

POLICY NUMBER: POL-86

Chapter:
CLAIMS

Subject:
TEMPORARY WAGE LOSS BENEFITS

Effective Date:
April 1, 2002

Last Update:
December 10, 2020

PURPOSE STATEMENT:

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

REFERENCE:

Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1, Section(s) 1, 4, 6(1)(2)(5)(12), 9(2), 40-44, 46-47, 48.5(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-60, Recurrence

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-85, Extended Wage Loss Benefits

Workers Compensation Board Policy, POL-94, Learners

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.

“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.

“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.

“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 the worker is capable of earning after the accident.

“Maximum annual earnings” means a maximum annual earnings amount set by the Workers Compensation Board on the first day of January, 1996 and adjusted each year by the percentage increase in the Consumer Price Index for Charlottetown and Summerside for all items for the twelve-month period ending on the June 30 previous as determined by the Workers Compensation Board in August of each year on the basis of monthly reports published in that respect by Statistics Canada for that period.

“Net average earnings” means a worker’s average earnings less the probable deductions payable by the worker for income tax , Canada Pension Plan premiums or Quebec Pension Plan

POLICY NUMBER: POL-86

premiums, employment insurance premiums, and such other deductions as the Workers Compensation Board may establish by regulation.

“Personal coverage” means workers compensation coverage that is available for proprietors, partners, and officers and directors of a corporation as well as independent operators but is not mandatory.

“Recurrence” means a return of a work injury that is reasonably related to a previous work-related accident and from which the worker has previously recovered or plateaued. Recurrence of the injury must be medically compatible with the previous injury and may include additional loss of earnings, as supported by objective medical information.

“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. Temporary wage loss benefits compensate eligible workers who are unable to work because of a work-related injury or illness. Benefits are based on the worker’s loss of earning capacity due to the injury.
2. This policy explains entitlement to benefits for a temporary loss of earning capacity. If a worker’s loss of earning capacity is extended, the Workers Compensation Board (WCB) will determine entitlement to benefits under WCB policy, POL-85, Extended Wage Loss Benefits.
3. If a work-related injury has no impact on earning capacity, the worker is not entitled to wage loss benefits. In these cases, the WCB provides assistance to help workers recover under WCB policy, POL-92, Medical Aid.

Eligibility Criteria

4. To be eligible for temporary 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.

- A loss of earning capacity caused by the accepted work-related injury, as supported by objective medical information and verifiable earnings information.

Entitlement to Temporary Wage Loss Benefits

5. If a worker is eligible, temporary wage loss benefits are calculated by comparing the worker's earnings before the accident to their capacity to earn after the accident. Benefits are based on 85% of the worker's net loss of earning capacity, up to the maximum annual earnings for the accident year.
6. To determine a worker's entitlement to temporary wage loss benefits, the WCB:
 - Gathers information about the worker's average earnings.
 - Determines the worker's net average earnings before the accident.
 - Determines the worker's net earning capacity after the accident.
 - Calculates the benefit compensation rate based on 85% of the loss of earning capacity.
7. The factors the WCB considers when making decisions on claims, such as entitlement to temporary wage loss benefits, are set out in WCB policy, POL-160, Decision Making.

Average Earnings

8. The WCB will ask for earnings information when a claim for wage loss benefits is filed. This information is used to establish a worker's average earnings.
9. In most cases, earnings can be verified by the employer. If more information is required to confirm a worker's average earnings, the WCB will work with the worker, employer, and other third parties, if applicable, to obtain sufficient information. Average earnings must be verified using a source of income documentation that is acceptable to the WCB.
10. Average earnings are subject to the maximum annual earnings on the date of accident. This means that the WCB cannot consider earnings in excess of the maximum amount when determining a worker's average earnings.
11. Average earnings are based on the worker's consistent earning pattern, and include

regular wages, salary and other taxable employment income. (See Appendix A for a detailed list of types of earnings included, and income not included, when establishing average earnings.)

12. When calculating average earnings, weeks with zero or reduced earnings may be included if this a reflection of a consistent earning pattern.
13. Earnings from other employment are included in average earnings if the worker has a loss of earnings, as a worker at the other employment, due to the work-related injury.
14. Income from a non-employment source or earnings that cannot be confirmed or verified are not included in average earnings.

New, Casual or Seasonal Workers

15. If a consistent earning pattern cannot be established due to the length of time the worker has been employed or the casual or seasonal nature of the employment, the WCB will determine the worker's average earnings in a way that best represents their loss of earnings.

Personal Coverage

16. For those who have purchased WCB personal coverage, such as independent operators, average earnings are the lesser of the personal coverage (gross amount) purchased or the amount of verifiable net employment income at the time of the accident.

Volunteer Firefighters

17. Average earnings for a volunteer firefighter are based on their earnings as a worker in their regular employment, which may include self-employment income.

Apprentices

18. If the worker is an apprentice, average earnings may be based on the probable earning capacity of a qualified worker in the trade or occupation. This applies only when the loss of earning capacity extends beyond the date the apprenticeship would have been completed.

Learners

19. Average earnings for learners, after the date the training or probationary work would have been completed, are set out in WCB policy, POL-94, Learners.

Young Workers

20. Under exceptional circumstances, the WCB may, due to a worker's age, consider average earnings that reflect the probable earning capacity of the worker if the loss of earning capacity becomes extended. The WCB will consider the circumstances on a case by case basis.

Loss of earning capacity more than 12 months after the accident.

21. Where a worker's loss of earning capacity commences more than 12 months after the accident, the average earnings and maximum annual earnings may be based on either date the accident or the date the loss of earning capacity commences, whichever best reflects the worker's loss of earning capacity.

Net Average Earnings before the Accident

22. Once the WCB has determined the worker's average earnings before the accident, the net average earnings must be calculated.

The net average earnings are the average earnings less the 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.

Net Earning Capacity after the Accident

23. The WCB will provide temporary wage loss benefits based on a worker's net loss of earning capacity that results from the work-related injury.

The WCB considers the objective information about the worker's functional capability to work and the availability of suitable work with the employer to determine earning capacity after the accident.

24. If a work-related injury prevents the worker from returning to any type of suitable work,

POLICY NUMBER: POL-86

as set out in WCB policy, POL-93, Return to Work, the worker has a total loss of earning capacity and will be entitled to full temporary wage loss benefits.

25. If the worker is able to continue working or return to suitable work, such as modified duties, the injury may not be causing a total loss of earning capacity.

The WCB will determine the worker's net earning capacity based on the earnings, if any, at the suitable work and adjust the entitlement to temporary wage loss benefits, if applicable.

Calculation of Benefit Compensation Rate

26. For accidents that occurred on or after January 1, 2014, temporary wage loss benefits are calculated based on 85% of the worker's loss of earning capacity.
27. For accidents that occurred prior to 2014, entitlement to compensation is set out in the *Workers Compensation Act*.

Payment of Benefits

28. Temporary wage loss benefits are paid to the worker, except in the circumstances set out in WCB policy, POL-55, Benefit Assignment.
29. 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.
30. The total amount of WCB benefits cannot exceed 85% of net maximum annual earnings. If the worker is receiving other WCB wage loss benefits, temporary wage loss benefits will be adjusted, if applicable, so the benefits do not exceed the maximum.

Duration of Temporary Wage Loss Benefits

31. Temporary wage loss benefits are paid from the first day the worker has a loss of earning capacity beyond the date of accident.
32. Claims with a date of accident prior to January 1, 2016, may be subject to the requirements of the waiting period, as outlined in the *Workers Compensation Act*.

POLICY NUMBER: POL-86

33. Temporary wage loss benefits will continue until the date when the earlier 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.
 - The worker becomes eligible for extended wage loss benefits, as set out in WCB policy POL-85, Extended Wage Loss Benefits.
 - 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.
34. The only exception to the conditions set out in #33 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.
35. Temporary wage loss benefits may be discontinued, suspended or reduced if the worker:
- Does not comply with the responsibilities set out in WCB policy, POL-76, Responsibilities of Recovering Workers.
 - Engages in fraud or program abuse, as described in WCB policy, POL-80, Fraud Prevention and Investigation.

Temporary Wage Loss Benefit Reviews

36. The WCB may review temporary wage loss benefits at any time to determine the worker's ongoing entitlement to benefits and to ensure the worker is receiving the appropriate amount of compensation.
37. Workers are required to inform the WCB of any changes in their earnings or other benefits while they are receiving temporary wage loss benefits, as this may have an impact on their entitlement to benefits.

Average earnings review

38. An average earnings review will take place if the worker's earnings on the date of accident may not represent the actual loss of earning capacity of a worker. For example, a worker whose position is subject to lay-offs or shutdowns due to lack of work or seasonal factors, or the position is such that the agreed term of employment is less than 12 months in duration.
39. Where a worker is subject to an average earnings review, the WCB will calculate the compensation rate in two stages:
- To compensate for the short-term loss, the initial rate is based on the worker's actual earnings as of the date of the accident. This rate will continue for eight weeks.
 - At the end of eight weeks, the WCB will adjust the rate, taking into consideration the worker's employment pattern and earnings which better represents the worker's average earnings based on a consecutive twelve month period during the two years preceding the date of accident.
40. Average earnings must be verified using a source of income documentation that is acceptable to the WCB.
41. Where the worker does not provide the necessary documentation, the worker's benefits will be suspended until such time as the information has been provided to the WCB, unless the circumstances for the delay are outside the worker's control.

If the information is received from the worker after benefits have been suspended, benefits will be reinstated effective the date the information was received by the WCB.

Pre-Accident Wage Changes

42. A worker who receives a notice of a wage increase while in receipt of temporary wage loss benefits may request a review of the benefit rate only when the wage increase has an effective date that predates the date of accident. The worker is required to provide the information from the employer necessary to complete the review. The information from the employer should include the effective date of the change, the amount of the wage change, and other pertinent information. Any change resulting from the review will become effective the date the temporary wage loss benefits commenced.

Recurrence

43. Where a worker has a recurrence of an injury that causes a loss of earning capacity more than twelve months after the initial loss of earning capacity has ended, the average earnings of the worker will be based on what the WCB determined best represents the worker's current loss of earning capacity, as set out in WCB policy, POL-60, Recurrence.

HISTORY:

December 10, 2020 – Non-substantive changes for clarification, including content on the eligibility criteria, conditions for entitlement, and how benefits are calculated, paid, reviewed and adjusted.

April 9, 2019 – Non-substantive editorial changes.

August 9, 2018 – Non-substantive changes to definitions.

May 5, 2017 - Non-substantive changes to reflect approved amendments to Workers Compensation Board policy, POL-94, "Learners."

September 26, 2016 - Non-substantive changes to clarify policy statements.

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

September 30, 2009 - The policy was updated as a result of the 60 month policy review process.

May 26, 2003 - Amended to ensure the definitions of "Average earnings" and "Wage loss benefits" are consistent with the definitions provided in the *Workers Compensation Act*.

December 19, 2002 - Modified to clarify the definition "average earnings" and specify wage loss benefits for workers 63 years of age or older.

March 28, 2002 - Replaces Policy and Practice (1) Benefits Administration - Earnings Loss Average Earnings dated April 16, 1996 and (2) Benefits Administration - Earnings Loss 80-85% of

POLICY NUMBER: POL-86

Net Average Earnings" dated April 16, 1996.

Board of Directors Approval Date: March 28, 2002

Appendix "A"

Types of earnings included when establishing average earnings:

- Regular employment wages/salary and other taxable income as identified by the Canada Revenue Agency, including but not limited to:
 - Commissions
 - Employment Insurance regular benefits (Box 15 on T4E)
 - Gratuities and tips
 - Holiday pay (contractual or statutory)
 - Overtime where there is a regular and consistent pattern
 - Production bonuses
 - Regular bonus payments
 - Shift differentials
 - Sick pay or sick pay credits paid
 - Vacation pay as a percentage of earnings or in a lump sum
- Taxable benefits such as car allowances, employer-supplied accommodations, meal allowances, room & board, travel time pay

Income not used when establishing average earnings includes but is not limited to:

- Award payments (e.g. for an idea or suggestion)
- Employer contributions to employment benefits
- Employer contributions to RRSP
- Gifts in lieu of cash or payments in the form of merchandise
- Federal and provincial income assistance benefits, Maintenance Enforcement and other support payments (e.g. child, spousal, disability, etc.)
- Long term service awards/severance
- Tuition reimbursements from employer
- Uniforms
- Workers Compensation benefits
- Benefits under an insurance plan, long-term disability benefits
- Employment Insurance benefits for reasons other than job loss (e.g., sickness, maternity/parental, compassionate care, etc.)
- Profit sharing, royalties, stocks or dividends resulting from employer stock option/purchase plan
- Strike pay