 Yukon Workers' Compensation Health and Safety Board	<b>Part:</b>	<b>Employer Assessments</b>		
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## **TRANSFER OF EMPLOYER EXPERIENCE ACCOUNT**

### **GENERAL INFORMATION**

An employer may reorganize, restructure or undergo a change in ownership. When changes of this nature occur, the Yukon Workers' Compensation Health and Safety Board (YWCHSB) determines, with due consideration to equity and fairness, whether to transfer, blend or close the employer's experience account(s).

### **DEFINITIONS**

- 1. Base Assessment Rate:** the assessment rate paid by all employers in an industry class prior to any incentive program or super-assessment adjustments.
- 2. Experience Account:** an employer account which indicates the assessments levied and the cost of all claims charged to the account.
- 3. Merit Rating:** a favourable rating obtained, when such a program is adopted, through maintaining a better than industry average experience account.
- 4. Risk:** the probability of an incident occurring from exposure to a hazard. Factors used to assess an employer's historical work environment as it relates to risk include the classification of the industry it conducts business in, the claims costs charged to the experience account (in terms of amount and frequency), the safety practices or safety violations it may have on record, operational exposure hours, etc.
- 5. Relatedness:** owners or employers not in an arms-length relationship.
- 6. Super-Assessment:** a surcharge to the assessment rate due to excessive claims costs to an employer experience account.
- 7. Undertaking:** includes the business operation's classification, and its business operation's processes and procedures.

## **POLICY STATEMENT**

### **1. Principles**

The *Workers' Compensation Act* S.Y. 2008 (the "*Act*") requires the YWCHSB to maintain an experience account for each employer, indicating the assessments levied and the costs of all claims. This in turn establishes the basis to set the assessment rate, apply super-assessments when adverse experience exists or determine merit ratings for favourable experience when such a program(s) is in place.

Costs of claims are equitably distributed through the principle of collective liability for the hazards reflected in an employer class. They may also be recognized through individual employer accountability for claims costs associated with the employer's experience account.

The policy approach taken is intended to ensure equitable treatment of employers. This policy provides a check against an employer altering ownership or restructuring in an attempt to remove itself from an adverse experience account and start anew. Such an approach is unfair to employers in that industry class who would absorb these costs of the adverse experience account under the principle of collective liability.

Alternatively, where an employer's positive safety practices have resulted in a favourable experience account, the experience account will be continued, where the criteria for transfer of an experience account are satisfactorily met.

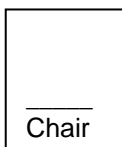
Therefore it is important to have a policy that allows the YWCHSB to determine the relationship between the previous and successor owners of an employer and one that allows the YWCHSB to blend experience accounts for two related employers in determining total experience.

In applying the *Act*, this policy considers the objectives of fair assessments to employers, maintenance of a solvent Compensation Fund and the treatment of employers and workers with respect and fairness.

### **2. Determining Ownership Continuity**

The YWCHSB staff will examine some or all of the following criteria in determining ownership continuity and whether the business is likely to continue substantially the same, with similar risk of industry hazard.

Where these criteria are met, the experience account will continue through transfer or blending of experience accounts. Where these criteria are not met, the experience account will be closed and charged to the industry class.

  
Chair

## Transfer of Employer Experience Account

### a) 51 per cent (51%) or More Continued Ownership

As the ownership of a business generally determines the nature of operations and approach to occupational health and safety in the workplace, a criterion in determining whether experience should be transferred or continued is whether there is a change in ownership.

Where there is 51 per cent (51%) or more continued ownership, the experience account should be continued. The industry classification will also remain generally the same. In these situations, it is assumed that business' relative hazard or cost of compensation remains the same.

### b) Exceptions

As an exception to the 51 per cent (51%) or more continued ownership rule, generally experience will not continue or transfer unless the YWCHSB is satisfied that the "business operations remain substantially the same", such that the risk and industry hazard are likely to remain unchanged. The industry classification will also remain generally the same.

This exception is primarily to address the following situations:

- i) Where the business ownership is relatively removed from the day-to-day operations and does not supervise staff and/or make management decisions. This is typically the case for a large publicly traded company where shareholder activity may result in a change in ownership, but does not alter the business operations.
- ii) The change is amongst existing owner(s). This includes changes in: partnership composition; a sole proprietor or partnership incorporating; a corporation changing to a partnership or sole proprietor; or changes between a partnership and a sole proprietorship. At least one related person(s) remains after the change and business operations remain substantially the same.
- iii) Where the new ownership is a "family member" of the prior ownership. Factors that will influence whether the experience will transfer include whether the undertaking remains the same, whether the new ownership has been historically involved, and whether the previous ownership will still be active in the business.

Indicators used in determining whether individuals or employers are related and whether the business is continuing substantially the same predominantly include: undertaking, executive officers, management, and staff. Other considerations

## Transfer of Employer Experience Account

include location, clients/customers, company assets, logo or trademarks, and whether the operational and financial control remains with the original owners.

The YWCHSB staff will interpret these indicators and weigh them in conjunction with the level of continued ownership in determining whether an account will be closed, transferred or blended, depending on the nature and extent of the change.

Blending experience accounts may occur when a relationship between two employers is found, such as between two amalgamating corporations. Accounts will be blended based on the sum total of payroll and claims costs charged to the employer for the year of amalgamation. Historical information of each employer would be on record and may be utilized for other programs or policies. This would include payroll and claims cost histories, indicating relative size and risk of each employer.

The time frame in which historical data will be considered is "within four years". This is congruent with those provided for under the *Act* relating to super-assessments.

### **ROLES AND RESPONSIBILITIES**

Employers who cease, commence or recommence in an industry are required to report such information to the YWCHSB under the *Act*.

When examining an experience account, the YWCHSB staff will consider evidence related to transferring or closing an experience account. They will then communicate the decision with its reasons to the employer(s) in writing. Employers do have appeal rights to an assessment decision.

The YWCHSB staff will make the employer aware that a transfer of an experience account continues the old experience account. Where adverse, the employer may be subject to super-assessment, and where favourable, the employer could receive merit rating, when such programs are in effect.

The *Act* permits the YWCHSB to levy a super-assessment on the employer's account within four years for excessive claims costs charged to that experience account.

### **APPEALS**

Decisions made by the YWCHSB under this policy can be appealed directly in writing to the Board of Directors of the YWCHSB in accordance with subsection 85(1) of the *Act*.

  
Chair

**ACT REFERENCES**

Sections 69, 70, 71, 72, 73, 80, 82, 85 and 90

**HISTORY**

AS-15, "Transfer of Employer Experience Account", May 11, 2004, revoked July 1, 2008.

AS-15, "Change of Ownership", January 1, 1993 under review, rescinded May 11, 2004.

**APPENDIX A**  
**Examples of Situations Applying the Policy**

**Situations where an experience account would transfer under policy:**

- 1) Where 51% or more of the employer's ownership remains the same, experience will transfer, assuming the employer's classification remains the same. This may include situations where a sole proprietor or partnership incorporates (or the reverse). At least 51% of the ownership must remain the same.
- 2) If less than 51% of the employer's ownership remains the same, experience will not transfer unless there is a degree of evidence that business operations will remain substantially the same under the indicators, primarily in undertaking, management and staff. This is to address situations such as:
  - Where the ownership is not involved in the day-to-day operations, and does not supervise staff and/or make operational management decisions. This most often describes publicly traded companies.
  - Where the change is amongst existing owners. This includes changes in partnership composition, a sole proprietor or partnership incorporating, a corporation changing to a partnership or sole proprietor, or changes between a partnership and a sole proprietorship. At least one related person continues and business operations remain substantially the same.
  - When the new ownership is a "family member" of the prior ownership. Factors that may include whether experience may transfer include whether the undertaking remains the same, whether the new ownership has been historically involved, whether the previous ownership is still active in the business.
- 3) Where the experience transfer is between companies, common ownership will be examined. Note that share transfers reassign ownership and asset transfers reassign business holdings.

ABC Ltd. (3 shareholders) dissolves and the shareholders form two new companies to take over the activities: 123 Ltd. (where 3 shareholders remain the same) and 456 Ltd. (where 2 shareholders remain the same). Experience transfers to both 123 Ltd. and 456 Ltd. from ABC Ltd. More than 51% ownership remains in the numbered firms, as well as continuing business operations in the same industry classification. (Consider each new firm on a case-by-case basis as a receiver.)

David Trent operates and is the sole shareholder of PQR Ltd. Mr. Trent closes down PQR Ltd., incorporates 789 Ltd., and operates the same business out of this new incorporation. Experience transfers to 789 Ltd. from PQR Ltd. When the business operations transfer to 789 Ltd., there is 100% common ownership between the two incorporations, and business operations continue in the same industry classification.

Newly incorporated 369 Ltd. (shareholder: Jim Smith) takes over business operations and shuts down these three firms: DEF Ltd. (2 equal shareholders: Jim Smith, Irene Davis) MNO Ltd. (3 equal shareholders: Jim Smith, Bob Jones, Bill Adams) XYZ Ltd. (2 equal shareholders: Jim Smith, Bob Jones) Experience may transfer from DEF Ltd. and XYZ Ltd. to 369 Ltd. Experience may transfer from closed account MNO Ltd. to 369 Ltd. As 50% ownership remains the same from DEF Ltd. and XYZ Ltd. (less than 51%) transfer of experience to 369 Ltd. is subject to the discretionary rules of continuing business operations (Consider each old firm on a case-by-case basis as a contributor.) MNO Ltd. may transfer experience to 369 Ltd. subject to the discretionary rules of continuing business operations, as 33% ownership remains.

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<p>UVW Ltd. (shareholders: Jim Smith, Irene Davis), active in classification A &amp; B, has JKL Ltd. (shareholders Jim Smith, Bill Evans) take over operations in UVW Ltd. in classification A only, and both firms remain active. Experience may transfer on classification A from UVW Ltd. to JKL Ltd. as long as UVW Ltd. classification A ceases operations and has an end date and JKL continues business operations subject the discretionary rules of continuing business operations (as less than 51% common ownership between firms).</p>
<p>UHF Ltd. (shareholders: Jim Smith, Irene Davis) sells assets only to OPQ Ltd. (shareholders Bill Adams, Bob Jones). No Experience transfer. (You may consider continuing business operations). There is no common ownership, as there was no transfer of shares. (If the assets transferred are fully functioning independent continuing business operations, and the shareholders of OPQ Ltd. are not directly managing day-to-day operations, then experience may transfer subject to a determination that the business operations continue unchanged.)</p>
<p>PIL Ltd. (shareholder: Bill Evans) acquires all shares of REM Ltd. Both firms have been active in the same class for a number of years. Mr. Evans shuts down PIL Ltd. and continues all operations (i.e. moves PIL Ltd.'s assets) through REM Ltd. Experience transfers from PIL Ltd. to REM Ltd. PIL Ltd. has an end date, as it is no longer operating. There is 100% common ownership between firms when the PIL Ltd. account shuts down, and business operations continue in the same classification unit. (Essentially the experience history of PIL Ltd. will blend with that of REM Ltd. for experience account purposes.)</p>
<p>JKL Ltd. (shareholder: SHU Ltd.) merges operations with SHU Ltd. under a new incorporation, 246 Ltd. (shareholders: Jim Smith, Irene Davis). Both JKL Ltd. and SHU Ltd. have employer accounts and are classed the same at the time they are shut down. The shareholder of SHU Ltd. is Jim Smith. Experience may transfer to 246 Ltd. from JKL Ltd. and SHU Ltd. JKL Ltd. and SHU Ltd. have end dates, as they are no longer operating. As less than 51% ownership remains the same from JKL Ltd. and SHU Ltd. to 246 Ltd., this is subject to the discretionary rules of continuing business operations.</p>