

Practice Directive 30:50:50 (A)

Transfer of Experience

Effective July 1, 2001

Ownership Changes

The Board recognizes that ownership of a business determines the nature of operations and the approach to occupational health and safety in the workplace. Therefore, a general criterion to determine whether a firm's experience may transfer rests on whether there has been a change to the ownership of the business.

To confirm a change to ownership of business operations, the classification unit (CU) that is possibly contributing experience has to have an end date. The Board identifies a firm's involvement in an industry by assigning the appropriate classification unit to the firm account; if a firm is active in an industry, the firm reports payroll through the appropriate classification unit to denote that activity. An expired classification unit demonstrates that a firm is no longer active and accumulating their own experience in a classification unit. The potentially contributing classification unit may expire because the employer account is closing, and/or the firm is no longer responsible to report industry activity through that classification unit. When a firm transfers business operations (ending the associated classification unit on their account) so that a different firm must report those operations on their account, it is appropriate to consider whether or not the firm's experience rating should transfer.

Firm accounts with multiple classification units might remain open and contribute experience, as long as the classification unit that they are contributing experience from has an end date. For example:

Firm B acquires operations formerly reported through Firm A's account. Firm A may continue operations in other classifications while contributing experience to Firm B (subject to experience transfer rules, below) from a classification unit in which Firm A no longer has any activity.

Finally, there is one situation where it may be appropriate to consider experience transfer although the contributing classification unit has no end date. Divisional accounts share experience between several accounts (see policy 20:30:30 (Registration of Incorporations)). Experience is combined (i.e. transferred) between a common classification unit on multiple accounts held by one firm.

Criteria for Experience Transfer

Policy 30:50:50 identifies two situations in which experience transfer between two firms may be considered.¹

¹ For information on experience transfer in situations when a single firm is changing classifications, see policy 30:20:40 (Change of Classification).

1. If 50 percent or more of the firm's ownership remains the same, experience **will** transfer. This assumes that the firm's classification remains the same. (If classification changes with ownership, and more than 50 percent ownership of the business operations remains, then policy 30:20:40 (Change of Classification) takes precedence.)
2. If less than 50 percent of the firm's ownership remains the same, experience **will not** transfer, unless the Board is satisfied that the "business operations remain substantially the same." Policy identifies indicators that serve to suggest when this is the case, which are "undertaking, management, staff, plant, equipment, location, and customers/clients."

Board officers may use all of the indicators to measure the similarity of business operations before and after ownership transfers. However, primary consideration should be given to the following:

- i) Undertaking: Consider if the business operation's classification unit remains the same before and after the change in ownership. In addition, consider if the new ownership has implemented any new processes or procedures, or changed how the business operates in any way.
- ii) Management: Consider if the new ownership has changed the individuals who directly manage staff, safety programs, and ongoing business operations. Consider also if the new ownership is active in the business and makes or vets decisions that directly affect the workplace of the firm. Where they do, experience probably should not transfer.
- iii) Staff: Consider if the new ownership employs the staff who worked for the business before the change in ownership.

Board officers may interpret these indicators at their discretion, and must weigh them in conjunction with the level of continued ownership to determine if experience transfer is appropriate.

The policy allows for experience transfer when a firm's "business operations remain substantially the same" in order to address three situations:

1. When business ownership is uninvolved with day-to-day business operations, and does not supervise staff and/or make direct operational management decisions. This most often describes large publicly traded incorporations.
2. When an equal partnership splits, and the former partners continue in the same business undertaking, as per i), above. When this occurs, Board staff must close the original partnership account and set up new proprietorship accounts for the former partners, transferring experience from the former partnership account to the new accounts as appropriate.
3. When the new ownership of the business is a "family member" of the prior ownership. Factors that may influence whether experience may transfer include:
 - Consideration if the undertaking of the firm, as per i), above, remains the same after the transfer.

- Whether the new ownership has been historically involved in the business.
- Whether the previous ownership will still be active in the business.

These indicators help to determine situations when the historical claims cost to payroll ratio may change for a family-owned business. As per policy 20:30:21 (Assignment of New Account Numbers), staff must assign a new account number to the new owner and transfer experience as appropriate.

Incorporations

When considering experience transfer between incorporations, it may be unclear what decision to make given different business changes. The chart below shows common situations where experience may or may not transfer between incorporations. Please remember that share transfers reassign firm ownership, and asset transfers reassign business holdings that can include materials, operating locations, and equipment. In all cases, policy has precedence over this chart, which is a guide for your reference.

Scenario	Action	Rationale
ABC Ltd. (3 shareholders) dissolves and the shareholders form two new companies to take over the activities: 123 Ltd. (where 3 shareholders remain the same) and 456 Ltd. (where 2 shareholders remain the same).	Experience transfers to both 123 Ltd. and 456 Ltd. from ABC Ltd.	ABC Ltd. has an end date on its CU, as it is no longer operating. More than 50% ownership remains in the numbered firms, as well as continuing business operations in the same classification unit. (Consider each new firm on a case-by-case basis as a receiver.)
David Trent operates and is the sole shareholder of PQR Ltd. Mr. Trent closes down PQR Ltd., incorporates 789 Ltd., and operates the same business out of this new incorporation.	Experience transfers to 789 Ltd. from PQR Ltd.	When PQR Ltd. shuts down, the account CU has an end date. When the business operations transfer to 789 Ltd., there is 100% common ownership between the two incorporations, and business operations continue in the same classification unit.
Newly incorporated 369 Ltd. (shareholder: Jim Smith) takes over business operations and shuts down these three firms: <ul style="list-style-type: none"> • DEF Ltd. (2 equal shareholders: Jim Smith, Irene Davis) • MNO Ltd. (3 equal shareholders: Jim Smith, Bob Jones, Bill Adams) • XYZ Ltd. (2 equal shareholders: Jim Smith, Bob Jones) 	Experience transfers from DEF Ltd. and XYZ Ltd. to 369 Ltd. Experience may transfer from closed account MNO Ltd. to 369 Ltd. (See rationale.)	DEF Ltd., MNO Ltd. and XYZ Ltd. all have end dates on their CUs, as they are no longer operating. 50% ownership remains the same from DEF Ltd. and XYZ Ltd. to 369 Ltd. (Consider each old firm on a case-by-case basis as a contributor.) MNO Ltd. may transfer experience to 369 Ltd. subject to the discretionary rules of continuing business operations, as 33% ownership remains.
UVW Ltd. (shareholders: Jim Smith, Irene Davis), active in CU A and CU B, has JKL Ltd. (shareholders Jim Smith, Bill Evans) take over operations in CU A only, and both firms remain active.	CU A's experience transfers from UVW Ltd. to JKL Ltd. as long as UVW Ltd. ceases operations in CU A.	UVW Ltd. has an end date on CU A. 50% common ownership between firms allows experience transfer.

Scenario	Action	Rationale
UHF Ltd. (shareholders: Jim Smith, Irene Davis) sells assets only to OPQ Ltd. (shareholders Bill Adams, Bob Jones).	No Experience transfer. (You may consider continuing business operations, see rationale, next box.)	There is no common ownership, as there was no transfer of shares. (If the assets transferred are fully functioning independent continuing business operations, and the shareholders of OPQ Ltd. are not directly managing day-to-day operations, then experience may transfer subject to a determination that the business operations continue unchanged.)
PIL Ltd. (shareholder: Bill Evans) acquires all shares of REM Ltd. Both firms have been active in the same class for a number of years. Mr. Evans shuts down PIL Ltd. and continues all operations (i.e. moves PIL Ltd.'s assets) through REM Ltd.	Experience transfers from PIL Ltd. to REM Ltd.	PIL Ltd. has an end date on its CU, as it is no longer operating. There is 100% common ownership between firms when the PIL Ltd. account shuts down, and business operations continue in the same classification unit. (Essentially the experience history of PIL Ltd. will blend with that of REM Ltd. for rate calculation purposes. ²)
JKL Ltd. (shareholder: SHU Ltd.) merges operations with SHU Ltd. under a new incorporation, 246 Ltd. (shareholders: Jim Smith, Irene Davis). Both JKL Ltd. and SHU Ltd. have employer accounts and are classed the same at the time they are shut down. The shareholder of SHU Ltd. is Jim Smith.	Experience transfers to 246 Ltd. from JKL Ltd. and SHU Ltd.	JKL Ltd. and SHU Ltd. have end dates on their CUs, as they are no longer operating. 50% ownership remains the same from JKL Ltd. and SHU Ltd. to 246 Ltd.

Communicating Experience Transfer Decisions

When a Board officer communicates a decision to an employer about the transfer of experience in a given transaction, the decision letter must show that the officer considered evidence for and against transfer during the decision-making process. It is important to advise employers of the reasons behind the Board's decision, so that they may make informed evaluations on whether to appeal.

² The Board will add the historical yearly claim costs and payrolls of all participating firms together to come up with new claim cost-to-payroll ratios for rate setting purposes. Board officers can initiate this through the completion of a Special Instruction that directs the Premium Modification System to do these calculations and apply the new rate to the receiver account. See policy 30:50:41 (ER – The Plan) for an explanation of experience history components and how they can affect experience rate adjustments.