

PRACTICE DIRECTIVE #7

Exclusion of Certain Claims Costs From Experience Rating Calculations

The Assessment Policy Manual describes the Board's Experience Rating Assessment plan. In Policy No. 30:50:52 (relevant portion attached) there is an exhaustive list of types of claims costs which are excluded from the calculation of the ERA rate. This policy is reiterated in Policy #115.30 of the RS&C Manual. The Assessment Policy Manual sets forth the Panel of Administrators' policy as to what items will be exempted. It then becomes a matter for Compensation Services adjudicators to determine whether the factual situations have arisen which give rise to the exemptions found in the Assessment Policy Manual.

Representatives from Compensation Services and Assessments met recently and confirmed that in order to ensure consistency in policy application and therefore, equitable treatment for all affected employers, requests for exclusions for other reasons should be denied and the requester invited to contact the Assessment Department should he or she wish to pursue the matter further. There is no authority for adjudicators in the Compensation Services Division to expand on the list of exclusions. Exclusions which are not authorized by policy include:

- alleged delays in the adjudication or claims management process;
- alleged mismanagement of files;
- dissatisfaction with treatment or rehabilitation plans or outcomes.

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30:50:41 sets out the Era plan in detail.

As a general rule, any acceptable claim coded to a particular employer is counted for experience rating purposes and the costs of record within the review period are used in determining the cost of payroll ratio for the firm and the subclass.

One of the most common requests from an employer under experience rating is to exclude claim costs on the basis that the claim was not that particular employer's fault.

The no fault concept of workers' compensation relates to the acceptability of the claim, not to the responsibility for the costs. While the assessment system operates similar to a mutual insurance scheme with all employers contributing to the cost of injuries occurring in their particular industry group, experience rating provides a slight modification to that principle by allowing the claims costs arising from a particular firm's operation to have a slight effect on the collective industry assessment rate.

W.C. Reporter Decision 49 sets out the basic philosophy of including claims for experience rating purposes and, in particular, dismisses the argument to remove claims from the experience rating accounting on the basis of fault.

Decision 49 reads in part:

"The system of experience rating is based to some extent on notions of fault. It reflects the view that some accidents are preventable, and that employers in whose operations injuries are more frequent or substantial should pay higher assessments than those in whose operations injuries are less frequent or less substantial. But to the extent that the system concerns itself with fault, it does so by reference to aggregated data, not by moral judgments on individual claims. To take out of this accounting a particular accident because it was adjudged not to be the fault of the particular employer would, therefore, introduce a distortion rather than an improvement in accuracy.

"There may be scope for argument about what is a fair and proper formula to apply in the administration of an experience rating system. But once a formula has been adopted, fairness among employers in the class then requires the formula must be strictly followed. To take out a particular claim on the application of the particular employer would be unfair to other employers whose experience includes similar claims, but who have not initiated similar applications."

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The Board therefore will not consider an argument as to employer culpability in determining the inclusions/exclusions of claims and their costs for experience rating purposes.

There are, however, some types of claim costs which are excluded from consideration. These are:

1. Costs recovered by way of a third party action. (For details, see #111.25 of the Rehabilitation Services and Claims Manual).
2. Investigation and/or compensation costs paid out prior to the disallow of a claim or reversal of a decision by a Board officer or the Review Board, Appeal Division or Medical Review Panel. (For details, see #113.10 of the Rehabilitation Services and Claims Manual).
3. Costs transferred to the class of another employer or independent operator under Section 10(8). (For details, see #114.10 of the Rehabilitation Services and Claims Manual).
4. Costs assigned to the funds created by Section 39(1)(d) and (e). (For details, see #114.30 and #114.40 of the Rehabilitation Services and Claims Manual).
5. Occupational disease claims which on average require exposure for, or involve latency periods of, two or more years before manifesting into a disability. The exclusions are done by category using the Canadian Work Injuries Standard (CWIS) classification system. The diseases presently excluded on this ground with their "nature of injury" codes are :

Non traumatic hearing loss, excluding hearing loss resulting from other injuries	Code 230 and "source of injury code" 4400
Silicosis	Code 281 for mining and 282 for non-mining
Asbestosis	Code 283
Other diagnosed pneumoconiosis, for example anthracosis and siderosis	Code 284

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Pneumoconioses not specifically diagnosed	Code 280
Heart disease	Code 887
Cancer	Code 888
Raynaud's phenomenon	Code 889

6. Costs after 13 weeks where Section 5(3) applies. (For details, see #16.60 of the Rehabilitation Services and Claims Manual).
7. Costs from accidents substantially due to personal illness, for example epilepsy. (For details, see #15.30 of the Rehabilitation Services and Claims Manual).
8. Injuries during a retraining program sponsored by the Vocational Rehabilitation Department. (For details, see #88.43 and #88.54 of the Rehabilitation Services and Claims Manual).
9. Pension costs arising from an aggravation of an injury or a subsequent injury arising out of treatment causing death or permanent disability that would not otherwise have been expected.(For details, see #115.31 of the Rehabilitation Services and Claims Manual).
10. The cost of survivor benefits to the extent of the reserve for a permanent disability award being paid to the deceased worker where the death resulted from the condition for which the pension was being paid. (For details, see #115.32 of the Rehabilitation Services and Claims Manual).

The decision whether a claim falls within one of the exclusions is not made by the Assessment Department. It will usually be made by an officer in the Compensation Services Division. In the case of Section 10(8) (Exclusion 3), the Appeal Division makes the decision and in the case of third party actions (Exclusion 1), a Board solicitor.