

ONTARIO NURSES' ASSOCIATION

Submission on Workplace Safety and Insurance Board Rate Framework Consultations

January 15, 2018



ONTARIO NURSES' ASSOCIATION

85 Grenville Street, Suite 400

Toronto, ON M5S 3A2

Phone: (416) 964-8833

Fax: (416) 964-8864

Web site: www.ona.org

Introduction

The Ontario Nurses' Association (ONA), the union representing 65,000 registered nurses (RNs) and health professionals, as well as more than 16,000 nursing student affiliates, across the province, is the voice of Ontario's knowledgeable and experienced nurses.

We welcome a review and modernization of the Workplace Safety and Insurance Board (WSIB) funding system and are of the view that policy must reflect the intent and purpose of the *Workplace Safety and Insurance Act, 1997 (WSIA)*. Further, we agree with a fair and equitable implementation of a "collective liability" funding system that is managed in a financially responsible and accountable manner.

It is our view that the implementation of the proposed policy, following this consultation, must be consistent with the *WSIA* and compatible with Sir William Meredith's principles, first elucidated in his report to parliament. Specifically, he advocated "collective liability" to fund the system and a "security of payment" to injured workers. It is also our view that modernization of WSIB's funding system should ensure that the first goal of WSIB's mandate is achieved, namely to promote healthy and safe workplaces.

For brevity, we are limiting our input to the following proposed policies, **Employer Level Premium Rate Setting** and **Employer Premium Adjustments** (OPM 14-02-06).

Employer Level Premium Rate Setting

The use of experience rating systems produces both positive and negative results. The positive intended results include appropriate funds to administer the plan or reserve capital to fund research in workplace injury prevention. However, the unintended negative results, such as claim suppression or under reporting, are far more corrosive to workplaces and worker compensation systems, generally.

Moreover, history has proven that "efficient" premium rates are unable to fund the system and do not incentivize accident prevention to a degree that would reduce the costs of WSIB administration. A White paper¹ that set out the government's changes to the compensation system (in response to Paul Weiler's review of the *Worker's Compensation Act*) in the early 1980s restructured available entitlement to workplace injuries with the intent to reduce the unfunded liability and to incentivize accident prevention.

The results of the 1980s compensation reforms did not alleviate the unfunded liability issues, despite significant benefit reduction of injured workers' entitlements, nor did it promote accident prevention. Unfortunately, WSIB administrative and total claims cost continued to escalate; likely contributing to the escalation was an absence of evaluating employer accident prevention, an assessment that could provide variable funding to meet fluctuating compensation costs.

Another effort in the mid-1990s², driven by the unfunded liability, was undertaken to "balance the books." The restructuring, which significantly reduced accident benefits, did not reduce the

¹ White Paper on the *Worker's Compensation Act* - 1981

² New Directions for Worker's Compensation Reform, 1996 Honorable Cam Jackson.

unfunded liability despite a purported focus on accident prevention³ – which was not a consideration in the new calculation of premium rates.

However, a recovery of the unfunded liability ought to be a separate rate paid by employers or stakeholders because it is a result of chronic underfunding and discounted premium rates, and is arguably a “loan” to employers. The “loan” has funded or maintained employers’ respective business enterprises at the expense of workers’ compensation. As such, WSIB ought to implement a funding policy that apportions premiums to those industries that have benefited or profited from the delay in funding their own workplace accident compensation costs.

The efforts of the 1990s also included considerable changes to compensation legislation, notably the *Workers’ Compensation Act*⁴ received a new name and a purpose clause:

“The purpose of this Act is to accomplish the following in a financially responsible and accountable manner:

1. To promote health and safety in workplaces.
2. To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
3. To facilitate the re-entry into the labour market of workers and spouses of deceased workers.
4. To provide compensation and other benefits to workers and to the survivors of deceased workers.⁵”

While this clause directs WSIB to promote health and safety, the adopted approach, emphasizing economic pressures that reflected claims cost, did not create the necessary conditions for employers to implement preventative health and safety measures.

The WSIB created Safety Groups as a means to incent employers to improve their health and safety programs. Yet despite this involvement and supposed action Violence, MSDs, slips, trips and falls and infectious disease injuries and illnesses continue to plague our members. In fact health care sector has the highest rates of these injuries and illnesses when compared to the mines, construction and manufacturing. (see included infographic). In our experience, incentive programs that reward employers are ineffective while, WSIB programs that include audits and penalties are more effective in creating healthy and safe workplaces.

For example, the Niagara Health System is one employer who was enjoying rebates for years as a result of inaccurate reporting that WSIB allowed. After ONA filed a grievance and made a call to WSIB to investigate (which they did) this employer took steps to improve its health and safety program and return to work (RTW) program. In response, their new RTW was publicly supported by the WSIB when it was launched.

³ New Directions for Worker’s Compensation Reform: A Discussion Paper, Goals of Reform. “A system based on: Prevention first, return if possible, rehabilitation when needed and compensation as required...”

⁴ Bill 99 (January 1, 1998), Hansard, October 9, 1997:

“**Hon Elizabeth Witmer (Minister of Labour)**: The legislation which we are passing today is going to achieve a very significant objective, that is, it's going to shift the focus from compensation to the prevention of injury and illness. Bill 99 is, for the first time, going to deal with health and safety.”

⁵ *Workplace Safety and Insurance Act, 1997* – Section 1

The Workwell audit was one program we found held employers accountable. In this program, auditors visited workplaces to review the Employers' health and safety programs. If Employers who "failed" the audit risked getting penalty assessments that were sometimes very large – hundreds of thousands of dollars. This penalty is what incented employers to prevent injuries and illnesses. Employers lobbied to take the teeth out of Workwell and in 2011, the compulsory component was removed as well as the penalties. These changes reduced the effectiveness of the Workwell program.

Our experience tells us that any incentive and penalty system and a new Rate framework system must also include in it an audit system to be effective and meet WSIB's number one mandate.

We propose the following:

- Employers be required to do an annual self-audit, in collaboration with their Joint Health and Safety Committees, and provide their report to WSIB, MOL, and their Joint Health and Safety Committee
- Where there is a union, the union will participate in the audit, which could be supervised by the JHSC – sign off by both the Union and the JHSC must be a requirement
- The audit would be carried out to a standard established by MOL
- MOL would carry out random audits of its own
- An external audit would be mandatory following a critical injury, fatality, and/or act of violence
- Incentive payments made in the year prior and year of a critical injury or fatality would be reviewed based on the results of the audit and recovered if the audit demonstrates deficiencies
- Apply penalties based on the audit findings

Therefore, a policy to determine an employer's premium rate ought to include and declare that rate settings will evaluate measurable efforts by employers to reduce injuries, to reduce occupational diseases and to encourage workers' safe return to work.

In our view, the consultation policy lacks sufficient detail to indicate, in any way, that a determination of an employer's premium rate includes demonstrating or implementing measurable efforts to reduce workplace accidents. Moreover, the policy references a two-step process that ignores health and safety awareness and does not motivate the employer to adopt robust health and safety programs from the initial stages of business development or afterwards.

In addition, without explicit and measurable benefit for the implementation of health and safety improvement in the workplace, employers are unlikely to value or appreciate the incentive. There is also the risk that employers will resort to reactive management approaches to claims mitigation, which increases the administrative burden on WSIB administrative resources and puts workers at risk.

OPM 14-02-06 – Employer Premium Adjustments

The policy should include an employer accountability measure to implement or maintain health and safety objectives and disability prevention in the Return to Work (RTW) process. These measures should underpin the calculation of adjustments to an employer's premium rate.

The inclusion of such a measure is consistent with the stated purpose of the *WSIA*, namely Sec. 1(1), "To promote health and safety in workplaces." Further, the accountability measure would accumulate actuarial data to evaluate if employer programs are accomplishing their stated purpose and create a feedback loop to reinforce successful health and safety prevention initiatives for similar employers to adopt.

In the Experience Rating System, ONA has always made a point of obtaining from WSIB data requests a yearly report of all employer rebates and surcharges. This report has assisted us greatly and our JHSC members in making health and safety improvements in the workplace. We are asking that in this new rate framework the WSIB develop a similar system that would allow for transparency so unions and JHSC members can obtain a report that indicates total premiums paid yearly and shows increases and decreases from the prior year.

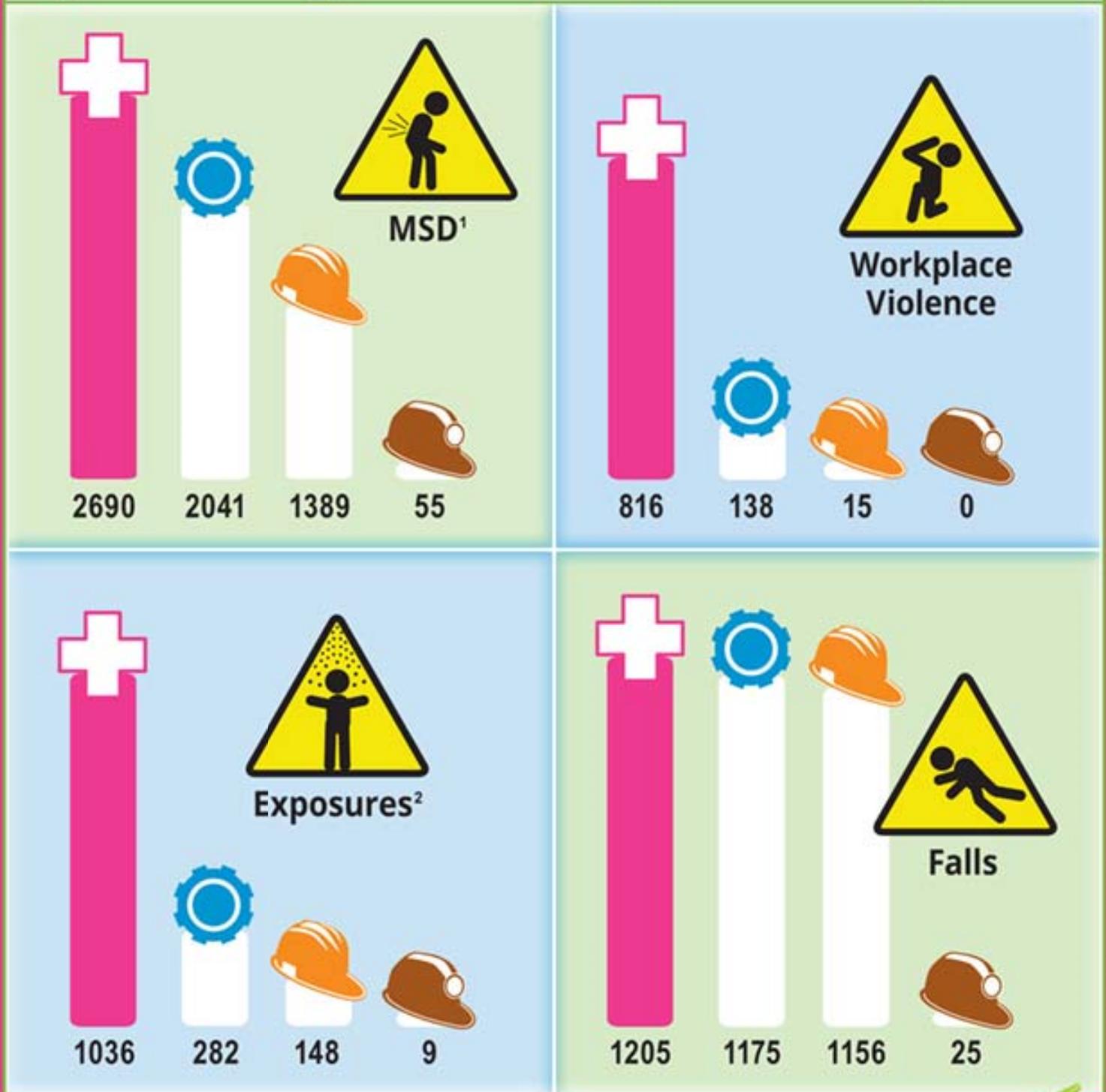
Conclusion

The final adopted policy to guide employer premium adjustments ought to include criteria that measures and audits an employer's promotion and action of safe workplaces and prevention of workplace injuries and illnesses. The WSIB would use the criteria to adjust and reward successful objectives with a lower premium rate (within their class) or increase premium rates, in a progressive manner for employers who disregard or fail to take similar meaningful steps and/or who fail the audit. WSIB must ensure as noted above that the yearly premiums and any increases or decreases are made available to Unions and JHSC on request and/or are publicly reportable.

Working in Health Care IS Dangerous

Comparison of Lost-time Injuries in Ontario, 2016, by Sector

+ Health Care
 ⚙️ Manufacturing
 👷 Construction
 👷 Mining



¹ Musculoskeletal Disorders (soft-tissue injuries to the low-back, shoulder, arm, etc.)

² Exposures may include infectious disease, medical waste, mould, radiation, etc.