



Executive Director's Report

Update – WSIB Rate Framework Reform Consultation

The WSIB has finally launched the consultation on proposed changes to the rate framework for all employers, including construction. The proposed changes are comprehensive and far reaching. Not every stakeholder supports the need for change, however the WSIB is committed to modernize and transform the current system to meet the changing needs of Ontario's workplaces. At the same time, they are receptive to hear feedback about the proposed changes from all stakeholders. The last significant changes were over 20 years ago.

The consultation proposes to change **how employers are classified**, aligning them to an accepted national standard, **new premium rate settings** and a **new experience rating**, replacing the current CAD-7 for construction with a prospective program. The WSIB has stated that any reform of the Rate Framework would be revenue neutral and focus on improving fairness in the premium rate setting process.

The initiative results from several years of prior reviews including Harry Arthurs Review and the subsequent Doug Stanley Review. Consultation backgrounders, executive summaries and documents are on the WSIB review website: www.wsibratereform.com

On April 14, 2015, AAO as a member of COCA's WSIB OH&S Committee, had an opportunity to be briefed by the WSIB on the proposed initiative. Please note this is preliminary in general.

The following is a general overview of the proposed changes being considered by the WSIB:

- Replacing the current classification system with a 22 class structure adapted from the 2012 North American Industry Classification System (NAICS). These are updated every 5 years.
 - ◆ For construction this means the current 13 rate groups (i.e. Inside Finishing Rate Group 719) will be replaced with 3 rate groups (classes) – Building Construction, Infrastructure Construction and Specialty Trades Construction.
 - ◆ Multiple rate groups (presently allowed) will no longer be allowed (except for the temporary work sector).
- Employers will be classed based on their predominant business activity, determined by each employer's activity that has the greatest proportion of assessable payroll.
- Long latency diseases such as cancer will continue to have their costs assigned to the class level.

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Executive Director's Report (continued)

- The WSIB proposes to eliminate the Second Injury and Enhancement Fund (SIEF). This is where a prior disability caused or contributed to the compensable accident, or if the period resulting from an accident becomes prolonged or enhanced due to a pre-existing condition. In such cases all or part of the compensation and health care costs could be transferred from the accident employer to the SIEF.
- The current experience rating programs (for construction CAD-7) are to be replaced by an EMPLOYER LEVEL PREMIUM RATE ADJUSTMENT plan.
 - ◆ This will be a prospective experience rating plan for all employers who are currently experience rated (there will be no CAD-7 rebates or surcharges). Premiums will be adjusted up or down on an annual go forward basis for each employer based on their prior annual actual cost performance.
- Employers will be assigned a target rate based on their past actual accident costs. Depending on future annual costs, they will move up or down from this target rate using risk bands in 5% increments. Each of the three (3) construction classes are expected to have between 40 and 80 risk bands.
- It appears that there will be a six year accident cost window (for established employers) to determine which risk band an employer is assigned to.

Based on current information, the implementation phase in is expected in 2018.

Current WSIB premiums for inside finishing contractors (Rate Group 719) is \$7.19 per \$100.00 of payroll. Given current remuneration rates, this equates to about a 7% overhead on wages, which not only is significant, but presently applies to ALL drywall companies.

Based on employers' final target rates, the proposed changes will create an environment whereby individual employers, within the same trade, will pay different premium rates. Employers will be severally responsible for either an increase or decrease in future premiums given their prior years actual cost performance. This will make health and safety an extremely important aspect of the day to day operation of a contractors business forcing individual employers to be personally responsible for the health and safety performance of their company.

In the meantime, to get an idea of which target rate your firm might be slotted into you should review your company's past CAD-7s and Workplace Injury Summary Reports. If you need assistance please contact me.

Should you wish to see the WSIB technical webinar (approximately 1.5 hours), please go to the following link:

<http://oha.mediasite.com/mediasite/Play/72a7f17d32b84a2a8e4de5c380f3ce2f1d>

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Executive Director's Report (continued)

The **initial consultation phase** will conclude on June 30, 2015. The second phase of the Consultation Plan will run from the summer to the fall of 2015 allowing the WSIB to review submissions and assess stakeholder input on the implications of the proposed initiative. In the fall of 2015 the WSIB will hold a "What We've Heard" session with key stakeholders who participated in the consultation process. AAO through COCA will be involved in the entire process.

The Rate Framework Reform process will significantly change how the WSIB assess employer premiums potentially for decades to come. If you are interested, I encourage you to read the materials on the Rate Framework Reform website and offer your comments directly to the WSIB or through AAO. Feel free to contact me if you have any questions.

MINISTRY OF LABOUR (MOL) UPDATE

New Provincial Inspection Blitz – Struck-by Hazards

“Struck-by” is a term that the MOL uses for the various injuries that occur when workers are hit by (struck-by) by tools, materials, equipment or vehicles. We often hear about someone being or run over or struck by a backing vehicle. But “struck by” could also include a pile of drywall sheets falling over striking and thereby hurting or fatally injuring a worker. In recent years, struck-by hazards have become a common cause of fatality and injury in Ontario, second only to falls.

To address this, the MOL will be conducting a struck-by hazards enforcement blitz in May and June. Inspectors will focus particular emphasis on reversing vehicles (including delivery trucks) as well as the set up and layout of work sites to ensure hazards are eliminated. Make sure your crews are advised of this initiative.

UPCOMING MAY EVENTS

IHSA Drywall Labour-Management Meeting - May 7, 2015 (Paul Gunning attending)

COCA Tony Dean Review Meeting - May 11, 2015 (Paul Gunning attending with Ian Cunningham, President, Gary van Bolderen, Chair and Roger Hubbard, Reinforcing Steel Institute of Ontario)

Prompt Payment Ontario (PPO) Board Meeting - May 19, 2015 (Paul Gunning attending)

Take Advantage Of These FREE ONLINE May OEA WSIB Webinars

Copy the following URL to your browser to register as enrolment is limited:

<http://employeradviser.ca/en/Construction-Employer/News-Resources/Events/index.php>

OEA Claims Management Tips For 2015 Webinar - May 7, 2015 - 10:00 a.m. – 11:00 a.m. ET

OEA Form 7 Webinar - May 14, 2015 - 10:00 a.m. – 11:00 a.m.

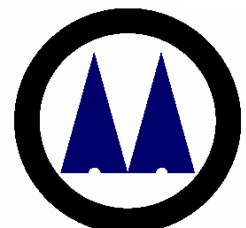
OEA WSIB Appeals Webinar - May 21, 2015 - 10:00 a.m. – 11:00 a.m.

If you have any questions, please call me at 519-671-5930.

Thank you.

Paul Gunning

Executive Director



The Mathews Dinsdale Minute



Dealing with the nightmare: Workplace fatalities.

This week in the Mathews Dinsdale Minute we are going to talk about an employer's worst nightmare: Your phone rings. It's your site supervisor. One of your employees has suffered a fatal injury.

In recent months, this nightmare has unfortunately been a reality for a number of employers across the province. Faced with this scenario, employers are often left asking themselves the same question, what do I do now?

The importance of managing risk has never been more important given the recent increase in fines resulting from prosecutions under the Occupational Health and Safety Act ("Act") and the prospect of parallel Ministry of Labour ("MOL") and "criminal" investigations, which is real and immediate following a workplace accident involving a fatal or critical injury. In the aftermath of a workplace accident there are several essential risk management strategies an employer should follow. These are the important basics, but we also strongly recommend you contact and retain counsel. Each situation is unique and nothing can replace timely and well informed advice in the moment. However, here are the general steps:

1. Notify senior management and appoint an Accident Coordinator, preferably someone who can attend at the scene immediately and is familiar with the company's health and safety procedures. The Coordinator will then be the primary contact for the MOL and Police.
2. Provide medical aid where needed and secure the accident area. Employees must be made aware, if they are not already, that the Act specifically provides that no one shall disturb the scene, except in a few narrow exceptions, and that to do so is a serious offence.
3. In the case of a fatality or "critical injury" (as defined by the Act), the MOL, joint health and safety committee and the union (if applicable) must be notified immediately. Following the initial reporting to the MOL, the appropriate written notices must be filed with WSIB and the MOL as prescribed by the Act. It is important to ensure that the worker's injury meets the definitions which give rise to the reporting obligations, since injuries which are neither "fatal" nor "critical" do not have the same reporting obligations. If you are in any doubt, exercise reasonable care and contact your legal representative.



The Mathews Dinsdale Minute (continued)



By now, the MOL, Police and other agencies will likely be on site. The Accident Coordinator should shadow the MOL and Police investigations and take detailed notes, including observations, identification of all persons interviewed (request to be present during the interview and take notes), tests performed and the results. The Accident Coordinator should also take photographs of anything that appears to be of interest to the MOL or Police.

At the same time, the Accident Coordinator should ensure that the Company is fulfilling its duty to cooperate, and is not obstructing or interfering with the investigation.

However, keep in mind that cooperation does not mean self-incrimination. Information and documentation should not be provided without first discussing with the Accident Coordinator and possibly legal counsel.

Simultaneous to the MOL/Police investigation, the Company should also be conducting its own parallel investigation. The investigation should include conducting interviews, taking photographs, compiling due diligence documentation, and evaluating whether a third-party expert should assess the accident scene before it is released by the MOL/Police. Do not forget to take the appropriate steps to ensure the investigation is privileged and confidential, which will require consultation with counsel.

While these and other best practices will not eliminate the effects of a workplace accident, they will help to ensure:

- that opportunities to protect legally privileged documents are not lost;
- that all appropriate legal requirements and investigators' demands are met, without incriminating more than necessary;
- the preservation of details and evidence which could assist with a defence; and
- the rights of organizations and individuals, which reach heightened status during a criminal investigation, are known and protected.

The impact of a serious workplace accident is real, and can reverberate for many years. While we all hope that none of you face it, being prepared is absolutely essential. These basics are your first steps.

