

Via Email

August 4, 2020

Ms. Diane Weber, Special Assistant to
the Chair
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Dear Diane:

Re: Truncated NEER Issues - Unjust Enrichment and Detrimental Impacts

A. An outline of the issue

1. Further to our chat earlier today, an issue connected to and unique to Rate Framework (RF) transition has arisen that drives unfair detrimental impacts for NEER employers.
2. The closure of NEER in 2020 sparks what (likely) is an unintended consequence due to the technical workings of NEER.
3. *This is the problem in a nutshell:*
 - ◆ injury before 2020;
 - ◆ two or more NEER issues would normally follow;
 - ◆ worker has returned to work (RTW) in 2020;
 - ◆ claim will be counted as “active” for NEER purposes;
 - ◆ this elevates the future reserves for the final 2020 NEER issue; employer is denied impacts of successful Return to Work [“RTW”].
4. Normally, this is not a problem as under the normal NEER issue timetable, the claim would switch to “inactive” status in 2021, and the employer would be rebated the difference between the 2020 and 2021 NEER Issue projections.
5. The following example shows the 2020 NEER Issue results for a 2019 injury:

Date of Accident	Claim Type	Claim Age	Non-Pension Costs	Reserve Factor (RG 428)	Future Projected Costs	Overhead Costs (78%)	Limited NEER Costs
November 15, 2019	05	10	\$4,400	8.4403	\$37,137.32	\$32,399.11	\$73,936.43

6. In the normal course, on September 30, 2021 the claim would look as follows:

Date of Accident	Claim Type	Claim Age	Non-Pension Costs	Reserve Factor (RG 428)	Future Projected Costs	Overhead Costs (78%)	Limited NEER Costs
November 15, 2019	06	22	\$4,400	2.2279	\$9,802.76	\$11,078.15	\$25,280.91

7. In this case, the change from “active” claim type to “inactive” claim type makes a difference of \$48,656 (presuming a 100% rating factor).
8. Consequently, in 2021 this employer would expect a benefit of \$48,656 due to the successful RTW in early 2020. It will receive no benefit at all.
9. The closure of NEER in 2020, however, means that even though the employer did the work and effected the closure of the claim it will not reap any impact. This is unfair.

B. A simple and fair remedy is available:

1. We suggest that in all cases where a claim is finalized in 2020 the WSIB use its discretion to assign an inactive claim type for the final 2020 NEER issue.
2. We submit that this is a fair remedy as these claims would be assigned those same inactive claim types in 2021 in any case, were NEER not discontinued in 2020.

C. Summary

1. The situation set out is unique and transitory. It requires a creative remedy to ensure the Board is not enriched and employers are not detrimentally impacted through a change in policy.

Yours truly,



L.A. Liversidge