



## WSIB Announces 2013 Premium Rate Increases

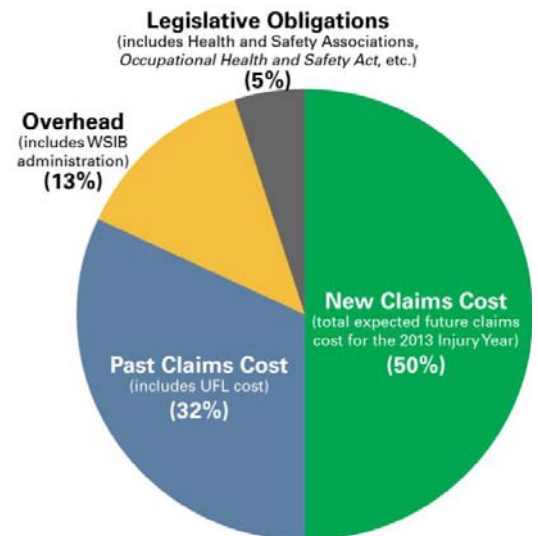
Ontario's Workplace Safety and Insurance Board (WSIB) recently announced that premium rates will increase by 2.5% for all employer rate groups in 2013. The WSIB maintained, in a recent news release, that the increased rate was necessary to "create stable and competitive premium rates for the future and ensure a sustainable workplace safety and insurance system for workers and employers. The increased rate, they claimed was necessary in order to reduce the WSIB's \$14.2 billion unfunded liability (UFL).

The UFL represents the difference between the funds the WSIB needs to pay benefits in the future and the money it actually has in the system. As a result of this UFL, WSIB Premiums in Ontario are among the highest in Canada. As a matter of fact, 30% of premiums go to pay interest on the UFL and over the past 13 years it amounted to an additional \$7 billion in employer premiums.

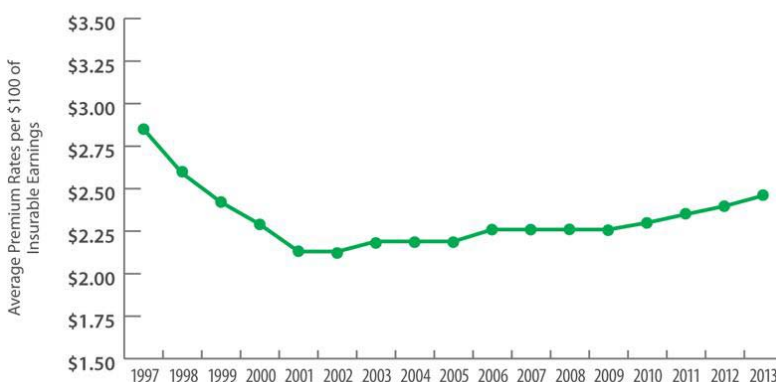
For numerous reasons, historically, premiums were not sufficient to cover the cost of claims which has placed an additional burden on current employers who are now faced with paying these legacy costs. In fact, the WSIB maintains that if not for the UFL, Ontario's premium rates would be the lowest in the country.

The WSIB argued that "while the premium rate increases for 2013 may add costs today, the retirement of the UFL will result in lower premiums and strengthened competitiveness for Ontario business in the longer run."

### 2013 premium rate components



History of Average Premium Rate



In its announcement the WSIB did not disclose what the maximum insurable earnings will be in 2013. Once the Board releases the actual rate group rates and the 2013 maximum insurable earnings we will make them available to all members.



### *The Mathews Dinsdale Minute*



Following up on our Minute from June where we discussed the fact that the Supreme Court of Canada is finally going to weigh in on the issue workplace drug and alcohol testing, an interesting turn of events has taken place. The Alberta Queen's Bench has issued an interim injunction preventing Suncor Energy from implementing a new random drug and alcohol testing program.

In June 2012, Suncor announced a program that would require all unionized employees in "safety-sensitive" or "specified" positions to be subject to mandatory random drug and alcohol testing. This covered approximately 85% of the workforce. The policy required testing such that at least 50% of the employees would be tested every calendar year (a staggering 1,445 tests) but also provided that any person tested would go "back into the pool" of names potentially subject to testing in the next round. This was obviously designed to ensure that employees didn't assume some period after a test was a free area where they couldn't be tested.

The Union grieved the policy and also sought an injunction from the Court preventing its implementation. They were successful. The Court concluded that the issue met the 3 step test for granting an injunction. There was a serious issue to be tried (the validity of the policy); that employees would suffer irreparable harm (in the form of being subjected to testing) which could not be remedied after the fact; and that the balance of convenience (in that Suncor had operated for a long time without the policy as opposed to the indignity of being subjected to the testing for the employees) favoured granting the injunction.

The Court appeared swayed by the fact the parties were heading to arbitration on the issue and that the Supreme Court was set to decide the Irving Pulp & Paper issue we wrote of in June.

As already stated, the Court considered the fact that Suncor had been operating for a long time without the policy, suggesting it may not have been as important as Suncor believed. However, this is, effectively, suggesting that if you haven't needed it before why do you need it now. Not the normal framework of analysis for workplace health and safety issues.

Employers are always faced with a dilemma. You are expected and required to keep your sites safe. Obviously, the presence of drugs and alcohol cannot be tolerated. Jurisprudence and legislation all speak of the importance of ensuring safety. However, testing programs are subject to significant challenges and decision maker imposed restrictions in virtually every case, making it harder to ensure the safety that is required. Perhaps you just can't win.

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