WCB Policy 31.05.20, Transfer of Assessment Rates and Claims Cost Experience on Change of Ownership

Administrative Guidelines

Please include the Board-Approved policy when referencing guidelines as they are intended to provide clarity and direction to ensure consistent administrative application of the policy.

These guidelines outline when claims cost experience and assessment rates will be transferred from one employer to another.

When a business changes ownership, it may be appropriate to transfer the claims cost experience and assessment rates from the old employer ("predecessor") to the new employer ("successor"). There may be other times when the change in ownership does not represent a continuation of the same business, and the transfer of claims cost experience and assessment rates is not appropriate.

These guidelines outline when to transfer the claims cost experience and assessment rates between two employers who are assigned to the same industry classifications.

- If the successor is classified in a different industry classification from the predecessor, any transfer of claims cost experience or rate of assessment will be made at the discretion of the Assessment Program Services.
- Where two or more active accounts with the same industry classification merge or amalgamate all or part of their business, their assessment rates may be recalculated based on a weighted average ("blended") assessment rate.

Change of Legal Entity

- Where an employer has changed their legal entity by incorporating, un-incorporating, or adding or deleting a partner, the ownership structure itself has not been substantially changed. In each of these cases, the employer's assessment account, rate and claims cost experience will remain as is.
- Where a sole-proprietor has passed away, change the legal entity to "The Estate of …" and close the account. Any successor would get a new account with the appropriate new firm rate.

Sale of Shares of a Corporation

- Corporations are owned by shareholders. When there is a change to the shareholder structure, there is technically a change to the ownership. However, the WCB would maintain the same account for a corporation despite changes in shareholders.

- Common shareholders are the owners; not those with "preferred" shares.
- A publicly-traded corporation, ownership is held by the "voting" shareholders only.

- If the shares of one corporation are purchased by another corporation, the employing entity will report payroll. For example, Company A buys the shares of Company B:
    - If Company A (the successor) pays the workers' earnings, their file will be adopt Company B's assessment rate and claims cost experience.
    - If Company B (the predecessor) is the employing entity, Company B's account remains open with the same assessment rate and claims cost experience.

Sale of Assets

- One employer has sold a substantial portion of assets to another. These assets can include equipment, vehicles, buildings, trade name, customer lists, etc.
    - If the predecessor has ceased operations entirely, the claims cost experience and assessment rate will transfer to the successor if the assets purchased are used to operate the business in "substantially the same form".
    - If the predecessor has only sold a portion of their assets to the successor, <u>both the claims cost experience and assessment rate</u> will be transferred if this portion of the predecessor's operations were:
        1. in a separate Industry Classification from their other operations, or
        2. reported under an associated legal entity with independent experience rating, or
        3. were in the same Industry Classifications as their other operations but:
            - had different cost centre(s) established for the assignment of claims pertaining to this aspect of the business, or
            - both the successor and predecessor agree which claims pertain to the transferred portion of the business.

        and the successor operates the business in "substantially the same form" (see below).

- If the successor does not meet the criteria in 1, 2 or 3, but does operate in "substantially the same form" and has the same industry classification as the predecessor on their account, the assessment rate will only be transferred if the experience of the transferring portion can be clearly identified (i.e. claims associated with the transferring portion can be identified). Otherwise, the employer will receive the new business rate of the industry they are classified under. For example, if a new account acquires some franchise locations from the franchise head office account, but the locations claims cannot be clearly identified or separated from the claims of the remainder of the head office account, then the new account would receive the new business rate of the industry they are classified under. Consider the answers to all of the following questions when determining whether the successor is operating in "substantially the same form":
    - Have they continued selling the same goods and/or services to the same or similar customer base?
        - When an employer continues to sell the same product or offer the same services, this indicates they are operating a similar business.
        - If the employer continues to have the same primary customer base, it is an indicator that they are operating a similar business.
    - Have they adopted the same or similar business name?
        - An employer that continues to use the same or similar name to generate work would suggest the continuation of a similar business.
    - Are the equipment, land and/or buildings purchased going to be used to produce the same product or service?
        - Although the employer may be operating the same equipment, using the same processes and work from the same location, if the end product or service provided is not substantially the same, they may not be operating similarly.
    - Are the same employees engaged to do the same type of work?
        - Specialists, professionals and skilled trades doing the same work for both owners would indicate the continuation of a similar operation.
        - If different employees are engaged to do the same type of work, it may still indicate a continuation of the same business with different employees. Compare the occupations of workers.
    - Did the business cease operating between the changes in ownership?

- Depending on the type of business, a break in operations can indicate a temporary suspension of the existing business, or it can reflect the closure of the existing business and the creation of a new business. Consider the length of the break as well as the type of industry involved. Some businesses can close for extended periods with no ill-effect to their customer base (e.g. restaurants), however others can lose substantial customers if closed for even a short period of time (e.g. manufacturers that make components for another manufacturer).

Appointment of Trustee, Receiver, Etc

- When an employer's operations, in part or in whole, become insolvent, often they will be operated by a third party for the purpose of winding the operation down and liquidating the assets. These third parties include trustees (for bankruptcies), receiver-managers (receiverships), liquidators, executors (where a death has caused the business to cease) or other administrators.
    - If these third parties employ workers to help operate the business while winding down the business, they will be provided a new file with the claims cost experience and assessment rate(s) of the predecessor.
        - If the third party only employs their regular workers and the business does not operate during the dissolution, they will not be required to register as this is an optional industry.
    - If the third party sells the business to another successor, the successor will inherit the claims cost experience of the predecessor and third party if they operate the business in substantially the same form as the predecessor (see the criteria outlined above under "*Sale of Assets"*.