen system.
- The amount of the fine reflects not only INCO's size, but its terrible record of past convictions for workplace safety offences.

- Yet INCO's experience rating rebate for the Copper Cliff site alone of \$2,424,406 for the corresponding period was over six times the amount of the fine.

Williams Operating Corporation

- As a result of an accident, which involved the loss of a worker's leg, the Williams Operating Corporation was convicted of failing to provide adequate supervision to the workers and fined \$80,000.
- Through experience rating the same firm received rebates in corresponding years totalling \$2,114.96, more than 26 times the fine.

Weston Bakeries Ltd.

- A worker, whose duties included unloading baked goods from an oven, suffered heat stroke and later died after collapsing on the bakery floor. The air temperature at the bakery was 36 degrees Celsius at a distance from the oven.
- The employer was convicted for failing to take the reasonable precaution of implementing a heat stress management plan or program in the workplace and subsequently fined \$215,000.
- Through experience rating this same firm received a rebate of \$715,023.45 more than triple the cost of the fine.

If the theory of experience rating programs is to encourage investment in health and safety, why are so many employers with a history of serious violations and convictions rewarded with significant rebates?

If employers can obtain significant rebates from a seriously flawed experience rating scheme, what incentive is there for them to invest and promote good health and safety practices?

The following appendix provides details of the 18 firms with fines under the *Occupational Health & Safety Act* of more than \$100,000 who still managed to receive experience rating rebates big enough to pay those fines.

Examine the facts; examine the proof; experience rating does not promote good health & safety practices!

APPENDIX A

1. WASTE SERVICES (CA) INC. (FORMERLY CAPITAL ENVIRONMENTAL RESOURCE INC.)

Fine: \$160,000

Year: 2001

Incident:

A worker was standing on a riding step at the back of a reversing loading truck. He fell off and was run over by the truck, breaking his foot, ankle, collar bone and ribs. He suffered permanent ligament damage to his knee and neck. The Ministry of Labour investigator also found that only two seatbelts were available, but three workers were assigned to the truck.

The employer was convicted on three charges – failing to provide instruction to the injured worker on the correct use of the rear riding step, failing to take reasonable precaution of ensuring the injured worker did not ride the rear riding step while the vehicle was reversing, and failing to ensure seat belts were available for all workers.

Experience Rating details:

Waste Services (CA) Inc. participates in the NEER program. This incident would still be relevant to their 2004 calculations (but not 2005). In 2004, Waste Services (CA) Inc. received a rebate of **\$247,995.58**, more than enough to reimburse them for their considerable fine.

2. NORTHERN SAWMILLS INC.

Fine: \$65000

Year: 2003

Incident:

There was a log jam on an out-feed conveyor belt of a debarker machine. A worker locked the out-feed machine and stood up on the conveyer belt, trying to clear the log. Even though the machine was locked, a log was somehow pushed through, and it knocked the worker unconscious, causing a fractured cheekbone, crushed sinus, dislocated jaw, cracked left forehead and a concussion.

The employer was convicted of failing to ensure that cleaning/maintenance work was not performed on the conveyor until motion that may endanger a worker was stopped.

Experience Rating details:

Northern Sawmills Inc. participates in the NEER program. This incident would still be relevant to their 2004 and 2005 calculations. In those two years, they received a net rebate of **\$198,053.30**, off-setting their fine by over three times.

3. NEWMONT CANADA LTD.

Fine: \$120,000

Year: 2004

Incident:

Two workers were performing electrical work on a starter motor. The side electrical contacts short circuited and resulted in critical flash burns to both workers. The first received first, second and third degree burns to the face, hands and arms, and the second received first and second degree burns to the hands.

The employer was convicted of failing to provide the workers with/ensure the use of personal protective equipment.

Experience Rating details:

Newmont Canada Ltd. participates in the NEER program. In 2005 – the first relevant year following this incident – they received a rebate of **\$476,016.49**, almost four times the amount of their considerable fine.

4. SEMPLE-GOODER ROOFING LTD.

Fine: \$150,000

Year: 2001

Incident:

A construction worker was killed by a reversing tractor-trailer when he was struck and trapped under the wheels, and dragged 10 meters. The employer was convicted of failing to ensure that operators of vehicles were assisted by a signaller when the operator's view is obstructed.

Experience Rating details:

Semple-Gooder Roofing Ltd. participates in the CAD7 and NEER experience rating programs. In 2005 and 2006 (the last two years that this incident would be relevant to their CAD7 calculations), they received a net rebate of **\$648,182.90**, more than four times the amount of their considerable fine. They also received a rebate of \$336.38 for NEER 2004.

5. GENERAL ELECTRIC CANADA INC.

Fine: \$50000

Year: 2003

Incident:

At a GE light bulb manufacturing plant in Oakville, a worker was caught in the rotating spindles of a fluorescent light bulb making machine while trying to clear some bulbs that had gone askew. The worker suffered lacerations and tendon damage to the right forearm. A Ministry of Labour investigation found that it was standard operating procedure at the time to clear bulbs while the machine was in operation.

The employer was convicted of failing to ensure the high-speed horizontal line was properly guarded to prevent access to moving parts.

Experience Rating details:

General Electric Canada Inc. participates in the NEER program. Both years (2004 and 2005) should reflect this incident (which itself is reflective of systemic unsafe practices). Nonetheless, they received a net rebate in these two years of **\$704,096**, over 14 times the amount of the fine levied for this incident.

6. WILLIAMS OPERATING CORPORATION

Fine: \$80,000

Year: 2003

Incident:

A worker, who had been hired to do surface labour jobs such as repairing fences and clearing brush, was working in a pit mine, stemming blast holes with an excavator. The worker was not trained to work in open pit mines. The excavator shifted suddenly after coming into contact with a large boulder, causing a bucket full of rocks to swing quickly into the workers foot. The resulting injury required the worker's leg to be amputated.

The Ministry of Labour found that the stemming of blast holes at the Williams mine pit wasn't usually done with an excavator, but the normal machine was insufficient for this job due to the large number of blast holes and the rough terrain in the area. No supervisor was present to approve the use of an excavator as an alternative, or to ensure that the stemming procedures were carried out in a safe manner. The employer was convicted of failing to provide adequate supervision to the workers.

Experience Rating details:

Williams Operating Corporation takes part in the NEER program. In 2004 and 2005, the first two years for which this incident would be taken into account, they received a net rebate of **\$2,114,961.19**, over 26 times the amount of their fine for this incident.

7. QUEBECOR WORLD INC.

Fine: \$130,000

Year: 2003

Incident:

While inspecting a paper compactor for an oil leak, a workers legs were crushed and partially severed when the compactor's ram press unexpectedly cycled. A Ministry of Labour investigation found the injured worker was not given specific information and instruction on lockout procedures for the compactor, which would have prevented the ram from moving.

The employer was convicted of failing to provide proper information and instruction.

Experience Rating details:

Quebecor World Inc. participates in the NEER program. In 2004 and 2005, the first two years that this incident would be taken account for, they received a rebate of **\$300,734.90**, more than twice as much as their considerable fine.

8. PLACER DOME (CLA) LTD.

Fine: \$350,000

Year: 2004

Incident:

A worker who was performing underground gas checks in a mine was killed when he fell about 12-15 meters into an open hole. The Ministry of Labour found that there were no standard safe procedures for these gas checks that the workers were following.

The employer was convicted on two charges – failing to develop standard safe procedures for gas checks, and failing to ensure that such procedures were followed.

Experience Rating details:

Placer Dome (CLA) Ltd. participates in the NEER program. In 2005, the first year (of three) that this incident would be taken into account for, they received a rebate of **\$681,730**, nearly twice as much as their very large fine.

9. AECON GROUP INC.

Fine: \$300,000

Year: 2003

Incident:

Two workers were welding a steel end cap onto a pipe, when a large fireball suddenly engulfed them. One worker was killed and the other suffered serious burns. Two nearby workers were also injured. Not to mention the property damage!

The employer was convicted for failing to take the reasonable precaution of ensuring that the workers were wearing fire retardant clothing while cutting and welding on a natural gas pipeline.

Experience Rating details:

AECON Group Inc. participates in the CAD7 experience rating program. In 2005 and 2006, years where this incident should still be taken into account, they received a net rebate of **\$594,719.60**, almost twice as much as their very large fine.

10. BRENNAN PAVING & CONSTRUCTION LTD.

Fine: \$50,000

Year: 2002

Incident:

A large flatbed truck was parked across the street from a construction project and was obstructing the roadway. A citizen suffered cuts to the scalp when he collided with the truck. While the flatbed truck was operated by an independent moving company, Brennan Paving & Construction Ltd. was convicted with failing to ensure that a supervisor at the project site supervised the work at all times.

Experience Rating details:

Brennan Paving & Construction Ltd. participates in the CAD7 program. In 2005 and 2006, years where this incident should still be taken into account, they received a net rebate of **\$112,430.60**, over twice as much as their fine.

11. DAGMAR CONSTRUCTION INC.

Fine: \$55,000

Year: 2005

Incident:

A worker was patching holes in asphalt when a traffic accident occurred, resulting in the worker being pushed along concrete barriers for some distance. The worker suffered a double fracture to the right ankle and cuts, scrapes and bruises.

The traffic accident occurred in part because the worker's supervisor had left a truck parked partially in the right line. The Ministry of Labour found no traffic control measures such as barriers, barricades, flashing lights or warning signs were used. The employer was convicted for failing to ensure that the necessary traffic control measures were taken.

Experience Rating details:

Dagmar Construction Inc. participates in the CAD7 program. In 2006, the first year (of five) that would reflect this incident, they received a rebate of **\$88,709.28**, more than enough to cover the cost of the fine.

12. WOODBRIDGE FOAM CORPORATION

Fine: \$175,000

Year: 2003

Incident:

A worker died when he entered a foam shredder, which had a safety assembly designed to stop it from operating when a certain amount of weight was placed on the plate that led into it. The Ministry of Labour found that the safety assembly was not working and had not been properly maintained.

The employer was convicted of failing to ensure the safety limit overweight assembly on the shredder was maintained in good condition.

Experience Rating details:

Woodbridge Foam Corporation participates in the NEER program. In 2004 and 2005, the first two years that this incident would be taken into account, the employer received a net rebate of \$277,954.50, more than enough to cover the cost of their considerable fine.

13. WESTON BAKERIES LTD.

Fine: \$215,000

Year: 2001

Incident:

A worker whose duties included unloading baked goods from an oven, suffered heat stroke and later died after collapsing on the bakery floor. The air temperature at the bakery was 36 degrees celsius at a distance from the oven.

The employer was convicted for failing to take the reasonable precaution of implementing a heat stress management plan or program in the workplace.

Experience Rating details:

Weston bakeries participates in the NEER program. In 2004, the last year for which this incident would affect their experience rating, they received a rebate of **\$715,023.45**, covering the cost of their very large fine more than three times over.

14. LAFARGE CANADA INC.

Fine: \$150,000

Year: 2001

Incident:

A worker, who was on a wooden platform in a silo, was killed after falling 21 feet through an uncovered opening. The employer was convicted for failing to ensure that there was a guardrail around the perimeter of the opening.

Experience Rating details:

LaFarge Canada Inc. takes part in the NEER and CAD7 programs. In 2004, the last year for which this incident would affect their NEER rating, they received a rebate of **\$1,033,690.71**, almost seven times the amount of their fines, though they did receive a small net surcharge for their CAD7 ratings of \$43,158.67.

15. DYNATEC CORPORATION (INCIDENT 1)

Fine: \$45,000 + \$55,000

Year: 2002

Incident:

A miner was removing loose rock slabs from the walls and roof of a “stope” (an excavated mining area), when some rock fell from the roof pinning the miner under three slabs weighing more than two tones. The area had been blasted the previous night. The Ministry of Labour found that the miner had not received specialty training for working in stopes, even though such a program was available and the worker had been working in stopes for nine weeks.

Dynatic received two separate fines arising out of this incident – one for failing to ensure the worker was properly trained in the appropriate specialty modules, and then another when they subsequently interfered with the Ministry’s investigation and were charged with obstructing a ministry inspector.

Experience Rating details:

Dynatec Corporation takes part in the NEER program. In 2004 and 2005, the last two years for which this incident would be reflected, they received a rebate of **\$1,475,359**, covering the cost of their fine almost 15 times over.

16. DYNATEC CORPORATION (INCIDENT 2)

Fine: \$100,000

Year: 2004

Incident:

A miner was on a ramp trying to single-handedly hold back a moving “scoop tram”, to prevent it from hitting two other miners in its anticipated pathway, when the first miner’s right foot became pinned underneath the tram’s bucket. The tram dragged the mine with it down the ramp. The worker suffered multiple fractures to the right leg and a crushed ankle.

Dynatec Corporation was found guilty of failing to ensure that wheel chocks were used to block the tram’s movement when it was left unattended.

Experience Rating details:

Dynatec Corporation takes part in the NEER program. In 2005, the first year for which this incident would be reflected, they received a rebate of **\$239,949**, more than twice the amount of the fine.

17. INCO LTD.

Fine: \$375,000

Year: 2001

Incident:

A shift foreman was testing a shutoff valve in an oxygen piping system when an explosion occurred. The worker suffered critical burns. A Ministry of Labour

investigation found that the most probable cause of the explosion was the ignition of hydrocarbon grease in the valve. The valve had not been cleaned prior to delivery in 1996 by a contractor, and no formal procedure was in place for the testing or operating of oxygen line valves.

Inco Ltd. was convicted of failing to provide information/instruction/supervision to a worker regarding the operation/testing of valves on the oxygen system.

Experience Rating details:

INCO Ltd. participates in the NEER program. In 2004, the last year for which this incident should be reflected, they received a rebate of **\$2,424,406**, more than six times the amount of their fine.

18. PRIESTLY DEMOLITION INC.

Fine: \$200,000

Year: 2003

Incident:

Workers were in the process of demolishing the main auditorium of a theatre when the entire roof structure collapsed, thrusting masonry walls outwards onto surrounding buildings. Debris resulting from the collapse fell through the roof of an adjacent English Academy, killing one student and injuring 12 other people. In addition, five people in a nearby bank were also injured.

Priestly demolition was convicted for failing to ensure a competent person inspected the internal roof structure, failing to reference hazards or include options for safely dismantling roof, failing to review or examine the internal roof structure prior to starting the demolition, and failing to have the engineer of record attend the project.

Experience Rating details:

Priestly Demolition Inc. takes part in the CAD7 program. In 2005 and 2006, both relevant years that should reflect this massive incident, they received a rebate of **\$362,768.11**, more than covering the cost of their considerable fine.