EXPERIENCE RATING

Findings and Recommendations of “FUNDING FAIRNESS”
Ontario WSIB Funding Review
Harry Arthurs, Chair
FUNDING REVIEW MANDATE

• Major concern was unfunded liability ($14.4 bil) and rate setting

• Some related issues included:
  – Allocating costs of system amongst / within sectors
  – Employer incentives / experience rating (ER)

• Other related issues not included:
  – Coverage and effectiveness of WSIB system
  – Benefit levels and administration
FUNDING REVIEW PROCESS

• Chair + four advisors + small staff + consultants
• Intense engagement with stakeholders
• Extensive public hearings
• Research program (some original studies)
• Report + research + submissions all available:
  http://www.wsibfundingreview.ca/finalreport.php
EMPLOYER INCENTIVES

• Ontario WSIB provides:
  – Funding for enforcement of OHS legislation and accident prevention organizations
  – Practice-based incentives (training, equipment, practices)
  – Incentives to hire injured workers (Second Injury Enhancement Fund - SIEF)
  – Three experience rating (ER) plans: NEER, CAD7 and MAP
EXPERIENCE RATING

Ontario’s ER plans:

– Designed for different sectors / firm size
– Generate different levels of incentives (rebates) / disincentives (surcharges)
– Meant to be revenue neutral
– Use claims frequency / cost as metric
– Operate retrospectively
– Generated intense controversy
CONTROVERSY OVER EXPERIENCE RATING

• Financial concern: supposed to be revenue neutral but “off-balance” (excess of rebates over surcharges) = $2.5 bil over 15 years
• Abuse concern: is ER incenting claims suppression and adversarial attitudes?
• Conceptual concern: how does ER fit within the logic of the WSIB insurance scheme?
THREE VERSIONS OF INSURANCE LOGIC

• Employers: ER = “insurance equity”: each employer should pay premiums commensurate with losses they generate

• Workers: ER = negation of collective liability principle: employers should all pay equally

• Statute: ER = incentive: only justified if producing desired results of reduced accidents / improved return to work
EXPERIENCE RATING:
HISTORICAL / LEGAL FOUNDATION

• **History: from inception of legislation in 1915:**
  – Collective / group / individual responsibility have coexisted
  – Differential group rates have been based at least partly on risk exposure
  – Individualized rates were used to reward/punish *ad hoc* (now s. 82)

• **Law: enactment of s. 83 in 1997:**
  – Systematized / legitimated long-standing ER practices / policies
  – Provides new legal basis for experience rating: “to encourage employers to reduce injuries...and ... return to work”
  – Did not mention / hence implicitly excluded other objectives including “insurance equity”
EXPERIENCE RATING: EMPIRICAL EVIDENCE

• Off-balance has contributed significantly to UFL (general agreement re need to rectify)
• Accident rates have dropped since ER introduced (but multiple / unknown causes)
• ER likely generates some positives (but statistical evidence weak)
• ER likely generates some abuses (evidence strong but anecdotal / extent unconfirmed)
• ER based on claims metrics may be less cost-effective than other employer incentive programs (IWH study)
MY CONCLUSIONS

• Incentives can produce both positive / negative behavior
• WSIB lacks / has failed to use tools to eliminate abuse
• Evidence not conclusive but sufficient to suggest abuse exists / insufficient to conclude experience rating should be abolished altogether
• Need better evidence to assess abuse / measure achievement of statutory objectives / inform decision to abolish or re-design ER system
MY RECOMMENDATIONS: DESIGN ER TO MEET OBJECTIVES

• Eliminate “off balance”
• Continue ER only if
  – sole purpose is to “encourage” accident reduction / RTW
  – effective steps taken to prevent / detect / punish abuse
  – credible monitoring system to ensure conditions met
• Undertake controlled experiment:
  – redesign system for one sector / industry class
  – monitor / evaluate data to test success
  – sunset clause: succeed or terminate
• Link new ER design to other accident prevention initiatives (Chief Prevention Officer)
MY RECOMMENDATIONS:
PREVENT ABUSE: MAKE ER SAFE

Deploy / enhance WSIB powers / resources to prevent / detect / punish abuse

– Identify corporate officer responsible for workplace health, safety, insurance and related issues
– Educate / regulate claims managers and advocates
– Establish dedicated WSIB unit to deal with abuse
– Take proactive steps to detect / prevent abuse
– Enable WSIB to disqualify violators of WSIA/ OHS legislation from ER
– Significantly enhance administrative / quasi-criminal remedies
OTHER POSSIBLE REFORMS TO EMPLOYER INCENTIVES

• If ER is retained:
  – Consolidate ER programs into one
  – Change ER metric from cost/claims to accident reduction / increased RTW
  – Mitigate rate volatility
  – Replace retrospective with prospective rate adjustment
  – Limit participation in ER to employers enrolled in practice-based programs

• Expand practice-based programs / coordinate with other prevention / education initiatives

• Abolish SIEF or replace with subsidies for hiring injured workers