

Ask an Expert

Question:

Rick Bayliss, Moniam Enterprises

I have a WSIB Question and here is the scenario:

A driver lives and works in Quebec. The employer is stationed in Quebec and registered with CSST in Quebec. However the employer is also registered and operates out of Ontario. The driver crossed the border into Ontario to make a switch on a daily basis as part of daily routine.

Driver gets injured -----

CSST is managing the claim but this fellow shows up on the WSIB NEER cost statement. How can one province (Quebec) so called manage the claim and all the charges go on the Ontario WSIB account. I'm sure the Trans. Provincial guidelines apply somehow but this does not seem right. I'm suggesting the complete claim should go under the realm of the CSST only -- not Ontario. Please advise.

Answer:

Michael Zacks, Director (A) and General Counsel, Office of the Employer Adviser (OEA)

An Ontario trucking company has a driver who lives and works out of Quebec for the company's Quebec division. The Quebec division of the company is not a separate legal entity but is registered with the CSST, the Quebec WCB. The employer is also registered with the WSIB, and operates out of Ontario.

The driver crossed border into Ontario as part of his regular duties and while in Ontario was injured. The CSST is managing this claim but the worker shows up on the employer's WSIB NEER cost statement.

Most likely what has happened is that the company may have in the past elected to be assessed under the WSIB's Alternative Assessment Procedure.

This Procedure is contained in OP 14-02-13 . The relevant part states:

Inter-jurisdictional trucking employers may elect the optional Alternative Assessment Procedure (AAP). Under the AAP these employers report earnings and pay premiums to Ontario for all their employee drivers, even though the drivers travel through other Canadian provinces and territories.

The AAP does not apply to Saskatchewan, which elected not to participate, or to individual states within the United States. In addition, the Ontario WSIB does not consider the Yukon and Prince Edward Island to be participants in the AAP.

This policy only applies to drivers in inter-jurisdictional trucking. Unless otherwise indicated, "workers" therefore only means workers who drive.

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Answer: (continued from page 1)

The purpose is to prevent duplicate payment of premiums by employers to the accident jurisdiction and the injured worker's resident jurisdiction. The employer should try and confirm this with those in your company who pay premiums, and with the WSIB.

If the company has not made an election under the APA, then the answer may be that the WSIB has applied its inter-jurisdictional agreement (IJA) with Quebec to this case. The WSIB has an agreement with all provinces.

Under the IJA a worker has a choice to elect to receive benefits in the province of accident or the province of residence. The IJA then applies to allow the province of benefit payment to charge for the accident. The relevant OP is 14-02-12, Insurable Earnings - Inter-jurisdictional Agreement), and states in part Policy—Under the Inter-jurisdictional Agreement on Workers' Compensation (IJA), employers registered in two or more Canadian jurisdictions (provinces or territories) are responsible for the payment of premiums to those jurisdictions. For employers whose home jurisdiction is Ontario, once an Ontario worker's total gross earnings from all jurisdictions exceeds the Ontario maximum insurable earnings ceiling, the employer pro-rates the Ontario maximum in accordance with formulae set out in the IJA. This is done to determine the amount the employer can consider non-insurable earnings for the purpose of premium payment in Ontario on that worker's earnings.

What this means is that because the worker elected benefits in Ontario, the WSIB has added the cost on to your NEER statement. The worker may not have actually made a conscious election. It may be that a Form 8 was filed in Ontario, and the worker simply accepted the WSIB benefits after completing a form 6. The employer should ensure that a Form 7 was filed in Ontario, or perhaps the Quebec division was asked to complete the F7 and did so.

In any event the employer should confirm with the WSIB why these costs have been charged to the employer in Ontario. As a matter of first principles this should be a Quebec case. In any event, the LOE benefits are better in Quebec (90%) so it is surprising the worker chose Ontario benefits. This matter needs to be cleared up with the WSIB.

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