

Experience? Rating?



"I was getting this patient... I went and called one of my co-workers to help me transfer her to the wheelchair, to go to the dining room. Then she wanted to go to the washroom...As we tried to lift her up in a count of three, I felt this sharp pinch on my back... During the day, I felt a lot of pain, but, you know, I just thought it would go away. Like, sometimes... the type of work I did, you get a sore back...Roughly, about, four or five days after, I called the union because it was getting worse to the point I couldn't even move or breathe. you know, the pain was so bad. First, I called my union rep. and I told her what happened. So she told me to take the union Steward and go to the employer and fill in a WSIB report. The employer refused. She asked me what happened. So I told her what happened. So she refused this. She told me what you have, it's wear and tear and it's not a WSIB claim. And they wouldn't do anything." – Injured Worker

Experience Rating

Recently the Premier of Ontario, Dalton McGuinty, was forced to concede that the Province's workers' compensation rebate program was an "embarrassment." At issue is the fact that a number of Ontario corporations had received hundreds of thousands, even millions, of dollars in rebates despite the fact that these same companies had been found guilty of health and safety violations that had led to serious injury – including deaths.

One example is the International Nickel Corporation - INCO. A worker was killed at its Copper Cliff site. The company was fined \$375,000 by the Ministry of Labour for failing to provide adequate information, training and supervision to the worker regarding valves on an oxygen system. For the time period in which this death occurred INCO received \$2,424,406 in rebates from the Workplace Safety and Insurance Board.

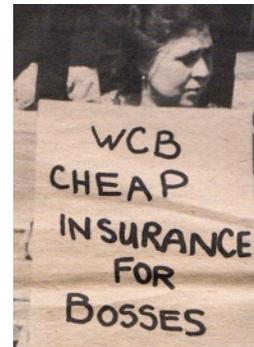
What is this rebate program? The origins lay in the late 1970s and early 1980s when compensation costs began to rise because of an increase in the number of claims and because injured workers were increasingly successful in getting their claims recognized and in winning their appeals. According to Workers' Compensation Board (WCB) officials at this time, a major reason why more workers were getting injured lay in the fact that as all employers in a given classification paid the same assessments, there were no real incentives for them to address health and safety problems in their workplaces. This was not only unfair to those employers with good accident records, it did nothing to promote better corporate health and safety behaviour.

Their solution? The expansion and further development of existing experience rating programs. Taking their cue from such programs in the United States, where most worker's compensation systems operated on private insurance principles, WCB officials pushed for changes whereby employers who had good accident records would be financially rewarded, while those with poor accident records would be punished financially. "Employers should be rewarded," a WCB document argued, "for investing time and money to make their work places safer and reduce injuries."

Interestingly, much like the Early and Safe Return

to Work policy that came into existence with Bill 99, there was no research demonstrating a clear and consistent relationship between experience rating programs and better health and safety behaviour by employers. Even such an advocate as Paul Weiler, the Harvard University Law professor commissioned by the Conservative government of Bill Davis to investigate the operation of the worker's compensation system, had to acknowledge the weaknesses of studies investigating the relationship between experience rating and the incidence of accidents.

Such studies did not prevent Weiler, however, from urging the government to press ahead with such a program. "[W]hen one looks at the studies cumulatively," he wrote in his 1983 report, *Protecting the Worker from Disability: Challenge for the Eighties*, "and when one recalls that we are starting from an intuitively plausible assumption in any event, this evidence provides more than enough support for the policy judgment that we should experience rate the system of workers' compensation in Ontario in order to take advantage of this market incentive to make the workplace safer."



The Pitfalls of Experience Rating

Not only was there little or no evidence linking experience ratings programs and improved health and safety outcomes, there was ample room to critique existing programs. Terence Ison, who in the mid 1980s was a professor of law at Osgoode Hall Law School at York University, listed some of the problems. Under such plans, Ison argued, employers:

- △ discourage workers from reporting claims
- △ either refuse to complete Form 7 or submit it with missing information
- △ institute safety programs that reward lower management and workers for not making claims
- △ contest and closely monitor claims
- △ establish "light work" jobs where the injured worker does little or nothing
- press injured workers to return to work too soon

In his critique, Professor Ison also wrote that "given the economic incentive for employers to ignore, hide or contest claims," it was wrong to assume a positive relationship "between claims data and accidents." Ultimately, he concluded, "experience rating probably has a negative influence on health and safety."

We'll be watching you

Experience rating programs that offer sizable rebates to employers for good health and safety records promote suspicions and adversarial actions on the part of



employers. According to injured workers, while suspicion has always been present in the Ontario workers' compensation system, the situation has worsened since the widespread introduction of experience rating and deeming. When they talk about their accidents and injuries they recall, with surprise and dismay, how their employers and WCB officials either did not believe them - they were frauds - or thought that they were exaggerating their injuries. They were, in a phrase coined by the private insurance industry, a "moral hazard."

The infamous "fraud line" established by the WSIB when the Mike Harris Conservative Party was in power is a formal expression of this suspicion. Staffed 24 hours a day, callers can - anonymously - provide information on the day-to-day behaviour of injured workers that they believe violates their compensation claims. There is no such fraud line for employers who, as WSIB chair Steve Mahoney recently stated, commit fraud by not reporting "incidences that cause people certain injury. They'll send them home on full pay. The reason they don't report the injury is that they're trying to keep their record clean because they have the potential to get a rebate if they have a clean record."

Squeezing Injured Workers

A young man from Iraq, only recently arrived in Canada, injured his shoulder lifting

heavy plates on an assembly line. In an interview with the IWHP, he talked of how his pain was immediately downplayed by the company doctor. After being on compensation for a year, he was shocked to learn that his benefits were being terminated because he had been secretly videotaped gardening, as suggested by his doctor but which the company claimed indicated that he had recovered. Humiliated and depressed, he has since struggled to recompose his life and his sense of trust in others.

A woman suffers from repetitive strain injury that according to her doctor was caused by her job as a drill press operator. Her employer's response was to suggest that she apply for the company's private insurance. She put in her claim to the workers' compensation board but the employer refused to fill in the claim form. To add insult to injury, she was fired from her job. Seven years after her injury, she had not yet received any form of compensation. She has not been able to return to work. By challenging the worker's claim the money is taken away from the worker and the company may receive a hefty cheque from the Board.

A woman worked as a cashier in a department store and broke her leg in a fall at work. The company called the worker every day to say that it had a job for her. The compensation board refused to pay any benefits to her because the company informed the Board it had "suitable work." Despite the pain and the fact that she was supposed to rest with her leg raised, she finally returned to work where she finds herself alone in a room with a shredding machine. She has a chair but no place to put her leg up. As a result, her leg is taking much longer to heal than it should and her doctor says she needs physiotherapy. Her employer's insistence that she be on the worksite may be aggravating her condition. However, the company's chances of receiving a substantial rebate from the workers' compensation board are heightened.



Sir William Meredith

The experience rating plans in place in Ontario are not the kind envisioned by Sir William Meredith. He did not believe that employers should be rewarded for investing time and money to make their workplaces healthier and safer. Why reward employers for policies and practices they should be implementing in any event? Rather, in his draft act Meredith wrote:

"Where a greater number of accidents has happened in any industry than in the opinion of the Board ought to have happened if proper precautions had been taken for the prevention of accidents in it, or where in the opinion of the Board the ways, works, machinery or appliances in any industry are defective, inadequate or insufficient, the Board may add to the amount of any contribution to the accident



fund for which an employer is liable in respect of such industry such a percentage thereof as the Board may deem just and may assess and levy the same upon such employer..."

Nor did Meredith see worker's compensation as an insurance system. "I do not like the term 'premium'," he wrote in his *Final Report*. "I prefer the terminology which I have used. What is levied by the Board is not a premium but an assessment."

Body and Soul

The moral hazards at work in present day workers' compensation systems are not those of fraudulent or malingering workers. The moral hazards lay with those employers, government and WCB officials who over the past decade have designed an incentive system that has redirected almost two billion dollars away from injured workers into the pockets of large corporations even as it depletes the bodies and robs the souls of injured workers.

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