

WORK SAFE. FOR LIFE.
WORKERS' COMPENSATION BOARD OF NOVA SCOTIA

Practice Incentive Rebate Program
Final Program Policy Decision and Supporting Rationale

Date: June 2012

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Introduction

At the March 2012 Board of Directors' meeting, the Board agreed to initiate Stage 2 consultation with stakeholders on a new program policy for the Practice Incentive Rebate Program. Subsequently, the WCB posted the background paper and draft program policy to the WCB website and mailed the materials to individuals on the key stakeholder mailing list. The deadline for submissions was May 15, 2012. The WCB received 5 submissions from stakeholders (employers, employer associations, injured worker associations and labour) offering input on the proposed program policy. Also included in this consultation summary is feedback from 8 additional stakeholders that commented on the Practice Incentive Rebate Program as part of the consultation in January/February 2012 on the other Rate Setting Model Enhancements.

The Practice Incentive Rebate Program - Program Policy Background Paper can be found on the WCB website at www.wcb.ns.ca.

On June 27, 2012, the WCB Board of Directors approved the new *Program Policy 11.1.3 Practice Incentive Rebate Program* which outlines the rebate program criteria for employers operating in the Construction and Trucking industries. Please see Appendix A for the new program policy.

This report includes:

- Key issues raised by stakeholders during Stage 2 consultation on the proposed program policy and WCB response to these issues;
- Appendix A: WCB's final policy decision as reflected in the final version of Program Policy 11.1.3, and
- Appendix B: Summary of feedback received during Stage 2 consultation and from previous rate setting model enhancement consultation.

Key Issues Raised During Stage 2 Consultation and WCB Response

This section of the report summarizes the key issues raised by stakeholders regarding the proposed practice incentive rebate program and the WCB's response to these issues. For a detailed overview of input received from stakeholders, see Appendix B - Stage Two Consultation Summary.

Employers and Employer Associations

Stakeholder Issue #1: Risk of rebating firms prosecuted under OH&S Regulations

- Under the current proposed criteria for the program, you run the risk of rebating funds to firms who may be prosecuted by the Department of Labour and Advanced Education or those who have a history of non-compliance.

WCB Response: The WCB recognizes there is inherent risk of providing rebates to employers that could potentially be prosecuted under OH&S regulations. Linking the practice incentive rebate to OH&S prosecutions and investigations was considered as part of the development of the practice incentive rebate program, however, due to a lack of stakeholder buy-in for this during program development (some supported linking, some opposed) the WCB decided to defer linking at this time. Therefore, the WCB is not prepared to link the practice incentive rebate to OH&S prosecutions at this time but could consider this at some point in the future as the practice incentive rebate program expands.

Stakeholder Issue #2: More dynamic funding approach

- Should investigate a more dynamic funding approach for the program that would penalize the firms that continue to cause injuries and drive costs.

WCB Response: The WCB's experience rating program, including merits, demerits and surcharges, ensures that employers that continue to experience injuries and drive costs pay higher WCB premiums than their industry peers that show improvements in claims experience. Funding for the practice incentive rebate program will be industry based whereby employers in the construction and trucking industries that have successfully passed a health and safety certification audit will receive the appropriate rebate amount and those that do not will pay more WCB premiums to offset the rebated amount.

Employers and Employer Associations -and- Labour

Stakeholder Issue #3: No rebate for Surcharge Employers and those with no improvements

- Companies on the previous year's surcharge list should be disqualified from receiving the practice incentive rebate.

- In addition to having COR, an employer should also be required to reduce compensable claims and injuries to receive the rebate.

WCB Response: The intent of the practice incentive rebate program is to incent good safety behavior and encourage surcharged employers to implement health and safety systems. However, the WCB does agree that an employer should not be able to receive multiple practice incentive rebates if they continue to remain a surcharged employer, thereby continuing to have significantly worse claims experience than their industry peers.

The WCB proposes to provide an initial practice incentive rebate to employers that make the investment in getting accreditation for implementing health and safety systems, regardless of surcharge position or claims experience, in order to incent good safety behavior. However, the WCB also proposes adding criteria to the policy language to ensure that employers that continue to be surcharged three years following the initial rebate will be disqualified from subsequent rebates until they show improvement and/or are removed from the surcharge list. A three year window period is used because we recognize that it can take time to see improvements in the workplace and for those improvements to show up in claims experience.

Proposed new criteria to include in policy:

For surcharged employers, if they do not show a minimum of 25% improvement in their cost experience ratio three years following the initial practice incentive rebate received once surcharged, they will not be eligible for further rebates from this point forward until they can show this minimum improvement or until they are no longer in a surcharge position.

Stakeholder Issue #4: Is rebate meaningful for smaller employers?

- Concern about how this rebate could be applied to small and medium sized companies.
- There does not appear to be much incentive for small and medium sized employers.
- Concerned that the cost of completing a safety audit will exceed the amount of the practice incentive rebate as this would be particularly problematic for smaller organizations and would undermine the purpose of the rebate.

WCB Response: The costs of completing a safety audit will vary by the size of the organization and can range from as low as \$100 for a very small firm to thousands for a very large firm. In determining the calculation to use for the rebate, the WCB considered whether the rebate would be meaningful for smaller employers and whether the cost of the audit would exceed the rebate. By varying the amount of rebate by the size of the employer, the WCB has attempted to mitigate this risk as much as possible. A smaller firm (i.e. paying less than \$5,000 in WCB premiums) will receive a 10% rebate of their premiums while a slightly larger firm (paying premiums between \$5,001 and \$9,999) will receive a rebate of \$500.

Injured Workers' Associations

Stakeholder Issue #5: Program inconsistent with purpose of surcharge process

- Do not support this program in any way as a rebate program is inconsistent with the stated purpose of the surcharge process.
- Surcharges were designed as a financial lever to promote and encourage safe work practices with the aim of minimizing workplace injuries and the losses attributable to those injuries – this financial lever is removed by this proposed rebate program.

WCB Response: The WCB acknowledges that the Injured Workers' Associations are opposed to a practice incentive rebate program. We understand the rationale behind this decision to oppose the program and have considered this perspective in making our decisions. While we understand the perspective, we must make decisions regarding new programs by taking into consideration the perspectives of all stakeholders. The majority of stakeholders that provided feedback to this consultation either support or at least are not opposed to a practice incentive rebate program and for this reason we will move forward with the program.

Concerns regarding the surcharge program have been partially addressed above by adding criteria to the policy language to ensure that employers that continue to be surcharged three years following the initial rebate will be disqualified from subsequent rebates until they show improvement and are removed from the surcharge list.

Labour

Stakeholder Issue #6: What is a WCB approved audit provider & audit instrument?

- Do not understand what is meant by a WCB-approved audit provider or a WCB-approved audit instrument.

WCB Response: The WCB acknowledges that we did not adequately explain the concept of a WCB-approved audit provider and audit instrument in the background paper provided to stakeholders and understand how these terms could be confusing. To clarify, a WCB-approved audit provider is a health and safety service provider that is qualified to conduct safety audits. The fact that they are "WCB-approved" means that the audit provider has met the rigorous audit requirements outlined by the WCB in the WCB Standard. Currently, there are six WCB-approved audit providers in the province, including a mix of third party audit providers and safety associations.

A WCB-approved audit instrument is an audit tool that meets the 22 elements required to effectively audit a health and safety system, as outlined by the WCB in the WCB Standard. The audit instruments used by the above mentioned approved audit providers have met these requirements.

Stakeholder Issue #7: Criteria for fatalities should be 2-3 year window instead of one year

- Why use only a one-year window on fatalities, why not use 2-3 years as evidence of a sustained performance improvement? The same longer window should apply when an

employer is found guilty or pleads guilty to a serious offence under the *Occupational Health and Safety Act*.

WCB Response: As mentioned above, the intent of the practice incentive rebate program is to incent good safety behavior in employers. For employers that have incurred a fatality, this incentive to promote good safety practices is even more important as it is imperative that they put the right safety systems in place to prevent this from ever happening again. That being said, the WCB does not want to appear to be “rewarding” an employer for incurring a fatality – this was why the one year window for fatalities was added to the program criteria. By extending this window to 2 or 3 years, we are missing an opportunity to encourage these employers to take the necessary steps to create safer workplaces and prevent a fatality or serious injury from occurring in the future.

Appendix A – Practice Incentive Rebate Final Policy

(Additions based on Stakeholder Feedback are in **Bold and Underlined**)

PROGRAM POLICY

NUMBER: 11.1.3

Effective Date: June 27th, 2012

Topic: Practice Incentive Rebate Program for Construction and Trucking Industry

Date Issued: July 5th, 2012

Section: Prevention

Date Approved by Board of Directors: June 27th, 2012

Subsection: Practice Incentive Rebate Program

Preamble

The WCB's focus on injury prevention and safe and timely return to work recognizes that societal and cultural change is essential for creating a culture of health and safety in the workplace. The WCB encourages employers to implement effective health and safety management systems as an important step towards reducing the risk of workplace injuries and illnesses. The Practice Incentive Rebate Program gives an added incentive to employers classified in the construction or trucking industry to attain health and safety certification, to strengthen their commitment to safe work, to continue expanding worker knowledge of safe work practices through training and awareness, and to improve safety performance overall.

The Practice Incentive Rebate Program will apply to construction and trucking firms that meet the criteria established by the WCB and receive or maintain certification for effective health and safety management systems (i.e. Certificate of Recognition (COR)).

Employers with appropriate certification will be eligible for a practice incentive rebate in accordance with this policy.

Definitions

“assessment year” is the period from January 1 to December 31.

“qualifying year” is the assessment year preceding the year in which the practice incentive rebate for an employer may be awarded.

Policy Statement

1.

Program Eligibility Criteria

To qualify for the practice incentive rebate, an employer must meet the following requirements:

- Employer must operate in the construction or trucking industry, as defined and classified by the WCB;
- Employer must have a health and safety management system in place that has successfully passed a certification audit by a WCB-approved audit provider using a WCB-approved audit instrument;
- Employer must pass the certification audit and receive certification prior to December 31st

of the qualifying year;

- Employer must be in good standing with WCB of NS at the time the rebate is issued. This means the employer:
 - Has WCB coverage;
 - Has met all payroll reporting requirements; and
 - Has paid all premiums to date.
- Employer must have no compensable fatal claims during the qualifying year and up to the date the rebate is issued.
- **For surcharged employers, if they do not show a minimum of 25% improvement in their cost experience ratio three years following the initial practice incentive rebate received once surcharged, they will not be eligible for further rebates from this point forward until they can show this minimum improvement or until they are no longer in a surcharge position.**

An employer who does not meet the criteria established by the WCB will not receive the practice incentive rebate until the criteria are met, as determined by the WCB.

2.

Practice Incentive Rebate

An employer who obtains health and safety management system certification (i.e. COR) and who has met the criteria outlined in this policy will receive the following rebate:

- A 5 per cent rebate of assessment premiums paid in the qualifying year for employers with premiums of \$10,000 and above; or
- A 10 per cent rebate of assessment premiums paid in the qualifying year for employers with premiums of \$5,000 or less; or
- A \$500 rebate for employers with premiums between \$5,001 and \$9,999.

An employer is eligible for a practice incentive rebate each assessment year. To be eligible for subsequent practice incentive rebates an employer must maintain health and safety management certification (i.e. COR) and meet the eligibility criteria outlined above in section 1.

Application

This program policy applies to employers in the construction or trucking industry, as defined and classified by the WCB for 2013 onward.

References

Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 121(5).

Executive Corporate Secretary

Appendix B - Stage Two Consultation Summary

Outlined below is a summary of comments on the Practice Incentive Rebate Program submitted by various stakeholders in as part of Stage two and as part of previous consultation on rate setting model enhancements.

Employers and Employer Associations

- Generally feedback is positive. Such an incentive program is a welcome addition as employers have outlined the need to take a less punitive and more positive and proactive approach to workplace health and safety.
- Concerned that the cost of completing a safety audit will exceed the amount of the rebate as this would be particularly problematic for smaller organizations and would undermine the purpose of the rebate.
- Companies on the previous year's surcharge list should be disqualified from receiving the practice incentive rebate.
- Should investigate a more dynamic funding approach for the program that would penalize the firms that continue to cause injuries and drive costs.
- Under the current proposed criteria for the program, you run the risk of rebating funds to firms who may be prosecuted by the Department of Labour and Advanced Education or those who have a history of non-compliance.
- In addition to having COR, an employer should also be required to reduce compensable claims and injuries to receive multiple rebates.
- There does not appear to be much incentive for small and medium sized employers.

Injured Workers' Associations

- Do not support this policy in any way as a rebate program is inconsistent with the stated purpose of the surcharge process.
- Surcharges were designed as a financial lever to promote and encourage safe work practices with the aim of minimizing workplace injuries and the losses attributable to those injuries – this financial lever is removed by this proposed rebate program.
- Workers are living in enforced poverty due to workplace injuries and illnesses. Under the Act, workers receive only 50% inflation indexing, 75% and 85% of net earnings, loss of the first two days of time loss, et cetera. Yet, no incentives are being contemplated to reduce these penalties upon workers. In contrast the WCB is promoting rebates to employers for doing what they are legally required to do – maintain safe and healthy workplaces.

- The message the WCB should be sending is this: “If you, as an employer in Nova Scotia, continue to injure and kill your workers, you will pay.”

Labour

- Not necessarily against the proposed practice incentive program.
- Benefits to workers should not be negatively affected, nor should other sectors be footing the bill.
- In addition to COR, an employer should also be required to reduce compensable claims, accidents and injuries in order to receive the rebate.
- Concerned that third party or private-for-profit companies have to be used to conduct an audit of occupational health and safety systems when these could be done by WCB and/or provincial occupational health and safety staff.
- Do not understand what is meant by a WCB-approved audit provider or a WCB-approved audit instrument.
- Concerned that a lot of weight is put on the COR and question why the COR has never changed over the past 17 years or brought to a higher standard.
- Why use only a one-year window on fatalities, why not use 2-3 years as evidence of a sustained performance improvement? The same longer window should apply when an employer is found guilty or pleads guilty to a serious offence under the *Occupational Health and Safety Act*.
- Concern about how this rebate could be applied outside of the construction and trucking industries and how it could be applied to small and medium sized companies.