



Going Across the Border?

Here's how to manage Canadian Workers' Compensation claims

By Liz R. Scott, Ph.D.

For many employers in the U.S., Canada offers an attractive market for business expansion. Culturally and economically close, Canada shares a strong western economy, one of the world's largest disposable incomes, a higher paid price for goods, and on occasion, less competition for market share.

Even with all the advantages, businesses should also be aware of the risks when considering expansion across the border. Workplace legislation and the legal policies companies must follow are significantly different from those in the United States. Notably, the Workers' Compensation system has some unique and costly elements.

No employer wants to see an accident or injury in the workplace, but when they do happen, employers in Canada need to understand how to negotiate

the complex maze of the local Workers' Compensation Board.

The Canadian Workers' Compensation system

The Canadian Workers' Compensation system is more than 100 years old and was cultivated in the rich and hazardous landscape of a booming industrial and economic revolution. In 1910, Chief Justice of Ontario, Sir William Meredith, was asked to head a Royal Commission studying Workers' Compensation systems throughout the world.

In his Royal Commission report, Meredith said that the true aim of compensation law was to provide for both injured workers and their dependents. He identified five basic principles for a compassionate system: no-fault compensation, security of benefits, collective liability, exclusive jurisdiction and administration

by independent boards. The most significant of these was the idea of "no-fault compensation." This means the workers give up their right to sue their employers in exchange for no-fault income security in the event of a workplace injury. Employers pay for the system in return for protection against liability.

Today, the system in Canada is still built on the founding Meredith principles. It is a quasi-government run system, 100 percent employer-funded and provincially administered through individual boards. In each province these boards operate under different names and have different maximum benefit levels, legislative provisions, and penalty programs (*See Table*).

If not managed carefully, the cost of Workers' Compensation penalties can have a significant and serious financial impact on a company's bottom line. This often takes employers by surprise at the

end of the year when they receive a large bill that is due and payable in 30 days. The penalties are sometimes so heavy they wipe out entire profit margins.

To navigate rough (and potentially damaging) legislative waters, it is important for businesses to chart the cause of penalties and unique differences in each relevant province and map out the best course to manage risk.

In putting any strategy together, the following factors are particularly important to note.

The experience rating program

The majority of the Provincial Workers' Compensation boards have an experience rating program in place. The employer's premium is based on the perception of their risk and historical cost. If a company's experience is poor, it can more than double the premium cost for a business.

In Canada, these programs can vary quite a bit from province to province. In Alberta, there are two experience ratings programs (one for large and one for small employers). Next door in British Columbia, there is one program for all and in Ontario, there are three systems in place (one for small employers, one for construction companies and one with surcharge penalties or refunds for everyone else).

Most experience rating programs compare employers that are in the same industry classification. Groups are classified by the nature of work the employees perform. As a word of caution, a company may not always be in the correct group classification, so discovering and correcting this can sometimes lead to significant cost savings.

For example, in Ontario where the clothing retail rate is \$1.59 per hundred of assessable payroll, on a salary base of \$50

million the base premium would equate to \$795,000, but the year-end experience rating penalty could be up to \$1,000,000 due and payable 30 days from the receipt of the invoice.

There are specific strategies to contain these costs and manage claims. The stakes are high and the solutions sometimes hidden for employers not familiar with the system.

The role of consultants

Many employers will use consultants to assist in understanding legislation, claims management, cost control and the different appeals processes. In the province of Ontario, the representative must be a paralegal or lawyer licensed by the Upper Canada Law Society and working for a firm that is recognized by the Law Society. The Workplace Safety and Insurance Board (WSIB) will not deal with unli-

Province	Name	Maximum Assessable Earnings	Experience Rating Program
British Columbia	WorkSafeBC	\$78,600	Yes — Premium rate will increase or decrease based on experience up to 500% increase or 40% decrease
Alberta	Workers' Compensation Board of Alberta	\$95,300	Yes — Premium rate will increase or decrease based on experience up to 200% increase or 40% decrease
Saskatchewan	Saskatchewan Workers' Compensation Board	\$65,130	Yes — Premium rate will increase or decrease based on experience up to 100% increase or 25-40% decrease
Manitoba	Workers' Compensation Board of Manitoba	\$121,000	Yes — Premium rate will increase or decrease based on experience up to 200% increase or 40% decrease
Ontario	Workplace Safety and Insurance Board (WSIB)	\$85,200	Yearly penalty or refund based on experience. An invoice is issued for up to 200% of the premium at year end.
Quebec	Commission de la Sante et de la Securite du Travail (CSST)	\$70,000	Three-tiered program: 1. Yearly penalty or refund based on experience. An invoice is issued for up to 100% of the premium at year end. 2. Premium rate will increase or decrease based on experience up to 100% increase or 40% decrease. 3. Large employers can select "insurance level" to increase or decrease premium based on projected experience.
New Brunswick	WorkSafeNB	\$60,900	Yes — Premium Rate will increase or decrease based on experience up to 80% increase or 40% decrease
Nova Scotia	WorkSafe Nova Scotia	\$56,800	Yes — Premium rate will increase or decrease based on experience up to 60% increase or 40% decrease
Prince Edward Island	Workers' Compensation Board of Prince Edward Island	\$52,100	Yes — Premium rate will increase or decrease based on experience up to 100% increase or 25-50% decrease
Newfoundland	Workplace Safety and Compensation Commission	\$61,615	Yes — Premium rate will increase or decrease based on experience up to 100% increase or 20-40% decrease
Yukon	Yukon Workers' Compensation Health and Safety Board	\$84,837	None
Northwest Territory/Nunavut	Northwest Territory/ Nunavut Workers' Safety and Compensation Commission	\$86,000	Merit/Demerit program in place

censed representatives.

In Quebec, the language of choice at the CSST (Commission de la santé et de la sécurité du travail) is French, and it is very difficult to interact with the Board in any language other than French. Each Board holds its unique appeal system and the use of specific Workers Compensation consultants is very common at the appeal level.

Unlike the U.S., there are very few cases that involve employee lawyers, although there has been an increase in litigation since the legal field was given the ability to advertise. The legislation is not administered on precedent, but on the interpretation of legislative and operational policy provisions based on the individual merits of each case. The appeal system is generally a two- or three-level system with the final decisions preventing further appeal unless there has been a gross misinterpretation of policy.

Be aware (and beware) of legislation

The Canadian system is governed by a legislatively driven act and operational policy. The legislation and operational policy in each province outlines all key steps for compliance. This can be everything from defining who requires coverage to how permanent impairment awards are established.

In 2012, the government of British Columbia passed Bill 14 eliminating the phrase “mental stress” in favour of “mental disorder,” and included specific wording to deal with bullying and harassment in the workplace as a cause of such a disorder. It is common to see in a lot of Canadian legislation that an employer’s failure to manage risk associated with mental health can be just as serious as failing to manage risk associated with physical injury.

Canadian Workers’ Compensation legislation is complex and has many pitfalls for companies not familiar with them. In particular, companies should watch for:

1. Failure to offer return to work immediately. In many provinces, failure to offer return to work immediately and actively participate in an employee’s return to work program can result in additional penalties of up to a year of the injured

employee’s salary.

2. Third-party cost transfer and second injury funds. Third-party cost transfer and second injury funds are still alive and well in Canada, and if an individual has personal or past work-related limitations, some of the cost can be attributed to this fund instead of the employer’s individual account.

While the boards advise employers that they review all files for potential cost reductions; there is evidence to indicate otherwise. If employers want third-party cost transfer or access to second injury fund cost relief, it must be applied for with adequate documentation to support the rationale for these cost reductions.

3. Claims management. Claims management is an area of significant attention in the employer community. The various Workers’ Compensation boards have the final authority of any continuance of benefits and claim decisions. However, many employers either assertively manage the claims internally or hire external experts to assist in the management of files.

The consequence of not paying attention to claim initiation, claims management, return to work and financial management of workers’ compensation claims in the Canadian market can be financially crippling. In the last economic downturn, several companies reported the Workers’ Compensation penalty programs contributed to their bankruptcy and ultimate closure of their business.

How well-managed return to work programs help

Return to work is strongly advocated by most of the Workers’ Compensation boards in Canada. The exception is Quebec, where the physician still controls the lost time and ultimate return to work of the injured employee.

In Quebec, it is extremely important to have a French-speaking representative either internally or externally. The CSST has a 14-day waiting period where the employer is to pay the injured employee. This is the window of opportunity to affect the ultimate outcome of the file. Once it is taken over by the CSST, the legislative peculiarities make it the most difficult province to maneuver. The experience rating system is complex with three po-

tential levels. The cost consequences can be very high.

Some strategies can work extremely well for employers. For example, if the employee is injured and cannot return to a full job role, modified work (if available) should be offered immediately before lost time from the job can occur. No lost time is the goal for employers and the employee should always, and immediately, be focused on returning to work.

Accurate diagnosis and high touch communication involving the employee, any relevant healthcare providers, immediate supervisors and HR senior management yield the best results in return to work planning. If handled correctly, return to work coordination can dramatically reduce an employee’s time away from the job.

The ideal situation is for the return to be quick and safe, while ensuring it doesn’t lead to any relapse or further complications. Less lost time for employers often means better experience ratings, lower premiums and can even be the difference between receiving a rebate over a surcharge.

Permanent impairment

Sometimes an injury may be serious enough to be considered a permanent impairment and these awards are governed by the legislative provisions in each province. The permanent impairment awards in most provinces account for future earnings loss and pain and suffering. However, a few provinces separate loss of future earnings from pain and suffering and have very specific schedules for the calculation of these awards.

In most provinces an employee can have both a permanent impairment award and also be paid loss of earnings. This is often a point of contention and ultimately an area of appeal for employers.

The Canadian Workers’ Compensation system is very complex and U.S. businesses that operate in Canada or are considering expanding to the country must understand its intricacies. 📌

Liz R. Scott, Ph.D., owns and operates Organizational Solutions Inc., which offers employer Workers’ Compensation services. She can be reached at lscott@orgsoln.com.