

Section Title: Finance, Assessments and Administration - Assessments
Subject: Placement of Employers into Industry Classifications
Effective Date: January 1, 2018

POLICY PURPOSE

The purpose of this policy is to clarify the principles of employer classification and establish the criteria for when an employer will be classified under one Industry Classification or under more than one Industry Classification. It also establishes criteria on how the WCB will classify an employer whose business includes an optional component.

The Workers Compensation Board (WCB) maintains a classification system designed to place employers engaged in similar business activities into groups or Industry Classifications. This system helps to ensure that all Class E employers pay their fair share of the costs of the workers compensation system while adhering to collective liability principles.

Industry Classification is a critical step in the rate-setting process. When the WCB sets an employer's assessment rate, it first assigns each employer to the appropriate Industry Classification based on the business activities of the employer. Where an employer's business is engaged in a variety of business activities, the WCB may classify the entire operation based on the predominant activity, or may classify each Department separately.

Appendix A includes a glossary of commonly used terms.

A. POLICY

I. PRINCIPLES FOR CLASSIFICATION OF EMPLOYERS

The placement of employers into Industry Classifications is consistent with and upholds the principle of collective liability. The purpose of grouping together employers with similar business activities and similar levels of risk is to assist in setting fair and equitable assessment rates that best reflect the collective liability of that group.

Employer classification is based on the premise that an employer will be assigned to one Industry Classification unless the employer qualifies for more than one Industry Classification in accordance with the criteria established in this policy. As a general rule, an employer will be assigned an Industry Classification based on the employer's predominant business activity.

Whether mandatory or optional, all employers will be placed in an Industry Classification.

An employer's Industry Classification is determined by the employer's predominant business operation. It is not affected by the legal structure of the business or the various occupations within the employer's operation. The placement into an Industry Classification within the WCB's classification system follows a process which takes into account factors such as:

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- The employer's business activity;
 - Operational and production processes;
 - Use of similar equipment;
 - End products or services;
 - Customer base; and
 - Competitors.

When there is no clear fit or similar Industry Classification, the WCB will use its judgment to classify the employer into the Industry Classification that has the best fit. In doing so, the WCB may review the occupations of workers in the business, business locations or other information to get a better understanding of the employer's business activities in order to make a fair decision. When there is a requirement to use judgment, the WCB will give consideration to the fair treatment of other employers in the same industry.

The WCB may add, eliminate or amalgamate Industry Classifications from its classification system. The WCB may form additional Industry Classifications when an employer's business activities do not fall into any one of the existing Industry Classifications in the classification system. In deciding if a new Industry Classification is needed, the WCB will take into consideration whether the size of the Industry Classification is large enough to be statistically significant and if the size of the Industry Classification lends itself to reliable statistical analysis.

When an employer is operating in more than one business activity but **does not qualify** for multiple classification in accordance with this policy, the placement into an Industry Classification will be determined based on the predominant business operation. If the predominant business operation is not clear, the Industry Classification will be assigned based on such factors such as the principal sources of revenue or lines of production and any other measure that best represents that employer's business operations.

II. ASSIGNING AN EMPLOYER TO MORE THAN ONE INDUSTRY CLASSIFICATION (MULTICLASS EMPLOYER)

When an employer's business includes a number of different Separately Administered Departments undertaking different business activities, the employer will be assigned more than one Industry Classification if all of the following criteria are met:

- The Department is in a different operation than the predominant operation of the employer;
- The Department does not exist to service or support the predominant operation of the employer;
- The Department is not an ancillary part of the employer's predominant operation;
- The Department is able to stand on its own even if the predominant operation

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- ceased to exist;
 - The payroll records of Departments are easily identifiable; and
 - The payroll of the Department is 20% or more of the employer's total assessable payroll or a minimum of \$750,000.

The 20% payroll test and the minimum payroll threshold referenced above are determined by calculating average actual payroll over a three-year period.

On a periodic basis, the WCB will adjust the minimum payroll threshold listed above to reflect changes in the provincial industrial average wage as published by Statistics Canada.

This payroll threshold is linked to the payroll levels used to determine an employer's size (small, medium or large) as defined in policy 31.05.05, *Rate-Setting Model for Class E Employers*.

III. CLASSIFICATION WHEN PART OF THE BUSINESS IS UNDER OPTIONAL COVERAGE

OPTIONAL DEPARTMENT, SEPARATELY ADMINISTERED

When an employer engaged in a mandatory industry has a Separately Administered optional Department, as listed in Schedule A of the Manitoba *Regulation 196/2005, Excluded Industries, Employers and Workers Regulation* (the *Regulation*) and meets the six criteria set out in Section II of this policy, WCB registration is not required for the optional Department. If registered on a voluntary basis, the optional Department may be assigned to a separate Industry Classification.

If a Separately Administered optional Department, as listed in Schedule A of the *Regulation*, has coverage, and the workers serve both mandatory and optional aspects of the business, then payroll will be divided according to the percentages of mandatory and optional Departments to determine if the Department will qualify for a separate Industry Classification.

OPTIONAL DEPARTMENT, NOT SEPARATELY ADMINISTERED

If the optional Department is not Separately Administered, and represents less than 50% of the employer's total assessable payroll (including the optional payroll), the optional Department will be assessed as part of the employer's business and classified in the same Industry Classification. If the optional Department represents more than 50% of the employer's assessable payroll (including the optional payroll), WCB registration is required only for the Department engaged in the mandatory industry.

IV. GENERAL

Under policy 35.20.15, *Associated Employers*, the WCB determines whether two or more employers are associated when their businesses have shared ownership and are ancillary to each other. When the WCB determines that two or more employers do not share ownership but are ancillary to each other with the same goals or outcomes, they will be assigned an Industry Classification based on the combined business activities of the group.

The WCB may change an employer's Industry Classification when the employer's business undergoes a substantial change. This may be the result of change in an employer's business mix, addition of new business lines or operations terminated, modified or reduced.

When an employer is assigned to two or more Industry Classifications, any of the employer's administrative staff who do not perform work or services exclusively for a specific Department, will be deemed to be employed by all Departments. The assessable earnings of these administrative staff will be included in each Department's assessable payroll, in proportion to the Department's total direct assessable payroll.

B. REFERENCES

The Workers Compensation Act, sections 73 and 79, subsection 82(8)

WCB Policy 31.05.05, *Rate-Setting Model for Class E Employers*

WCB Policy 35.05.10, *Reporting and Verifying Payroll*

WCB Policy 35.05.20, *Paying and Refunding Premiums*

WCB Policy 35.20.15, *Associated Employers*

Manitoba Regulation 196/2005, *Excluded Industries, Employers and Workers Regulation*

History

1. Policy 35.20.10, *Criteria for Classification of an Employer Into More than One Rate Code*, formally established criteria classifying an employer under more than one sub-group effective January 1, 1990. Approved by Board Order 161/89 on December 12, 1989.
2. Policy amended to permit separate classification of a high risk component of an employer's business, effective January 1, 1991. Approved by Board Order 41/90 on November 29, 1990.
3. Policy amended to incorporate criteria formerly in "Assessment Guidelines" into the policy, effective January 1, 1992. Approved by Board Order 38/91 on December 17, 1991. Board Orders 161/89 and 41/90 rescinded.
4. Policy amended retroactive to January 1, 1992, to clarify application to employers with both compulsory and non-compulsory components. Approved by Board Order 42/92 on September 28, 1992.

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5. Policy clarified and re-written, effective October 1, 1994. Approved by Board Order 45/94. Board Orders 38/91 and 42/92 rescinded.
 6. On August 25, 2003, Page 4 #VI. General was amended to #V. General.
 7. Policy updated to reflect the proclamation of Bill 25, *The Workers Compensation Amendment Act* and passage of Manitoba Regulation 196/2005, *Excluded Industries, Employers and Workers Regulation*.
 8. Policy revised to: (i) Include additional criteria for multi-classification of employers; and
(ii) Exclude from this Policy **Section IV** “ASSOCIATED EMPLOYERS”.
The criteria for classifying an employer into sub-groups are different from the criteria for associating of employers. The effective date of revised Policy 35.20.10, *Classification of Employers into Industry Sectors and Sub-Groups*, is effective January 1, 2010.
Policy 35.20.15, *Associated Employers*, sets out the criteria for associating employers. The effective date of this Policy is January 1, 2010.
Approved by Board Order No. 23/09 on September 29, 2009.
 9. Minor formatting and grammatical changes were made to the policy, June 27, 2012.
 10. March 2014 - Reference section revised to Policies 35.05.10 *Reporting and Verifying Payroll* and 35.05.20 *Paying and Refunding Premiums* rather than the rescinded policy 35.00 *Reporting Payroll and Paying Assessments for the General Body of Employers*.
 11. Policy amended by Board Order 17/17 on June 28, 2017, effective January 1, 2018. Policy revisions include updated terminology to reflect the new Policy 31.05.05, *Rate-Setting Model for Class E Employers* and increasing the payroll threshold for an employer to be placed into more than one industry classification.

Appendix A - Glossary of Terms

Class E Employer: Those employers who pay for the costs of the workers compensation system based on their payroll and claim costs experience. These employers are subject to the collective liability provisions of the *Act*.

Department: Any part, branch, or division of an employer's business which operates in a separate industry that is not merely incidental to the employer's main industry.

Industry Classification: All employers are classified into an Industry Classification based on the nature of the industry in which the employer operates. This creates a grouping of like employers.

Separately Administered: A Department that has its own separate management, supervisory and administrative personnel with no significant exchange of management personnel with other Departments of the employer.