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Audit slams Ontario workplace safety rebates

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The provincial insurance program that is supposed to promote safe workplaces needs to be immediately fixed and possibly replaced, says a sweeping review that could affect tens of thousands of Ontario businesses.

The audit of the Workplace Safety and Insurance Board's incentive program confirms the findings of the *Toronto Star's* multi-part *Working Wounded* investigation published over the past year.

The review, commissioned by the WSIB, says dangerous companies are getting cash rewards and many employers are exploiting the WSIB's incentive program at the expense of injured workers.

It urges the WSIB to make chief executives more accountable.

Workers remain at risk unless this and other changes are made "as soon as possible," the review warns.

The authors say the WSIB should consider replacing the flawed incentive program with a new "world-class" incentive system even if it takes years to accomplish.

"Finally we have some vindication," said Wayne Samuelson, president of the workers' advocate group Ontario Federation of Labour.

"For those of us who have been raising this issue for almost a decade, it reinforces what we have been saying, and reinforces what the *Toronto Star* has done. And it cries out for action."

The incentive program – known in WSIB circles as the "experience rating system" – began in 1985 to make companies safer by using a penalty-rebate ("carrot-stick") approach. The system looks at the "experience" of each company.

Premiums are based largely on the expected cost of a company's claims for the year. If lower than projected, the company gets a rebate. How much lower determines the amount of the rebate. If a firm's insurance costs exceed expectations, it is hit with a surcharge.

From 1998 to 2007, refunds to employers exceeded surcharges by \$880 million.

Though employers benefit from these "significant financial incentives," the report questioned whether the WSIB is doing enough to protect workers.

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TORONTO STAR GRAPHIC

Star series triggered sweeping review of Ontario's workplace safety policy.

A four-person team from Toronto firm Morneau Sobeco began its look at the program last June, after the *Star* revealed companies guilty of fatal safety violations received large cash rewards – a practice Premier Dalton McGuinty called "an embarrassment."

And around the time Morneau Sobeco started its review, the *Star* revealed companies were saving money by hiding injuries and rushing the wounded back to work.

Prompted by the *Working Wounded* investigation, the WSIB last summer made new policy by banning rebates to employers where a worker is killed on the job.

The policy says an employer will not get a rebate in the year of a fatal accident, regardless of whether the firm broke a safety law.

But the review says the incentive program could be made "considerably more effective."

Firms with non-fatal safety violations continue to receive rebates, causing what report authors call a situation where "employers may be entitled to rebates ... while at the same time being non-compliant with their regulatory obligations."

The review found that from 2005 to 2007, 73 firms that received rebates were convicted of safety offences leading to a fine.

The report suggests a safety conviction should automatically trigger a WSIB audit that could result in corrective action if a minimum audit score is not met. Otherwise, a rebate owed to the firm will not be issued.

The review encouraged the WSIB to also consider a tougher stance – withholding a refund the year of a conviction, if not longer.

The review authors said they also have a "reasonable sense that it is not uncommon" for companies not to report injuries.

And some employers admitted advancing wages – paying a worker for the time he or she misses due to injury. This form of self-insurance can result in the WSIB not classifying the injury as "lost time," even though the worker did miss work.

The report suggests the WSIB should curtail the practice that allows some firms to pay workers to stay home in exchange for a no-lost-time classification.

A lost-time injury is one that causes a worker to miss at least one shift of work.

The reasons for avoiding reporting such injuries were made clear in a *Star* investigation published last summer: The WSIB considers lost-time injuries a sign of a possibly unsafe workplace, so its incentive program places a heavy emphasis on reducing them.

Under the program, the longer a lost-time injury persists and the prospect of future claim cost grows, the greater the expense to the company. Shortening this lost time or avoiding reporting it can lead to a WSIB rebate.

Data analysis by the *Star's* Andrew Bailey found that at least 11,000 worker injuries were downplayed or improperly handled over a seven-year period, including 3,000 amputations, fractures, dislocations, bad burns and other injuries, that companies reported as resulting in not even one day off work.

At the time, WSIB chair Steve Mahoney said the *Star's* findings proved exceptional behaviour, not the rule.

Morneau Sobeco's report calls for a "robust system of checks and balances" to make the incentive program "credible and fair," including requiring a company's CEO or other senior official to sign an

annual declaration of compliance with Workplace Safety and Insurance Act, as well as the Occupational Health and Safety Act.

Rebates owed to the firm under the incentive program will not be paid if the WSIB cannot confirm compliance.

The review also suggested the WSIB consider levying a surcharge in such cases.

Meanwhile, the effect of advanced wages reaches beyond the facilities of the offending company. The practice is dangerous because government agencies rely on lost-time injury data to measure the state of Ontario's workplaces and guide enforcement.

The review suggests the WSIB consider eliminating the distinction it makes between no-lost-time and lost-time injuries.

A WSIB spokesperson said before making any changes, Mahoney will consult with the workers and employers who would be affected.