

DISCUSSION PAPER

1. TITLE

Experience Transfer Policy Changes

2. ISSUE

At issue is a review of the Transfer of Experience Rating policy in the *Assessment Manual* ("AM"), to address the following challenges:

- a) The principle of experience transfer policy is that where assets move between two firms under common control, experience should also transfer. Current policy uses 50 percent or more common ownership between the firms as the criterion for experience transfer. This causes problems where there is less than 50 percent of common ownership between two firms, but both are still under common control, and thus affiliated.
- b) The policy is unclear in its use of the concepts of ownership of firms and ownership of businesses, creating confusion as other policies specifically define the term "firm".
- c) The policy does not define what is actually transferred in an experience transfer.

3. BACKGROUND

3.1 Law and Policy

Section 42 of the *Workers Compensation Act* ("Act") provides authority for the Workers' Compensation Board ("WCB") to adopt an experience rating system. Under that authority, the WCB has adopted an experience rating program called ER2000¹ that operates by comparing the claims-cost-to-payroll ratio of a firm to that of the firm's rate group. Based on that comparison of experience, the assessment rate of the firm is adjusted to reflect its actual claim cost experience. Better experience than the rate group provides a firm with a discount, and worse experience results in a firm paying a surcharge.

Employers may sell or otherwise transfer all or part of their business to another person or entity. When changes of this nature occur, *AM* Item AP1-42-3

¹ Policy on the administration of ER2000 is found in *AM* Items AP1-42-1 (Experience Rating), AP1-42-2 (Experience Rating Cost Inclusions/Exclusions), and AP1-42-3 (Transfer of Experience Rating) in the *AM*.

(Transfer of Experience Rating) provides guidance as to whether the experience of the original firm should transfer to the successor firm.

It is worth noting that *Prevention Manual* Item D12-196-3 (Administrative Penalty – Prior Violations and Orders) provides that where an original firm has a history of occupational health and safety violations and that firm's experience transfers to a successor firm under *AM* Item AP1-42-3, the "prior violations are treated as part of the firm's history". Thus, experience transfer policy may also affect the determination of administrative penalties.

Prior to the consolidation of all assessment policies in the *AM* in 2003, experience transfer policy was found in Policy 30:50:50 of the *Assessment Policy Manual*. The original version of the policy was restrictive, providing experience transfers only in certain limited circumstances as follows: the old firm had to have ceased operating completely and a new firm had to start up and carry on the same business, and majority ownership of the new firm had to remain the same as the old firm, and the new firm had to receive the same classification as the old one.

Policy 30:50:50 was updated effective July 1, 2001, to broaden the criteria by which experience transfers could be considered, allowing experience transfers between firms that remained active after a change in the ownership of the business, or where there was less than a majority of common ownership between firms.

Current Item AP1-42-3 sets out a general criterion by which experience transfers are considered:

... the general criteria to determine whether a firm's experience will be transferred/continued is whether there has been a change in ownership of the business.

Then there are two other criteria as follows:

Where a firm undergoes a change in ownership, its experience will continue if at least 50% of the ownership remains the same. Generally, the firm's classification must also remain the same...

Where a firm undergoes a majority change in ownership (i.e., less than 50% of the ownership remains the same), the experience of the old firm will generally not continue or transfer to the new firm.

The policy then provides a list of exceptions that apply to "this general rule". The exceptions provide that experience will transfer in the following situations:

- Where the firm's owner is relatively removed from day-to-day operation and management decisions. This is typically the case for a large

publicly traded firm where shareholder activity may result in a change in ownership, but does not alter the firm's business operations.

- Where an equal partnership splits and the former partners continue to operate in the same business. In this situation, the former partners may, through their respective firms, continue the business operations of the old firm.
- Where the new owner is a "member of the family" of the previous owner and the firm's business operations continue unaffected by the change in ownership. The definition of "member of the family" in section 1 of the *Act* is generally followed, but a same-sex spouse is also included.

3.2 Issues in Applying Current Policy

The WCB, the Review Division, the Workers' Compensation Appeals Tribunal ("WCAT"), and stakeholders have found certain aspects of the experience transfer policy ambiguous in terms of how it should apply to firms and the business operations they own. The issues are summarized as follows:

- There is an implicit general rule applied by the WCB that is currently not referenced in Item AP1-42-3, and has not been referenced in the older versions of the policy. The rule is that when a firm moves its business operations or assets to another unaffiliated firm, generally experience does not also transfer between the firms.
- The structure of the current policy has allowed for inconsistent results in adjudicating experience transfers. For example, the placement of the criteria in the policy that deal with the ownership of firms has left it unclear as to whether experience transfer should be considered when a firm's ownership changes, or whether assets must first move between firms.
- Due to the vagueness of the policy, some have interpreted the policy as providing that the WCB applies experience rating to the ownership of firms (i.e. shareholders) as opposed to firms. For example, a recent WCAT decision found that the current policy would allow for a firm to discontinue its experience due to a shareholder change despite the fact that the same firm continued operating.²

² See WCAT Decision 2004-05149, p. 13. Such a result is contrary to the principle that ownership of shares in a corporation entitles shareholders to both the assets and liabilities of the corporation; thus, when shares of a corporation are purchased it follows that the experience of the corporation as an employer is also purchased.

- Other Items in the *AM* provide guidance that a firm is the legal entity operating a business that is experience rated by the WCB,³ but the policy is not clear in its usage of terminology such as "firm" and "ownership". For example, the policy currently, and inaccurately, indicates that "ownership", rather than the firm, may be subject to industry classification.
- The policy also contains other references to "ownership" that do not clearly specify whether the policy is applicable to the ownership of the firm or the ownership of the business operations.

4. DISCUSSION

4.1 The Intent of Experience Transfer Policy

Experience rating adjusts the rate at which a firm pays premiums based on the claims cost performance of the firm. As a result, firms that cost the system more pay more premiums, and firms that cost the system less pay less premiums. The WCB has adopted this program in an attempt to make firms more accountable for their costs and increase premium equity between firms.

As experience transfers affect firms' rates, there can be significant premium amounts at stake. In order to avoid the impact of experience rating, individuals in control of a firm may shut it down and recommence operations as a new firm. The aim of experience transfer policy is to prevent this behaviour by ensuring that experience earned by one firm may transfer to another firm controlled by a common individual or other entity. This also applies in situations where firms have earned a good experience record.

The intent of experience rating as an incentive program would be compromised if experience was not consistently applied to firms that have earned it. Experience transfer can be justified because the successor firm's health and safety performance is expected to be similar to the original firm's performance if they are under the control of a common person or entity.

4.2 Ownership vs. Affiliation and Control

The current criteria for experience transfer are based on the idea that common majority ownership of firms is a sufficient measure of both affiliation and control. However, 50 percent of firm ownership may not be a broad enough indicator of how a firm will perform its WCB obligations. For example there may be situations where an individual, despite not owning a full 50 percent of shares, may direct

³ Item AP1-1-1 (*Coverage Under Act - Descriptions of Terms*), provides that a "firm" is "any person or entity carrying on a business", and Item AP1-42-1 (*Experience Rating*), provides that the "employer for experience rating purposes is the legal entity operating the business."

the firm's business operations or elect board members by holding enough shares to do so or by contractual agreements.

An alternate approach in considering whether to transfer experience is to determine if the original and successor firms are affiliated. Affiliation between firms exists where there is common control. For example, where both firms are under the control of one individual or one firm controls the other. Control may also be demonstrated by an individual holding enough shares in a firm to have authority over the management of the business operations. Affiliation and control may exist in the absence of 50 percent common ownership in situations where a common individual holds control of both firms through the means referenced in the previous paragraph.

The use of common control as a test for affiliation between firms is found in a review of other legislation, regulations, and policies. The provincial *Business Corporations Act*⁴ uses the test of control to determine whether corporations are "affiliated", and the federal *Income Tax Act*⁵ uses control to determine whether corporations are "associated". In situations where companies are under common control, the Federal and Provincial Governments vary the usual taxation rules and consider companies together for tax purposes to prevent corporate structuring to avoid taxes and obtain a fiscal advantage.

In addition, three of the other Canadian workers' compensation boards⁶ use tests similar to affiliation and control in their experience transfer policies.

Using tests for control and affiliation derived from the common law as the criteria for experience transfer would make the policy broader in scope than the existing criteria concerning ownership. By broadening the policy, the WCB will be able to consider experience transfers in situations where there is less than 50 percent common ownership, but the firms are under common control.

With broader criteria, experience transfer adjudications will require additional considerations on how firms may be affiliated. However, the Assessment Department's practice directive on experience transfers could use examples demonstrating affiliation and control in common scenarios to provide guidance to staff.

4.3 Proposed Minor Amendments

4.3.1 Introductory Material

The information in the introduction to the policy does not clearly set out the principles behind experience transfer and why it is considered. It is proposed

⁴ S.B.C. 2002, c. 57.

⁵ R.S.C. 1985, c. 1 (5th Supp.), updated to August 31, 2004.

⁶ Alberta, Saskatchewan, and Newfoundland use variants of control and affiliation in their experience transfer policies. See section 5 of this paper for more detail.

that some simple bullets outlining the general principles be placed into the introduction to the policy, to assist adjudicators in their considerations.

4.3.2 Family Members

Item AP1-42-3 currently provides for experience transfer where business operations move between family members, generally as set out in section 1 of the *Act*. The rationale for this is made more apparent in light of considering affiliation as a reason to transfer experience, as family members may generally be said to be affiliated. However, the section 1 definition of family member may be too limiting for the purposes of experience transfer considerations, as it does not include many relationships by marriage, marriage-like relationships, and other sorts of family relationships (such as cousins, etc.). Putting a statement in policy allowing for a finding of affiliation between firms controlled by "family members, immediate, extended or equivalent" could allow greater latitude for experience transfers where, as an example, a father sells his business operations to his son-in-law.

4.3.3 Terminology Clarification

For the lay person, the terms "firm" and "business" mean the same thing, but for the purposes of experience transfer policy, they are very different. Many of the problems with the current policy lie in the fact that there is a lack of clarity in identifying when ownership of a firm (as opposed to ownership of a business) should be considered in experience rating transfer adjudications. In order to ensure that the terminology in policy is clear, it would be of benefit to update the language in the policy to clarify that it is firms that are experience rated by the WCB, and not a firm's "ownership" or "business".

4.3.4 What Is Experience?

Currently there is no definition of "experience" in policy. The general experience rating policy (Item AP1-42-1) contains language that describes in general what experience is composed of, including statements about claims costs and payroll and how they count toward an employer's experience rating. However, there is no statement in that policy to describe what it is that may transfer between firms in an experience transfer adjudication. In order to clarify this, it is proposed that a brief definition of "experience" be added to policy.

5. OTHER JURISDICTIONS

The majority of the workers' compensation boards in Canada operate some type of experience rating program. The criteria used in determining whether or not a firm's experience should be transferred following a transfer of operations to another firm is generally based on changes in ownership, changes in business operations, or a combination of the two. As in BC, some other boards also have made exceptions to the usual experience transfer criteria for business transfers

between family members and other similar transactions. Here is a summary of the experience transfer considerations used in eight other Canadian jurisdictions:

- In Alberta, policy sets out that experience transfer is mandatory in some situations and optional in others. All considerations of experience transfer are first predicated on business operations or assets changing ownership between firms. The criterion used to determine whether experience must or may be transferred is whether the firms involved are operating at "arms-length", a similar criterion to considering whether there is "affiliation".
- Saskatchewan's policy sets out a general statement precluding experience transfers between firms where business operations or assets change hands, and then provides exceptions to the general rule. The exceptions are primarily based upon control as a criterion, and whether the firms involved are controlled by an entity "alone or together with related persons".
- Manitoba's policy provides that experience generally transfers with business operations or assets in all cases, except where the business ceases to operate.
- Ontario's legislation does not provide the authority to assign the accident costs of one legal entity to another, therefore there is no provision for experience transfer in that jurisdiction.
- Policy in Newfoundland provides that experience will transfer between "related" firms where those firms "change business operations, restructure, or reorganize". In order to determine whether firms are related, policy sets out the following criteria as indicators of control: ownership of the business, family relationships, customers or clients, continuation of service, employees, management, assets, nature of work, logos and trademarks, arm's-length transactions, and financial and operational control. In addition, there is a statement that the Commission may use "any other criteria" deemed relevant.
- New Brunswick's policy provides that experience transfer must be considered when "an employer's business activities change resulting in a new employer account". The determination is made when there is a "nominal" or "material" change in ownership, assets or shares are sold, there is a partial transfer of business activity, a change in the name of the company, or a firm enters receivership or files for bankruptcy. Depending on the nature of the change, there are rules for experience transfer, mostly predicated on asset transfers and firm ownership.

- Nova Scotia has a guideline providing direction on experience transfers in situations set out almost identically to those in New Brunswick.
- Prince Edward Island's policy provides that experience may transfer when "a change to an employer's status and/or ownership" results in a new employer account. The test used to determine whether experience will transfer is "continuity" between the old employer and the new employer. "Continuity" is not defined in the policy.

6. OPTIONS/IMPLICATIONS

Option 1: Status Quo

Under this option, no amendment would be made to policy.

Implications

- Ambiguities in the policies would continue, leading to inconsistent interpretations and applications.
- This option may lead to an increase in review and appeal requests from stakeholders, due to differing interpretations of policy.
- Policy would not capture some ways in which firms could be reorganized to avoid negative experience ratings.

Option 2: Minor Policy Changes to Clarify the Current Criteria for Experience Transfers

Under this option, the general experience rating policy would be changed to include a definition of "experience", to clarify what is being transferred between firms in experience transfer adjudications. Experience transfer policy would be clarified as to its application and terminology, but the existing 50 percent ownership criterion for transfers would remain in the policy. A minor change to the title of the experience transfer policy would also be made, to clarify that it is experience that may transfer between firms, and not the rating derived from it.

Implications

- "Experience" would be defined in Item AP1-42-1 (Experience Rating), clarifying what is being considered for transfer in Item AP1-42-3.
- Policy criteria for experience transfers would remain constrained to simple ownership considerations. The Assessment Department has advised that this does not capture all of the situations arising where

firms are moving business operations to other related firms, possibly in attempts to escape negative experience ratings.

- Policy would have greater clarity that firms are subject to experience rating, and not firms' owners, which may result in fewer differences in interpretation between the WCB, stakeholders, the Review Division and WCAT.
- Policy would provide guidance that changes to firm ownership do not generally trigger consideration of experience transfer.
- The title of Item AP1-42-3 would have greater clarity as to the nature of the transfer being considered.

Option 3: Affiliation and Control as Criteria for Experience Transfers

Under this option, the general experience rating policy would be changed to include a definition of "experience", to clarify what is being transferred between firms in experience transfer adjudications. Experience transfer policy would be changed to incorporate tests for affiliation and control similar to those found in the *Income Tax Act*, the *Business Corporations Act*, and other jurisdictions. A draft policy which reflects this option is contained in Appendix "A". The following changes would also be made to Item AP1-42-3 (Transfer of Experience Rating):

- The policy's terminology would be aligned with Items AP1-1-1 (Coverage Under Act - Descriptions of Terms) and AP1-42-1 (Experience Rating) in order to properly reference that the WCB applies experience rating to firms. Another related change would be to clarify that the WCB applies classification units to firm accounts based on firm operations and not "ownership".
- A "description of terms" section would be added to the policy to clarify the meaning of the relevant terminology. This section would contain detail concerning affiliation and control, and how those terms are to be considered.
- The policy would be reorganized to first make a statement that experience does not generally transfer between firms when firms move business operations or assets to other unaffiliated firms.
- The policy would provide exceptions to the general statement based on tests for affiliation and control, including the exception for large publicly traded firms.
- An exclusion statement would be added to the policy to clarify that where a firm continues its business operations after a share transfer, the experience rating of the firm will remain unaffected.

- The policy would provide that experience transfer may be considered where a "significant portion or aspect" of a business changes hands between firms. This will allow for Board officers to consider experience transfers where partial asset sales occur.
- A minor change to the title of Item AP1-42-3 would be made, to clarify that it is experience that may transfer between firms, and not the rating derived from it.

Implications

- "Experience" would be defined in Item AP1-42-1, clarifying what is being considered for transfer in Item AP1-42-3.
- Policy criteria for experience transfers would be broadened considerably from simple ownership considerations, giving the WCB greater ability to transfer experience rating in appropriate circumstances, perhaps precluding some experience-avoidant behaviours.
- Policy would have greater clarity that firms are subject to experience rating, and not firms' owners, which may result in fewer differences in interpretation between the WCB, stakeholders, the Review Division and WCAT.
- The title of Item AP1-42-3 would have greater clarity as to the nature of the transfer being considered.
- Policy would provide guidance that changes to firm ownership do not generally trigger consideration of experience transfer.

Option 4: Use Specific Criteria for Experience Transfers

Under this option, the general experience rating policy would be changed to include a definition of "experience", to clarify what is being transferred between firms in experience transfer adjudications. Experience transfer policy would be updated to be clearer in application, and to include specific criteria that may be used to indicate control and whether firms are related. For example, experience transfers could be adjudicated on indicators of common control such as: percentage change in ownership, nature of work or business activity, continuing customers/clients, and whether employees and management change. A minor change to the title of Item AP1-42-3 would be made, to clarify that it is experience that may transfer between firms, and not the rating derived from it.

Implications

- "Experience" would be defined in Item AP1-42-1, clarifying what is being considered for transfer in Item AP1-42-3.

- Policy would have greater clarity that firms are subject to experience rating, and not firms' owners, which may result in fewer differences in interpretation between the WCB, stakeholders, the Review Division and WCAT.
- Specific criteria to determine whether firms are affiliated or related would be set out in policy. Using a specific list in policy may not capture all situations where firms may be affiliated, and may constrain Board officers to specific examples within the policy.
- The title of Item AP1-42-3 would have greater clarity as to the nature of the transfer being considered.

7. CONSULTATION

Stakeholders are invited to provide feedback on the options provided and may provide any additional comments that may be relevant to the issue.

Stakeholder comments will be accepted until **April 26, 2005**. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

By mail: Cameron Angus
Policy Analyst
Policy and Research Division
Workers' Compensation Board
P.O. Box 5350, Stn Terminal
Vancouver, BC V6B 5L5

By fax: 604 279-7599

By e-mail: policyd1@wcb.bc.ca

The WCB's governing body, the Board of Directors, will consider the opinions expressed by stakeholders before it adopts any amendments to the current policies.

Please note that all comments become part of the Policy and Research Division's database and may be published, including the identity of organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

RE: Experience Rating

ITEM: AP1-42-1

BACKGROUND

1. Explanatory Notes

Experience rating is a means of adjusting individual employers' assessment rates to reflect their actual claims cost experience. Employers whose experience is better than their rate group average receive a discount. Employers whose experience is worse than their rate group average pay a surcharge.

The experience rating program attempts to promote positive safety attitudes and to provide equity through a system of recognition and accountability for claims costs. The goal is to encourage employers with high injury costs to reduce them, and to encourage employers with low injury costs to keep them low. The desired outcome is a reduction in the social and economic costs of work-related injuries and diseases.

2. The Act

Section 42:

The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be considered just; and where the Board thinks a particular industry or plant is shown to be so circumstanced or conducted that the hazard or cost of compensation differs from the average of the class or subclass to which the industry or plant is assigned, the Board must confer or impose on that industry or plant a special rate, differential or assessment to correspond with the relative hazard or cost of compensation of that industry or plant, and for that purpose may also adopt a system of experience rating.

POLICY

Effective January 1, 2000, a new experience rating ("ER") plan took effect. The main features of the plan are:

- (1) The same ER plan applies to all employers and independent operators in rateable classes.
- (2) The ER plan is prospective in application. ER adjustments are calculated in the fall of each year on the basis of past claims costs **and payroll experience**, and are applied to employers' assessments commencing January 1st of the following year. **Thus, a firm's experience is a measure**



of a firm's performance relative to its rate group based on information derived by the Board from appropriate past claims costs and payroll.

- (3) ER adjustments are based solely on claims costs. The costs used are those directly associated with compensation claims, including the capitalized value of pensions awarded. The cost used for fatal claims is the five-year moving Board-wide average rather than the actual cost of each claim.
- (4) The Board's administrative costs are not included in the ER calculation.
- (5) The ER plan uses claims costs arising from claims commenced in the three calendar years prior to the year in which the calculation is made (the "ER Window"). This includes all costs of those claims up to and including June 30th of the year of calculation.
- (6) The costs included are subject to maximum limits for each claim as follows:
 - 100% of the first \$70,000;
 - 50% of the next \$50,000; and
 - 10% of all costs above \$120,000.
- (7) An employer's cost to assessable payroll ratio is compared to the cost to assessable payroll ratio of the rate group to which the employer is assigned.
- (8) The payroll used is the total assessable payroll used to calculate employers' assessments in the ER Window. This amount excludes earnings above the maximum wage, and includes Personal Optional Protection amounts.
- (9) In determining the cost to assessable payroll ratio in the ER Window, the most recent year is weighted at 50%, the prior year at 33.3%, and the most distant year at 16.7%.
- (10) The calculation involves combining an employer's cost experience in the ER window with its ER factor for the previous year. The ER factor reflects the fact that employers participate at different levels, based on the size of the employer's assessment before the ER adjustment. The higher an employer's base assessment, the higher its level of participation in the plan. A higher level of participation means an employer's ER adjustment is more responsive to its claims costs experience in the current ER window.
- (11) The minimum participation level is set at 10%.
- (12) The maximum ER discount is 50%. The maximum ER surcharge is 100%.



- (13) Employers enter the plan for the first time when they have had some payroll within the current ER window.
- (14) Where any part of an employer's payroll has been estimated, any resulting discount will not be applied. If a surcharge results, it will be applied. If an estimate is replaced by the actual payroll information, the experience rating will be recalculated.
- (15) The employer for experience rating purposes is the legal entity operating the business. If an employer operates divisions, whether they are separately registered with the Board or not, the employer's combined experience determines the rating for all the employer's operations.
- (16) Employers registered voluntarily under sections 3(5) to (7) of the *Act* or by a variance from a general exemption order under section 2(1) of the *Act* are excluded from participating in the experience rating plan.
- (17) For simplicity, ER discounts or surcharges are generally expressed as percentage adjustments to employers' base assessment rates.

PRACTICE

Further information on the experience rating system can be found on the WCB website at http://www.worksafebc.com/for_employers/premiums/experience_rating/default.asp.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

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| EFFECTIVE DATE: | January 1, 2003 June 1, 2005 |
| AUTHORITY: | s. 42, <i>Workers Compensation Act</i> . |
| CROSS REFERENCES: | See also Requesting a Variance from a General Exemption (AP1-2-2), Personal Optional Protection (AP1-2-3), Extending the Application of the <i>Act</i> (AP1-3-1) with regard to sections 3(5) to 3(7) of the <i>Act</i> , Classification – Changes (AP1-37-3), Registration of Employers (AP1-38-1), Payroll Estimates (AP1-38-5), Maximum Wage Rate (AP1-38-6), ER Cost Inclusions/Exclusions (AP1-42-2) and Transfer of Experience Rating (AP1-42-3) in the <i>Assessment Manual</i> . |
| HISTORY: | Updated to define "experience" on June 1, 2005. Replaces Policies No. 30:50:10 and 30:50:41 of the <i>Assessment Policy Manual</i> and Decision No. 401 in volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> . This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i>. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. |

APPENDIX "A"



ASSESSMENT MANUAL

APPLICATION:

This Item results from the 2002 "editorial" consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. **The amended policy applies to all decisions on or after June 1, 2005.**

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| RE: Transfer of Experience Rating Between Firms | ITEM: AP1-42-3 |
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BACKGROUND

1. Explanatory Notes

Employers may sell or otherwise reassign all or part of their business to another person or entity. When changes of this nature occur, the question arises whether there should be a change in **transfer of** the experience rating of the business firm.

2. The Act

See Item AP1-42-1.

Section 1 (in part):

~~“member of the family” means wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother and half sister...~~

POLICY

~~The concept behind experience rating is to promote positive safety attitudes and provide a degree of equity among employers, through a system of recognition and accountability for claims costs arising out of a firm's operations. It is the owner(s) of a business who determines the nature of operations and the approach to occupational health and safety in the workplace. Therefore, the general criteria to determine whether a firm's experience will be transferred/continued is whether there has been a change in ownership of the business.~~

1. Overview

Principles to consider in experience transfer include:

- **Experience rating is a measure of a firm's "hazard or cost of compensation" within the workers' compensation system.**
- **A firm has control over the way it conducts its business operations, which in turn may impact claims costs.**



- The Board applies experience rating to a firm, and maintains each firm's earned experience, to promote continuity and premium equity.

Therefore, when business operations or assets move between firms, the Board must determine whether or not it is appropriate to transfer the original firm's experience history to a successor firm.

~~Where the classification of the operations changes with ownership, the provisions of Item AP1-37-3 must be considered in conjunction with this policy.~~

~~Where a firm undergoes a change in ownership, its experience will continue if at least 50% of the ownership remains the same. Generally, the firm's classification must also remain the same. In these situations, it is assumed that the firm's relative hazard or cost of compensation remains substantially unchanged.~~

~~Where a firm undergoes a majority change in ownership (i.e., less than 50% of the ownership remains the same), the experience of the old firm will generally not continue or transfer to the new firm.~~

2. Descriptions of Terms

The following terms assist in interpreting policy:

Affiliation

Firms are affiliated where:

- directly or indirectly through one or more intermediaries or by other means, one firm controls the other firm, or both firms are controlled by the same person or group of persons, or
- the firms are controlled by family members, immediate, extended, or equivalent.

Where an original firm's business operations or assets are split between multiple successor firms, affiliation is determined on the basis of the relationship between the original firm and each individual successor firm.

Control

Control is the ability or power, actual or potential, direct or indirect through other firms, to direct or cause the direction of the management of a firm's business operations, through the ownership of voting securities, by contract, or by other means.

***Firm***

A firm is any person or entity carrying on a business. An "original firm" is one that moves assets or business operations to one or more other firms. A "successor firm" is one receiving assets or business operations from an original firm.

Business Operations

The commercial, industrial, or professional undertakings of a firm; which generally comprise its assets and activities respecting property, plant(s), equipment, products, or services.

3. Experience Transfer Guidelines

The following guidelines are used when considering whether experience should transfer between firms:

- a) Generally, experience will not transfer where a firm's business operations or assets move to another firm and the firms do not meet the definition for affiliation. Experience may transfer where an original firm's business operations or a significant portion or aspect of an original firm's business operations move to an affiliated successor firm.

As an exception, experience may transfer between unaffiliated original and successor firms where both are publicly traded companies, and it is anticipated that the successor firm will continue the business operations unchanged by preserving the original undertaking, management, staff, plant, equipment, location or customers/clients.

Where experience transfer is considered between firms, generally the classifications of the operations should remain the same. If the classification of the operations changes, the provisions of Item AP1-37-3 (Classification - Changes) are considered in conjunction with this policy.

- b) Generally, a firm's experience will remain with the firm if it undergoes a change in ownership through a share purchase or other means, as the same firm remains in operation.

~~As an exception to this general rule, the Board may transfer/continue a firm's experience if the firm's business operations remain substantially the same. Indications of continuing business operations include where the firm's undertaking, management, staff, plant, equipment, location, and~~



~~customers/clients remain the same. Under these circumstances, it may be reasonable to expect the firm's relative hazard or cost of compensation to remain the same.~~

This exception is primarily intended to address the following situations:

- ~~• Where the firm's owner is relatively removed from day-to-day operation and management decisions. This is typically the case for a large publicly traded firm where shareholder activity may result in a change in ownership, but does not alter the firm's business operations.~~
- ~~• Where an equal partnership splits and the former partners continue to operate in the same business. In this situation, the former partners may, through their respective firms, continue the business operations of the old firm.~~
- ~~• Where the new owner is a "member of the family" of the previous owner and the firm's business operations continue unaffected by the change in ownership. The definition of "member of the family" in section 1 of the Act is generally followed, but a same-sex spouse is also included.~~

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

For Practice Directive "Transfer of Experience" - AP1-42-3, readers should see, in particular,

http://www.worksafebc.com/law_and_policy/practice_directives/assessment_and_revenue_services/default.asp.

| | |
|--------------------------|--|
| EFFECTIVE DATE: | January 1, 2003 June 1, 2005 |
| AUTHORITY: | s. 42, <i>Workers Compensation Act</i> . |
| CROSS REFERENCES: | See also Coverage Under Act – Descriptions of Terms (AP1-1-1) and Classification – Change (AP1-37-3) and Experience Rating (AP1-42-1) in the <i>Assessment Manual</i>. |
| HISTORY: | Policy updated to change experience transfer criteria on June 1, 2005. This Item resulted from an editorial consolidation of the former <i>Assessment Policy Manual</i> , which was effective on January 1, 2003. The Policy in this Item continued the substantive requirements that existed before the consolidation, with any wording changes necessary to reflect legislative and other changes that had occurred. Policy No. 30:50:50 in the former <i>Assessment Policy Manual</i> was replaced by this Item. |

APPENDIX "A"



ASSESSMENT MANUAL

Consequential changes to this Item made as a result of the *Workers Compensation Amendment Act (No. 2), 2002* were effective on March 3, 2003.

APPLICATION:

~~The amended policy applies to all new decisions on or after January 1, 2004.~~

The amended policy applies to all decisions on or after June 1, 2005.