POLICY REPORT

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WSIB Workplace Safety & Insurance Board
ONTARIO
CSPAAT Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail

INSIDE

New policy,

Employer Premium Adjustments

changes how WSIB reviews premiums

Background

In the spring of 2000, two factors led the WSIB to review the *Retroactive Adjustments* policy (08-01-09 in the Pre-Bill 99 Operational Policy Manual (OPM)) and replace it with the *Employer Premium Adjustments* policy (14-02-06 in the new OPM):

- Firstly, many WSIB customers felt that the *Retroactive Adjustments* policy was unfair, inflexible, and financially punitive, especially in cases where retroactive adjustments were made to correct prior errors.
- Secondly, the WSIB had experienced a significant increase in the number of classification changes arising directly out of the implementation of the new Service Delivery Model.

As a result, the WSIB felt that it was necessary to revise the policy in order to administer premium adjustments more efficiently and effectively. While the policy was under review, the WSIB felt that it was neither fair nor appropriate to make classification changes; consequently, it suspended implementation of any new classification changes until after the revised policy was formally approved.

Why premiums are reviewed

The WSIB initiates a review of an employer's premium, if either the WSIB or the employer believes that the employer's premium may have been incorrectly calculated, based on proper application of the WSIB policies in effect at the relevant time.

Changes that may result in a premium adjustment

An employer's premium may need to be adjusted due to a change in one or more of the following:

- the employer's classification
- the employer's insurable earnings
- the employer's previously reported or paid premiums
- optional insurance
- worker status for executive officers, independent operators or sub-contractors
- interest charges, or
- non-compliance penalties.

Application of the revised policy

The *Employer Premium Adjustments* policy applies to:

- all classification decisions made on or after July 1, 2000 if the notification date was on or after May 15, 2000, and
- all other decisions made on or after July 1, 2000.

Notification date

"The notification date" is the date on which the WSIB initiates a review of the employer's premiums. This is the first date on which the WSIB:

- phones or visits the employer regarding the review, or
- receives any correspondence requesting (via the post, fax, or e-mail) some type of change.

Note: For classification changes, this policy applies to those reviews initiated by the WSIB on or after May 15, 2000. Similarly, when an employer (or the employer's representative) requests a review, the correspondence must have a receipt date of May 15, 2000 or later for this policy to apply (this date can be the mailroom stamp date, or the date recorded by a fax machine or an e-mail).
The notification date is very important because the WSIB uses it to establish its timelines for adjusting prior premiums.

Timeline for making adjustments: two-year rule

The WSIB uses one of two possible dates on which to base its timelines for making premium adjustments, either:

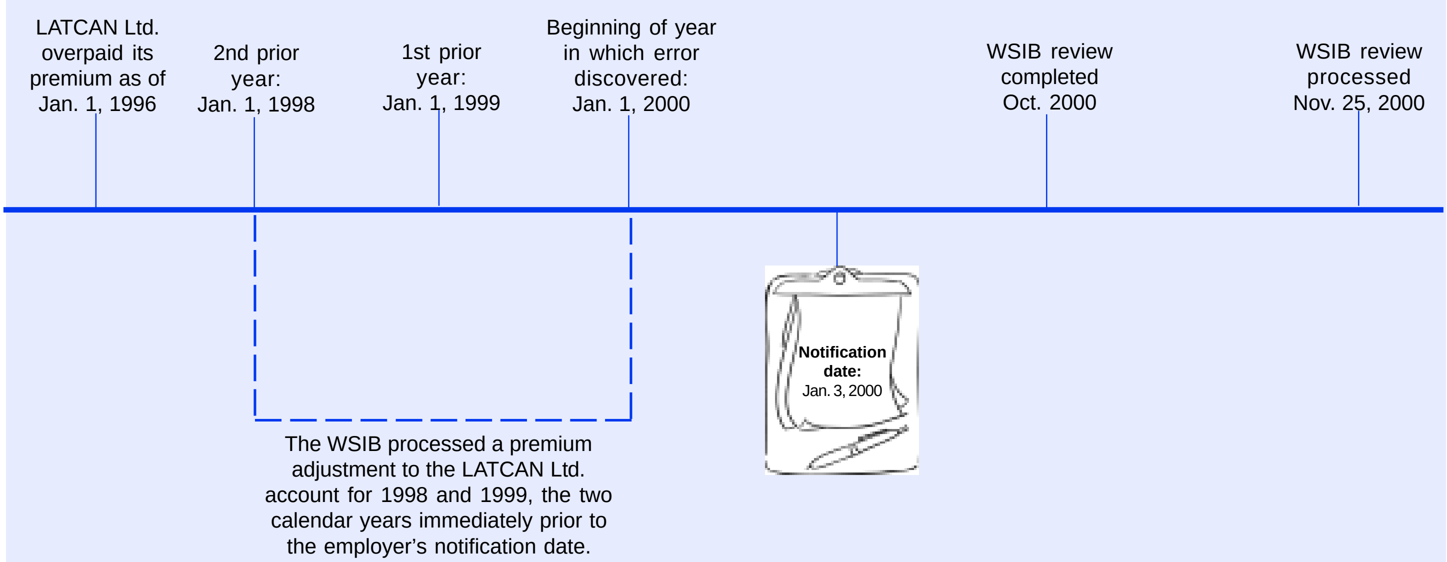
- back to the beginning of the notification year, plus two full calendar years prior to the notification year, or
- back to the actual date of the change which caused the adjustment to take place, if the change occurred within the two years prior to the notification year.

Examples of the general two-year rule

Example 1

For four years (1996-1999), LATCAN Ltd. overpaid its premium because it did not deduct excess earnings for workers who earn above the WSIB insurable earnings ceiling. On January 3, 2000, LATCAN Ltd. discovered the problem and notified the WSIB. The WSIB completed its review in October and processed the review on Nov. 25, 2000. The WSIB made a premium adjustment to the LATCAN Ltd. account for 1998 and 1999, the two years immediately prior to the year of the employer's notification date. No adjustments were made for 2000 since the employer reported the excess earnings correctly. The credit adjustment to the employer's premium was made for 1998 and 1999 (two years).

If LATCAN Ltd. had failed to deduct excess earnings only for the 1999 year, then the WSIB would have corrected the premium for 1999 only.



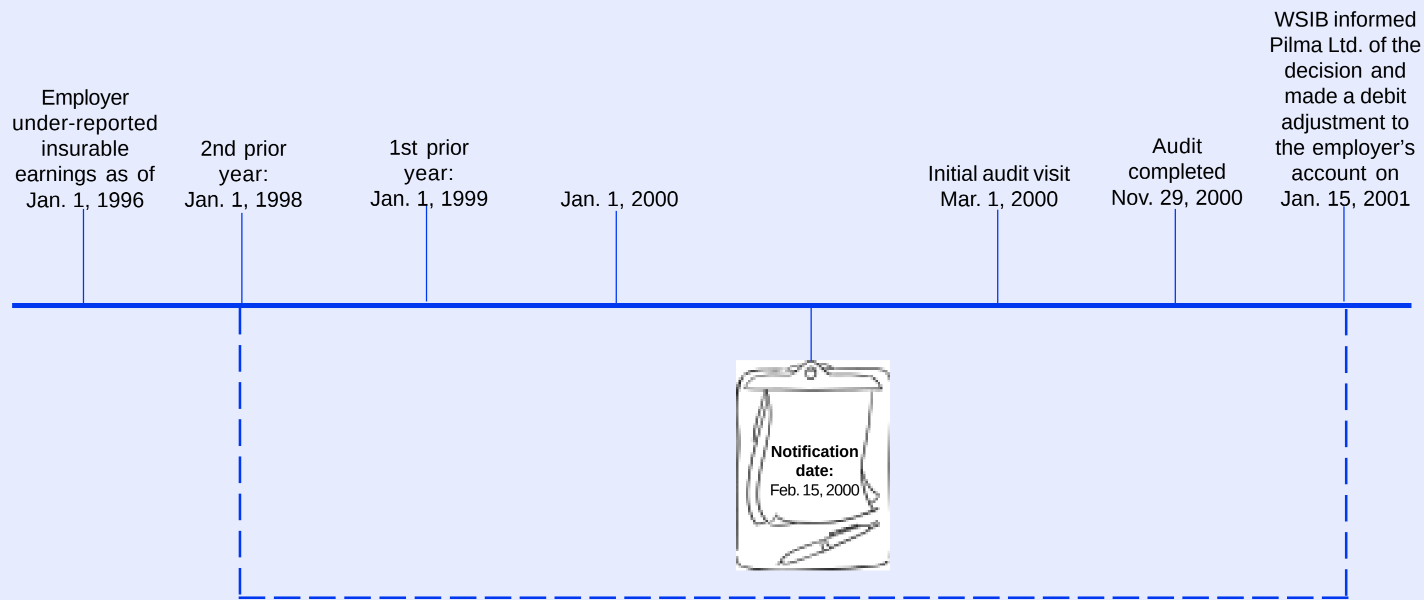
Examples of the general two-year rule (cont'd)

Example 2

The WSIB audited Pilma Ltd. in 2000. The audit revealed that this employer under-reported insurable earnings dating back (four prior years) to January 1, 1996, as they had inadvertently miscalculated their contractor's earnings. It was determined that the firm did not fail to fully disclose information to the WSIB. As a result of this error, the employer had been paying lower premiums since 1996.

Pilma was notified of the audit on February 15, 2000. The initial audit visit took place on March 1, 2000. The audit was not completed until November 29, 2000. The debit adjustment and the decision were not communicated to the employer until January 15, 2001.

The premium debit adjustment was made for 1998 and 1999, the two full calendar years immediately prior to WSIB's notification date of the audit and from January 1, 2000 onwards.



The WSIB processed the retroactive adjustment on Jan. 15, 2001 back to Jan. 1, 2000, plus the full 1998 and 1999 calendar years.

Did you know…

…that the WSIB **does not pursue** the recovery of a benefit-related debt if:

- the debt is a result of a previous entitlement decision overturned due to a reconsideration or appeal*
- the debt is a result of an administrative error and the debtor could not have reasonably been aware of the error
- the debtor is not notified of the debt within three years of the date the debt is considered due and owing to the WSIB*
- the WSIB determines that recovery action will result in severe, long-term financial hardship?

*This, however, does not apply to circumstances of fraud, and/or false or misleading statement(s) or representation, in connection with a claim for benefits or an attempt to obtain payment for goods or services provided to the WSIB, or failure to report material change in circumstances.

Four exceptions to the two-year rule

Exception	Explanation
Classification changes	For classification changes (i.e., where the employer is found to have been placed in the incorrect classification category), premium adjustments are generally made back **to the beginning of the calendar year** that includes the notification date, if the notification date was on or after May 15, 2000. See examples 3 and 4.
Provisional premiums	The WSIB may make premium adjustments to an employer account to correct provisional premiums in any prior year in which a provisional premium was issued. If the WSIB has not received sufficient information about a firm in order to establish a premium to be paid, the WSIB estimates a provisional premium based on past reported payroll or premiums. If the WSIB does not have any past information about the firm's payroll or premiums, the estimate could end up being too high or too low.
Lack of full disclosure	If the WSIB finds that there has been a lack of full disclosure in an employer's account on any premium-related issue requiring a correction, the WSIB may use its discretion to make premium debit adjustments. This adjustment to an employer's account can only go back **to a maximum of five prior calendar years**. Examples of lack of full disclosure include: • providing incomplete or inaccurate information to the WSIB, or • otherwise delaying, withholding, or not fully disclosing relevant information, or • not acting on information provided to them by the WSIB that directly affects their premium. See also, "Additional Information".
Offences or fraud	The WSIB may make premium debit adjustments to an employer's account **beyond five years or in any year**, if the Special Investigations Branch (SIB) or Legal Branch finds that the employer has committed either: • a fraudulent act, or • an offence under the Act. See also, "Additional Information".

Additional Information

For guidelines used by the Special Investigations Branch (SIB) in cases of suspected fraud please refer to the following policies in the new OPM:

Policy Number	Title	Description
11-02-02	Offences and Penalties, General	This policy describes the **general** guidelines the WSIB follows when WSIB staff, employers, workers, their spouses or dependants, or external suppliers of goods and services have committed an offence.
11-02-05	Offences and Penalties, Employer	This policy describes the **specific** guidelines the WSIB follows when an employer has committed an offence.

Examples of classification changes

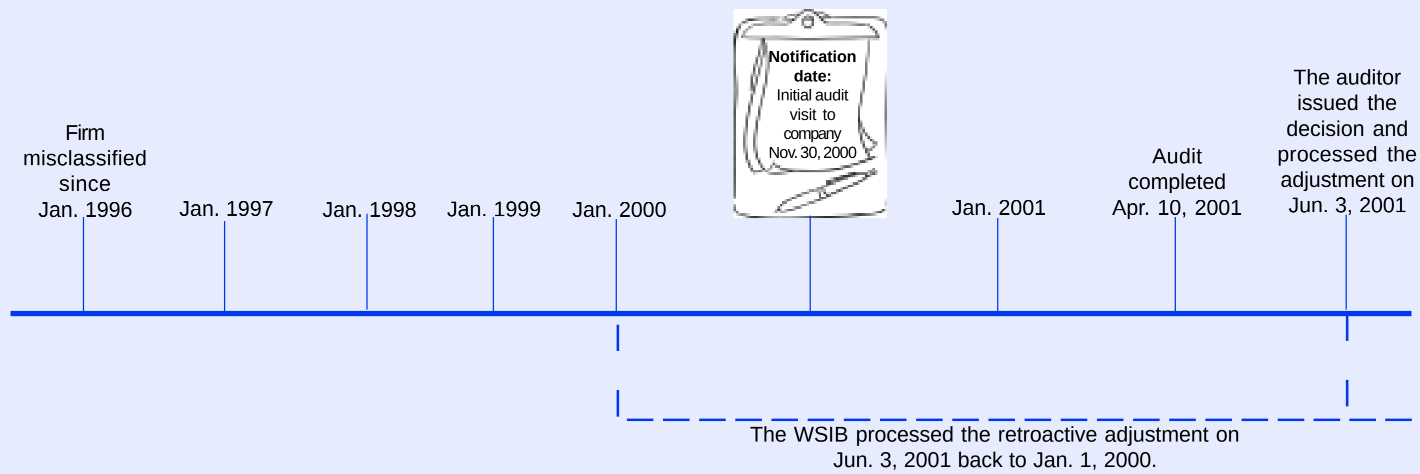
Example 3 — A classification change:
The WSIB audited Ontario Corp. The notice to audit was issued on November 15, 2000 with the initial visit taking place on November 30, 2000. The audit was completed on April 10, 2001.

It was discovered during the audit that the firm was misclassified under rate group 210: Poultry Products for about five years (since the beginning of 1996). The firm did previously provide the correct information to the WSIB about their operation.

The auditor determined that the correct classification for this firm's operation was RG 207: Meat & Fish Products, which has a significantly higher rate. Therefore, the firm had been paying a lower premium rate for five years.

The auditor processed the adjustment in the account and issued the decision on June 3, 2001.

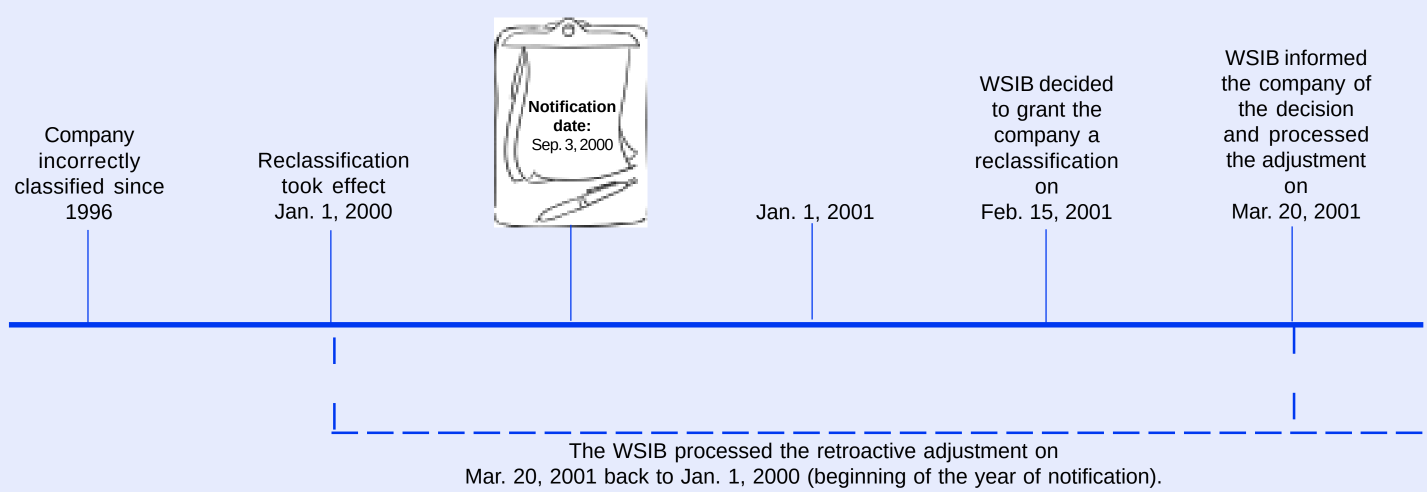
The reclassification took effect on January 1, 2000 (i.e., at beginning of year of notification).

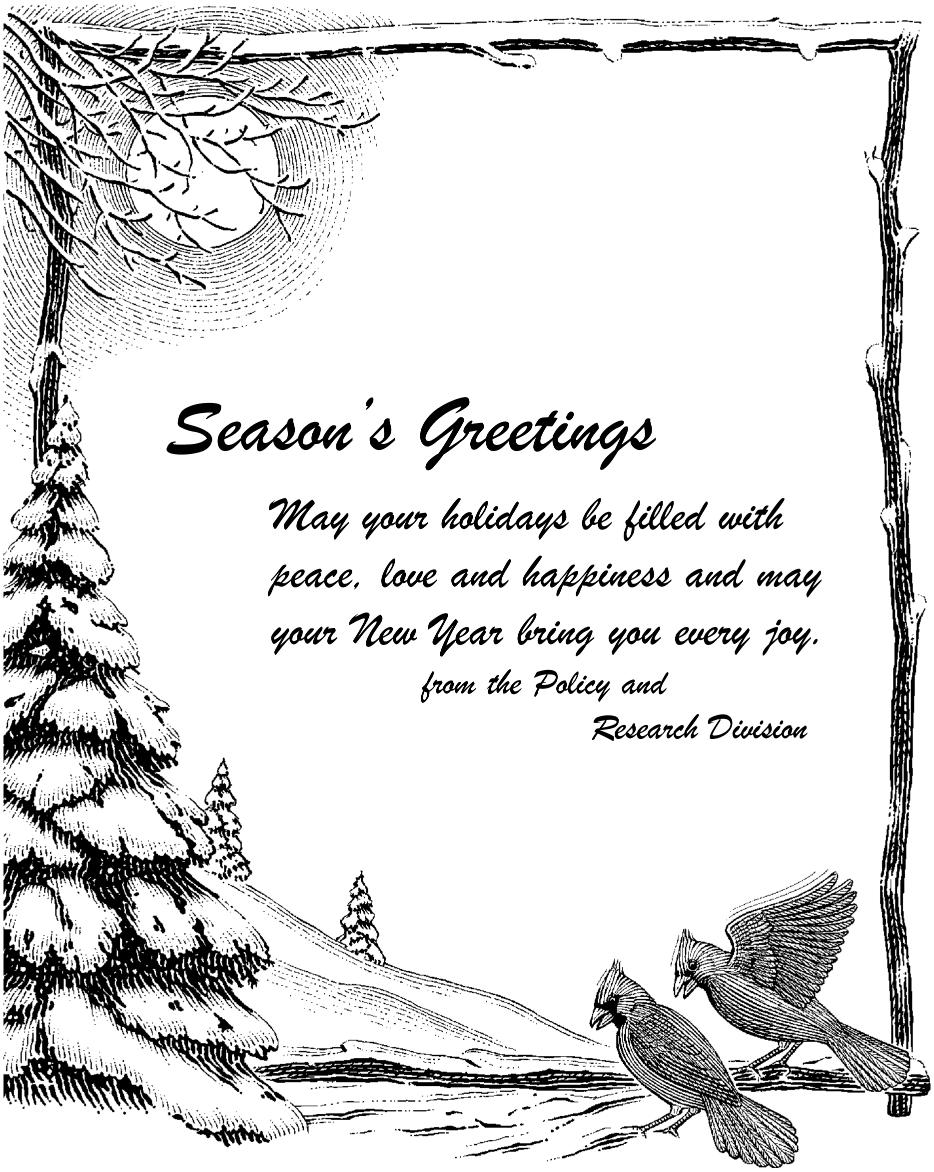


Example 4 — A classification change:
On Time Deliveries felt that it had been incorrectly classified under the Trucking rate group (#570) since 1996. On September 3, 2000, the WSIB received a notice from On Time Deliveries requesting a classification change. The company requested a reclassification to the rate group for Courier Services (#577). Since the issue was very complex, the WSIB had to gather additional information — a process that took about six months.

On February 15, 2001, the WSIB decided to grant the company a reclassification from RG 570 (under which the company was paying a higher premium rate) to RG 577. On March 20, 2001, the WSIB informed On Time Deliveries and adjusted their account.

The reclassification took effect January 1, 2000 (i.e., at the beginning of the year of notification).





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