WSIB's new Rate Framework to come into effect January 1, 2020 – significant changes to employer classification and rate setting

December 19, 2019

Effective January 1, 2020, the Workplace Safety Insurance Board ("WSIB") will be replacing its current Schedule 1 employer classification system and premium and experience rating programs with a new "Rate Framework". Additionally, the WSIB will implement a five-year premium rate freeze for all non-profit organizations operating in Ontario. This means that employers will no longer pay a fixed annual premium with the chance of a rebate or surcharge under their experience rating programs. Instead, under the WSIB's new Rate Framework, employers will pay prospective and fluctuating premium rates based on a new classification system and their individual claim history.

The new Rate Framework is the end-product of policy consultations that ran from August 2017 to January 2018. The changes are anticipated to impact approximately 300,000 businesses covered by the WSIB's insurance fund. The WSIB has stated that the Rate Framework will establish classifications and premium rates that better reflect the risk presented by individual employers and will operate to stabilize and limit premium rate volatility. The Rate Framework is also stated to be easier to understand than the previous regime, and promises greater fairness, predictability and transparency in terms of setting and adjusting premium rates.

For non-profit organizations in Ontario, the five-year freeze on premium rates means that approximately 2,700 non-profit organizations will keep their current premium rates, while 1,600 non-profit organizations will have a premium rate reduction. These organizations include charities, women's shelters, art galleries and daycares.

Schedule 1 employers should have already received correspondence from the WSIB informing them of their placement in the Rate Framework's classification system as well as their new premium rates.

Changes to Employer Classification Structure

Currently, workplace insurance coverage is compulsory for any business or industry named in Schedule 1 of *Regulation 175/98 (General)* (the "Regulation") made under the *Workplace Safety and Insurance Act, 1997*. Schedule 1 employers must contribute to the insurance fund by paying premiums and are protected by a system of collective liability. Under the current framework, Schedule 1 employers are classified based on their business activities into one or more "Classification Units". Each Classification Unit falls into one of 155 different "Rate Groups" which is subject to a specific premium rate.

Effective January 1, 2020, the existing Schedule 1 of the Regulation will be revoked and replaced by Schedule 1, Parts I and II (the new Schedule 1 may be accessed here). Employers falling under Schedule 1, Part I will be subject to mandatory coverage, while employers falling under Part II will not be subject to mandatory coverage but may nevertheless "opt-in" and apply for Schedule 1 insurance coverage. Under the new Rate Framework, the Classification Units and Rate Groups will be replaced with over 900 North American Industry Classification System ("NAICS") codes. Each NAICS code will fall into one of 34 "Classes" or "Subclasses" listed in the new Schedule 1 of the Regulation.

The move to the use of NAICS codes is stated by the WSIB to streamline the classification process (from 155 Rate Groups to 34 Classes/Subclasses) making it easier for businesses to understand how they and other businesses are classified for the purposes of establishing premium rates.

The WSIB has published its new Employer Classification Manual for the Rate Framework on its website. Employers should also have received their NAICS code(s) from the WSIB.

The new Rate Framework will not impose significant changes for Schedule 2 employers.

Changes to Rate Setting

The new Rate Framework will be based on a two-step approach to set and adjust premium rates for Schedule 1 employers. An employer's overall premium rate will be based on both industry risk and individual claim history:

Step 1

An industry "Class Average Premium Rate" will be set based on that industry's collective risk profile and its share of responsibility to maintain the insurance fund.

a. Each Class/Subclass will have a series of "Risk Bands", each with an associated rate either above or below the Class Average Premium Rate that represent increments of risk with respect to the class risk profile. Each Risk Band will adjust the premium rate upwards or downwards by around 5%. For instance, an employer assigned to a Risk Band one step above the class average will pay a premium rate that is around 5% above the Class Average Premium Rate. If the overall Class Average Premium Rate changes as a result of the Class' claim experience, all Risk Bands within that Class will change.

Step 2

A consideration of how an employer's claim history compares to the rest of the Class/Subclass.

a. Each employer in a Class/Subclass will be assigned to a Risk Band that is intended to be reflective of the employer's risk in relation to the other businesses in the Class/Subclass. The WSIB states that it will be using insurable earnings, claims costs and the number of allowed claims, derived from the employer's claim experience under their prior Classification Unit over a six-year period (2013-2018), to establish an employer's "Actuarial Predictability" rating.

Longer Cost Window

As noted above, the new Rate Framework employs a six-year window to set premium rates. This is considerably longer than the three, four, or five-year cost windows under the previous experience rating systems of MAP, NEER and CAD-7. Although the length of time that a claim will "stay on the books" is longer, the impact of a single year will be reduced which may be of benefit to some employers. With the elimination of the previous experience rating programs, employers will be issued their final statements, along with any rebates or surcharges, effective on the following timeline:

Experience Rating Program	Final Statement Issued	Final Rebate	Final Surcharge
MAP	December 2018	2019 premium year	2019 premium year
NEER	November 2020	January 2021	December 31, 2020
CAD-7	September 2020	November 2020	October 31, 2020

Predictability and Transition

The WSIB states that the new Rate Framework will assist employers in predicting future costs and therefore assist in budgeting. In this regard, for each Schedule 1 employer, the WSIB will establish a "Projected Premium Rate" which will inform employers of how much the employer's premium rates are expected to increase or decrease in the future.

As previously stated, under the new Rate Framework, employers will be assigned an "Actuarial Predictability" rating based on the number of claims and quantum of insurable earnings incurred during the six-year window. The Actuarial Predictability rating will be used to weigh an employer's claim history against the collective claims experience of its Class/Subclass. This will inform how the employer's premium rate will deviate from the Class Average Premium Rate and will also impact the employer's per-claim cost.

The WSIB has also provided the following transition rules to limit movement through the Risk Bands as employers prepare and adjust to the new Rate Framework:

2020: An employer's Risk Band cannot be higher than the Risk Band that would have applied in

2019 (but it can be lower).

2021: An employer's Risk Band can only move one level higher than the 2020 Risk Band (i.e. 5% in premiums) or move downward any number of Risk Bands.

2022: An employer's Risk Band can move a maximum of two levels higher than the 2021 Risk Band (i.e. 10% in premiums) or move downward any number of Risk Bands.

2023+: An employer's Risk Band can only move a maximum of three levels up or down from the prior year (i.e. 15% in premiums).

Under the new Rate Framework, from 2023 onward, the WSIB will limit the potential for rate increases to a maximum of three risk bands per year. Since the first three years of the Rate Framework permit unlimited movement down through risk bands, employers may have the best opportunity to reduce their premiums during this time.

Single or Multiple Premium Rates

Schedule 1 employers that are engaged in only one business activity will be classified in a single NAICS code. However, some employers may have more than one business activity and, therefore, multiple NAICS codes. Generally, where an employer falls within more than one NAICS code, it is assigned a single premium rate based on the employer's "Predominant Class". The Predominant Class is generally the Class with the largest share of insurable earnings.

An employer who is classified in more than one NAICS code and is paying a single premium rate based on Predominant Class may have the NAICS codes assigned separate premium rates, provided the business activity in a NAICS code is significant and is considered not integrated with the employer's other operations. A business activity is significant if it meets one of the following conditions:

1. Generates annual insurable earnings of at least five times the maximum insurable earnings ceiling for the premium year; or
2. Generates at least 20% of the employer's total annual insurable earnings.

The business activity is considered integrated with the employer's other operations and not eligible for a separate premium rate, if the business activity meets any of the following criteria:

1. A substantial share of either staff, supplies, equipment or processes of one business activity are combined with those of another business activity;

2. The product or service of the business activity is primarily offered to external, unaffiliated clients together with the product or service of the employer's other operations.

Temporary Employment Agencies

Under the new Rate Framework, special classification rules will apply to an employer that carries on business as a Temporary Employment Agency ("TEA") to supply workers to another employer on a temporary basis. TEAs will be assigned separate premium rates. One rate will be in respect of the business activity of supplying workers, while the other premium rate or rates will correspond to the business activity of the TEA's client(s). If the client's operations are not covered under Schedule 1, the WSIB will determine the appropriate Class/Subclass that best represents the client's business activity.

In Our View

As can be seen, the new Rate Framework significantly changes the way Schedule 1 employers are classified, and the way premiums are calculated. Many employers will welcome the removal of the potential for a surcharge, while others may miss the cash injections in the form of rebates that came under the old system. All employers should consider whether there are any opportunities to reduce their premiums as they are transitioned to the Rate Framework. As noted above, for the next three years, employers are not restricted in how many risk bands they can move down in a Class/Subclass. Lastly, since the new Rate Framework will group certain types of business activities differently than under the current classification system, certain business activities may no longer be subject to mandatory coverage under the insurance plan. Therefore, employers should review their NAICS code descriptions to ascertain whether they are properly classified and covered.

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