



BEYOND A PAPER EXERCISE

Submission to the WorkplaceNL PRIME Program Review

EMPLOYERS' COUNCIL
NEWFOUNDLAND & LABRADOR

APPROVED by the Board of Directors
September 21, 2018

Employers' Council Submission to WorkplaceNL PRIME program review

WorkplaceNL has engaged in a consultation process to get feedback on the operation and effectiveness of the Prevention and Return-to-Work Insurance Management for Employers/Employees (PRIME) Program, introduced in 2005. The Employers' Council is supportive of the PRIME program, in particular the experience rating portion, as experience rating is a fundamental principle of insurance systems.

While injury rates have improved overall since the introduction of PRIME, as described in WorkplaceNL's PRIME consultation document, PRIME is only "one of a suite of tools" that have contributed to this improvement. It is important that we remember that PRIME is not a panacea for all safety and return to work issues. In fact, the program is viewed by many employers and stakeholders as a "paper exercise" that does little to improve safety and may actually distract from priority safety activity in the workplace.

While experience incentives are a fundamental principle of worker's compensation systems, NL is the only province in Canada, and the only jurisdiction other than the North West Territories that requires an employer "pass" a safety incentive to receive an experience rating refund. PRIME was designed at a time when the safety culture in our province was much different than it is today. The tone of the PRIME program is written as though employers are a barrier to safety, versus a partner in achieving safe workplaces. There is very little recognition of the time, resources and commitment employers have made to improve workplace safety in this province over the last decade. Given the low employer participation in the PRIME program, this model is clearly not the most effective means to reach the goals of injury and illness prevention and claim cost containment for all employers.

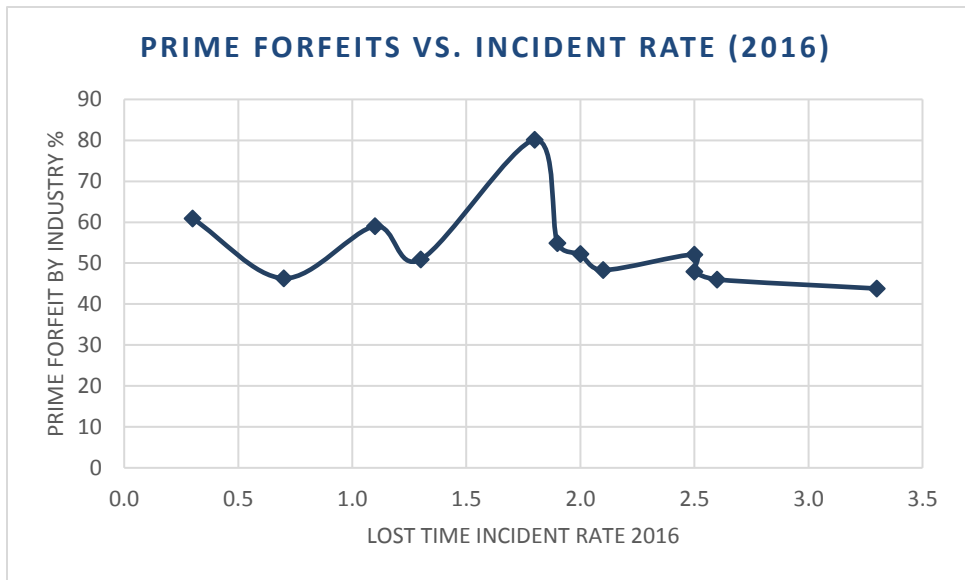
Inhibiting employers from accessing the positive financial reinforcement of experience refunds through prescriptive "practice incentive" criteria is a fundamentally flawed principle. This model is not working for all employers and industries, and requires modifications. We suggest that in 2018, given the change in safety culture seen in the province and improvements to our safety rating and claims cost, it is time for a new, more encouraging approach.

Recommendations:

The need to further evaluate the effectiveness of PRIME

NL has one of the lowest lost-time injury rates in Canada and 92% of workplaces in the province are now injury free. This despite the fact that 10,000 of the 16,000 employers who are eligible for PRIME do not participate or fail to meet the PRIME validation requirements. This raises the question of how much the PRIME program has contributed to improvements that have been made to safety since its inception.

A "strong statistical correlation" between the number of firms passing the practice incentive and the decrease in the injury rate is used in the consultation document to demonstrate that participation in PRIME is a leading indicator of the adoption of safety programs. However, given that PRIME is only one component of a broader safety system that has seen dramatic changes over the last decade, this correlation provides very little information about the program's effectiveness. While firm level data was not available, there was no correlation between industries with high levels of participation in PRIME and lower injury rates. In fact, the industries with the highest level of PRIME "forfeits" in 2016 had some of



the lowest lost time incidence ratings, and there is actually a small negative correlation between these two variables (see Figure 1). The industry with the highest % of refunds in 2016 was Fish Processing, which also had the highest lost time incidence rate. This stands to reason, since industry groups with high incidence rates are more likely

Figure 1
Source: WorkplaceNL, NL Employers’ Council

to be interested in participating in PRIME. However, it seems inappropriate that more than 60% of employers in finance, insurance and real estate (non-safety sensitive industries) do not receive PRIME refunds despite having an industry average lost time incidence rate of 0.3 injuries per 1000 workers. It is noteworthy that construction was a major outlier in PRIME participation: only 14.4% of construction employers received refunds, despite having the fifth lowest incidence rate of 12 industry groups, at 1.8 injuries per 1000 workers.

While these correlations provide some insight, a better indicator would be to compare the actual outcomes (injury rate and duration) of employers who pass PRIME and those who do not on an aggregate firm level by industry and size, to determine if the program is effectively influencing these outcomes. This information should be easily accessible by WorkplaceNL and should have been analyzed and provided as part of the review/ prior to public consultation. This information was requested by the Employers’ Council as part of this review but was not available, although it is our understanding that an actuarial assessment of similar statistics may be taking place.

In the consultation document, very little attention is given to employers who are passing PRIME or to analyzing what IS working in workplaces who have reduced injury rates and duration – whether or not they are accessing their PRIME refund. Throughout the consultation document there is no distinction made between employers who “fail” PRIME versus those who do not participate. While correlations are made between increased participation in PRIME and improved safety ratings, given the low uptake there is no evidence to suggest that an employer who does not PARTICIPATE in PRIME by not completing the self-report questionnaire on the Employer Payroll Statement is not achieving a high safety standard, in light of the improvements in safety that have been made in this province over the last decade. Reasons for “failing”, by industry group were provided to the Employers’ Council upon request. The number one reason applicable to the most industries was saying no, or leaving blank, the checkbox on the employer payroll statement for having an OHS policy statement (see Figure 2). There was no distinction made between no or blank. This indicates a documentation/ reporting issue versus “failures” in achieving safe workplaces. We maintain that an analysis of the reasons for “failing” PRIME by employer size, industry

and injury rate should be further analyzed to understand the breakdowns in the system. Determining whether the issue is documentation versus actual implementation is important. In the absence of this information only assumptions and inferences can be made.

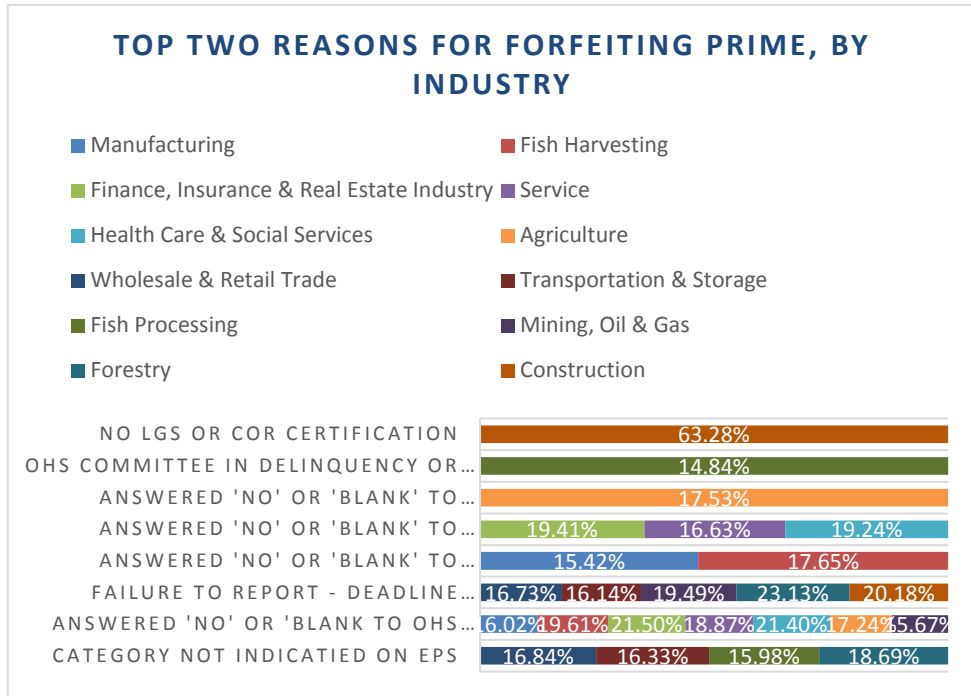


Figure 2
Source: WorkplaceNL, NL Employers' Council

Passing of a PRIME audit

does not evaluate the effectiveness of a health and safety program in addressing risk found within specific workplaces. Many employers go well above PRIME criteria and have more effective methods of ensuring safe workplaces. Also, there are a number of other programs and initiatives delivered by WorkplaceNL that may be more effective in handling some of the issues PRIME is attempting to address. In order to best determine what that approach should look like, we respectfully submit that beyond a public consultation, further evidence based research, review and analysis is needed to determine a model that will prove most effective.

The timelines and process in which this review has been conducted do not allow for appropriate evaluation of potential changes. It is important not to rush changes to such an important system. PRIME has been in place for 13 years and this is its first review. Any changes made from this review could remain in place for quite some time. It is important that changes are evaluated and accessed appropriately and are based on research and experience.

Recommendation #1: Further research and analysis (as indicated above) should take place before any suggested changes to PRIME coming from this review are implemented and/or changes should be piloted.

Remove the link between the practice incentive and experience rating refund

It is the fundamental position of the Employers' Council that the linkage of the practice incentive to the experience refund is flawed, as it removes the positive reinforcement and financial incentive of the experience rating refund. While leading indicators are important and best practices should be rewarded and incentivized, they should not inhibit rewarding the achievement of desired outcomes through positive financial reinforcement. As it is currently designed, PRIME is preventing employers from

receiving refunds even if they are achieving good safety and RTW outcomes, simply due to “non-compliance” with prescriptive paper processes - that may or may not actually improve workplace safety and duration. Unlinking the practice incentive refund from the experience refund may also help improve awareness, as communication on how to access further refunds through a practice incentive program could accompany notice of an experience rating refund or charge.

Recommendation #2: Unlink the current practice incentive as a requirement to participate in the experience rating incentive program.

The PRIME consultation document suggests that PRIME requirements should potentially go *further* than legislative requirements to evaluate program *implementation*, not just the program itself and to encourage employers to reach a “higher standard” in workplace safety than is required in legislation. However, the one size fits all/ all or nothing approach of the PRIME practice incentive has not proved effective. Only about 38% of all eligible employers participate or meet PRIME criteria. Adding additional criteria to a program that currently has low uptake and is already viewed as prescriptive, inflexible and irrelevant would be wasteful and unsuccessful. Also, the assumption that employers need PRIME criteria to encourage them to reach a “higher standard” in workplace safety implies a low standard. 92% of workplaces are injury free and many employers go well above PRIME criteria. The punitive and defensive nature of PRIME was developed at a different time. It gives very little credit to employers for their efforts to improve safety, the cultural shift that has occurred in NL regarding safety, or to rewarding and celebrating what IS working in workplaces who have reduced injury rates and duration.

Recommendation #3: The Employers’ Council does not support any increase in procedural requirements under the current model that links the practice incentive to the experience refund.

Change the practice incentive from a punitive and prescriptive audit based process to an industry specific, voluntary refund, outreach and assessment process

Given that it is an educational tool, the PRIME program should be more carrot, less stick. In 2018, when NL has one of the best safety ratings in the country, a program that contains the inherent assumption that the only way an employer would enact safety policy or programs is to develop prescriptive criteria upon which they will be “audited” is offensive and unnecessary. No employer wants to have an unsafe workplace, or to put the health of their employees at risk.

Recommendation #4: Given the current injury rate in NL, “incentives” for employers should take a more positive and encouraging tone.

The consultation document poses the question of how PRIME criteria “should be revised to ensure employers have well-developed innovative, compliant safety cultures?” Attempting to develop “criteria” to incentivize culture is counterintuitive. Culture comes from within and starts with organizational leadership. It cannot be regulated by an outside agency, especially through prescriptive policies. Currently, the practice incentive portion of the PRIME program is compliance based and process driven, rewarding prescriptive practices, not outcomes. Modern best practices in policy development indicate that overly prescriptive, process based policies that do not fit organizational needs and culture are ineffective. In fact, they are actually an impediment to developing innovative and compliant safety cultures. A solely compliance based approach leads to policies that are a “backstop to minimize risk” versus a tool to build culture and create value. Policies are written from a defensive approach for

regulators, not for users. Onerous or overly prescriptive policies with a lack of connection to corporate culture makes them seem irrelevant, which can actually decrease understanding and compliance. Consider how many people actually read and understand software licenses they “accept” when downloading or using a service.

Safety should be an extension of company culture, not a departure from it. WorkplaceNL’s role should be to incentivize businesses to improve safety and return to work outcomes, not to dictate, audit and enforce the processes by which they do so. Employers’ report widely that PRIME is a “paper exercise” and many find it a distraction from actual prevention initiatives. Moving from just a paper exercise to a program that focuses on implementation and truly encourages good safety practices requires broader values based criteria that show a cultural commitment to safety versus prescriptive procedures. This would respect the employers unique needs, corporate values and culture; treat stakeholder’s as capable of exercising good judgement; inspire trust and compliance; and allow for innovation and better integration of safety and ESRTW in culture, not just in policy. Allowing for more flexibility in meeting requirements that allow for industry and employer specific circumstances would also increase participation and compliance.

The use of PRIME “audits”, for example, is a compliance based enforcement approach that is defensive, punitive, and implies a lack of trust in employers. An alternative to the punitive “audit” approach could be the use of “assessments” for voluntary practice incentives designed to address real industry challenges, and/or education and outreach to non-compliant employers that provide broad guidelines and support, allowing an employer flexibility to implement safety and ESRTW programs as best suited to the company culture, values and industry needs - as is currently done with the priority employer program. This would also be more aligned with the educational mandate of WorkplaceNL.

Other jurisdictions, including Nova Scotia, Ontario, Manitoba and Alberta have safety incentive programs that are less punitive in their approach. These practice incentive programs are truly voluntary, allowing employers the ability to access refunds over and above their experience rating refund but not prohibiting them from accessing their experience refund for achieving good safety and return to work outcomes. Other provinces encourage employers to participate in the safety incentives by offering larger financial incentives than NL’s 5% practice incentive, as opposed to forcing employers to complete the practice incentive to access their experience refund. This is a much less punitive model that respects and rewards the commitment employers have made to improve workplace safety in this province, while also encouraging them to go “above and beyond” through greater financial incentive.

For example, Ontario has an outreach program called WorkWell, in which they select employers who have more frequent lost-time injuries and higher than average injury duration to participate in a Workwell Assessment. WSIB evaluates the health and safety management system and works with the employer to improve health and safety and return-to-work outcomes. This is not a punitive “auditing” model, but an education/ outreach approach which may be more effective in increasing employer participation. This program does not prevent the employer from accessing an experience refund.

In Alberta, for example, employers can qualify for additional refunds above their experience refund for improving claim cost performance. Employer performance is compared to their own historical record and they receive a 1% refund for every 1% that they improve performance, to a maximum of 20%. They can also earn additional refunds if they perform significantly better than their industry average over two

consecutive years. This has no impact on/ is over and above their experience refund. This sort of program may be effective in industries or for employers who have high claim costs.

For small to medium employers it may be more realistic to focus on hazard and risk assessment versus policy and paper review. This is much more relevant and has a better chance to actually improve safety. Focus on “what can hurt you here, and what are you doing to fix it?” In Ontario, a rebate program has been developed that focuses on risk assessment and appears to tie practice to experience in a more practical manner. At the beginning of the year, employers select five health and safety elements to target and set goals for each of the elements. If they reach the goal set out in the action plan and improve the health and safety performance by the end of the year, they can earn a rebate of up to six percent over and above their experience rating refund.

A switch to this sort of truly voluntary program would put us in line with other jurisdictions. A more encouraging approach also may help to improve uptake and communication to employers. This switch would not need to be complicated. The experience rating model currently utilized in PRIME can be maintained. Practice incentive refunds could be developed that suit industry needs and provide adequate practice and financial incentive based on employer size.

Recommendation #5: Eliminate the current practice incentive and establish voluntary, less punitive “practice incentive” refund programs addressing current, evidence base, and practical issues and risks; based on industry and employer size.

Recommendation #6: Workplace NL should further evaluate the success of voluntary incentive programs in other provinces to determine their effectiveness and applicability in NL.

Focus the PRIME program on true cost drivers of the system

PRIME is not having the same impact on every employer in the province and may not be the best tool to improve safety and return to work in all businesses. Given the improvements in safety and reduction in lost-time injury rates since the implementation of PRIME and the number of other initiatives that have led to an improved safety culture in the province, the objective of providing financial incentives for the establishment of safety programs and procedures for *all* employers seems irrelevant and unnecessary. In the interest of maximizing resources and respecting employers with low injury rates and claim costs, less stringent requirements and/or exclusions should be made for employers who are not contributing significantly to the injury rate, claim cost and duration.

Eliminate the practice incentive for small employers

We maintain that while the use of a practice incentive may be relevant to larger employers, the program has not been effective for small employers with less than 10 employees. The lowest level of participation in PRIME is found in small employers. Only 33% of small employers with less than \$5000 in assessments participated in PRIME versus 76% of firms with assessments greater than \$48,000. This despite the ease with which the three practice incentive actions can be taken. This indicates either a lack of awareness, absence of information regarding safety obligations, low relevance of the practice criteria in the workplace, or a low return on investment for completing the actions and/or completing the self-report questionnaire. Despite regular outreach to this group, evidence based data on the reasons for not participating in PRIME have not been collected or evaluated by WorkplaceNL.

There has been some suggestion that because of a correlation between small increases in PRIME participation and an improving injury rate in the province that WorkplaceNL should identify ways to increase the participation of small businesses in the current PRIME program. However, increased awareness and promotion, massive investments by employers, changes to legislation, increased certification/ training requirements, and an increased focus on industry-specific health and safety challenges have all contributed to this reduction in the injury rate. There is no way to attribute these gains to the PRIME program, particularly given the low level of uptake. Also, the return on investment for these small gains must be evaluated.

While the proactive nature of the practice incentive is well intentioned, investing in increased education and awareness aimed at improving participation rates of small employers with no injuries, in a program they find irrelevant, would be an inefficient and unnecessary use of resources. Approximately 350 employers in the province account for approximately 80% of the entire costs of the system. Those 350 employers are primarily medium to large organizations. On average, small employers only have a workplace accident once every seven years. Because of this they have much less stringent requirements under the OHS Act, and to achieve the PRIME practice incentive. The Employers Council has seen no evidence to suggest that the current practice incentive criteria have, or could have, a causal impact on what is an already very low incident rate amongst small employers, particularly those that operate in non-safety sensitive environments. In fact, we argue that the low participation in the practice incentive prevents employers from participating fully in the experience rating – eliminating the positive financial incentive of good safety/RTW performance that is essential to insurance systems. The risk of removing the practice incentive for this group is minimal, especially given the already low participation rates in this group of employers. Resources should instead be redirected to large and medium sized employers.

Recommendation #7: Eliminate the current practice incentive for small employers.

Elimination of the practice incentive for small employers could potentially be combined with targeted outreach and education to small employers who have injuries, experience rating charges, or who are not meeting legislative obligations. In Ontario, for example, the WSIB has resources tailored to small businesses, including “Building Your Health and Safety Program” training that qualifies employers for a 5 per cent rebate. This program does not preclude employers from participating in the experience rating system, meaning the financial incentive of improved safety and ESRTW outcomes remains. Similar types of outreach programs could be developed to replace the current practice incentive in NL for small employers. In order to do this effectively, evidenced based research into the barriers for PRIME participation for small employers must be conducted.

In order to truly engage leadership in small/ medium sized firms, a revised practice incentive could potentially provide the opportunity to have the owner or senior manager trained in OHS versus an employee representative. Currently OHS legislation requires that small employers have a “worker rep/designate” trained via a mandatory Occupational Health & Safety course. Employee turnover can make meeting this requirement challenging for employers, requiring an employer to train a new representative. While there is an allowance for employers with less than six employees to have a management rep trained instead, this threshold should be increased and management training could be incentivized. OHS certification training does not provide the worker representative with adequate experience to act effectively as a company’s sole safety rep. The owner or senior manager has the authority to make real changes to safety policy. Leadership engagement would ensure the development

of a safety culture from the top down. This requirement could be accompanied by a refund or rebate program, which could provide financial incentive and increase uptake in OHS training for managers/employers.

Recommendation #8: Revise OHS legislation to require small employers have the owner or a senior manager trained in OHS versus an employee rep.

Address low uptake in the construction industry

Of all industries involved in the PRIME program, construction firms seem to be benefiting the least due to the unique nature of their participation through the Certificate of Recognition (COR) Program. Uptake in this industry is particularly low, with only 13.7 per cent of firms “passing” versus 45 per cent on average.

Recommendation #9: COR certification should be unlinked from access to experience refunds as with all other industries. The practice incentive portion of PRIME should be eliminated and replaced by an experience rating model for small construction firms along with other small businesses. Further analysis of the issues with COR should be done by WorkplaceNL with involvement from the construction industry.

Implement Practice Incentive exemptions or equivalencies for employers with good safety ratings and robust safety systems

While 750 PRIME audits occur annually, the vast majority of these audits evaluate large employers, many of whom have robust safety systems in place that go well above and beyond PRIME requirements. Many of these employers report repeat audits, some saying they have been audited every year, despite having passed multiple audits in a row. Employers also report that many of them already get certified voluntarily by other bodies to ensure they are complying with industry standards. Repeat auditing by WorkplaceNL of these types of employers is a waste of limited resources.

The consultation document mentions Manitoba’s new model of requiring all firms who wish to avail of safety incentives to undergo a formal audit. However, there is no mention of the fundamental difference in their “safety incentive” – it is a voluntary rebate program over and above experience rating refunds, through which employers can receive refunds of the greater of 15% or \$3000. This model allows for equivalencies for employers who provide safety audit or review results from a recognized standard. The mandatory utilization of private sector auditors given our current PRIME model would be costly and onerous to employers. However, the ability for employers to voluntarily utilize outside audits and certifications they are already accessing would significantly alleviate the strain on WorkplaceNL and enable them to conduct audits/assessments on employers with the biggest room for improvement.

Recommendation #10: Employers who have an established safety management system in place that complies with a recognized standard such as OHSAS 18001 or ISO 45001 or equivalent and has been verified by external auditing should be exempted from PRIME practice incentive audits.

Increase employer accountability in the fish harvesting industry

While significant improvements in safety have been made in nearly every industry group in the province, fish harvesting continues to be the only industry in which the statistics are going in the wrong direction – and it is one of the only industries excluded from the PRIME program/ experience rating system. Given

the high rate of injuries and deaths occurring in the fish harvesting industry, greater and more direct financial accountability for fish harvesters is needed in the Worker’s Compensation system.

The way in which harvesting enterprises submit workers’ compensation employer insurance premiums is unique. It fundamentally compromises the application of worker’s compensation insurance principles in an industry that is one of the most dangerous, injury prone, and costly of all sectors. When PRIME was implemented in 2005 the all claim incident rate per 100 employees was 4.0 province wide and 3.2 in the fish harvesting industry. Since that time, the provincial rate has dropped to 2.2 while fish harvesting has *increased* to 3.8. Fish harvesting is also the ONLY industry in the province that experienced an increase

in its lost time incidence rate over the last 10 years. Between 2008-2017 the province as a whole saw a 23.8% decrease in its lost time incidence rate, while the fish harvesting industry experienced a 15.7 percentage point *increase* (see Figure 3).

The average number of days lost in the fish harvesting industry in 2017 was 114 days, 57% higher

than the provincial average of 72 days (see Figure 4). The serious injury rate in the fish harvesting industry has also increased, from 19.5 serious injuries per 10,000 employees in 2005 to 34.5 serious injuries per 10,000 employees in the fish harvesting industry in 2017. This is the highest serious injury rate of any industry, 21% higher than construction and more than three times the provincial rate of 10.5. From 2005-2017 there were 34 accidental deaths in the fish harvesting industry. It is not a matter of if someone will be injured or die in the fishery; it is a matter of when, and how many. The statistics are clear: the lack of financial incentive to practice Occupational Health & Safety and Early & Safe Return to Work in the fish harvesting industry is contributing to extremely high incident rates and claim duration. Allowing this to continue unchecked would be irresponsible.

If injuries are to be prevented and lives saved in the fish harvesting industry, then direct financial accountability for injuries and fatalities must be implemented. Promotion of safety education and awareness initiatives are inadequate in the face of such alarmingly high numbers of workplace injuries and fatalities. Something further **must** be done.

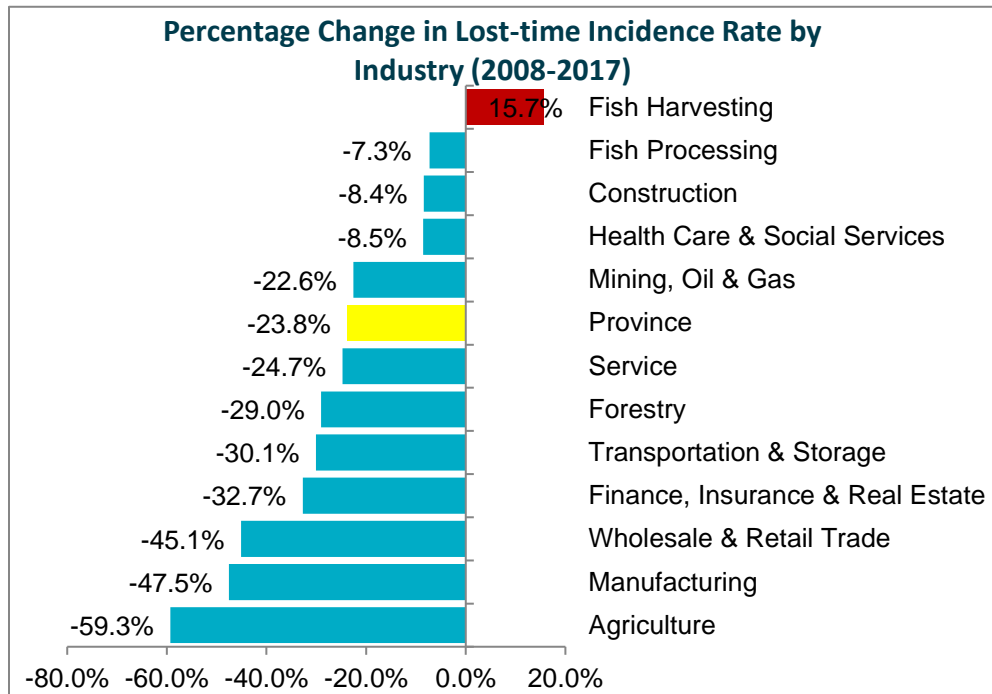


Figure 3
Source: WorkplaceNL

Financial accountability and experience incentive is the key principal in any insurance system and will reduce workplace injuries and increase safety - in particular for larger firms for whom the financial incentives are greatest.

The size of vessel required to remit workers' compensation insurance premiums directly to WorkplaceNL should be lowered from the current 64'11" vessel to 45' vessel size, for both inshore and offshore fleet. Collection of

premiums from these vessels would not place an unreasonable administrative burden on the WHSCC, given the potential return on this investment. There are fewer larger boats in the industry, many are incorporated, and many use the services of professional accountants. The benefits of improved safety in the industry should far outweigh any administrative or political concerns.

Recommendation #11: Large fishing vessels over 45' should be treated as all other employers under the Workplace Health, Safety and Compensation Act, and make their own payments directly to WorkplaceNL and be eligible to participate in the PRIME/ Experience Rating program, increasing their financial accountability and decreasing injuries and deaths in the industry.

Challenges with the current practice incentive

In discussion around the current PRIME program, the following issues have been noted by employers.

OH&S Committee structure and reporting requirements

The prescriptive nature of the requirements surrounding OH&S committee meetings and submission of minutes to WorkplaceNL may actually be inhibiting "compliance" on this criteria. According to WorkplaceNL there are 4100 OHS committees in the province, of which only 57 per cent are deemed "active", and less than half of those "active" committees submit minutes that have identified safety issues in a given year. The reasons for this have not been investigated.

WorkplaceNL provided the Employers' Council with a breakdown of the percent of employers who are delinquent by industry. It was not available by employer size, nor was the injury rate of employers who have OHS delinquencies versus those who do not. When compared with industry lost time incidence rates, there was a moderate correlation between industries with high rates of delinquency and those with higher incidence rates. This simply indicates, however, that industries with high incidence rates (fish harvesting, fish processing), have higher rates of delinquency of OHS committees, it does not imply that OHS committees cause reduced incidence rates. If these two industries are removed, the correlation is insignificant.

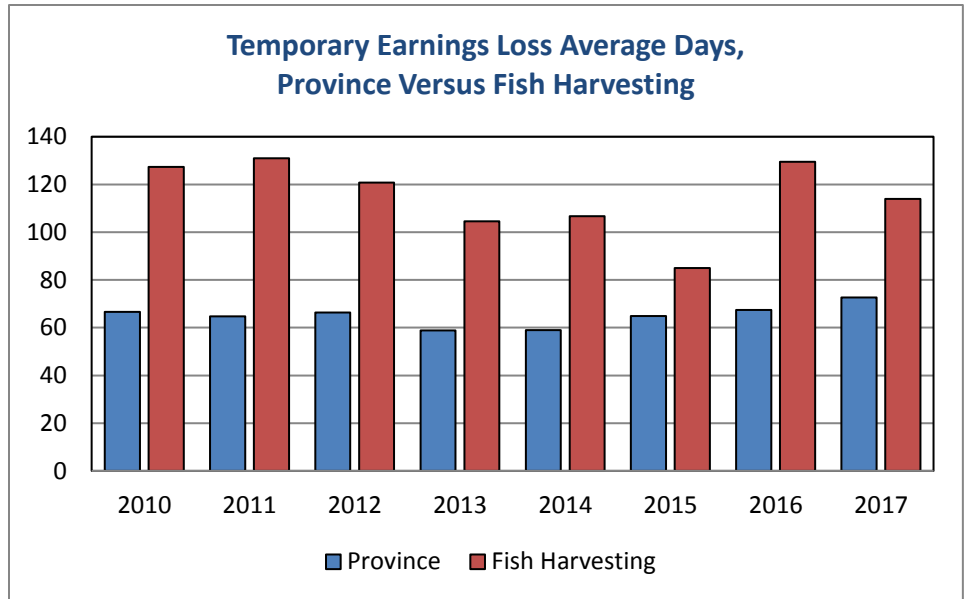


Figure 4
Source: WorkplaceNL

While OHS committees may be working very well in some workplaces, the Employers' Council has heard from some employers that OHS committee effectiveness is low in addressing high level safety concerns. Some employers indicate that the meetings are not viewed as effective or relevant for a variety of reasons specific to the employer or industry group. It has been suggested by some employers that serious injuries likely would not be identified or prevented by PRIME or OHS committees. Many express concern that the people involved often do not have the necessary skill set, experience or motivation to participate in safety and hazard/ risk assessment and to effectively do what is expected of them, and therefore committees are not identifying real issues. Some employers indicate that safety issues are often handled on site as they occur by senior management or safety/ HR professionals within the organization, and may not make it to the committee. Senior management owns the safety program and has the authority to effect real change, and the committee does not have this ability in many cases. Concerns have also been expressed that the emphasis on process and policy makes the committees irrelevant, and are simply a layer of administrative bureaucracy. Significant improvements have been made to the province's injury rate, despite the high proportion of "inactive" OHS committees as documented through OHS committee delinquencies. We suggest that the documentation of OHS committee minutes may not be the most relevant, or necessary "leading indicator" of safe workplaces to be evaluated as part of an incentive program for all employers and/or industry groups.

Recommendation #12: WorkplaceNL should examine the cause and effect relationship of OHS committees and injury rates by comparing the injury rate of employers who have "active" OHS committees and those who do not, by size and industry, to determine their effectiveness.

It is unclear how much of the low activity rate indicated by WorkplaceNL is due to actual committee inactivity, or due to reporting. There have been concerns raised with the perceived inflexibility around OHS committee reporting "delinquencies" and their impact on PRIME. If, for example, one committee meeting is missed, or a meeting is held a few days late, or minutes cannot get signed in time, etc. an employer is considered delinquent and their PRIME refund may be forfeited. This does not necessarily mean that the committee is "inactive". This is particularly problematic for employers who may have multiple worksites and multiple committees. If one committee makes an error in January, the perception that the entire companies refund may be "blown" for the year, whether real or perceived, provides a disincentive to meet criteria or report as directed for the rest of the year.

The lack of flexibility in reporting may deter from the intended goal of employer/employee communication regarding safety and the identification and reporting of safety issues. If WorkplaceNL continues to include OHS committee reporting in an incentive program, more flexibility should be introduced that allows employers to qualify for a refund even if minor reporting issues occur.

Recommendation #13: WorkplaceNL should further investigate the reasons for OHS delinquency by industry, size and injury rates to determine trends and barriers to submission. The Employers' Council recommends this research be used to determine different models or more flexibility in reporting that would increase compliance.

Questions have also been raised regarding the accuracy of the number of delinquencies as reported. If a workplace shrinks in size from over 10 to under 10 employees with one year they would be considered a "delinquent" committee, despite the fact that they no longer have a legislative obligation to have a committee.

Recommendation #14: Reevaluate the OHS committee requirement in legislation to raise the number of employees required to have an OHS committee from 10 to 20, as is standard in other provinces/ federally.

ESRTW Requirements

Significant concerns have been raised by employers about the requirements around Early and Safe Return to Work (ESRTW), and whether or not PRIME is the appropriate program to use to improve awareness and outcomes in this area. The PRIME practice incentive evaluates an employer's safety policies, practices and systems. While WorkplaceNL considers ESRTW as a part of prevention/ safety, there are many employers who feel that it may be out of place in PRIME. The ESRTW process involves the employer, the worker, the treating health care provider, and WorkplaceNL case managers. Employers still widely report that challenges in dealing with health care providers, specifically physicians, and case managers at WorkplaceNL present the biggest barriers to their ability to effectively engage in ESRTW.

The worker, employer and health care provider all have an obligation under the Worker's Compensation Act to participate in Early and Safe Return to Work (ESRTW). However, in current practice if the health care provider deems the worker "unable to work" in any capacity, WorkplaceNL commonly does not enforce the worker and/or health care provider's obligation to communicate and to provide appropriate and updated functional abilities, even if appropriate accommodations are available. Some employers have classified ESRTW as a "vacuum" of information, with the worker dictating the process. Often the challenges around return to work stem from lack of worker cooperation, unanswered phone calls, or the provision of incorrect contact information. Employers also report challenges in reaching WorkplaceNL case managers in a timely matter, and getting answers to questions and access to information they need in order to facilitate ESRTW.

It is important to recognize that the ESRTW process requires cooperation from all parties and many of the challenges faced are outside of the employer's control. While significant improvements have been made in recent years, more aggressive management of claims is needed from WorkplaceNL and participation from appropriate health care practitioners in determining and communicating functional capability as it pertains to work must be enforced. Cooperation from all parties in rehabilitation is in the best interest of the worker. We respectfully suggest that WorkplaceNL focus efforts to improve ESRTW on implementing internal improvements to the case management and a work to recover mindset in the medical community and amongst injured workers, in lieu of subjecting all employers to additional PRIME criteria or auditing in this area.

Recommendation #15: Since the biggest barriers to effective ESRTW lie outside the employers' policy, a punitive audit of employer policy such as the current PRIME practice incentive is not an appropriate method for improving ESRTW. Outreach such as the Priority Employer Program may be better suited to addressing the complexities of return to work.

The consultation document asks if more aspects of the return-to-work process should be considered during an audit. It states that "Many employers who have been part of recent WorkplaceNL outreach programs were not using or communicating return-to-work programs effectively." This statement is made to indicate that PRIME should include further evaluation or criteria on return-to-work practices, however, there is no further detail or context provided.

Again we assert that adding additional criteria to a program that currently has low uptake and is already viewed as onerous and irrelevant would be wasteful and unsuccessful. The experience rating system ensures that employers receive financial feedback based on claim duration and claim cost. The removal of the requirement to “pass” the practice incentive to receive an experience refund would provide incentive to improve return to work processes. Further to concerns raised earlier, industry specific constraints around accommodation (ie. for seasonal employers), and access to health care in remote areas of the province can impact claim cost and duration and also must be considered.

Changing the practice incentive to a voluntary refund program over and above the experience rating could allow for establishment of a separate voluntary ESRTW incentive program/ outreach that could apply to appropriate industry groups/ employers to whom it is relevant. WorkplaceNL’s Priority Employer Program was established in 2017 to identify high-cost, high-claim employers to address health and safety and RTW issues. The program targets employers by offering intensive advisory and consultative services to deal with employer-specific issues. We suggest that such outreach and support tied to employer-specific challenges is much more effective than the blanket approach provided through PRIME criteria and audits, and would be interested in seeing the data on improvements in injury rate, claim cost and duration stemming from both programs. Perhaps instead of expanding PRIME practice incentive criteria to include more ESRTW requirements WorkplaceNL should continue with priority employer initiatives and consider expanding this and/or tying to incentive refunds on a voluntary basis.

Recommendation #16: If WorkplaceNL is set on linking ESRTW to further financial incentives for employers, then data and feedback regarding the *true* barriers to ESRTW should be analyzed to develop a voluntary practice incentive refund program (over and above experience rating refunds) around ESRTW for relevant employers, based on claim cost/duration, size and/or industry needs.

Concern with the requirement for “meaningful consultation and effective communication” regarding ESRTW has also been raised by employers. To meet PRIME Practice Incentive requirements employers must have a mechanism in place that provides for joint and meaningful consultation on the return-to-work program and complex return-to-work issues between management and workers. Employers have expressed concerns regarding varying opinions from auditors as to what constitutes “meaningful consultation” and a “joint mechanism for consultation.” Some have been told that separate early and safe return to work committees must be established. This is of significant concern to the Employers’ Council as this was NOT the intent of this requirement in PRIME.

Utilizing the OHS committee or an ad hoc group to consult on and evaluate ESRTW programming is a completely legitimate avenue to accomplish consultation on ESRTW policy and programming. According to WorkplaceNL policy, consultation on ESRTW is only required on program development, implementation, revision, monitoring and evaluating, and to provide “innovative and practical solutions” to complex return-to-work issues. This can happen in many ways and does not need to be established through a standing committee. Employers are required to evaluate and communicate outcomes of the ESRTW program in joint consultation with employees annually. While some employers may choose to do this more frequently, given the infrequency with which evaluation and communication are needed within some organizations, and the infrequency with which “complex issues” may arise, the requirement of a committee would be unduly onerous and irrelevant. Particularly given the challenges raised earlier with OHS committee activity and effectiveness, it makes no sense to add another layer of bureaucracy and reporting. Further, while the “joint mechanism for consultation” is not intended to manage day to

day issues related to individual return-to-work plans, even addressing “complex return to work issues” at a committee raises confidentiality concerns, and adds a fifth party to an already challenging process.

The Employers’ Council respectfully submits that while consultation with employees in the development and revision of any policy, including return-to-work policy, is good practice, it is a management responsibility and right. It is not the role of WorkplaceNL to dictate the process by which employers accomplish such consultation.

We are aware that there may be pressure from some groups to further worker/ union involvement in the return to work process. However, the Employers’ Council questions whether this “joint consultation” has had any positive impact on return-to-work outcomes? This should be investigated further.

Recommendation #17: The effectiveness and appropriateness of the requirement for a “joint mechanism for consultation” as part of a practice incentive should be evaluated further. A requirement for official “ESRTW Committees” is inappropriate. In particular, we are opposed to any requirement for the union to sign off on any policy in order for the employer to access a refund, as this would be very dangerous from a labour relations perspective.

Simplify Communication Regarding OH&S/ ESRTW Obligations and PRIME program

There is an opportunity to improve communication regarding OH&S/ ESRTW employer obligations as well as the PRIME program through modernization and simplification. The WorkplaceNL website currently contains separate sections on OH&S obligations, ESRTW obligations, and PRIME. Communication on the WorkplaceNL website mentions multiple times that PRIME does not necessarily mean you are compliant with OHS or ESRTW legislative requirements. This overlap confuses communication and ease of participation. Communication directs to the legislation and regulations at various points, with disclaimers that use of this information “does not relieve individuals or organizations from their responsibilities under any or all applicable legislation” emphasized heavily. The expectation that new or small employers navigate through this information and read legislation is onerous, and minimizes the likelihood of participation. While the site includes a toolkit on PRIME, the volume of information makes it appear unnecessarily complex, particularly for small employers. Simplification of policies is key to ensuring clarity, ease of use, and in turn compliance.

A one-stop, short, easy to access communication tool that explains the employers legislative obligation in conjunction with their ability to get a refund by participating could help ensure compliance. This does not need to be expensive or complex. In today’s communication environment less is more. A short how-to video, point form website, or policy statement for employers would be much more user friendly than having to navigate multiple web pages and read legislation. Specifically tailoring this communication and outreach to new employers may also be beneficial.

Recommendation #18: Awareness and compliance may increase if information on employer obligations regarding OH&S and ESRTW and PRIME were communicated in a more user-focused and less defensive/ compliance based manner. Information regarding legislative obligations and PRIME should be simplified and amalgamated.

Employers report that often the payroll statement is not received or filled out by the appropriate person to complete the PRIME questionnaire. Further, it’s presence within the statement may cause it to get missed.

Recommendation #19: Given that the main reason that employers “fail” prime is that they do not complete the self-report questionnaire on the payroll assessment, collection of this information could also be improved.

Response to other issues suggested in the consultation document

The following questions or suggestions in the PRIME consultation discussion document raised concern from employers. Implementation of these suggestions could make participation in PRIME more onerous and procedural, and access to refunds more difficult. This has the potential to decrease participation from employers rather than increase it. It is important that financial incentives are focused on the desired outcomes of fewer injuries and lower claim duration – not on procedural implementation.

Allowing orders or directives made by OHS enforcement officers to impact an employers’ eligibility for a practice/ experience incentive refund.

The issuance of an order or directive by OHS enforcement officers should have no impact on an employer’s ability to access a PRIME refund. Issuance of an order or directive does not constitute conviction and does not necessarily take the whole story or investigation into account. Employers report sometimes receiving orders that are irrelevant or frivolous, and should not be financially penalized for these by WorkplaceNL.

The Employers’ Council is strongly opposed to this suggestion.

Excluding employers who experience an accidental fatal injury from practice incentive refunds.

The occurrence of an accidental fatal injury does not necessarily mean the employer was at fault. There are already punishments and penalties in place for such actions that involve appropriate investigation. OHS division and the RNC are responsible for investigating workplace accidents and an employer has the ability to be convicted if they are found guilty. The legislated responsibility for occupational health and safety education lies with WorkplaceNL. The enforcement responsibility rests with the OH&S Division of the Department of Service NL. There continues to be blurred lines between “education” and “enforcement.” While WorkplaceNL auditors do not have the ability to “enforce” legislation through legal means, PRIME provides the ability to levy significant financial penalties and refunds. If WorkplaceNL is considering increased use of audits to validate PRIME refunds/charges, and/or sharing information from OH&S division/ case management in consideration of PRIME refunds, then they are wading further into enforcement. This is inappropriate in a no-fault insurance system.

In the consultation document, a suggestion is made that “some jurisdictions such as Manitoba exclude employers who have been convicted under their OHS Act from receiving the equivalent of a practice incentive reward in a particular year.” However, an important difference that is not mentioned is that in Manitoba an employer is not required to “pass” the practice incentive to gain access to an experience rating refund, as is the case in NL.

If the PRIME practice incentive were to be unlinked from the experience refund to become a voluntary additional incentive refund, the Employers’ Council would consider support of exclusion of employers who have received convictions (not charges) for fatalities and serious OHS infractions from practice incentive refunds. Otherwise we are opposed to this suggestion.

That PRIME criteria and audits should include the determination that OHS and ESRTW programs policies/ procedures are being implemented or followed.

How this could be done raises serious questions and concerns from employers. While we support the intent of evaluating implementation versus policy, given the lack of uptake and that the program as it currently stands can be onerous and irrelevant for many employers, we do not support the addition of further criteria or additions to the audit process. While many employers support the PRIME program and the implementation of safety policies and procedure, the process of a PRIME audit has been described as disruptive, time consuming, and a “paper exercise” that “distracts” from prevention initiatives. In particular, the requirements around ESRTW have been raised as irrelevant and out of place.

Development of “criteria” and “audits” that evaluate implementation should be replaced by a revamping of the entire program to be less procedural and punitive in nature.

That WorkplaceNL use data and decisions from case managers to determine the effectiveness of ESRTW procedures.

There are serious concerns about the use of case manager opinions and decisions to influence PRIME refunds. This would significantly change the relationship between the employer and the case manager, giving them the ability to financially penalize an employer. The role of WorkplaceNL is education, not enforcement. PRIME is a rate setting/ employer incentive program and should be based on evidence based data. Experience rating already provides financial feedback based on ESRTW outcomes and claim cost. The ability for case to influence PRIME refunds or charges is inappropriate.

The Employers’ Council does not support use of such information

That PRIME should be made more relevant to workers.

The discussion document states “Some workers have indicated that PRIME has been viewed as an employer insurance issue rather than a workplace safety and return to work program, as many employees do not find it relevant to their day to day work requirements.” Further, the questions are posed “How could the PRIME program be adapted to make it more relevant to workers?” and “Should there be more involvement of employees/ workers during the PRIME audit process?” and “Should the PRIME audit confirm workplace OHS and return-to-work practices using tactics beyond documentation review, such as interviews?”

We question why a worker would or *should* find the PRIME program “relevant to their day to day work requirements”? PRIME is a rate setting program. It recognizes workplaces that comply with designated OHS and return-to-work practices through financial incentives – a reward that would inherently be of more interest to the employer than its employees. PRIME is just one of a suite of tools that has been used to improve OHS and return-to-work practices. It does not need to be adapted to be “more relevant to workers.” It is up to the employer to develop programs, policies, and practices that make SAFETY and ESRTW relevant to employees – not PRIME specifically.

While this is clearly a concern brought forward by “some workers” no employer perspective on his issue is given. This assertion is made without any indication of whether or not this would improve the program’s ability to meet its goals of injury prevention and cost containment. The employer already has an obligation to involve, consult, and communicate to employees in a variety of aspects of PRIME.

Further employee involvement in the practice incentive seems unnecessary and could, in fact, diffuse responsibility and relevance of the program further, making it less effective as is reported with OHS committees in many cases. Implementing such an approach would make the process much more punitive and onerous. The experience rating already evaluates and incentivizes or penalizes employers for the outcomes of a safety and ESRTW program.

WorkplaceNL determining and evaluating *how* safety and return to work policy is communicated and managed internally through interviews of employees is inappropriate, unless there are issues of concern regarding an employer's injury rate or duration.

Some aspects of PRIME simply may not be relevant or important to individual workers. Subjecting them to interviews that the employer would be audited against would be very challenging. Specifically, employers report that ESRTW policy may only be relevant to workers if they are/have been injured. Some employers report having spent significant efforts educating and communicating, only to conduct internal reviews and surveys that indicate some employees are not aware. People pay attention to what they feel is relevant to them.

Increasing employee involvement in an employer refund program also has the potential to cross the line into labour relations issues, giving individual employees the ability to influence whether or not an employer receives a refund or charge. The use of interviews of employees to evaluate OHS and return-to-work practices is specifically concerning to employers. What questions would be asked and how would this information be used? While outreach to workers to determine effectiveness of program implementation may be appropriate through an education and outreach initiative like the Priority Employer Program, it is the position of the Employers' Council that it is NOT appropriate to tie financial incentive or penalty for employers to such outreach.

It would be difficult to develop an auditing system that truly measures employee engagement, and it is unreasonable for an employer to be financially penalized/ incentivized based on such reports.

Conclusion

PRIME was designed at a time when the safety culture in our province was much different than it is today. The current model is not working for all employers and industries, and requires significant modifications. We suggest that in 2018, given improvements to our safety rating and claims cost, it is time for a new, less punitive and procedural, more encouraging and practical approach.

Summary of the Employers' Council's recommendations

- 1) Further research and analysis should take place before any suggested changes to PRIME coming from this review are implemented and/or changes should be piloted.
- 2) Unlink the current practice incentive as a requirement to participate in the experience rating incentive program.
- 3) The Employers' Council does not support any increase in procedural requirements under the current model that links the practice incentive to the experience refund.
- 4) Given the current injury rate in NL, "incentives" for employers should take a more positive and encouraging tone.
- 5) Eliminate the current practice incentive and establish voluntary, less punitive "practice incentive" refund programs addressing current, evidence base, and practical issues and risks, based on industry and employer size.
- 6) Workplace NL should further evaluate the success of voluntary incentive programs in other provinces to determine their effectiveness and applicability in NL.
- 7) Eliminate the current practice incentive and use experience rating only for small employers.
- 8) Revise OHS legislation to require small employers have the owner or a senior manager trained in OHS versus an employee rep.
- 9) COR certification should be unlinked from access to experience refunds as with all other industries. The practice incentive portion of PRIME should be eliminated and replaced by an experience rating model for small construction firms along with other small businesses. Further analysis of the issues with COR should be done by WorkplaceNL with involvement from the construction industry.
- 10) Employers who have an established safety management system in place that complies with a recognized standard such as OHSAS 18001 or ISO 45001 or equivalent and has been verified by external auditing should be exempted from PRIME practice incentive audits.
- 11) Large fishing vessels over 45' should be treated as all other employers under the Workplace Health, Safety and Compensation Act, and make their own payments directly to WorkplaceNL and be eligible to participate in the PRIME/ Experience Rating program, increasing their financial accountability and decreasing injuries and deaths in the industry.
- 12) WorkplaceNL should examine the cause and effect relationship of OHS committees and injury rates by comparing the injury rate of employers who have "active" OHS committees and those who do not, by size and industry, to determine their effectiveness.
- 13) WorkplaceNL should further investigate the reasons for OHS delinquency by industry, size and injury rates to determine trends and barriers to submission. The Employers' Council recommends this research be used to determine different models or more flexibility in reporting that would increase compliance.
- 14) Reevaluate the OHS committee requirement in legislation to raise the number of employees required to have an OHS committee from 10 to 20.
- 15) Since the biggest barriers to effective ESRTW lie outside the employers' policy, a punitive audit of employer policy such as the current PRIME practice incentive is not an appropriate method for improving ESRTW. Outreach such as the Priority Employer Program may be better suited to addressing the complexities of return to work.
- 16) If WorkplaceNL is set on linking ESRTW to further financial incentives for employers, then data and feedback regarding the *true* barriers to ESRTW should be analyzed to develop a voluntary

practice incentive refund program (over and above experience rating refunds) around ESRTW for relevant employers, based on claim cost/duration, size and/or industry needs.

- 17) The effectiveness and appropriateness of the requirement for a “joint mechanism for consultation” as part of a practice incentive should be evaluated further. A requirement for official “ESRTW Committees” is inappropriate. In particular, we are opposed to any requirement for the union to sign off on any policy in order for the employer to access a refund, as this would be very dangerous from a labour relations perspective.
- 18) Awareness and compliance may increase if information on employer obligations regarding OH&S and ESRTW and PRIME were communicated in a more user-focused and less defensive/compliance based manner. Information regarding legislative obligations and PRIME should be simplified and amalgamated.
- 19) Given that the main reason that employers “fail” prime is that they do not complete the self-report questionnaire on the payroll assessment, collection of this information could also be improved.

Response to other issues suggested in the consultation document:

- Further worker involvement in PRIME requirements through a requirement for increased consultation or the addition of employee interviews to PRIME audits is inappropriate.
- The use of information from OHS division and/or case managers in determining refund eligibility is also inappropriate.
- If the PRIME practice incentive were to be unlinked from the experience refund to become a voluntary additional incentive refund, the Employers’ Council would consider support of exclusion of employers who have received convictions (not charges) for fatalities and serious OHS infractions from practice incentive refunds. Otherwise we are opposed to this suggestion.
- Development of “criteria” and “audits” that evaluate implementation should be replaced by a revamping of the entire program to be less procedural and punitive in nature.