Ontario Getting $et to $queeze Employers

The fact that the Ontario Workplace Safety and Insurance Board (WSIB) funding deficit, which now stands at $12.36 billion, has reached “alarming” proportions is not news. But when the WSIB actually uses the word “alarming” in its own annual report, it’s a sign of just how serious the situation has become. Here’s what’s going on and what to expect.

The Workers’ Comp Crisis

As you all probably know, workers’ compensation is a mandatory insurance scheme that provides benefits to workers who suffer work-related injuries and illnesses regardless of fault. This way, workers don’t have to (and aren’t allowed to) sue their employers for negligence like they did in the old days.

Employers fund the scheme by paying premiums. In Ontario, the average premium is $2.35 per $100 assessable payroll, among the highest in Canada. But despite the high premium rates, the system’s running an enormous deficit and won’t have enough money to pay claims unless something’s done.

The newly published 2010 WSIB Annual Report’s conclusion that the funding deficit is problem number one is stating the obvious. The Report details the reasons for the problem, including the decline in premium revenue and increase in costs. Although most claims are still being paid within weeks, the WSIB faces the challenge of coming up with the money to pay the more than 160,000 locked-in claims involving payment of benefits over decades.

Workers’ Comp Reform & Impact on Employers

The WSIB Report describes the steps being taken to address the funding problem, including the appointment of the Arthurs Commission to recommend workers’ comp reform in late 2010.

On Jan. 19, 2011, the Arthurs Commission issued a Green Paper outlining the situation and what it intends to do about it, including the six big issues the panel plans to address:

1. **Funding:** How much money does the system need and where will it come from’
2. **Premium Rates:** How should the formula for setting premiums be changed’

3. **Rate Groups:** Is the current structure whereby employers in different industry classes pay different premium rates appropriate and how should it be changed’
4. **Incentive Programs:** How should incentive programs be changed’
5. **Occupational Diseases:** What occupational diseases should workers’ comp cover and how should these fastest growing claims be funded’
6. **Indexation of Partial Disability Benefits:** What indexation formula should be used to adjust the benefits of workers who are partially disabled’

What’s Going to Happen & When

The Commission held hearings through the spring and its report is expected to come out early in 2012—literally any day.

Meanwhile, the WSIB has been exercising its own initiatives to raise money. Among other things, the WSIB expanded the New Experimental Experience Rating (NEER) window that it uses to assess workers’ comp rates from three to four years. WSIB compares actual claim costs over the window period to an expected rate. Employers with costs above the benchmark must pay a surcharge; employers with lower costs are eligible for refunds. Extending the window to four years, which is retroactive to claims after Jan. 1, 2008, is essentially a hidden rate increase because the longer the window, the greater the likelihood that claims will be experienced.

Bottom Line

Ontario employers: If you thought the Dean Commission, Bill 160 and OHS reform were big stories last year, just wait for workers’ comp reform this year. What the WSIB Report does *not* say is what will soon become apparent once the Arthurs Commission issues its report: Ontario employers are going to be asked to foot much if not most of the bill for getting the system back in financial balance.

Go to the Ontario OHS Reform Compliance Center to stay on top of the latest developments in Ontario, including both the OHS reform process and workers’ comp reform.