



Policy Amendment Proposal

EA-10 Transfer of Employer Experience Account

This policy amendment proposal relating to the transfer of employer experience accounts will reflect the issues consulted on during the engagement for the *Workers' Safety and Compensation Act* (the 'Act') and will align the amendments made in the new legislation.

The new Act comes into force July 1, 2022. The intended effective date of the proposed policy amendments will be July 1, 2022.

The proposed amended Transfer of Employer Experience Accounts policy will reflect minor changes to ensure consistency with the provisions of the Act.

A five-year policy review plan will be developed later in 2022. After July 1, 2022, all amended policies to align with the new Act will be prioritized for a more detailed review.

The purpose of this policy is to outline how the relationship between the previous and successor owners of a business are determined and allows for experience accounts to be blended for related employers in determining total experience.

Relevant sections of the Act

The following sections of the Act are relevant:

- 147 employer ceasing its business

Proposed minor changes to this policy are highlighted in yellow

- changes to section references, language and definitions

Board Orders/Regulations

N/A

Current policy

[EA-10 Transfer of Employer Experience Account](#)



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The board of directors is providing this policy amendment proposal to stakeholders seeking their input, comments, questions and suggestions.

Some questions for consideration:

1. Are there any general comments about this policy proposal?
2. Are there any gaps in this policy proposal?
3. Additional comments?

The views of our stakeholders are important to us. All feedback will be considered prior to the board of directors approving any amendments.

Engagement on this policy proposal closes on **April 30, 2022**. Please provide your feedback by:

1. Downloading a [fillable form](#) on our website and sending it as an attachment to Policy.Feedback@wcb.yk.ca
2. Emailing comments directly to Policy.Feedback@wcb.yk.ca
3. Receipt in our building by April 30, 2022, by mail or drop off at
*Yukon Workers' Compensation Health and Safety Board
401 Strickland Street
Whitehorse, Yukon Y1A 5N8*

By the end of May a summary of all feedback on this policy amendment proposal will be published on our website at www.wcb.yk.ca



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Preventing work-related injuries is the most important job in any workplace. The *Workers' Safety and Compensation Act* establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

Purpose

This policy outlines how the relationship between the previous and successor owners of a business are determined and allows for experience accounts to be blended for related employers in determining total experience.

Definitions

board means the Workers' Safety and Compensation Board

employer means every association, corporation, individual, partnership, person, society or unincorporated organization or other body having in their service one or more workers in an industry and as further defined in section 77 of the Act

experience account means an employer account which indicates the assessments levied and the cost of all claims charged to the account

payroll means the total amount of all wages and salaries that an employer paid to its workers during a calendar year, including: commissions, tips, remuneration for overtime, piece work, and contract work, bonuses and allowances, the cash equivalent of board and lodging, store certificates, directors fees, indemnities, allowances paid to members of the Legislative Assembly or elected officials of a municipality, and any substitute for money

risk means 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.

super-assessment means an assessment over and above an employer's ordinary annual assessment that covers, in whole or in part, their higher than normal claims costs

undertaking means the business operation's classification, and its business operation's processes and procedures

worker means a person who performs work or services for an employer under a contract of service or apprenticeship, written, or oral, express or implied and as further defined in section 77 of the Act



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Policy Statement

1. General

When an employer reorganizes, restructures or undergoes a change in ownership, the board determines whether to transfer, blend or close the employer's experience account(s).

Under the Act, when an employer commences or recommences in an industry in Yukon, they must provide the board, within 10 days, with a statement that includes the following information:

- a. the total payroll for the employer's workers for the immediately preceding year;
- b. an estimate of the total payroll for its workers for the current year or any part of it as the board directs;
- c. the nature of its industry;
- d. a list of all subcontractors and the amounts paid to them; and
- e. any additional information that the board may require.

When a person or body ceases to be an employer they must notify the board within 10 days after they cease to be an employer and, at that time, must provide the board with a statement of their total payroll for the year.

2. Principles

The Act requires **the board** 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, and apply super-assessments when claims costs are higher than normal and there are inadequate prevention practices.

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

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.



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3. Determining Ownership Continuity

The board may 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.

51 per cent (51%) or More Continued Ownership

As the ownership of a business generally determines the nature of operations and approach to workplace 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.

Exceptions

As an exception to the 51 per cent (51%) or more continued ownership rule, generally experience will not continue or transfer unless the board 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 the same.

This exception is primarily to address the following situations:

- a. 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.
- b. The change is amongst existing owner(s). This includes changes in: partnership composition; a proprietor or partnership incorporating; a corporation changing to a partnership or proprietor; or changes between a partnership and a proprietorship. At least one related person(s) remains after the change and business operations remain substantially the same.
- c. 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.



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

Board 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 used for other programs or policies. This would include payroll and claims cost histories, indicating relative size and risk of each employer.