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**SUBMISSION**  
**OF THE**  
**ONTARIO FEDERATION OF LABOUR (OFL)**  
**TO THE**  
**WORKPLACE SAFETY & INSURANCE BOARD (WSIB)**  
**“WSIB RATE FRAMEWORK REVIEW”**

**OCTOBER 2, 2015**



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# **FROM EXPERIENCE RATING TO RATE FRAMEWORK SETTING**

## **A HEALTH AND SAFETY PERSPECTIVE**

### **Introduction**

Ontario's workers compensation system's experience rating programs have skewed the lost time injury statistics for the Province. Employers able to hide their serious injuries as no lost time accidents reduce their compensation costs and then become eligible to receive a rebate from the Workplace Safety and Insurance Board (WSIB). The other side of this program provides penalties for employers who have a higher level of lost time injury statistics and costs. The money at stake for many employers can add up to millions of dollars. In addition, efforts to accommodate injured workers now see injured workers coming back the next day to some sort of modified work. As a result, injuries that at one time would have been listed as lost time injuries are now being listed as no lost time injuries. It does not matter whether legitimate modified meaningful work is being provided or if the employer is simply hiding the claim, the result is the same. If it is cheaper to hide the injuries than prevent them, then many employers with an eye to the bottom line will do just that.

In addition to these financial incentives, the Ontario Ministry of Labour uses lost time injury statistics as a means to target workplaces for inspections. These are all tremendous incentives for employers to reduce the statistics.

For decades, the Ontario Federation of Labour had been hearing anecdotal evidence from our affiliates about workers who had been brought back to work the day after an accident in casts, wheelchairs and even stretchers so as to prevent the accident from being listed as a lost time injury. We were told of employers who were providing gifts or cash bonuses for work groups that had no reported lost time injuries. The information we were hearing indicated that it was widespread across all sectors.

The WSIB is now proposing to embed experience rating into the rates employers pay to the WSIB. This will expand the worst aspects of experience rating right across the system to include employers not previously eligible to participate in the experience rating programs.

## **A Brief History**

The WSIB's main experience rating programs – NEER and CAD 7 – were introduced in 1984 with the aim of providing a financial incentive to promote improved health and safety practices in the workplace. These programs were introduced notwithstanding the fact that there were no authoritative studies available at the time to demonstrate that experience rating, where introduced, had produced safer workplaces. No cost benefit analysis was done to ensure that the programs would, indeed, add value to the compensation system as a whole.

The experience rating programs, which we feel are the driving force behind this effort to hide claims, was voluntary and had limited participation until the beginning of 1990 when it was made mandatory and greatly expanded. That same year, limited return to work obligations on employers were introduced. This required the employer to provide modified work so injured workers could return to their workplace sooner. These obligations were strengthened beginning in 1995. The experience rating programs were also expanded in 1995 to include even more employers.

Prior to 1990, total injury claims involved roughly half no lost time and half lost time with just one percentage point between the two types of injuries. Starting in 1990 we noticed a shift in how injury claims were being reported to the Board. By 2012, the last year that this data was made publicly available, there was 36.5 percentage points between the two types of injuries. It is the opinion of the Ontario Federation of Labour and our affiliates that these programs have been more effective in reducing the number of claims than they are in reducing the number of injuries.

## Reducing Claims Not Injuries

Experience rating programs have skewed the calculation for the severity rate which is another widely used measurement. Since it is calculated by taking a ratio of lost time hours over corresponding units of exposure, they will not provide an accurate picture of the true severity of injuries in the workplace if the lost time hours are skewed.

One technique that can be used to hide lost time injuries is to use the employers' sickness and accident benefit plan. Workers or lower-level management, whose job performance evaluation can be affected by the lost time injury rates, may have an incentive to see work related injuries listed as non-occupational lost time. This could also be a factor if substantial cash bonuses are provided to work crews who do not report any lost time injuries. This could result in significant peer pressure to use the benefit plan rather than report the injury to WSIB.

The rate framework proposal will only make this situation worse.

Ontario's workers compensation system has never put in place an evaluation system to monitor the impact of these programs on employer reporting practices. Such a system should have been established before the experience rating programs were introduced. This evaluation was, in fact, emphasized by Paul Weiler in his 1980 report, *"Reshaping Workers' Compensation in Ontario,"* made by the following observation:

"I believe it would be irresponsible to miss the opportunity afforded by the introduction of this new merit rating scheme for enhancing the state of our knowledge for the future. As I have already suggested with reference to other proposals, before this new policy is actually implemented, an evaluation study should be developed to monitor its impact on employer behavior in order to provide the Ontario public and policy makers and a more informed basis upon which to appraise and use experience rating in the future."

Unfortunately, Mr. Weiler's advice was ignored. Now, all these years later, the fundamental premise of experience rating programs – that they result in employers investing time and money to make their workplaces safer – remains unproven.

This is the fatal flaw with the proposed rate framework. The WSIB wrongly assumes that claims costs are a useful measure of health and safety. This is pure fantasy, there is no evidence that claims costs equate to health and safety.

In fact, there is substantial evidence to show that there is widespread injury claims suppression by employers and that statistical trends on lost time injury claims significantly mask the true rate of work-related injury.

Evidence of significant under-reporting of lost time injury claims first came to light in the *"Report on Accidents and Fatalities in Ontario Mines,"* 1988 by the Standing Committee on Resource Development. This report concludes on Page 14 that:

".... the mining companies, in an attempt to reduce the number of lost time accidents (and therefore lower their WCB assessment rates), are now reporting injuries of greater severity as 'health care only' (no lost time) claims instead of 'lost time' claims. The committee further believes that it is this shift in recording accidents which has resulted in the declining lost time injury rates.... Not only is the declining lost time injury rate masking the true situation concerning serious injuries, but a 'declining' lost time injury rate could also distort the response of the industry in terms of setting priorities and establishing appropriate safety strategies."

Several studies undertaken by the former Workers' Compensation Board confirmed the findings of the Standing Committee in 1988. These studies show that experience rated employers misreport or under-report accidents or, otherwise, engage in more intensive claims control measures and early return to work:

- (1) A survey and case study conducted by Peat Marwick Stevenson and Kellogg showed that experience rating resulted in firms relying more heavily on claims control measures and early return to work than on the implementation of preventive safety initiatives. The case study revealed that health care claims were simply not reported or short term claims were reported as health care only.
- (2) Analysis of statistical trends of claims mix also provide support for under- reporting. With the extension of experience rating to most employers in 1990 when the "no-lost time"/"lost time" mix was approximately 50-50, we have seen a consistent and increasing divergent trend with lost time claims decreasing, lock step, with a constant rise in no lost time claims. This would seem to indicate that employers are reporting more serious lost time injuries as no lost time injuries (WCB, Monthly Monitor).

As well, there has been a consistent increase in the severity of injury claims as measured by the number of days off per claim. This would indicate that the more severe injuries are more readily reported as lost time claims than the mild or less severe claims which may not be reported at all or may be misreported as a no-lost time claims.

- (3) A survey of 1,103 employers conducted by the WCB provides further evidence of misreporting or non-reporting practices in response to experience rating:
  - a. 20 percent of employers indicated that they allow their injured workers to use short-term sickness plans rather than report the injuries to the WCB;
  - b. 13.6 percent indicated that they encouraged workers with mild or less severe injuries to take time off with pay and only report to the WCB if the workers had not returned within a few days;

- c. 26.8 percent indicated that they gave injured workers light duties or modified work. The WCB study also showed that experience rated employers were more likely to appeal injury claims and that the rate of employer appeals had increased significantly.

The Morneau Sobeco report of 2008 echoed our concerns and criticisms by suggesting that the experience rating programs can encourage bad employer behaviour such as claims suppression rather than investing in health and safety.

In 2010, Tony Dean headed the Expert Advisory Panel on Occupational Health and Safety. The panel was made up of an equal number of representatives from labour, employers and academia. There was consensus that the use of Lost Time Injury and frequency was not a reliable measure for health and safety. The report recommended moving away from the use of LTIs as a metric and use leading indicators instead.

The Ontario government has committed to implementing all the recommendations from the Tony Dean panel. The proposed rate framework is not in keeping with the spirit and intent of the Tony Dean panel recommendations, nor with the government's commitment to implement those recommendations.

Professor Harry Arthurs turned a critical eye to the experience rating programs in his report *Funding Fairness*. He considered the experience rating programs a "moral crisis" and stated that unless the board was prepared to;

"... prevent and punish claims suppression and unless it is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them."

The WSIB has chosen to do neither. Instead it announces plans to expand this "moral crisis" through the proposed rate framework.



## **Conclusion**

The WSIB has made a conscious decision to ignore decades of evidence that too many employers are gaming the system by suppressing claims rather than investing in health and safety.

We can simply state that any claim that Ontario's experience rating programs result in a reduction of accidents is intellectually and scientifically dishonest. Any statement by the WSIB that the proposed rate framework will improve workplace health and safety is also intellectually and scientifically dishonest.

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