

Consultation Summary

Amendments to the policy, Pension Replacement Benefits (POL-124) are proposed to enhance clarity and readability for clients and will ensure that workers will be appropriately compensated for their loss of pension benefits resulting from a workplace injury.

Proposed amendments to the existing policy content include:

- a) Introduction of overall assumptions that, if not for the workplace injury:
 - The worker would have continued working with the same employer.
 - The worker's earnings would have increased, until retiring at age 65.
 - The worker would have continued to contribute to the Canada Pension Plan (CPP), Quebec Pension Plan (QPP), or an Employer Sponsored Pension Plan (ESPP) based on the projected earnings increases. (8)
- b) Change in methodology for annual adjustment of pre-injury earnings for workers with a loss of ESPP benefits. (9)
- c) New provision which outlines determination of pre-injury earnings where there is a recurrence of symptoms. (10)
- d) Removal of a previous provision in which a worker's pension replacement benefits could be reduced where they chose to take their ESPP benefits over a shorter period of time. (previous #9).
- e) New provision allows for WCB to factor any pension contributions made during the continued accrual period into the calculation of any potential benefits lost. The previous version of the policy excluded workers whose pension plan allowed for continued accrual. (16)

In addition to the proposed amendments, the policy has been updated and re-organized in accordance with WCB's client-centred approach to policy design, which is intended to enhance clients' understanding.

The attached draft policy is presented with the non-substantive changes applied. The proposed amendments are tracked, new content is **bolded** and content to be deleted is shown with a ~~strike through~~. A copy of the current policy is attached for comparison.

POLICY NUMBER: POL-124

**Chapter:
CLAIMS**

**Subject:
PENSION REPLACEMENT BENEFITS**

**Effective Date:
June 23, 2005**

**Last Update:
~~December 10, 2020~~ DRAFT November 15, 2024**

REFERENCE:

Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1, Sections 43, 50(4), 50(5)
Workers Compensation Board Policy, POL-154, Annuity

PURPOSE STATEMENT:

The purpose of this policy is to explain eligibility, calculation and payment of pension replacement benefits.

DEFINITION:

In this policy:

“Defined benefit” when referring to a registered employer sponsored plan means a pension plan that provides a pension at retirement based on a specific formula such as, for example, 2% of average earnings for each year of service.

“Defined contribution” when referring to a registered employer sponsored plan means a pension or retirement savings plan that provides for worker, if any, and employer contributions to be deposited into an account on behalf of the worker to be invested and accumulated until retirement with the proceeds of the account being available to purchase a pension or annuity at retirement.

“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.

“Pension replacement benefits” means the amount of pension benefit, under the Canada Pension Plan, Quebec Pension Plan or a registered employer sponsored pension plan a worker can demonstrate to the satisfaction of the Workers Compensation Board they have lost as the result of the compensable injury.

“Registered employer sponsored pension plan” means a pension or retirement savings plan that is sponsored by the employer and is registered under the *Income Tax Act* for Canada.

“Unreduced pension” means a pension that is available at an age earlier than the normal retirement age but that is not reduced for the fact that the pension is paid earlier and for a longer period.

POLICY:

Guiding Principles

1. The Workers Compensation Board (WCB) provides pension replacement benefits to eligible workers who have lost part of their pension benefits under the Canada Pension Plan (CPP), Quebec Pension Plan (QPP) or a registered employer-sponsored pension plan (ESPP), due to a workplace injury.
2. This policy applies to workers who qualify for extended wage loss benefits before January 1, 2019. For those who qualify after that date, eligibility is set out in WCB policy, POL-154, Annuity.

Eligibility Criteria

3. To be eligible for pension replacement benefits, the WCB must verify that the worker:
 - Received wage loss benefits after January 1, 1992, which ended when they turned 65 or older.
 - Did not receive a permanent partial or total disability pension for the injury.
 - Is eligible for pension benefits through CPP, QPP, or an employer-sponsored pension plan.

- Can show that the loss of earning capacity resulting from a workplace injury caused a loss of CPP, QPP, or ESPP benefits.

Application for Pension Replacement Benefits

4. Workers whose wage loss benefits will end at age 65 will receive a six-month notification, which includes information about eligibility for pension replacement benefits.
5. Workers must apply for pension replacement benefits in writing and provide information to demonstrate their loss of pension income.

Calculating Pension Replacement Benefits

6. The WCB will use external actuarial expertise in the calculation of pension replacement benefits.
7. To calculate the pension benefits lost because of a workplace injury, the WCB determines the amount of pension benefits the worker would have received if the loss of earning capacity due to the injury hadn't happened. Once calculated, they can be compared to the pension that the worker could have earned using the estimated capable earnings and the worker's actual pension benefits payable to determine if a loss of benefits occurred as a result of the workplace injury.
8. **The calculation will be based on the assumption that, if not for the workplace injury:**
 - **The worker would have continued working with the same employer.**
 - **The worker's earnings would have increased, until retiring at age 65.**
 - **The worker would have continued to contribute to the CPP, QPP, or ESPP based on the projected earnings increases as established in #9.**

Establishing Earnings Increases to Age 65

- 8.9. The worker's pre-injury earnings are established based on the worker's actual income at the time of the workplace injury, up to the maximum annual earnings limit for that year. The pre-injury earnings, capped at the maximum annual earnings limit for that year, are then adjusted annually to current day dollars to estimate what the worker's earnings would have been at age 65.

- **For loss of CPP or QPP benefits**, pre-injury earnings will be adjusted every year on January 1st based on the same percentage increase as the CPP and QPP Maximum Pensionable Earnings amount.
 - **For loss of ESPP benefits, pre-injury earnings will be adjusted every year on January 1st based on the change in the Average Weekly Earnings Industrial Aggregate for all employees in Prince Edward Island at June 30 of the year previous.**
- ~~• The Workers Compensation Board will use a factor of 1.8% per annum as a rate of salary increase before retirement when calculating pension replacement benefits. This factor will be reviewed every five years beginning on the date this policy came into effect. The rate will be established based on the average rate of increase in the Consumer Price Index (Canada all items) for the 10 years prior to the five year review period. If this factor changes, as a result of the five year review, the new rate will only be applied to applications for pension replacement benefits after the factor review date;~~

- 10. If a worker's claim is reopened due to a recurrence of symptoms, pre-injury earnings will be calculated as set out in WCB policy POL-86, Temporary Wage Loss Benefits.**

Loss of Canada Pension Plan or Quebec Pension Plan Retirement Benefits

11. The WCB will presume that a worker would have started to receive a pension benefit from the CPP or QPP at age 65.
12. The WCB will estimate the CPP benefits a worker would have received had the injury not occurred. This estimate will be compared to the actual CPP benefits received, and the worker will be compensated if a loss is determined.
13. Where a worker receives a pension benefit from CPP or QPP at an age other than 65, the estimate of pension benefits payable will be adjusted accordingly.

Loss of Registered Employer Sponsored Pension Plan (ESPP) Benefits

Defined Benefit Plans

14. The WCB will presume that the worker would have started to receive a pension benefit from the ESPP at age 65. Where a worker receives a pension benefit from an ESPP at an age other than 65, the estimate of pension benefits payable will be adjusted accordingly.

- If a worker chooses to start their pension before age 65, the WCB will compare the potential benefit that could have been earned at the later of the retirement date or the date at which an unreduced pension would have been available and the actual benefit, both indexed to age 65.

15. The WCB will calculate the difference between the potential pension benefit that could have been earned and the actual pension benefit received to determine the amount of lost ESPP benefits.

~~For registered employer sponsored pension plans that are of the defined benefit type:~~

- ~~• Where a worker takes early retirement the Workers Compensation Board will use the worker's unreduced pension amount in the calculation of pension replacement benefits;~~
- ~~• The Workers Compensation Board will use the assumption that a worker, had the injury not occurred, would have remained employed with the same employer and would have retired at the age at which an unreduced pension would have been available based on the rules of the worker's registered employer sponsored pension plan;~~
- ~~• Where a worker takes early retirement, the Workers Compensation Board will take any pension benefits received into consideration when determining the amount of pension replacement benefits. To calculate this amount, the Workers Compensation Board will use the amount of pension actually received by the worker from the date of retirement to the date the worker could have retired with an unreduced pension;~~

16. If the worker's ESPP provides the opportunity for continued accrual while the worker is determined to be disabled, any accrual or contributions during this period will be factored into the calculation of any potential ESPP benefits lost.

- ~~• If the worker's registered employer sponsored pension plan provides continued accrual while the worker is determined to be disabled for purposes of the registered employer sponsored pension plan, no registered employer sponsored pension plan pension benefit has been lost.~~

Defined Contribution Plans (including Group and Pooled Retirement Savings Plans)

17. The WCB will presume that the worker would have started to receive pension benefits at age 65.
18. The WCB will calculate the difference between the pension benefit that the worker could have earned, and the actual pension benefit received to determine the amount of lost pension benefits.
19. For plans that contain both defined benefit and defined contribution portions, the pension replacement benefit will be calculated for each portion separately and will be added together.

Payment of Pension Replacement Benefits

20. Pension replacement benefits are paid for the worker's lifetime and are non-transferable after death.
21. If annual benefits exceed \$500, they will be paid monthly. Otherwise, they will be paid annually as a lump sum.
22. The WCB will not index pension replacement benefits.

HISTORY:

December 10, 2020 – Non-substantive changes to definitions.

October 23, 2019 - Non-substantive changes to definitions and age requirements.

July 12, 2019 - Non-substantive changes to reference maximum annual earnings.

January 24, 2019 – Amended to reflect legislative changes to provide an annuity retirement benefit for those workers who qualify on or after January 1, 2019.

March 31, 2016 – The policy was amended to include retirement saving plans when determining the loss of pension benefits experienced by injured workers.

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October 28, 2015 – The policy was amended to reflect the change in the factor (decreased to 1.8% from 2.1%) used to calculate a rate of salary increase before retirement when calculating pension replacement benefits. The calculation was performed as required by this policy.

September 28, 2010 – The policy was updated as a result of the 60 month policy review process. No substantive changes were made to the policy during this review. However, the policy was amended to reflect the change in the factor (increased to 2.1% from 2%) used to calculate a rate of salary increase before retirement when calculating pension replacement benefits. The calculation was performed as required by this policy (every five years beginning on the date this policy came into effect).

Board of Directors Approval Date: June 23, 2005

DRAFT POLICY

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“Defined contribution” when referring to a registered employer sponsored plan means a pension or retirement savings plan that provides for worker, if any, and employer contributions to be deposited into an account on behalf of the worker to be invested and accumulated until retirement with the proceeds of the account being available to purchase a pension or annuity at retirement.

“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

“Pension replacement benefits” means the amount of pension benefit, under the Canada Pension Plan or a registered employer sponsored pension or retirement savings plan, a worker can demonstrate to the satisfaction of the Workers Compensation Board they have lost as a result of the compensable injury.

“Registered employer sponsored pension plan” means a pension or retirement savings plan that is registered under the *Income Tax Act* for Canada.

“Unreduced pension” means a pension that is available at an age earlier than the normal retirement age but that is not reduced for the fact that the pension is paid earlier and for a longer period.

POLICY:

Eligibility Criteria

1. This policy applies to workers who meet the criteria and qualify for extended wage loss benefits before January 1, 2019.
2. Eligibility and criteria for retirement benefits for workers who qualify for extended wage loss benefits on or after January 1, 2019 are set out in Workers Compensation Board policy, POL-154, Annuity.
3. The Workers Compensation Board provides six months notification to workers whose wage loss benefits will be discontinued because they have reached age 65. As part of this notification, the Workers Compensation Board will inform the worker that they may be eligible for pension replacement benefits.

The worker must make a written request to the Workers Compensation Board to be considered for pension replacement benefits.

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4. To be eligible for pension replacement benefits the worker must meet all of the following criteria:
- The worker has attained the age of 65;
 - The worker was assessed for a wage loss benefit after January 1, 1992;
 - The worker was in receipt of wage loss benefits, which ended when the worker reached the age of 65 years or over;
 - The worker did not receive a permanent partial or total disability pension for the injury;
 - The worker is in receipt of pension benefits under the Canada Pension Plan or a registered employer sponsored pension or retirement savings plan;
 - The worker can demonstrate to the satisfaction of the Workers Compensation Board that as a result of the compensable injury, the worker has lost benefits under the Canada Pension Plan or a registered employer sponsored pension or retirement savings plan.

Calculating Loss of Benefits

Loss of Canada Pension Plan Retirement Benefits

5. To determine whether a worker has a loss of pension benefits under the Canada Pension Plan, the Workers Compensation Board will use the assumption that a worker, had the injury not occurred, would have continued to be employed and would have retired at age 65 and would have started to receive a retirement benefit from the Canada Pension Plan at that time.
6. To determine whether a worker has a loss of pension benefits under the Canada Pension Plan the Workers Compensation Board will:
- Estimate the Canada Pension Plan retirement benefits, had the injury not occurred. In this estimation, the pre-injury earnings of the worker, subject to the maximum annual earnings on the date of accident, will be indexed at the same rate of increase as the increase in the pension index Yearly Pensionable Earnings under the Canada Pension Plan to give the worker the benefit of possible increases in earnings

they may have received had the injury not occurred;

- Estimate the Canada Pension Plan retirement benefits based on actual and/or estimated earnings;
 - Calculate the difference between the estimate of the Canada Pension Plan retirement benefits, had the injury not occurred, to the greater of:
 - (A) The estimate of the Canada Pension Plan retirement benefits based on actual and/or estimated earnings; or
 - (B) The actual Canada Pension Plan retirement benefit payable at age 65 adjusted as per item #8 below, if necessary.
7. The benefit payable to the worker will be the result of the calculation in item #6, if positive. If the difference in item #6 is zero or negative, no loss of Canada Pension Plan retirement benefits has been incurred by the worker.
8. Where a worker takes early retirement and receives Canada Pension Plan benefits prior to age 65, the estimate of actual Canada Pension Plan benefits payable at age 65 will be adjusted for early retirement and inflation factors.

Loss of Registered Employer Sponsored Pension Plan Benefits

9. The Workers Compensation Board recognizes there are endless possibilities with respect to type, governing rules, and the administration of a registered employer sponsored pension or retirement savings plan.

To assist workers in gathering the information required to demonstrate a loss of registered employer sponsored pension or retirement savings plan benefits and to simplify the process the Workers Compensation Board has defined the following criteria to be used in the determination of entitlement to pension replacement benefits:

- A) For registered employer sponsored pension plans that are of the defined benefit type:
 - Where a worker takes early retirement the Workers Compensation Board will use the worker's unreduced pension amount in the calculation of pension replacement benefits;

- The Workers Compensation Board will use the assumption that a worker, had the injury not occurred, would have remained employed with the same employer and would have retired at the age at which an unreduced pension would have been available based on the rules of the worker's registered employer sponsored pension plan;
- Where a worker takes early retirement, the Workers Compensation Board will take any pension benefits received into consideration when determining the amount of pension replacement benefits. To calculate this amount, the Workers Compensation Board will use the amount of pension actually received by the worker from the date of retirement to the date the worker could have retired with an unreduced pension;
- The Workers Compensation Board will use a factor of 1.8% per annum as a rate of salary increase before retirement when calculating pension replacement benefits. This factor will be reviewed every five years beginning on the date this policy came into effect. The rate will be established based on the average rate of increase in the Consumer Price Index (Canada all items) for the 10 years prior to the five-year review period. If this factor changes, as a result of the five-year review, the new rate will only be applied to applications for pension replacement benefits after the factor review date;

The Workers Compensation Board will take into account the potential pension benefit that could have been earned from the actual or estimated earnings following the injury in calculating the amount of lost registered employer sponsored pension plan benefit. This will be done by reducing the benefit by the ratio of actual or estimated earnings to the pre-injury earnings subject to the maximum annual earnings on the date of accident, excluding the portion of earnings in any of those amounts that is related to estimated Employment Insurance earnings;

- If the worker's registered employer sponsored pension plan provides continued accrual while the worker is determined to be disabled for purposes of the registered employer sponsored pension plan, no registered employer sponsored pension plan pension benefit has been lost.

B) For registered employer sponsored pension or retirement savings plans that are

of the defined contribution type including Group Retirement Savings Plans and Pooled Registered Pension Plans:

- The Workers Compensation Board will estimate the amount of contributions that would have been made each year by the worker and their employer based on the rate of contributions reported by the employer for the worker and the net difference between the pre-injury earnings, subject to the maximum annual earnings on the date of accident, and the actual or estimated earnings following the injury excluding the portion of earnings in any of those amounts that is related to estimated Employment Insurance earnings;
- The Workers Compensation Board will use a factor of 1.8 % per annum as a rate of salary increase before retirement when calculating pension replacement benefits. This factor will be reviewed every five years beginning on the date this policy came into effect. The rate will be established based on the average inflation for the 10 years prior to the five-year review period. If this factor changes, as a result of the five-year review, the new rate will only be applied to applications for pension replacement benefits after the factor review date;
- The estimated annual contributions will be assumed to have continued up to the attainment of age 65;
- The estimated annual contributions will be increased each year at a rate of interest considered to be appropriate by the Workers Compensation Board and assuming contributions would have been made at the mid-point of each year;
- The accumulated estimated annual contributions will be converted into a monthly pension using actuarial factors considered to be appropriate by the Workers Compensation Board.

For a registered employer sponsored pension or retirement savings plan that contains both a defined benefit and a defined contribution portion, the lost registered employer sponsored pension or retirement savings plan benefit will be calculated for each portion separately as they apply to the worker using the guidelines set out in this policy and the result of each calculation will be added together.

Payment of Pension Replacement Benefits

10. The Workers Compensation Board will use external actuarial expertise in the determination of pension replacement benefits.
 11. Pension replacement benefits are payable for the lifetime of the worker. Pension replacement benefits are not transferable to a surviving spouse or dependant upon the death of the worker.
 12. Where the total annual amount of pension replacement benefits is \$500 or more, benefits will be paid on a monthly basis. Otherwise, pension replacement benefits will be paid in a lump sum on an annual basis.
 13. The Workers Compensation Board will not index pension replacement benefits.
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HISTORY:

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on the date this policy came into effect).

Board of Directors Approval Date: June 23, 2005

CURRENT POLICY