

DISCUSSION PAPER

Construction Industry Experience Rating Pilot Project ("Construction Pilot")

March 25, 2003

DISCUSSION PAPER

1. TITLE AND DATE

The Construction Industry Experience Rating Pilot Project ("Construction Pilot")

March 25, 2003

2. ISSUE

At issue is the Workers' Compensation Board's ("the WCB") evaluation of the Construction Pilot.

3. BACKGROUND

3.1 The Construction sector

January 1, 2000, the WCB introduced a new classification and rate making system, which significantly reorganized the WCB's construction classifications. Under the new employer classification scheme, the construction sector comprises three sub-sectors – general construction, heavy construction, and road construction and maintenance. Firms in these sub-sectors are categorized in 65 classification units and 13 rate groups.¹ Two of the rate groups comprise firms in the construction and non-construction sectors, while the remaining 11 rate groups include construction sector employers only.²

3.2 ER2000

ER2000, also introduced January 1, 2000, is the WCB's experience rating program.³ The intent of this program is 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

¹ Forty-eight of the 65 construction classification units are in the general construction sub-sector.

² In 2002, the base assessment rates for the 11 construction-only rate groups ranged from \$3.57 to \$8.12, while the base rates for the two mixed rate groups was \$13.30 and \$14.60. (As per the Panel resolution that created it, only 2000 - 2002 data may be considered in evaluating the Construction Pilot.)

³ Set out in Assessment Policy AP1-42-1 (see Appendix A of this paper).

outcome is a reduction in the social and economic costs of work-related injuries and diseases.

ER2000 adjusts individual employers' assessment rates to reflect their claim cost experience. Employers whose experience is better than their rate group average receive discounts of up to 50% off their base premium rate. Employers whose experience is worse than their rate group average pay surcharges of up to 100% on their base premium rate. ER2000 improves on the previous "Experience Rated Assessment" program by preventing firms from flipping from maximum discounts to maximum surcharges in a single year. It also eliminates situations where employers would pay more than the cost of a claim in increased assessments, and makes it easier for small employers to protect their discounts.⁴

3.3 The Construction Industry Experience Rating Pilot Project

During the 1999 consultations on ER2000, the Council of Construction Associations ("COCA")⁵ expressed the belief that the maximum rate modifications for ER2000 were not appropriate for that industry.

At the December 1999 Panel of Administrators ("Panel") meeting, the Panel approved an interim experience rating project for all firms in the construction sector, known as the Construction Industry Experience Rating Pilot Project. The Panel resolution, signed on March 15, 2000, authorized a three-year pilot project that capped the maximum ER2000 surcharges and discounts at 33.3%, required the industry to participate in prevention programs, and obligated the WCB to evaluate the success of the program.

In October 2002, the Panel approved the extension of the Construction Pilot to the end of 2003. The purpose of this extension was to enable the Assessment Department to evaluate the Construction Pilot and report the results of the evaluation to the Panel in May 2003. The extension also enables the Assessment Department, with the assistance of the Policy and Regulation Development Bureau, to consult with stakeholders on the Construction Pilot.

⁴ For more information on the specifics of the ER2000 program, please see the "Experience Rating Discussion Paper" at the bottom of this page of our web site:
http://www.worksafebc.com/for_employers/premiums/experience_rating/default.asp

⁵ COCA represents 22 major construction associations and acts on behalf of the associations in workers' compensation matters.

4. LAW AND POLICY

4.1 The Act and the Assessment Manual

Section 42 of the *Workers Compensation Act* (the “Act”) authorizes the WCB to adopt a system of experience rating. It was under this authority that the Panel approved the ER2000 program and the Construction Pilot.

Since it was implemented, the ER2000 program has met its objectives of providing a fair system of incentives for firms of all sizes and levels of risk, as it offers a sliding scale of participation. Policy AP1-42-1 of the Assessment Manual⁶ outlines the main features of the ER2000 program. The Construction Pilot is a trial program that deviates from the regular ER2000 experience rating program as set out in the policy. Of the ER2000 features listed in the policy, the Construction Pilot differs on two points:

- The same ER plan applies to all employers and independent operators in rateable classes.
- The maximum ER discount is 50%. The maximum ER surcharge is 100%.

The Construction Pilot limits the discounts and surcharges possible for construction firms to 33.3%, making them different from any other industry in the way that they are experience rated. While this is the only difference in the way construction firms are experience rated from other industries, it has a significant effect.

One of the primary intents of the ER2000 program is to provide financial motivation for firms to maintain safe workplaces for their workers. The capped discounts and surcharges of the Construction Pilot reduce some firms' access to the incentives provided by ER2000. As time passes, more firms will reach the capped discount and surcharge amounts of the Construction Pilot, further reducing the effectiveness of the ER2000 incentives.

4.2 The Construction Pilot Panel Resolutions

The Panel resolution (#2000/01/21-02) that initiated the Construction Pilot identified the following four requirements for the program:

1. Contingent upon firms in the Construction Sector participating throughout the term of the pilot project in other WCB initiatives and/or special programs which have the purpose of reducing the frequency and/or cost of work-related injuries, diseases and deaths, effective January 1, 2000, all firms in the Construction Sector will be put into a three year pilot project

⁶ See Appendix A of this paper.

which has maximum experience rating surcharges and discounts of 33.3%.

2. All other components of the new experience rating plan will apply to firms in the Construction Sector.
3. During the 3 year pilot project, the Assessment Department will track what the assessment rates would have been for all firms in the Construction Sector if they had been subject to experience rating maximums of a 50% discount and a 100% surcharge. At the end of the pilot project, the WCB will evaluate the impact of the project on the Construction Sector.
4. For any rate group that is composed of classification units from the Construction Sector and at least one other sector, any additional experience rating imbalance that results from the different experience rating maximums for the Construction Sector will be accounted for through an appropriate adjustment to the base rate of the Construction Sector classification units in that rate group.

The Panel resolution that continued the Construction Pilot to the end of 2003 (#2002/10/16-04), extended the previously-set timeline in order allow the WCB to evaluate the criteria set out above and to consult with stakeholders throughout 2003 regarding the Pilot.

5. DISCUSSION

An evaluation of the requirements set out in the Panel resolution (listed above) is set out in the following sections. An example of another province's experience rating plan for construction firms is also provided.

5.1 Analysis of Construction Pilot objectives

5.1.1 Participation in WCB-sponsored prevention programs

Since the Construction Pilot's inception, the WCB's Prevention Division has launched and continued several health and safety programs with the construction sector. In addition, the construction sector itself has initiated various health and safety programs. Examples of the programs include:

- Continued communication, co-operation and consultation between the WCB and the BC Marine and Pile Driving Contractors' Association to facilitate regulatory compliance, and to provide education and training in occupational health and safety.
- The establishment of the BC Road Construction and Maintenance Safety Network, a safety association by the BC Road Builders and Heavy

Construction Association. In December 2001, the WCB approved the network's first year business plan.

- The establishment of the Construction Safety Association of BC (CSABC) by COCA and the WCB's approval in December 2002 of the CSABC business plan.
- Collaboration between the Prevention Division and the temporary construction labour agencies in the province to introduce training and higher standards to the temporary labour market.

There is concern among some stakeholders that if the WCB were to conclude the Construction Pilot and transition construction firms to the ER2000 program (which has more aggressive discounts and surcharges), the high level of co-operation between the WCB and the industry on health and safety issues would be undermined. Conversely, other stakeholders argue that the more aggressive experience rating plan under ER2000 would give employers in the sector a greater incentive to co-operate in health and safety activities in order to reduce assessment costs.

5.1.2 The capped discounts and surcharges: cost transfers

At the individual employer level, the Construction Pilot has affected the experience rating of a relatively small number of the more than 27,000 firms in the construction sector. Since 2000, the number of firms who have been eligible for higher discounts but have not received them by reason of the 33.3% cap has risen from zero to 32 (see Table 1, below). The number of firms who would have paid higher surcharges than 33.3%, but were capped at 33.3% increased from 25 to 66. While these two groups combined represent less than 0.5% of the employers in the sector, they represent about 7% of the sector's aggregate payroll of approximately \$3.1 billion.⁷

Large and medium sized firms⁸ with poor experience rating performance were the primary beneficiaries of the rate cap, while large and medium sized firms with exceptionally good experience rating performances did not receive as high a discount as under the ER20000 system due to the rate cap.

Capping the surcharges of firms with poor claim cost experience affects the base rates of all construction firms; as base rates must be raised to make up for the shortfall in collecting assessments that results from capped surcharges. In 2000,

⁷ About \$225 million of the total 2002 sector payroll of approximately \$3.1 billion.

⁸ For WCB, large firms are those that have assessable payrolls of \$1.6 million or more and base rate assessments of \$40,000 or more. Medium firms are those that are not large and which have assessable payrolls of \$600,000 or more and base rate assessments of \$12,000 or more.

the net effect was an increase of two cents per hundred dollars of payroll. This rose to three cents in 2001 and four cents in 2002.

Table 1: Fiscal results of Construction Pilot

	2000	2001	2002
Firms that would exceed the maximum surcharge if not capped	25	51	66
Firms that would exceed the maximum discount if not capped	0	14	32
Total surcharges not collected (\$ 000s)	\$628	\$948	\$1,376
Total discounts not credited (\$ 000s)	\$0	\$83	\$189
Net effect across all construction rate groups (\$ 000s)	\$628	\$865	\$1,187
Net effect as percentage of assessments paid	0.4%	0.6%	0.8%
Net effect on base rates for all construction employers	+\$0.02	+\$0.03	+\$0.04

While only about 98 employers were affected directly by the Construction Pilot in 2002, if the Construction Pilot continues the number of employers affected will increase each year. If the Construction Pilot ends, medium and large employers with poor experience rating who are currently protected from surcharges of more than 33.3% will see increased surcharges, while those with better performance will see increased discounts.

5.1.3 Correction of cost transfers resulting from the Construction Pilot in "mixed" construction and non-construction rate groups

One of the conditions the Panel set for approving the Construction Pilot was that within the two rate groups made up of construction and non-construction classification units, any experience rating imbalance that resulted from the Construction Pilot had to be absorbed by the construction sector classification units.

There are two rate groups in this category: CN and CS. Data on these mixed rate groups indicate that the Construction Pilot has not yet affected their base rates. Construction Pilot affected eight employers in these rate groups significantly over the three-year period. It protected three of them from paying a surcharge of more than 33.3%, and prevented five others from receiving discounts above 33.3%. The net effect of the Construction Pilot to the rate groups was approximately \$8,000 in discounts not distributed over the three-year period.

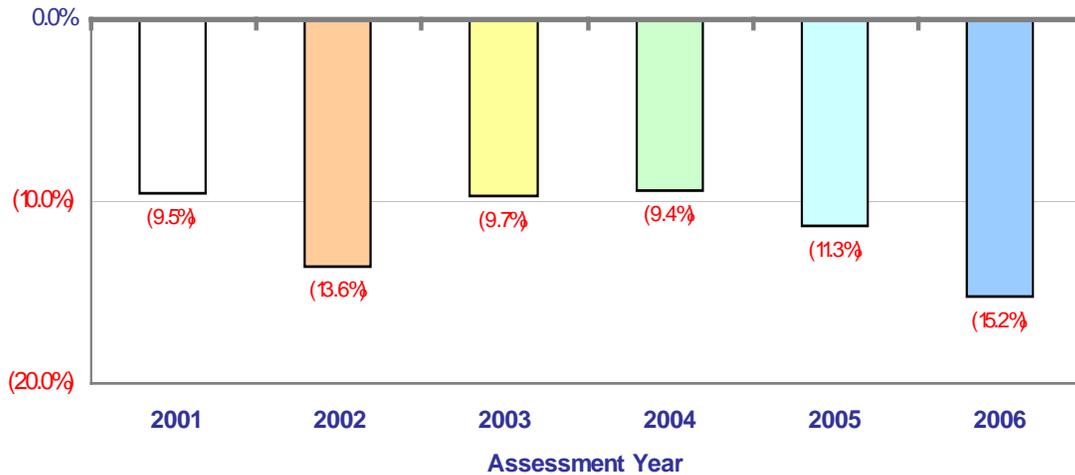
5.1.4 Impact of ER2000 and Construction Pilot on small employers

The average construction firm has \$110,000 annual payroll and typically has no claims. Some firms have expressed concern to the WCB that removing the 33.3% experience rating limits would expose construction firms, particularly smaller firms, to unreasonable rate changes if they were to have a single claim.

Since smaller firms usually have few or no injuries, the number and cost of their claims can fluctuate dramatically from one year to the next. The ER2000 system accommodates for this by protecting the discounts that small employers have earned over several years.⁹

Table 2, below, shows what a \$5,000 claim in 2001 would do to the experience rating of an average housing construction firm with no previous claim. In recognition of the firm's prior claims-free status, discounts of 9.5% and 13.6% had been applied to the 2001 and 2002 assessment years. The 2001 claim has its first impact on the 2003 assessment year. Rather than generating an unreasonable surcharge, the claim simply reduces the discount slightly to 9.7%. It should also be noted that even if the claim were \$50,000 or \$1 Million, the result would be the same.

Table 2: ER2000 example



Thus, in the ER2000 system, regardless of what the experience rating discount of surcharge limits are, small employers are protected from losing the discount they have earned over time. Only a sustained trend of claim costs over time would cause a small firm to lose its discount.

5.1.5 Construction industry feedback

The WCB has met with representatives from the Council of Construction Associations (“COCA”). COCA has advised the WCB of its preferences concerning the Construction Pilot. Input has also been received from some

⁹ For more information on the specifics of the ER2000 program, please see the "Experience Rating Discussion Paper" at the bottom of this page of our web site: http://www.worksafefbc.com/for_employers/premiums/experience_rating/default.asp

individual employers within the industry. Most recently, on February 17, 2003 WCB representatives met with COCA to discuss and identify the criteria to be used to evaluate the success of the Construction Pilot. At these discussions, four main criteria for this evaluation were identified as:

1. Consistency with the principles of ER2000
2. Obligations of the WCB as per existing signed Panel Resolutions
3. The impact of the Construction Pilot on the industry
4. The preference of the construction industry itself

5.2 Other Canadian jurisdictions

Most other Canadian workers' compensation boards do not have a separate experience rating program for the construction industry. The one exception is the Ontario Workplace Safety and Insurance Board ("WSIB"), which offers a special experience rating program for the construction sector known as the Council Amended Draft 7 ("CAD-7"). Ontario's program has been in place since 1984.

CAD-7 currently covers approximately 3,700 large employers who pay more than \$25,000 in annual premiums.¹⁰ Other features of the program include:

- A retrospective award system
- Discounts that vary from year to year between 30% and 45% and surcharges that vary from year to year between 65% and 90%, depending on the expected cost percentage in the construction industry
- A consideration of cost awards in the prior two years relating to accidents dating back five years
- A consideration of both claims cost experience and injury frequency
- Participation after one full year of experience

In recent years, both CAD-7 and the WSIB's general experience rating program, the New Experimental Experience Rating ("NEER"), have been criticized on several grounds. For example, it has been suggested that the experience rating adjustments are too small for small and medium-size employers, and that their methodology is too complex.

¹⁰ Small construction employers who pay between \$1,000 and \$25,000 in assessments were moved to the WSIB's Merit Adjusted Premium program in 2000.

In response to these and other criticisms, the WSIB is presently consulting with stakeholders on a number of changes to both the NEER and CAD-7 programs. There are two proposed changes to CAD-7: 1) adjusting the program window to review claims costs in five "accident years" independent of each other. Currently, the program reviews cost awards issued within two prior years relating to accidents going back five years; and, 2) elimination of the injury frequency component.

The WSIB intends to engage in consultation about modifying CAD-7 in the fall of 2003, and anticipates implementation in 2005 or 2006. Preliminary information on the proposed changes to CAD-7 indicate that the program will resemble ER2000 even more strongly than it does now.

6. OPTIONS AND IMPLICATIONS

6.1 Option 1: Continue the Construction Pilot in its present form

Under this option, the WCB would maintain the Construction Pilot indefinitely in its current form.

Implications:

- Construction sector firms with poor experience rating performance that are in a capped surcharge position will continue to be subsidized by other employers in the rate group
- Construction sector firms with very good experience rating performance that are in a capped discount position will continue to receive reduced discounts
- The number of employers at capped surcharge and capped discount will continue to grow
- Construction sector base rates will continue to incorporate increasing cost transfers

6.2 Option 2: Continue the Construction Pilot in a modified form

Under this option, the WCB would maintain the Construction Pilot indefinitely subject to possible modifications to the maximum discount and surcharge rates, or other modifications. For example, the WCB could increase the maximum discount and surcharge rates to 40% and 90% respectively. Other suggestions for modification from stakeholders will be reviewed by the WCB.

Implications:

- Depending on how it is modified, the Construction Pilot could have similar implications to the current situation, as in Option 1, above.

6.3 Option 3: Discontinue the Construction Pilot and adopt ER2000 for the construction industry

Under this option, the WCB would allow the Construction Pilot to conclude at the end of 2003. The construction sector would then be fully experience-rated under ER2000 beginning in January 2004.

Implications:

- All construction firms would no longer be subsidizing medium and large construction firms with poor experience rating performance
- All employers in the province will be subject to the same experience rating system. Accordingly, high-cost employers in the construction sector will pay more of their share of their cost of the system
- Construction sector base rates will be reduced since they would no longer incorporate cost transfers associated with the Construction Pilot

7. CONSULTATION

The WCB is requesting stakeholder input on this paper and options presented. The Board of Directors will consider the information gathered through this consultation process as part of its evaluation of the Construction Pilot. Please direct your comments on the Construction Industry Experience Rating Pilot Project to:

Gerry Paquette
Manager of Classification and Rate Modification Programs
Assessment Department
Phone: 604 244-6321
Email: gpaquett@wcb.bc.ca
Fax: 604 244-6161

We would appreciate your input and comments before April 11, 2003.

APPENDIX A - Policy AP1-42-1

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 experience, and are

applied to employers' assessments commencing January 1st of the following year.

- (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%.
- (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 WCB 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
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:	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> .
APPLICATION:	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 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.

Assessment Department Reply Form
Construction Industry Experience Rating Pilot Project

Introduction

The WCB is consulting with employers to evaluate the Construction Industry Experience Rating Pilot Project (Construction Pilot). The Board of Directors will consider your input into this project as part of its evaluation of the program.

The Construction Pilot is outlined in the attached paper, *The Construction Industry Experience Rating Pilot Project*. Please review this paper for a more in-depth look at the project.

Below, please indicate your level of support for continuing the Construction Pilot, either in its current form, or in a modified way. Please feel free to provide additional comments in the space provided.

Your contact information

Name: _____

Organization: _____

Telephone number: _____

E-mail: _____

Survey questions

Please put a check in the box next to your preference (check one only):

- 1) Option 1: I support the continuation of the Construction Pilot in its present form.
- 2) Option 2: I support the continuation of the Construction Pilot in a modified form.
- 3) Option 3: I do not support the continuation of the Construction Pilot.

Please comment on why you prefer the option you selected. If you chose option two, or have another option, please explain (if you need more space, please attach another sheet, or a letter):

Please provide your comments on the Construction Pilot and the evaluation undertaken by the WCB:

Thank you for your participation. Your responses will assist us in implementing the most equitable possible solution for the construction industry.

If you would like to discuss this issue, please contact:

Gerry Paquette
Manager of Classification and Rate Modification Programs
Assessment Department
Phone: 604 244-6321
E-mail: gpaquett@wcb.bc.ca
Fax: 604 244-6161

We appreciate receiving your input and your comments by April 11, 2003.