

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: DESIGNER 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