

POLICY NUMBER: POL-85

Chapter:
CLAIMS

Subject:
EXTENDED WAGE LOSS BENEFITS

Effective Date:
April 1, 2002

Last Update:
July 30, 2021

PURPOSE STATEMENT:

The purpose of this policy is to explain how the Workers Compensation Board (WCB) determines entitlement to extended wage loss benefits, and how the benefits are calculated, paid and adjusted.

REFERENCE:

Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1, Sections 1, 6(1)(2)(12), 40-44, 48.1-51
Workers Compensation Board Policy, POL-12, Survivor Benefits
Workers Compensation Board Policy, POL-41, Collateral Benefits
Workers Compensation Board Policy, POL-55, Benefit Assignment
Workers Compensation Board Policy, POL-71, Conditions for Entitlement
Workers Compensation Board Policy, POL-76, Responsibilities of Recovering Workers
Workers Compensation Board Policy, POL-80, Fraud Prevention and Investigation
Workers Compensation Board Policy, POL-86, Temporary Wage Loss Benefits
Workers Compensation Board Policy, POL-89, Impairment
Workers Compensation Board Policy, POL-92, Health Care Benefits - General Principles
Workers Compensation Board Policy, POL-117, Vocational Rehabilitation
Workers Compensation Board Policy, POL-124, Pension Replacement Benefits
Workers Compensation Board Policy, POL-154, Annuity
Workers Compensation Board Policy, POL-160, Decision Making

DEFINITION

In this policy:

“Average earnings” means the daily, weekly, monthly, or regular remuneration the worker was receiving at the time of the accident or any consecutive twelve month period during the two years preceding the date of accident, whichever, in the opinion of the Workers Compensation Board best represents the worker’s loss of earning capacity. This includes any remuneration the worker received as a result of the employment and Employment Insurance.

“Average wage index” means an index, generated using the actual values provided in Statistics Canada’s Survey of Employment, Payrolls and Hours (SEPH).

“Collateral benefit” means:

- (i) any periodic benefit the worker is entitled to receive under the Canada Pension Plan, the Quebec Pension Plan, the Employment Insurance Act (Canada); and
- (ii) any benefit the worker is entitled to receive as a result of the accident that is provided wholly or partially at the expense of the employer.

“Earnings” includes salary, wages, commissions, gratuities, earnings for overtime, piecework, contract work, bonuses, allowances, board and lodging capable of being estimated in terms of money, credits and any substitutes for money provided wholly at the expense of the employer.

“Estimated earnings” means the wages, as determined by the Workers Compensation Board that a worker with an impairment or pending impairment is capable of earning when actual wages do not reflect the worker’s ability to earn.

“Extended wage loss benefits” means wage loss benefits payable to a worker from the later of

- (i) the date which the Board determines that the worker has an impairment, and
- (ii) the date on which the worker completes vocational or occupational rehabilitation, where the worker is engaged in such rehabilitation on or after the date the Board determines the worker has an impairment.

“Impairment” means a medically measurable, permanent

- (i) loss of physiological function, anatomical function or anatomical structure, or
- (ii) abnormality of psychological function, physiological function, anatomical function or anatomical structure.

“Loss of earning capacity” means the difference between the worker’s net average earnings before the accident, and the net average amount the Workers Compensation Board determines

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the worker is capable of earning after the accident.

“Suitable work” means work that a worker has the necessary skills to perform and is medically able to perform, and that does not pose health or safety hazards to the worker or co-workers, as determined by the Workers Compensation Board.

“Temporary wage loss benefits” means wage loss benefits payable to a worker prior to the date on which extended wage loss benefits, if any, become payable.

“Wage loss benefits” means benefits paid as a result of a loss of earning capacity due to personal injury.

POLICY:

1. A worker receiving temporary wage loss benefits may become eligible for extended wage loss benefits if their work-related injury or illness has a long-term impact on their ability to work.
 2. The Workers Compensation Board (WCB) considers whether a worker is entitled to extended wage loss benefits if:
 - The worker has a permanent impairment or pending impairment as a result of the work-related injury, and
 - The work-related injury continues to cause a loss of earning capacity.
 3. This policy explains entitlement to extended wage loss benefits. Information about temporary benefits can be found in WCB policy, POL-86, Temporary Wage Loss Benefits.
 4. If a work-related injury has no long-term impact on earning capacity, the worker is not entitled to extended wage loss benefits. The WCB provides assistance for workers who have a permanent impairment and continue to experience symptoms from their work-related injury under WCB policy, POL-92, Health Care Benefits – General Principles.
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Eligibility Criteria

5. To be eligible for extended wage loss benefits, a worker must have:
- An accepted workers compensation claim that meets the conditions set out in WCB policy, POL-71, Conditions for Entitlement.
 - An impairment, or pending impairment, as a result of the work-related injury, as set out in WCB policy, POL-89, Impairment.
 - Completed their WCB vocational rehabilitation program, if applicable, as set out in WCB policy, POL-117, Vocational Rehabilitation.
 - An ongoing loss of earning capacity caused by the accepted work-related injury, as supported by objective medical information and verifiable earnings information.

Entitlement to Extended Wage Loss Benefits

6. Benefits are calculated by comparing the worker's earnings before the accident to their capacity to earn when the worker becomes eligible for extended wage loss benefits. Benefits are based on 85% of the worker's net loss of earning capacity, up to the maximum annual earnings.
7. To determine a worker's initial entitlement to extended wage loss benefits, the WCB:
- Adjusts the net pre-accident average earnings to present day value, up to the maximum annual earnings.
 - Determines current net earning capacity.
 - Calculates the extended wage loss benefit rate based on 85% of the loss of net earning capacity.
8. The factors the WCB considers when making decisions on claims, such as entitlement to extended wage loss benefits, are set out in WCB policy, POL-160, Decision Making.

Net Pre-Accident Average Earnings

9. The WCB determines the worker's net pre-accident average earnings when temporary wage loss benefits are established, as set out in WCB policy, POL-86, Temporary Wage Loss Benefits.

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10. Extended wage loss benefits are based on the comparison between net pre-accident earnings and their current net earning capacity.

To ensure that this is a fair comparison, a worker's net pre-accident average earnings will be adjusted to the current day dollars, using the Average Wage Index.

Net Earning Capacity

11. The WCB will provide extended wage loss benefits based on a worker's net loss of earning capacity that results from the work-related injury.
12. The loss of earning capacity is the difference between the net pre-accident average earnings, adjusted to current day dollars, if applicable, and the worker's net earning capacity when they become eligible for extended wage loss benefits.
13. To establish earning capacity, the WCB considers the objective medical information about the impact of the work-related injury on the worker's functional capability to work. If it is not clear from the objective medical information, a functional assessment may be required to determine the worker's functional ability.
14. The worker's earning capacity is based on the greater of the worker's actual earnings or the amount the WCB determines the worker is capable of earning.

Actual Earnings

15. If a worker has obtained employment, the WCB will consider the worker's actual earnings in determining their earning capacity.
16. The WCB may request the worker's income tax return, or other income documentation from an acceptable source, to confirm actual earnings.

Estimated Earning Capacity

17. If a worker has not obtained employment that reflects their ability to work, the WCB will estimate their earning capacity. This is because the *Workers Compensation Act* requires that compensation be based on a worker's earning capacity. This may be demonstrated by actual earnings, but the worker's capacity to earn is not dependent on obtaining actual employment.

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18. To estimate a worker's earning capacity, the WCB identifies three options for suitable work. The options must be:
- Consistent with the worker's functional ability to work.
 - Realistic given the worker's work history, education, and analysis of transferable skills.
 - Reasonably available, in that the work exists in the local labour market in Prince Edward Island or the province or territory where the worker usually lives.
19. The worker's estimated earnings will be based on the net average earnings of the three options for suitable work, using local labour market information.
20. Workers who have completed a WCB vocational rehabilitation program will have their earning capacity estimated as described in WCB policy, POL-117, Vocational Rehabilitation.

Net Value of Actual or Estimated Earnings

21. The net value of actual or estimated earnings is determined by deducting probable deductions payable by the worker for income tax, Canada Pension Plan premiums or Quebec Pension Plan premiums, and Employment Insurance premiums, as set out by the Canada Revenue Agency for the applicable income level and category.

Loss of Earning Capacity

22. A worker has a loss of earning capacity if the work-related injury is preventing them from achieving their pre-accident level of earnings, up to the maximum annual earnings.
23. If the worker's actual earnings are equal to or greater than before the accident, the worker has no loss of earning capacity and is not entitled to extended wage loss benefits.
24. If the worker has the functional ability to work in some capacity, the loss of earning capacity will be based on the greater of the worker's actual earnings or estimated earning capacity.

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25. If a work-related injury prevents a worker from returning to any type of work, the worker has a total loss of earning capacity and will be entitled to full extended wage loss benefits.

Calculation of Extended Wage Loss Benefits

26. For accidents that occurred on or after January 1, 2014, extended wage loss benefits are calculated based on 85% of the worker's loss of earning capacity.
27. WCB benefits cannot exceed 85% of net maximum annual earnings. If the worker is receiving other WCB benefits, the calculation of the extended wage loss benefits will be adjusted, if applicable, so the total amount of benefits does not exceed the maximum.
28. For accidents that occurred prior to 2014, entitlement to compensation is set out in the *Workers Compensation Act*.

Reviews and Adjustments

29. Because extended wage loss benefits compensate for long-term or permanent loss of earning capacity, the benefits are reviewed or adjusted only in the following circumstances:
- Once as a result of a scheduled review 36 months after the benefits are established, and then again 24 months later.
 - Annually to reflect cost of living increases, if applicable.
 - As a result of a measurable change in the level of impairment, as set out in WCB policy, POL-89, Impairment.
 - At any time, if it is determined that the benefits were based on a misrepresentation of fact.

Scheduled Reviews

30. The purpose of a scheduled extended wage loss benefit review is to confirm that the benefits continue to reflect the long-term impact that a work-related injury has on a worker's capacity to earn.
31. The first scheduled review starts in the year of the 36th month after the date the extended wage loss benefits were initially established.

32. All workers on extended wage loss benefits are subject to the 36 month review, except for those workers who will be 65 or older in the year of the review.
33. The review is based on objective medical information about the worker's functional ability and verifiable earnings information, in the same way that initial entitlement to extended wage loss benefits was determined.
34. If it is not clear from the medical information, an assessment may be required to determine any change in the level of functional ability.
35. The worker may be required to provide their income tax return or other acceptable income documentation to confirm their earnings from the review period.
36. The WCB will review the functional and earnings information to determine whether there has been a change in the worker's loss of earning capacity. Earning capacity is the greater of actual or estimated earnings.
37. If there has been a change in earning capacity, the amount of extended wage loss benefits will be adjusted. Adjustments are effective the date the review is complete.
38. Extended wage loss benefits are reviewed again in the same manner, starting in the 24th month after the date of the 36 month review.
39. The WCB may determine that a 24 month review is not required, if it is clear from the objective medical information that the worker's capacity to earn will not change.
40. If a worker is receiving a temporary wage loss benefit supplement at the time of a scheduled review, the review will be delayed until the period of temporary wage loss benefits has ended.

Cost of Living Adjustments

41. On July 1st every year extended wage loss benefits will be adjusted by an amount equal to the lesser of 4% or 80% of the percentage change in the Consumer Price Index.

The percentage change is determined by Statistics Canada in the Consumer Price Index for Charlottetown and Summerside for all items for December of the previous year and December one year earlier.

42. If the percentage change in the Consumer Price Index is negative, there will be no adjustment to benefits.

Payment of Benefits

43. Extended wage loss benefits are paid to the worker, except in the circumstances set out in WCB policy, POL-55, Benefit Assignment.
44. Wage loss benefits may be reduced if a worker is entitled to other benefits as a result of the work-related injury as described in WCB policy, POL-41, Collateral Benefits.

Workers who are entitled to full extended wage loss benefits are required to apply for Canada Pension Plan or Quebec Pension Plan disability benefits.

45. When extended wage loss benefits are established, workers who qualify may choose to contribute 5% of their benefit payments to an annuity fund. This is set out in WCB policy, POL-154, Annuity.
46. If a worker receiving extended wage loss benefits has a temporary loss of earning capacity due to the same injury, the worker may be entitled to a temporary wage loss supplement. The total amount of benefits cannot exceed 85% of the maximum annual earnings for the date of the accident.

Duration of Extended Wage Loss Benefits

47. Extended wage loss benefits are paid from the later of:
- The date the WCB determines that the worker has an impairment, or
 - The date the worker completes their WCB vocational rehabilitation program, if applicable, as set out in WCB policy, POL-117, Vocational Rehabilitation.
48. Extended wage loss benefits will continue until the date the earliest of the following occurs:
- The worker no longer has a loss of earning capacity or the loss is not a result of the work-related injury, as determined in a scheduled review or impairment reassessment.

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- The worker turns 65. The worker might be entitled to retirement income benefits as set out in WCB policies, POL-154, Annuity and POL-124, Pension Replacement Benefits.
 - The worker dies. Eligible dependents may be entitled to benefits if the death was the result of the work-related injury or illness, as set out in WCB policy, POL-12, Survivor Benefits.
49. The only exception to the conditions set out in #48 is where a worker is 63 years of age or older at the commencement of a loss of earning capacity. In this circumstance, wage loss benefits may be paid up to, but no later than, the date 24 months following the date of the accident.
50. Extended wage loss benefits may be discontinued or reduced if:
- The benefits were based on a misrepresentation of fact.
 - The worker does not provide the required information or cooperate in the scheduled reviews.
 - The worker is required to apply for Canada Pension Plan or Quebec Pension Plan disability benefits, but fails to do so.
 - The worker is found to have engaged in fraud or program abuse as described in WCB policy, POL-80, Fraud Prevention and Investigation.

HISTORY:

July 30, 2021 – Non-substantive edits to terminology.

December 10, 2020 – Amended to incorporate content from POL-116, Estimating Earning Capacity (rescinded), to set out that earnings are estimated when the worker has not obtained employment that reflects their ability to work and to state that estimated earnings are based on options for suitable work. Non-substantive changes for clarification, including content on the eligibility criteria, conditions for entitlement, and how benefits are calculated, paid, reviewed and adjusted.

May 8, 2019 - Non-substantive changes to clarify that there is no adjustment if the Consumer Price Index change is negative.

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March 28, 2019 - Amended to increase the average earnings review period from six to eight weeks.

January 10, 2019 – Non-substantive changes to reflect the legislative amendment to the definition of impairment.

January 18, 2018 - Amended to clarify income documentation requirements, allow for discretion related to the consequences of not providing documentation, authorize retroactive application of pre-accident wage increases and apply the present day value of wage loss when calculating extended benefits. Non-substantive changes for clarity and consistency with other Workers Compensation Board policies.

January 1, 2014 - Amended to reflect the revisions made to the *Workers Compensation Act* that became effective January 1, 2014.

June 23, 2011 - Amended to clarify the wording of some definitions and to provide clarity with respect to the 24 and 36 month reviews.

March 26, 2009 - Amended to clarify under what circumstances a review of benefits will be conducted.

March 29, 2007 - Amended to reflect changes to the *Workers Compensation Act* (Section 48.3) related to adjustment of benefits.

September 26, 2002 - Updated to clarify definition of earnings, handling of retroactive collective agreements, review of pensions, review of temporary wage loss benefits, application of indexing and the use of the average wage index.

March 28, 2002 - Replaces Policy and Practice (1) “Benefits Administration - Earnings Loss - Average Earnings” dated April 16, 1996 and (2) Adjudication and Compensation - Earnings Loss Review dated April 16, 1996.

Board of Directors Approval Date: March 28, 2002