

POLICY NUMBER: POL-86

**Chapter:
CLAIMS**

**Subject:
WAGE LOSS BENEFITS**

**Effective Date:
April 1, 2002**

**Last Update:
May 5, 2017**

PURPOSE STATEMENT:

The purpose of this policy is to explain how the Workers Compensation Board determines the earnings used in calculating wage loss benefits and the conditions under which wage loss benefits are payable.

REFERENCE:

Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1, Section(s) 1, 6 (2), 40-55.
Workers Compensation Board Policy, POL-41, Collateral Benefits
Workers Compensation Board Policy, POL-60, Recurrence
Workers Compensation Board Policy, POL-84, Waiting Period
Workers Compensation Board Policy, POL-85, Review of Benefits
Workers Compensation Board Policy, POL-89, Impairment
Workers Compensation Board Policy, POL-94, Learners

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.

“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.

“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 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 disabling conditions, supported by objective medical evidence that can be reasonable related to an injury caused by a previous work-related accident. Recurrence of the condition must be medically compatible with the previous injury, and decisions to accept or deny recurrences must rely on medical evidence supporting this relationship.

“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:

Average Earnings

1. Where, as determined by the Workers Compensation Board, it is impracticable to calculate the average earnings of a worker because of the length of time the worker has been employed or the casual nature of the employment, the Workers Compensation Board may determine the worker's average earnings in a way that, as determined by the Workers Compensation Board, best represents the loss of earnings incurred by the worker by reason of the accident.
2. The Workers Compensation Board establishes average earnings by using the worker's regular remuneration that, as determined by the Workers Compensation Board, forms a consistent earning pattern.
3. When establishing average earnings the Workers Compensation Board does not include income from a non-employment source, or earnings that cannot be confirmed or verified in the determination of average earnings. (See Appendix "A" for a detailed list of types of earnings.)
4. When calculating average earnings, weeks with zero or reduced earnings may be included if this a reflection of a consistent earning pattern, as determined by the Workers Compensation Board.
5. For workers who have personal coverage with the Workers Compensation Board, average earnings are calculated based on the lesser of the personal coverage (gross amount) purchased or the amount of demonstrated net employment income at the time of the accident confirmed by an acceptable source of income documentation, as determined by the Workers Compensation Board.
6. Average earnings for volunteer firefighters will be the same rate which would have been calculated based on the average earnings from their regular employment. For workers who are self-employed, average earnings will be verified using an acceptable source of income documentation, as determined by the Workers Compensation Board.
7. If a worker has other employment, the worker's total earnings are used when determining average earnings, provided that:
 - the earnings are covered under the *Workers Compensation Act*; and

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- the worker has a loss of earnings at the other employment due to the compensable injury.
8. Average earnings for learners, after the date the training or probationary work would have been completed, are set out in Workers Compensation Board policy, POL-94, "Learners."
 9. Where the earnings used to establish wage loss benefits do not appear to be representative of the worker's loss of earning capacity, an average earnings review will be initiated and may result in an adjustment of wage loss benefits as outlined in Workers Compensation Board policy, POL-85, "Review of Benefits."

Net Average Earnings

10. Each year, the Workers Compensation Board will establish a schedule of probable deductions payable by the worker for various levels of income and such deductions shall be used to determine net average earnings.
11. Net average earnings for a worker shall be confirmed at the time of the accident less the probable deductions payable by the worker for income tax, Canada Pension premiums or Quebec Pension Plan premiums, Employment Insurance premiums, and such other deductions as the Workers Compensation Board may establish by regulation.

Wage Loss Benefits

12. Wage loss benefits are payable in respect of any working day after the day of the accident. Claims with a date of accident prior to January 1, 2016, are subject to the requirements of the waiting period, as outlined in Workers Compensation Board policy, POL-84, "Waiting Period."
13. For accidents that occurred prior to January 1, 2014, the wage loss benefits payable to a worker are equivalent to 80% of the worker's loss of earning capacity up to the maximum annual earnings limit for the first 38 weeks and 85% thereafter. Where the worker received wage loss benefits for less than 38 weeks, effective January 1, 2014 the wage loss benefits will be adjusted to an amount equal to 85% of the worker's loss of earning capacity up to the maximum annual earnings limit.
14. For accidents that occurred on or after January 1, 2014, the wage loss benefits payable to a worker are equal to 85% of the worker's loss of earning capacity up to the

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maximum annual earnings limit.

15. Wage loss benefits are payable until the earlier of:
 - (a) the date the Workers Compensation Board determines the loss of earning capacity has ended or no longer results from the injury; or
 - (b) the date the worker attains the age of 65 years.
16. The only exception to the conditions set out in #15 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.
17. Wage loss benefits may be reduced if a worker is entitled to other benefits as a result of an injury as described in Workers Compensation Board policy, POL-41, "Collateral Benefits."

Recurrence

18. 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 best represents the worker's current loss of earning capacity, as determined by the Workers Compensation Board.

HISTORY:

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*.

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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 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 included when establishing average earnings:

- Non-taxable income or benefits, including but 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
 - 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
- Income from non-employment sources, such as:
 - 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