

Consultation Summary

Amendments to the policy, Collateral Benefits (POL-41), will enhance clarity, remove outdated provisions, and add examples of income which would not be considered collateral benefits subject to deduction.

Proposed amendments to the existing policy content include:

- New statement that indicates workers approved for partial Extended Wage Loss (EWL) benefits may be expected to apply for Canada Pension Plan Disability (CPPD) or Quebec Pension Plan Disability (QPPD) benefits. (4)
- Clarification that workers who are eligible for CPPD/QPPD benefits but do not apply, may have their WCB benefits reduced. (4).
- Addition of examples of income that WCB does not consider collateral benefits. (8)

In addition to the proposed amendments, the policy has been updated and re-organized in accordance with WCB's client-centered 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 strikethrough. A copy of the current policy is attached for comparison.

POLICY NUMBER: POL-41

Chapter:
CLAIMS

Subject:
COLLATERAL BENEFITS

Effective Date:
May 9, 1995

Last Update:
DRAFT August 29, 2024

PURPOSE STATEMENT:

The purpose of this policy is to explain how other injury-related benefits are deducted from Workers Compensation wage loss benefits.

REFERENCE:

Workers Compensation Act R.S.P.E.I.1988, Cap. W-7.1, Sections 41- 42.

DEFINITION:

In this policy:

“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.

“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.

“Net average earnings” means a worker’s average earnings less the probable deductions

POLICY NUMBER: POL-41

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.

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

POLICY:

1. Wage loss benefits payable to a worker shall be reduced by collateral benefits that the worker receives or is entitled to receive as a result of the injury.
2. A worker may receive collateral benefits without deduction where such benefits combined with wage loss benefits do not compensate the worker in excess of 90% of the worker’s net average earnings. This applies to workers whose average earnings exceed the maximum annual earnings.

Canada Pension Plan/Quebec Pension Plan Disability Benefits

~~32. Prior to April 1, 2002, wage loss benefits were offset by disability benefits a worker received from Canada Pension Plan (CPP) and Quebec Pension Plan (QPP) at a rate of 100%.~~

— Effective April 1, 2002, wage loss benefits are offset by Canada Pension Plan disability (CPPD) benefits or Quebec Pension Plan disability (QPPD) benefits a worker receives at a rate of 50%.

Therefore, if a worker receives a CPP or QPP disability benefit retroactive payment with an effective date prior to April 1, 2002, the Workers Compensation Board (WCB) will reduce the worker’s wage loss benefits using the following principles:

- — reduce the worker’s wage loss benefits by 100% of the portion of the retroactive payment for the period up to March 31, 2002.
- — reduce the worker’s wage loss benefits by 50% of the portion of the retroactive payment from April 1, 2002 and forward.

Where the worker is in receipt of collateral benefits other than CPP or QPP disability benefits, the WCB will reduce the worker’s wage loss benefits by 100% of the collateral benefits.

~~34.~~ Workers are expected to apply for CPPD or QPPD benefits if they are approved for full Extended Wage Loss (EWL) benefits. Workers may be expected to apply for CPPD or QPPD if they are approved for partial EWL benefits. Workers who do not apply and, in the opinion of the WCB are eligible for such disability benefits, ~~will be determined to be in receipt of such benefits and will~~ may have their wage loss benefits adjusted accordingly based on the basic payment amount.

~~6.~~ The percentage of collateral benefits will be calculated using the following formula:

$$\frac{\text{Pre-accident Average Estimated Net Earnings} - \text{Capable Earnings}}{\text{Pre-accident Average Net Earnings}} \times \text{Collateral Benefit}^*$$

~~*If the collateral benefit is CPP or QPP disability benefits, the collateral benefit will be divided by two before using in the formula.~~

~~This percentage of collateral benefits will continue to be used in subsequent reviews.~~

Other Collateral Benefits

5. Where the worker is in receipt of collateral benefits other than CPPD or QPPD, the WCB will reduce the worker's wage loss benefits by 100% of the collateral benefits.

Deduction of Collateral Benefit(s) from Wage Loss Benefits

6. Where the worker is entitled to collateral benefits but has yet to receive them, wage loss benefits may continue without deduction until the worker receives the collateral benefits.

Where the worker receives a retroactive lump sum payment of collateral benefits, the determined collateral benefit is immediately required to be paid to the WCB. Additionally, any wage loss benefits payable to the worker will be immediately recalculated.

If the worker informs the WCB that their collateral benefits have been adjusted the WCB will review the information and may recalculate wage loss benefits accordingly.

7. Where information confirms the worker is in receipt of CPPD or QPPD solely due to a non-work-related condition, CPPD or QPPD is not considered a collateral benefit.

Not Considered Collateral Benefits

89. Examples of income the WCB does not consider ~~the following to be~~ collateral benefits include, but are not limited to:

- Income from a registered employment pension plan which a worker is entitled to prior to the work injury.
- A lump sum payout of a worker's pension contributions (from a registered employment pension plan).
- Severance pay, which is the sum of money paid to a worker on employment termination based on length of employment or years of service.
- CPP retirement or post-retirement benefits.
- CPP benefits for dependent children.
- Vacation pay.
- Long-term disability benefits where the premiums were paid solely by someone other than the employer.

Income Tax

910. The worker may have to pay income tax on the amount repaid to the WCB. The WCB will not reimburse a worker for income tax paid by the worker on the amount repaid.

HISTORY:

January 1, 2023 - Non-substantive changes to reflect *Workers Compensation Act* amendments.

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

November 2, 2016 - Non-substantive changes. Policy reviewed Director and Chief Executive Officer; no other revisions required.

January 1, 2014 - Amended to reflect the spirit and intent of the changes to the *Workers Compensation Act* that became effective January 1, 2014. The amendments to the Act include a change from 80% for the first 38 weeks and 85% thereafter to as of January 1, 2014 wage loss benefits will be at 85% of the worker's net average earnings for all weeks.

May 27, 2010 - Amended to provide clarity with respect to determining the percentage of collateral benefits which are attributable to the injury.

POLICY NUMBER: POL-41

April 23, 2009 - Amended to clarify what the Workers Compensation Board considers to be collateral benefits and in what situations collateral benefits will be deducted.

March 30, 2006 - Policy revised to clarify that the Workers Compensation Board does not include severance pay to be a collateral benefit; and amended the definition of “collateral benefits” to be consistent with the definition provided in the *Workers Compensation Act*.

March 28, 2002 - Policy revised to incorporate changes required as a result of Workers Compensation Act amendments (Bill 15) to be proclaimed April 1, 2002.

June 21, 2001 - Replaces Policy and Practice (1) Collateral Benefits Treatment of Top up Payments under a collective agreement under section 42(3) of Workers Compensation Act dated May 9, 1995; (2) Benefits Administration - Earnings Loss Post Accident Earnings dated April 16, 1996; (3) Benefit Administration - Earnings Loss Post-Accident Earnings - Collateral Benefit (Allowable Employer Top-up) dated April 16, 1996; and (4) Benefits Administration - Earnings Loss Post-Accident Earnings - Collateral Benefits (Unallowable Employer Top-up) dated April 16, 1996.

Board of Directors Approval Date: May 9, 1995

POLICY NUMBER: POL-41

**Chapter:
CLAIMS**

**Subject:
COLLATERAL BENEFITS**

**Effective Date:
May 9, 1995**

**Last Update:
January 1, 2023**

PURPOSE STATEMENT:

The purpose of this policy is to explain how other injury-related benefits are deducted from Workers Compensation wage loss benefits.

REFERENCE:

Workers Compensation Act R.S.P.E.I.1988, Cap. W-7.1, Sections 41- 42.

DEFINITION:

In this policy:

“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.

“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.

“Net average earnings” means a worker’s average earnings less the probable deductions

POLICY NUMBER: POL-41

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.

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

POLICY:

1. Wage loss benefits payable to a worker shall be reduced by collateral benefits that the worker receives or is entitled to receive as a result of the injury.
2. Prior to April 1, 2002, wage loss benefits were offset by disability benefits a worker received from Canada Pension Plan (CPP) and Quebec Pension Plan (QPP) at a rate of 100%.

Effective April 1, 2002, wage loss benefits are offset by disability benefits a worker receives from CPP and QPP at a rate of 50%.

Therefore, if a worker receives a CPP or QPP disability benefit retroactive payment with an effective date prior to April 1, 2002, the Workers Compensation Board (WCB) will reduce the worker’s wage loss benefits using the following principles:

- reduce the worker’s wage loss benefits by 100% of the portion of the retroactive payment for the period up to March 31, 2002.
- reduce the worker’s wage loss benefits by 50% of the portion of the retroactive payment from April 1, 2002 and forward.

Where the worker is in receipt of collateral benefits other than CPP or QPP disability benefits, the WCB will reduce the worker’s wage loss benefits by 100% of the collateral benefits.

3. Workers are expected to apply for disability benefits under the CPP or the QPP if they are approved for extended wage loss benefits. Workers who do not apply and, in the opinion of the WCB are eligible for such disability benefits, will be determined to be in receipt of such benefits and will have their wage loss benefits adjusted accordingly.
-

POLICY NUMBER: POL-41

4. A worker may receive collateral benefits without deduction where such benefits combined with wage loss benefits do not compensate the worker in excess of 90% of the worker's net average earnings. This applies to workers whose average earnings exceed the maximum annual earnings at the time of the accident.
5. Wage loss benefits will be reduced by the percentage of collateral benefits that the worker receives or is entitled to receive as a result of the injury.
6. The percentage of collateral benefits will be calculated using the following formula:

$$\frac{\text{Pre-accident Average Net Earnings} - \text{Estimated Capable Earnings}}{\text{Pre-accident Average Net Earnings}} \times \text{Collateral Benefit}^*$$

*If the collateral benefit is CPP or QPP disability benefits, the collateral benefit will be divided by two before using in the formula.

This percentage of collateral benefits will continue to be used in subsequent reviews.

7. Where the worker is entitled to receive collateral benefits but has not yet received them, wage loss benefits are payable to the worker without deduction until the worker is in receipt of collateral benefits.

Where the worker receives a retroactive lump sum payment of collateral benefits, the percentage deduction of such lump sum payment is due to the WCB immediately upon receipt of same by the worker. Additionally, any temporary or extended wage loss benefits payable to the worker will be immediately recalculated and reduced by the amount of the collateral benefits the worker receives or has further entitlement to receive.

Where the worker informs the WCB that the collateral benefits (generally CPP disability benefits) the worker is receiving have been reduced and the worker is seeking a recalculation of temporary or extended wage loss benefits, the WCB will review the information and where necessary recalculate the temporary or extended wage loss benefits.

8. Where information is received directly from the federal government that verifies the worker was in receipt of CPP or QPP disability benefits solely attributable to a non-work related condition prior to the workplace injury, CPP or QPP disability benefits will not be deducted from the worker's wage loss benefits.

POLICY NUMBER: POL-41

9. The WCB does not consider the following to be collateral benefits:
- income from a registered employment pension plan which a worker is entitled to prior to the work injury;
 - a lump sum payout of a worker's pension contributions (from a registered employment pension plan);
 - severance pay, which is the sum of money paid to a worker on employment termination based on length of employment or years of service; and
 - CPP benefits for dependent children;
10. The worker may have to pay income tax on the amount repaid to the WCB. The WCB will not reimburse a worker for income tax paid by the worker on the amount repaid.
-

HISTORY:

January 1, 2023 - Non-substantive changes to reflect *Workers Compensation Act* amendments.

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

November 2, 2016 - Non-substantive changes. Policy reviewed Director and Chief Executive Officer; no other revisions required.

January 1, 2014 - Amended to reflect the spirit and intent of the changes to the *Workers Compensation Act* that became effective January 1, 2014. The amendments to the Act include a change from 80% for the first 38 weeks and 85% thereafter to as of January 1, 2014 wage loss benefits will be at 85% of the worker's net average earnings for all weeks.

May 27, 2010 - Amended to provide clarity with respect to determining the percentage of collateral benefits which are attributable to the injury.

April 23, 2009 - Amended to clarify what the Workers Compensation Board considers to be collateral benefits and in what situations collateral benefits will be deducted.

March 30, 2006 - Policy revised to clarify that the Workers Compensation Board does not include severance pay to be a collateral benefit; and amended the definition of "collateral benefits" to be consistent with the definition provided in the *Workers Compensation Act*.

March 28, 2002 - Policy revised to incorporate changes required as a result of Workers

POLICY NUMBER: POL-41

Compensation Act amendments (Bill 15) to be proclaimed April 1, 2002.

June 21, 2001 - Replaces Policy and Practice (1) Collateral Benefits Treatment of Top up Payments under a collective agreement under section 42(3) of Workers Compensation Act dated May 9, 1995; (2) Benefits Administration - Earnings Loss Post Accident Earnings dated April 16, 1996; (3) Benefit Administration - Earnings Loss Post-Accident Earnings - Collateral Benefit (Allowable Employer Top-up) dated April 16, 1996; and (4) Benefits Administration - Earnings Loss Post-Accident Earnings - Collateral Benefits (Unallowable Employer Top-up) dated April 16, 1996.

Board of Directors Approval Date: May 9, 1995

Current Policy