



## El Rate Consultation – Are Employers Paying True Insurance Premiums?

On August 18, 2011 the Canada Employment Insurance Financing Board (CEIFB) put out a [call for consultation](#) as to how the EI rate-setting mechanism could be improved, with submissions due by November 30, 2011. The technical aspects of EI rate-setting may not be top-of-mind for most BC businesses. However, there are aspects of the Employment Insurance program, including rate-setting, that raise significant cost issues for business that should not be ignored.

In June 2008, the CEIFB was created as an independent federal Crown Corporation responsible for managing the financing of the EI program. The CEIFB reports to the Minister of Human Resources and Skills Development and is mandated to set the EI premium rate to ensure that program revenues and expenditures break even over time.

The EI program provides approximately \$23 billion per year in income and employment benefits and support measures. The program is financed entirely by contributions from employees and employers, by way of premiums paid on insurable earnings up to an annual limit set at \$44,200 (for 2011). Employers (other than in Quebec) pay 1.4 times the employee premium (amounting to almost 60% of all premiums collected).

Over the last decade, EI rates (for employees) have fluctuated between \$1.75 and \$2.25 per \$100 of insurable income. In 2009 and 2010 the rate was set at \$1.73; in 2011 it was increased to \$1.78. In September 2010 the federal government took action to limit the annual increase in premium rates to 5 cents for 2011 (resulting in the increase from \$1.73

to \$1.78), and to 10 cents in subsequent years. This was done to limit the impact of rising EI premiums on the job market in the context of a somewhat muted economic recovery from the 2008-09 downturn. Without this step, the CEIFB would be required to increase EI premiums by 15 cents per year between 2011 and 2013.

On November 8, 2011, the federal Finance Minister announced that the increase in EI rate planned for January 2012 will be reduced by half. As a result, the EI rate will increase by 5 cents (\$1.83), rather than the planned 10 cents (\$1.88) in 2012.

EI premium rates are influenced by a number of factors, including labour market conditions, government-imposed limitations on annual rate changes, and the cumulative balance of the EI operating account.

The current consultation is not about EI benefits generally, but rather concerns only the EI rate-setting mechanism. The federal government is seeking the views of Canadians on the following questions:

- What is a reasonable amount of time over which the EI program should be expected to break even (i.e., 2 years, 5 years, 10 years)?
- What is an acceptable maximum annual change in EI premiums?
- What should be the rate-setting process?

While rate-setting is an important question, there are equally important issues regarding the benefits aspects of the EI program, which

in turn have an impact on rates that employers (and employees) pay.

Over the years, the EI program has moved well beyond a pure insurance scheme designed to maintain employment income for workers who experience unanticipated short term unemployment. Today, the program supports training initiatives; provides benefits for maternity leave, parental leave, and illness; and offers compassionate care benefits for those caring for a gravely ill family member. All of these are worthy social supports, but they are funded from a system that was originally intended to provide income for workers experiencing short-term unemployment because of cyclical market fluctuations.

The EI program also now helps to finance other income-support programs and initiatives including support for seasonal workers in industries where unemployment has nothing to do with cyclical markets. Providing seasonal workers with off-season income support is a form of government subsidy for those industries. It may be that such subsidies are warranted. The question, though, is whether an unemployment insurance scheme, funded by all employees and employers, should be used for that purpose. EI rates would not be at their current levels if the program reverted to an unemployment insurance scheme – one limited to insuring unanticipated unemployment rather than funding seasonal unemployment or income replacement for absences due to reasons other than market fluctuations.

If the EI program was truly an unemployment insurance scheme, then rates would be determined on the basis of risk. If certain

geographic regions of the country are subject to greater market fluctuations that have an impact on employment, the EI rate in these regions would reflect that risk. Today, there is one national EI rate (currently \$1.78), with no regional differences.<sup>1</sup>

Similarly, if a particular industry were more susceptible than another to market fluctuations, the EI rate for that industry would reflect the claims experience or the “risk” being insured. Moreover, an employer who was quick to lay off employees rather than find ways to keep them employed would pay a higher EI rate than others. An “experience rating” adjustment would be applied to determine that employer’s EI rate.

Unlike EI, workers’ compensation programs across the country apply an experience rating adjustment in determining employer premiums; the theory being that an employer can positively influence the risk of industrial accidents or illness. Arguably, the same is true in the case of employment insurance. The employer makes the decision as to whether and when to lay off employees and how many employees to let go, and in that sense can have a direct impact on the risk of unemployment.

While EI rate determination today is based on a macro assessment of benefit utilization, it makes no adjustments for regional differences, program utilization by industry, or individual employer experience. All of these considerations would have a direct impact on the rates that individual employers would be required to pay. A single

<sup>1</sup> There are, however, regional differences regarding benefits. There are 58 difference economic regions in Canada, with different qualifying periods and duration of benefits.

unemployment insurance rate provides little incentive for individual industries or employers to do what they can to manage the risk.

The Mowat Centre for Policy Innovation provides a useful [discussion paper](#) on a number of these issues. The paper asks, for example, why training benefits should be tied to employment insurance and be provided only after a job is lost. The authors argue that training is better provided early, to avoid job loss, and that it should be funded by way of a general tax. The Mowat Centre's EI Task Force points out another significant problem with EI rate determination: rates go up during periods of high unemployment, to bring the program's finances into balance. Yet it is during periods of high unemployment, when economic times are less robust, that business can least-afford to pay higher rates. Accordingly, the paper suggests that EI rates should be set higher during periods of strong economic activity to provide the necessary funding for the program to support higher unemployment during a subsequent economic downturn.<sup>2</sup>

Other issues that directly impinge on EI rate determination are on the political and social agendas of other interest groups. The Canadian Chamber of Commerce has been opposed to the 1.4 multiple paid by employers (a position shared by the Business Council of BC). [The Chamber argues](#) that there is no principled basis for employers to be required to fund the EI scheme on such a disproportionate basis. The Chamber also points to unfairness in the program's absence of any provisions to repay an employer for an

over-contribution. Overpayment refunds are available for employees, but not for employers. It is difficult to justify this distinction. Others groups advocating for employees want to expand EI benefits, reduce the level of qualifying hours, eliminate the waiting period, and extend coverage to temporary foreign workers.

While the current consultation, focused solely on EI rate-setting mechanisms, raises important issues for employers, other aspects of the program also deserve attention as they affect premium rates and who is required to pay them. The Business Council of BC continues to press the federal Government on these issues and will be making a submission by November 30.

\*\*\*\*\*

#### Authors

This article was co-authored by  
[Thomas Roper, Q.C](#)  
and [Michael Kilgallin](#)  
of Roper Greyell LLP.

**ROPERGREYELL**  
EMPLOYMENT + LABOUR LAWYERS



800 Park Place, 666 Burrard Street | Vancouver, BC V6C 3P3  
[info@ropergreyell.com](mailto:info@ropergreyell.com) | 604.806.0922 | [www.ropergreyell.com](http://www.ropergreyell.com)

<sup>2</sup> See also the Mowat Centre for Policy Innovation ["Consultation Report Back"](#)