

POLICY NUMBER: POL-85

Summary of Proposed Amendments

An amendment to the policy, Review of Benefits (POL-85), is proposed in section 4 for workers whose earnings on the date of accident may not represent their actual loss of earning capacity. The draft policy extends the period of time the initial compensation rate is payable.

*The proposed amendment is indicated in the policy document below. New content is **bolded** and content to be deleted is shown with a ~~striketrough~~.*

Chapter:

CLAIMS

Subject:

REVIEW OF BENEFITS

Effective Date:

April 1, 2002

Last Update:

~~January 10, 2019~~ — **DRAFT January 24, 2019**

PURPOSE STATEMENT:

The purpose of this policy is to explain how the Workers Compensation Board reviews wage loss benefits to ensure that they appropriately compensate for the loss of earnings capacity resulting from a workplace injury or illness.

REFERENCE:

*Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1, Sections 6, 44, 48.1-50
Workers Compensation Board Policy, POL-81, Adjustments to Pensions*

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 earnings review” means a review which is conducted whenever the Workers Compensation Board recalculates a worker’s average earnings when further documentation is received which indicates a recalculation would result in a more accurate representation of the worker’s loss of earning capacity.

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

“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.

“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 the worker is capable of earning after the accident.

“Pension” means an award based on a medically assessed disability awarded by the Workers Compensation Board prior to January 1, 1995 and was paid in recognition of a permanent partial or total disability.

“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 and are equivalent to an amount equal to 85% of the worker’s loss of earning capacity.

POLICY:

1. Wage loss benefits paid to a worker and the medical condition of a worker may be reviewed by the Workers Compensation Board to determine the worker’s ongoing entitlement to benefits and to ensure the worker is receiving the appropriate amount of compensation.
2. Workers are required to inform the Workers Compensation Board of any changes in their financial condition.

Average Earnings Review

3. 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.
 4. Where a worker is subject to an average earnings review, the Workers Compensation Board will calculate the compensation rate in two stages:
 - a) 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 ~~six~~**eight** weeks.
 - b) At the end of ~~six~~**eight** weeks, the Workers Compensation Board will adjust the rate, taking into consideration the worker's employment pattern and earnings for a period, or periods, of time before the accident which better represent the worker's average earnings at the time of the accident. The amount of average earnings shall not exceed the maximum annual earnings.
 5. To validate the earnings, the worker is required to provide documented proof of earnings by an acceptable source of income documentation. This could include pay
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stubs, income tax returns, documents filed with the worker's income tax returns, and applicable schedules provided by the federal department responsible for taxation.

6. 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 Workers Compensation Board, 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 Workers Compensation Board.

Pre-Accident Wage Changes

7. A worker who receives a notice of a wage increase while in receipt of temporary wage loss benefits may request a review of the temporary wage loss 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.

Extended Wage Loss

8. A worker's temporary wage loss benefits will be adjusted to present value, using the Average Wage Index, prior to the calculation of an extended wage loss award. The Workers Compensation Board may request the worker's income tax return from the previous year to confirm the loss of earning capacity.
9. The Workers Compensation Board may review its determination and adjust the amount of compensation payable to the worker as extended wage loss benefits according to the following:
 - a) in the year of the 36th month after the date of the initial award of extended wage loss benefits;
 - b) in the year of the 24th month after the date of the 36 month review;
 - c) where there is an adjustment by the Workers Compensation Board in the degree of the impairment; or

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- d) the worker's extended wage loss benefits were based on a misrepresentation of fact.
10. All workers receiving extended wage loss benefits are subject to the reviews except workers:
- a) who will reach the age of 65 years or more in the year the review is scheduled to commence; or
 - b) who are specifically excluded, based on objective medical evidence, from further review at the conclusion of the 36 month review.
11. Workers whose extended wage loss benefits are being supplemented by temporary wage loss benefits will have their review of benefits delayed until the period of temporary wage loss benefits has ended.
12. If a change in functional ability related to a workplace injury is indicated at the time of the 36 month or 24 month review, a functional assessment may be used to determine the change in the level of functional ability. The results of the functional assessment will be used to determine the worker's loss of earning capacity and the amount of compensation payable to the worker as extended wage loss benefits.
13. On July 1, 2014, and on the first day of July thereafter, a worker's extended wage loss benefits will be adjusted by an amount equal to the lesser of:
- (a) 80% of the percentage change in the Consumer Price Index for Charlottetown and Summerside for all items for December of the previous year and December one year earlier as determined by the Workers Compensation Board on the basis of reports published by Statistics Canada; and
 - (b) 4%.

Pensions

14. Pensions will not be reviewed or adjusted by the Workers Compensation Board, except for the annual adjustment that is made as of the first day of July in each year pursuant to the Workers Compensation Board policy, POL-81, "Adjustments To Pensions."

HISTORY:

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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