

Section Title: Finance, Assessments and Administration – Accounting & Finance
Subject: Cost Relief/Cost Transfers
Effective Date: For all decisions made from October 1, 2014 to December 31, 2017

A. POLICY PURPOSE

In setting assessment rates, the WCB's rate setting model considers an employer's individual cost experience and collective costs. To ensure fairness, accountability and responsibility among employers, some claim costs should be removed from an individual employer's cost experience and shared by a larger group of employers or transferred to another employer. When claim costs are removed from the accident employer and charged to a collective cost pool, this process is called cost relief. The cost transfer process occurs when claim costs are removed from the accident employer and charged to another employer.

The Workers Compensation Act (the *Act*) provides for the removal of claim costs in whole or in part from the accident employer in a number of circumstances. The *Act* also establishes a fund to apportion these pooled costs among employers. This policy describes the circumstances under which cost relief/cost transfer is provided to eligible employers, and how those relieved costs are subsequently shared by other employers or groups of employers through the assessment rate-setting process.

The Schedules form an integral part of this policy.

B. POLICY

1. THE COST RELIEF/TRANSFER PROCESS:

Based on information provided, the WCB will routinely consider and process cost relief and cost transfers where the employer is eligible under this policy.

Eligibility

Class E employers are eligible for cost relief and cost transfers as provided in all Schedules.

Self-insured employers who do not contribute to the Cost Apportionment Fund are not eligible for cost relief, except in the case of claims filed by participants in recognized work-experience programs. Self-insured employers are eligible for cost transfers under Schedules E and F.

This policy does not apply to employers covered under the *Government Employees Compensation Act*, unless provided by separate agreement.

Cost Removal Situations

Initially, all claim costs are charged to the cost experience of the accident employer. Cost relief or cost transfers may be provided for some or all of those costs according to the criteria within this policy. The cost relief or transfers may include costs charged to an employer's cost experience in prior years.

Cost relief/cost transfer provided during each rate-setting year will be allocated in the same rate-setting year to the most appropriate class, sub-class, group or sub-group of employers and will be used in determining assessment rates for the following year. The allocation methods and criteria are described in general terms within the policy schedules.

a) Cost Relief is available to eligible employers in the following situations:

- (i) When the claim is either caused by a pre-existing condition or is significantly prolonged by the pre-existing condition. The cost relief criteria and method of cost allocation are described in Schedule A.
- (ii) When the claim involves higher compensation costs not attributable to the accident employer. Circumstances when cost relief will be considered include:
 - When there is a recurrence of the effects of a previous injury or illness when a worker is employed with a new employer and the worker's net average earnings at the time of the recurrence are greater than the net average earnings at the time of the original accident when adjusted according to the indexing provisions of the *Act*.
 - When the worker has two or more jobs at the time of the compensable accident.
 - When the worker's average earnings on which wage loss benefits are paid are increased by the WCB when the worker is an apprentice or a youthful worker.
 - When a worker is employed with a new employer at date of death and the WCB adjusts the deceased worker's net average earnings to an amount that exceeds the worker's net average earnings (indexed) at the day of accident.

The cost relief criteria and method of cost allocation are described in Schedule B.

- (iii) When a subsequent compensable injury occurs outside the workplace while the worker is already receiving benefits and the second accident extends the period of time loss. The cost relief criteria and method of cost allocation are described in Schedule C.
- (iv) When the claim cost includes rehabilitation program expenditures incurred for:
 - preventive rehabilitation measures; or
 - a further injury that occurs while the worker is in a vocational rehabilitation training program or job placement.

The cost relief criteria and method of cost allocation are described in schedule D.

- (v) When the claim costs unfairly burdens an employer, the WCB may exclude all or part of these costs from a Class E employer's cost experience. The cost relief criteria and method of cost allocation are described in schedule H.
- (vi) When the worker is a person participating in a work experience program under section 77.1 of *Act* and the program is recognized by a Board Order as set out in policy 35.10.60, *Coverage under a Work Experience Program*. The overall claims costs will be shared by all Class E employers and self-insured employers.

b) Cost Transfer is available to eligible employers in the following situations:

- (i) When the claim involves cumulative trauma or long-latency occupational disease. The cost transfer/relief criteria and method of cost allocation are described in Schedule E.
- (ii) When the claim involves negligence of another employer or the worker(s) of another employer. In exceptional circumstances involving negligence the accident employer may be eligible for cost relief when a cost transfer is not appropriate. The cost transfer/relief criteria and method of cost allocation are described in Schedule F.
- (iii) When the WCB pursues a third party action on behalf of a Class E employer or cost sharing with Manitoba Public Insurance for a motor vehicle accident. In certain circumstances, cost relief may be provided when the WCB determines that no action will be taken. The cost transfer/relief criteria and method of cost allocation are described in Schedule G.

2. APPLICATION:

Cost relief/transfer occurs when some or all of the claim costs are removed from an accident employer's cost experience. This removal causes a cost credit in the employer's cost experience and revises the total costs used to calculate the employer's rate. If an adjustment to the claim costs is sufficient, the employer can qualify for an assessment rate decrease.

Under normal circumstances cost relief/transfers will only be considered on claims that have affected the employer's assessment rate within the prior five rate setting years. However if an employer's claim costs are affected by fraud, or other exceptional circumstances as determined by the WCB, assessment rate adjustments can be made beyond the previous five years up to the current year.

a) Current Year Claims

When a current year claim qualifies for cost relief/transfer, the revised claim costs will be used to calculate the employer's assessment rate for the following year.

b) Prior Year Claims

When a claim that originated in a previous year qualifies for cost relief/transfer, the amount of claim costs removed must be greater than the threshold amount established by regulation before an employer's prior years' assessment rates can be affected. For prior year claims:

- If the cost relief/transfer is **less than the threshold amount**, the claim costs credit will be applied to the current rate-setting year's claim costs. The revised claim costs will be used to calculate the employer's assessment rate for the upcoming year.
- Beginning in the year the cumulative cost relief/transfer **reaches or exceeds the threshold amount**, the cost credit will be applied to the claim costs used to calculate that year's assessment rate. If the claim was ongoing and affected following year's assessment rates, cost credits will be applied to the claim costs in any affected subsequent years' assessment rate calculation. Any affected year's assessment rates will be recalculated based on the revised claim costs.

The threshold amount is equal to the amount set in subsection 28(2) of the *Act* and indexed annually by section 44. *The Adjustment in Compensation Regulation*

displays these threshold amounts. Appendix A reproduces these amounts by rate-setting year.

The application of employer cost transfer and relief for claims involving negligence, third party actions and motor vehicle accidents is set out in Schedules F and G.

3. DEFINITIONS:

Accident Employer is generally the employer of the worker at the time of injury. For occupational disease or cumulative trauma claims, long periods of exposure or activity are often necessary before the disease/condition develops. The worker may no longer be employed with the employer where the exposure or activity occurred. In these cases, the accident employer will be the last employer where the worker had exposure or performed the activity contributing to the disease or condition.

Cost Transfer means claims costs are moved from the cost experience of the accident employer to another employer.

Cost Relief means claims costs are moved from the cost experience of the accident employer to a collective cost pool.

Cost Allocation is the process by which costs moved to a collective cost pool are shared among employers who contribute to the pool.

Rate-setting Year refers to the 12 month cost experience of employers which is used to establish assessment rates for the following year. The rate-setting year is October 1 to September 30.

Class refers to Classes A to E as defined in subsection 73(2) of the *Act*.

Class E, the general employers' pool, is sub-divided into sub-classes, groups and sub-groups.

"Sub-class" refers to a collection of specific industries within Class E with relatively similar cost experience or risk. Each sub-class forms a collective pool for assessment rate setting purposes. These collective pools (sub-classes) are referred to as "rate categories."

"Group" refers to broad industrial classifications of similar activities within Class E. In rate setting, certain costs are allocated to employers based on group.

"Sub-group" refers to the more specific breakdown of the broad industrial classifications within a group. Sub-groups are assigned to an appropriate sub-class (rate category).

Self-insured employer refers to an employer covered under Class B, C or D. Class A presently contains no industries.

Class E employer refers to an employer covered under Class E.

Cost Apportionment Fund means the fund noted in subsection 81(1)(c) of the Act.

C. REFERENCES

The Workers Compensation Act, sections or subsections 28(2), 40(5), 40(7), 45(2), 45(3), 45(4), 45(5), 60.6, 73, 76.7, 81(1), 81(3), 82(4), 82(5), 101(1.6), 105

Regulation 1/2018, *Adjustment in Compensation Regulation*

WCB Policy 31.05.05, *Rate Setting for the General Body of Employers*

WCB Policy 35.10.60, *Coverage under a Work Experience Program*

WCB Policy 35.40.50, *Overpayments of Benefits*

WCB Policy 43.10.60, *Preventive Vocational Rehabilitation*

WCB Policy 44.10.20.10, *Pre-Existing Conditions*

WCB Policy 44.10.20.50.10, *Recurring Effects of Injuries and Illness (Recurrences)*

WCB Policy 44.10.80.40, *Further Injuries Subsequent to a Compensable Injury*

WCB Policy 44.20, *Disease/General*

WCB Policy 44.20.50.20, *Noise-Induced Hearing Loss*

WCB Policy 44.80.10.10, *Average Earnings*

WCB Policy 44.80.30.30, *Prospective Earnings - Apprentices and Youthful Workers*

History:

1. Policy 31.05.10, *Accounting for Claims Costs*, established by Board Order 17/90 on June 21, 1990, effective retroactive to January 1, 1990.
2. Policy amended by Board Order 38/92, effective January 1, 1992, and re-titled *Cost Allocation*. Board Order 17/90 and directives dated January 16, 1974, February 10, 1978, and February 14, 1979, rescinded. Policies 44.20.50.20, *Hearing Loss*, and Policy 44.10.20.10, *Pre-existing Conditions*, amended.
3. One-year time limit for cost relief and Schedule B rescinded by Board Order 57/94, retroactive to January 1, 1992.
4. Schedule F rescinded by Board Order 57/94, retroactive March 12, 1993.
5. Policy amended by Board Order 57/94, effective January 1, 1995. Board Order 38/92 rescinded effective January 1, 1995.
6. Section 2 of the policy amended by Board Order 16/97, effective retroactive to January 1992 to amend how retroactive cost relief is applied for the purpose of assessment rate-setting.
7. Administrative Guidelines have been added to this policy. Schedule E amended by Board Order 6/2000. For hearing-loss claims, all expenses with employers other than the accident employer will be charged to the Cost Apportionment Fund.
8. The Administrative Guidelines have moved to Schedule A as they relate only to Schedule A (pre-existing conditions).
9. Policy amended by Board Order 37/05 on October 26, 2005, effective January 1, 2006 to ensure that the costs associated with claims made by workers participating in a work experience program not be borne by the accident employers and that in certain circumstances, the WCB may remove the costs from the accident employer if the worker had higher net average earnings at the death with another employer.
10. Reference to section 60.8(7) of the *Act* deleted as this subsection has been removed from the *Act* effective January 1, 2006.
11. Policy updated to reflect changes in department name – June 2008.
12. Policy amended by Board Order No. 20/10 on September 30, 2010, effective January 1, 2011, to provide consistent language in the policy and schedule around pre-existing conditions and to update the dollar threshold at which cost relief will be applied retroactively.
13. Minor formatting and grammatical changes were made to the policy, June 27, 2012.
14. Policy revised by Board Order 19/13 on October 3, 2013, effective for all decisions on or after October 1, 2013. The policy change removes the cost of noise-induced hearing loss claims from the cost records of Class E employers. Policy 44.20.50.20, *Noise-Induced Hearing Loss*, provides guidance on the adjudication of noise-induced hearing loss claims and the assigning of claim costs.
15. Policy revised by Board Order 28/14 on September 24, 2014, effective for all decisions on or after October 1, 2014. The policy changes include clarifying the impact of a pre-existing condition on impairment ratings and cost relief and removing the cost of long-latency occupational disease claims from the cost records of Class E employers. Other revisions include incorporating subsection 82(4)(d) of the *Act* into the policy and increasing the threshold to a consistent level for removal of costs consideration on claims involving negligence, a third party or a motor vehicle.
16. Policy Appendix A and References updated to incorporate Manitoba Regulation 265/2014, *Adjustment in Compensation Regulation* effective January 1, 2015.
17. Policy Appendix A and References updated to incorporate Manitoba Regulation 204/2015, *Adjustment in Compensation Regulation* effective January 1, 2016.
18. This policy was replaced by policy 31.05.10 *Cost Relief/Cost Transfer-Class E* and policy 31.05.15 *Cost Transfer-Self Insured* by Board Order 16/17 on June 28, 2017 effective December 31, 2017. This policy will apply to decisions made from October 1, 2014 to December 31, 2017 and any reconsiderations or appeals of those decisions.
19. Minor formatting changes were made to the policy, October 2020.

APPENDIX A

Threshold Amount - Recalculate Prior Years' Assessment Rates

Threshold Amount (\$) *	Rate-Setting Year
10,750	2011
11,070	2012
11,290	2013
11,540	2014
11,780	2015
12,170	2016

Note: * - Manitoba Regulation 204/2015, Adjustment in Compensation Regulation

SCHEDULE A**PRE-EXISTING CONDITIONS**

When the claim is either caused by a pre-existing condition or is significantly prolonged by the pre-existing condition, the WCB may provide cost relief to Class E employers.

100% Relief

The following pre-existing conditions will result in immediate 100% cost relief to the employer:

- When the prior condition is determined to be the primary cause of the accident.
- When the wearing of an artificial appliance is determined to be the primary cause of the accident.

50% Relief

For other claims involving a pre-existing condition, 50% cost relief may be provided. When a claim is significantly prolonged by a pre-existing condition, cost relief for 50% of the claim costs will be provided to the employer if the worker's time loss is greater than 12 weeks.

When the WCB has reduced the worker's impairment rating by factoring in the worker's pre-existing condition, the WCB will not provide cost relief on the impairment award.

When a claim is significantly prolonged by a pre-existing condition and the impairment rating is not affected by the pre-existing condition, the WCB will provide cost relief on the impairment award.

The WCB will not provide cost relief to the accident employer when the pre-existing condition relates to a previous accident with the same employer.

Cost relief for pre-existing conditions will be charged to the Cost Apportionment Fund and allocated to the class of the accident employer.

ADMINISTRATIVE GUIDELINES**Prior Condition**

A worker's prior condition may result in injuries at work or elsewhere. When the WCB determines a worker's prior condition is the primary cause of the workplace accident and the worker's workplace has increased the risk of additional injuries, the WCB may accept the claim. For example, a worker's systemic condition results in a loss of consciousness in the workplace and this results in an accident. The WCB determines this condition is the primary cause of the accident.

Return-to-Work Programs

The WCB will consider "time loss" to include absences from regular job duties and/or time worked during modified or alternate work programs. The payment of WCB wage loss benefits during a modified or alternate work program is not necessary to qualify for cost relief under Schedule A.

Accordingly, when the claim is significantly prolonged by a pre-existing condition and the policy criteria are met, employers who accommodate injured workers in early return-to-work programs may be eligible for cost relief.

SCHEDULE B**RECURRENCES, CONCURRENT EMPLOYMENT, AND ADJUSTMENTS
TO BENEFIT LEVELS DUE TO AGE, APPRENTICESHIP, OR DEATH**

When the worker's average earnings on which benefits are paid include earnings unrelated to the worker's accident employer, the WCB will provide cost relief to the accident employer for the additional compensation costs that are unrelated to the accident employer in the following circumstances:

1. A recurrence occurs while the worker is employed with a different employer than at the time of the original accident, and the worker's net average earnings for the recurrence claim are greater than the net average earnings at the time of the original accident when adjusted according to the indexing provisions of the *Act*.

Wage loss costs, based on the average earnings at the time of the original accident (adjusted for statutory indexing), will be charged to the employer where the original accident occurred. The remaining costs will be charged to the Cost Apportionment Fund and allocated to the class of the original employer.

2. When the worker has two or more jobs concurrently (at the same time), the accident employer is charged with the compensation costs based on average earnings with the accident employer. The accident employer receives cost relief for compensation costs based on average earnings with concurrent employers. Where applicable, the combined average earnings cannot exceed the maximum optional/personal coverage level in effect at the date of the accident.
3. The worker is subject to an adjustment of earning capacity as provided in subsections 45(3) or 45(4) of the *Act* for a worker who is an apprentice or a youthful worker.
4. While employed with an employer other than the accident employer, the worker dies as a result of an accident and the WCB adjusts his or her earning capacity as provided in subsection 1(12.1) of the *Act*.

Compensation costs in excess of those based on the average earnings at the workplace in which the accident occurred will be charged to the Cost Apportionment Fund and allocated to the class of the accident employer.

With the exception of point 4, this schedule applies only to accidents occurring on or after January 1, 1992. Point 4 only applies to accidents on or after January 1, 2006.

SCHEDULE C**FURTHER INJURIES SUBSEQUENT TO A COMPENSABLE INJURY**

When a worker is receiving benefits and the duration of benefits is extended due to a further separate injury which is compensable under policy 44.10.80.40, *Further Injuries Subsequent to a Compensable Injury*, the additional costs attributable to the further injury may be eligible for cost relief in the following circumstances:

- (i) when the further injury arises out of a situation over which the WCB exercises direct specific control; or
- (ii) when the further injury arises out of the delivery of treatment for the original compensable injury.

Relieved costs will be charged to the Cost Apportionment Fund and allocated to the class of the accident employer.

SCHEDULE D**REHABILITATION PROGRAM EXPENDITURES****1. Preventive Rehabilitation**

When preventive rehabilitation is provided under policy 43.10.60, *Preventive Vocational Rehabilitation*, the accident employer will receive cost relief for the claim costs attributable to the preventive rehabilitation measures.

Cost relief will be charged to the Cost Apportionment Fund and allocated to the broadest logical group that shares the risk which gives rise to the need for preventive vocational rehabilitation.

2. Vocational Rehabilitation Job Placements

- (i) When a worker has been placed by the WCB in an active transitional program with another employer, and a new accident occurs, the claim costs of the new accident will be eligible for cost relief. An active transitional program can include training on the job, work assessment and work experience.
- (ii) When a worker has been placed in a permanent position with a new employer covered by the WCB, and the new employer is paying the worker's full salary, the cost of any new accident will be the sole responsibility of the new employer, subject to other provisions of this policy.

3. Training

When a worker suffers an accident in a training institution or other type of training program sponsored by the WCB, the claim costs of the new accident will be eligible for cost relief.

Cost relief provided under items 2 and 3 above will be charged to the Cost Apportionment Fund and allocated to the class of the accident employer.

SCHEDULE E**CUMULATIVE TRAUMA AND LONG-LATENCY OCCUPATIONAL DISEASE****Cumulative Trauma****Cost Transfer**

Cost transfers for cumulative trauma are available to employers in all Classes, except as noted below.

Claim costs will be transferred to active employers on the basis of identifiable exposure with each employer when the injury is a result of cumulative trauma and the worker worked for more than one employer in whose workplace it is confirmed the worker was exposed to the occupational hazard which contributed to the development of the cumulative trauma injury.

When the accident employer is a self-insurer, the employer will be responsible for the cost associated with any out-of-province exposure. The self-insured employer will receive credit for any cost reimbursed by another jurisdiction under any interprovincial cost sharing agreements.

Cost Relief

Cost relief will be provided to the Class E accident employer when the WCB is unable to directly transfer some of the claim costs to other Class E employers for part of the exposure because:

- (i) the worker's exposure in previous employment is identified but cannot be confirmed by the specific employer; or
- (ii) part of the identified exposure was out-of-province; or
- (iii) the employer is out-of-business.

Cost relief will be provided to the Class E accident employer and the costs will be charged to the Cost Apportionment Fund.

Long-Latency Occupational Disease

While the WCB makes decisions regarding cost-relief on a case-by-case basis, "long latency" is generally understood as involving a period of at least two years between the worker's last exposure to the harmful substance and the manifestation of the disease.

Costs for long-latency claims are transferred among employers in the following manner.

When the accident employer is a **Class E employer**, all claim costs are assigned to the Cost Apportionment Fund, with the following exception:

- When the worker had exposure to a hazardous substance while previously employed with a self-insured employer, the self-insured employer is assigned its portion of the claim costs based upon the period of exposure.

When the accident employer is a **self-insured employer**, all claim costs are assigned to the self-insured employer, with the following exceptions:

- Those costs that result from exposure to a hazardous substance while previously employed with a Class E employer are assigned to the Cost Apportionment Fund.

- Those costs that result from exposure to a hazardous substance while previously employed with another self-insured employer(s) are assigned to the other self-insured employer(s).

Workers may be exposed to hazardous noise levels at work. If the hearing loss has developed gradually over time as a result of exposure to occupational noise, this claim is treated by the WCB as an occupational disease. Policy 44.20.50.20, *Noise Induced Hearing Loss* provides the WCB with adjudicative and entitlement guidance on this type of hearing loss claim.

Costs for long-latency occupational disease claims and noise-induced hearing loss claims are transferred among employers in an identical manner. Policy 44.20.50.20 details the method for assigning costs among employers for noise-induced hearing loss claims.

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SCHEDULE F**NEGLIGENCE**

The claim costs may be removed from an accident employer's cost experience if the worker is injured or killed due to the negligence of another employer or workers of another employer.

Cost Transfer

If the WCB determines the worker's injury or death resulted from the negligence of another worker or employer, all or part of the claim costs are transferred to the negligent employer's cost experience. Cost transfers for negligence are available to employers in all classes.

The claim costs are transferred to the cost experience of negligent employers or whose workers were negligent in proportion to the degree of negligence of each worker or employer.

The injured or deceased worker's own negligence may have contributed to the injury or death. If this is the case, the WCB will consider to what degree the worker was contributory negligent when it determines the amount of claim costs to transfer to other employers.

Criteria for cost transfer:

Cost transfers will only be made when the negligence of another party is established to the satisfaction of the WCB and the worker's injury or death results in claim costs of \$10,000 or more. In making this decision, the WCB may consider a determination of negligence made by a third party.

Some examples of sources the WCB may use in its determination of negligence include:

- police reports;
- Workplace Safety and Health reports;
- Transportation Safety Board of Canada reports.

Where the accident does not meet these criteria, the claim costs will remain on the cost experience of the accident employer.

Cost Relief

In exceptional circumstances, cost relief (rather than a cost transfer) may be provided to a Class E employer. Cost relief to Class E employers will only be provided on written justification and with the authority of the Vice President responsible for the Assessment Services Department, or the President and CEO or their designates.

Criteria for cost relief:

The WCB may relieve the claim costs of the worker's injury or death from the Class E accident employer's cost experience when:

- (i) the injury or death results in claim costs of \$10,000 or more; and
- (ii) the WCB has determined to its satisfaction, after investigation, that:
 - a) the worker's injury or death involved negligence on the part of another employer or the worker(s) of another employer; and
 - b) the injured or deceased worker was not contributory negligent; and
- (iii) the WCB has determined that a transfer of cost to a negligent employer is not appropriate because:
 - a) the negligent employer is out-of-province or out-of-business, or;
 - b) the identity of the negligent employer cannot reasonably be determined, or;
 - c) further investigation is not feasible given the passage of time, lack of information, or excessive cost of investigation.

The \$10,000 threshold level is based on the net costs of a claim after all recoveries and employer transfer and cost relief have been considered.

Relieved costs will be charged to the Cost Apportionment Fund and allocated to Class E.

SCHEDULE G**THIRD PARTY ACTIONS AND MOTOR VEHICLE ACCIDENTS****Third Party Actions**

Under the *Act*, an injured worker (or his or her dependants) cannot sue their employer, another covered employer, or a fellow worker if any of them cause the work-related injury or death. Someone who is neither a worker nor an employer under the *Act* is called a "third party". Examples of a third party include members of the general public, the owner of a private residential property or an out-of-province manufacturer of a defective product.

When a worker is injured or killed through the fault or negligence of a third party, the injured worker (or his or her dependants) may elect to claim workers compensation or take an action against the third party. If the worker elects compensation, the right of action "vests" in the WCB and the right to sue is transferred to the WCB. The WCB may decide to pursue legal action, in which case the WCB controls the lawsuit and bears all costs associated with the lawsuit.

Class E Employers**Cost Transfer:**

After the WCB has decided to pursue a third party action (lawsuit) and a Statement of Claim has been issued, the claim costs of the accident will be transferred from the cost experience of the Class E employer pending recovery.

Once the third party action has been concluded, any recovery received will be credited to the claim and any unrecovered claim costs will be transferred back to the experience of the Class E employer in the rate-setting year in which recovery occurs or the third-party action is concluded.

Cost Relief:

In exceptional circumstances, cost relief (rather than a cost transfer pending recovery) may be provided to a Class E employer. Cost relief to Class E employers will only be provided on written justification and with the authority of the Vice President responsible for the Assessment Services Department, or the President and CEO or their designates.

Cost relief may be provided to the Class E accident employer when:

- (i) the WCB determines that no action will be taken because the third party cannot be identified, has no assets, is not criminally responsible, the action would not be in the public interest, or for other reasons as determined by the WCB; and
- (ii) the injury or death results in claim costs of \$10,000 or more.

The \$10,000 threshold level is based on the net costs of a claim after all recoveries and employer transfer and cost relief have been considered.

Relieved costs will be charged to the Cost Apportionment Fund and allocated to Class E.

Self-Insured Employers

Self-insured employers are not eligible for cost transfers pending recovery via third party action. They are also not eligible for cost relief when the third party cannot be identified or has no assets. Self-insured employers will receive credit for third-party recoveries when such amounts are received by the WCB.

Motor Vehicle Accidents On or After March 1, 1994

The Personal Injury Protection Plan (PIPP), was implemented March 1, 1994 and is administered by Manitoba Public Insurance (MPI). This program replaced a system where injury or death benefits were primarily delivered through a tort-based compensation system.

If the work-related injury or fatality involves a motor vehicle, the worker (or his or her dependants) may elect between workers compensation benefits and benefits under the PIPP system. Once a worker (or his or her dependants) elects with the WCB, the WCB will request cost recovery from MPI pursuant to the Cost Recovery Agreement between these two entities.

Class E Employers

When a worker of a Class E employer is involved in a motor vehicle accident on or after March 1, 1994, and the claim is eligible for cost recovery from MPI, the claim costs will be transferred from the cost experience of the employer pending recovery negotiations.

Once cost sharing negotiations have been concluded, the claim costs will be transferred back to the cost experience of the Class E employer. Recoveries will be credited to the claim in the rate-setting year in which they are received. Unrecovered claim costs will remain on the employer's cost experience.

In all cases involving motor vehicle accidents which are eligible for cost recovery from MPI, when a binding decision has been made between the WCB and MPI, no further cost relief or cost transfers for negligence will be available to Class E employers beyond the amounts received.

Self-Insured Employers

Self-insured employers are not eligible for cost transfers pending recovery from MPI. Self-insured employers will receive credit for amounts recovered from MPI under the cost sharing agreement when such amounts are received by the WCB.

SCHEDULE H**UNFAIR BURDEN**

Under subsection 82(4)(d) of the *Act*, the WCB may exclude from a Class E employer's cost experience that portion of the claim costs that in its opinion would unfairly burden a particular employer.

Although the WCB exercises its authority under this subsection only in extraordinary circumstances, it is prudent to express when and how the WCB will consider requests for cost relief on the basis of unfair burden.

The removal of claim costs under subsection 82(4)(d) will only be provided on written justification and with the approval of both the Vice President responsible for the Assessment Services Department and the WCB's General Counsel. Reconsideration will be by the President and CEO.

An "unfair burden" is generally understood to mean having a substantial financial impact. Recognizing that the rate-setting model imposes financial limits on employer's assessment rates, there must be other compelling reasons or unusual or extraordinary situations an employer is facing before the WCB considers applying subsection 82(4)(d). A burden is regarded as unfair when it imposes disadvantages other employers would not face in similar circumstances or when the impact is clearly unwarranted for the situation at hand.

In determining whether an employer is unfairly burdened by compensation costs awarded to workers of the employer, the WCB will consider a number of factors including:

- What effect will this claim have on the employer's assessment rates and over what period of time?
- Will there be any additional financial effects other than the assessment rate?
- What is the degree or magnitude of the financial burden?
- Could the burden threaten the employer's viability?
- Is the impact outside the realm of what was reasonably anticipated in the design of the rate setting model?
- Has the employer taken all reasonable steps to control its own costs by investing in injury prevention and disability management?

Relieved costs will be charged to the Cost Apportionment Fund and allocated to Class E.