

2005/05/17-01

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA
RESOLUTION OF THE BOARD OF DIRECTORS

**RE: Changes to Two Experience Rating Policies
In the *Assessment Manual***

WHEREAS:

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors (the "BOD") must set and revise as necessary the policies of the BOD, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

Pursuant to section 42 of the *Act*, the Workers' Compensation Board has adopted a system of experience rating;

AND WHEREAS:

General guidance on the experience rating system is provided in *Assessment Manual* Item AP1-42-1;

AND WHEREAS:

Guidance on transfer of experience is provided in *Assessment Manual* Item AP1-42-3;

AND WHEREAS:

There is no concise definition of the term "experience" in current policy;

AND WHEREAS:

The BOD has been made aware of concerns that the current transfer of experience policy's use of ownership as the primary criterion for experience transfer is not addressing some ways in which firms may arrange their business operations to avoid experience rating;

AND WHEREAS:

The criteria of "affiliation" and "control" have been identified as more suitable for considering whether experience should transfer between firms;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. To clarify the meaning of "experience" when adjudicating experience transfers, changes to Item AP1-42-1 are approved, as per the attached Appendix "A".
2. To promote equitable and proper adjudications of whether experience should transfer between firms, changes to Item AP1-42-3 are approved, to include "affiliation" and "control" as criteria for experience transfers, as per the attached Appendix "A".
3. This resolution is effective June 1, 2005, and applies to all decisions made on or after June 1, 2005.

DATED at Richmond, British Columbia, May 17, 2005.

By the Workers' Compensation Board

**DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTORS**

APPENDIX A



ASSESSMENT MANUAL

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**

APPENDIX A



ASSESSMENT MANUAL

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%.

APPENDIX A



ASSESSMENT MANUAL

- (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.

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" effective 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

APPENDIX A



ASSESSMENT MANUAL

APPLICATION:

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.

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 made on or after June 1, 2005.**

APPENDIX A



ASSESSMENT MANUAL

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

BACKGROUND

1. Explanatory Notes

Employers may sell or otherwise transfer 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.**

APPENDIX A



ASSESSMENT MANUAL

- 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 intermediaries, 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 operations from an original firm.

Business Operations

The commercial, industrial, or professional activities 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 description of 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 and customers/clients.

Where experience transfer is considered between firms, generally the classification 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.~~

APPENDIX A



ASSESSMENT MANUAL

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:	Changes to the criteria by which experience transfers are adjudicated were made effective 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. Consequential changes to this Item made as a result of the <i>Workers Compensation Amendment Act (No. 2), 2002</i> were effective on March 3, 2003.
APPLICATION:	The amended policy applies to all decisions made on or after June 1, 2005.