Yukon Workers' Compensation Health and Safety Board	Part:			Earnings Loss
	Board Approval:	*Original Signed by Chair*	Effective Date:	July 1, 2008
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	Board Order:	2008	Review Date:	

LOSS OF EARNINGS BENEFITS

GENERAL INFORMATION

When a worker has a loss of earnings because of a work-related injury, the Yukon Workers' Compensation Health and Safety Board (YWCHSB) pays the worker loss of earnings benefits in accordance with section 22 of the *Workers' Compensation Act* S.Y. 2008 (the "*Act*").

Section 22 of the *Act* provides that a worker's loss of earnings benefit is based on his/her average weekly earnings at the time the injury occurred. Therefore, a key part of the process is determining what the worker's earnings were at the time the injury occurred.

Furthermore, a worker may be receiving other disability benefits in addition to those paid by the YWCHSB. Under section 24 of the *Act*, the YWCHSB subtracts a portion of Canada Pension Plan or Quebec Pension Plan (CPP/QPP) disability benefits from a worker's average weekly earnings. This is to encourage the worker to recover and return to work by ensuring he or she does not receive more income from injury-related benefits than from employment.

PURPOSE

This policy provides direction to YWCHSB decision-makers on how to calculate a worker's loss of earnings benefit rate for workers whose initial short term or long term benefit rate is determined on or after July 1, 2008. It includes direction on the subtraction of a portion of CPP/QPP disability benefits for workers who begin to receive CPP/QPP disability benefits on or after July 1, 2008.

DEFINITIONS

1. Canada Pension Plan (CPP) and Quebec Pension Plan (QPP) disability benefits: monthly benefits paid to individuals who have a disability which prevents them from working at any job on a regular basis. The disability may be caused by work-related or non-work-related injuries, diseases, or a combination of several

injuries/diseases. CPP benefits are paid by the federal government; QPP benefits are paid by the Quebec government.

2. Documentation: pay slips, T4 slips, tax returns, contracts, employers' proof of workers' earnings, employers' letters or other documents which confirm a worker's earnings and employment pattern.

3. Earnings: these include, in accordance with section 3 of the *Act*: **"**salary, wages, commissions, tips, remuneration for overtime, piece work and contract work, bonuses and allowances, the cash equivalent of board and lodging, store certificates, credits, directors fees, indemnities and allowances paid to members of the Legislative Assembly, and any substitute for money but does not include any amount received for expenses incurred by the worker because of the worker's employment."

4. Interruption of Earnings: a time when a worker's earnings are interrupted for reasons usually outside the worker's control. Examples include, but are not limited to:

a) documented illness or injury;

b) incarceration;

c) maternity or paternity leave;

d) strikes or lockouts; or

e) full-time study.

5. Maximum wage rate: under Section 3 of the *Act*, maximum wage rate for a year means:

"i) $74,100 as of January 1, 2008; and

ii) commencing January 1, 2009, and in each year thereafter, the amount resulting from adjusting the previous year's maximum wage rate by

A) the percent change in the Consumer Price Index for Whitehorse, calculated by using the percent change between the average index for the twelve month period ending October 31st of the previous year and the same time period one year earlier; however,

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B) despite clause A, if the percent change is greater than four percent, the percent change to be used will be four percent; and, if the percent change is less than zero percent, the percent change to be used will be zero percent."

6. Recurrence: a situation in which a worker has had a work-related injury, has reached maximum medical improvement, has returned to work and subsequently requires treatment directly related to or caused by the original work-related injury.

7. Seasonal worker: a worker with a recurring employment profile of a period of seasonal employment, followed by a period where the worker is in receipt of Employment Insurance benefits, followed by a period of seasonal employment.

8. Terms and conditions of employment: information from a worker and the worker's employer which confirms the worker's rate of pay and the hours normally worked by the worker, which could be hourly, daily, weekly, bi-weekly, semi-monthly, monthly – or some other interval.

PREVENTION

To prevent work-related injuries, employers must ensure that workplaces, procedures and equipment are safe and that workers are thoroughly trained to perform their work safely. Workers must take all necessary safety precautions, comply with health and safety instructions and promptly report hazards and injuries to supervisors. Once injured, a worker is required to take all reasonable steps to reduce or eliminate any impairment or loss of earnings and seek out and co-operate with health care assistance or treatment, in accordance with section 14 of the *Act.*

POLICY STATEMENT

To compensate an injured worker for loss of earnings because of a work-related injury, the YWCHSB pays the worker 75 per cent of his or her average weekly earnings at the time the injury occurred, up to the maximum wage rate, in accordance with section 22 of the *Act.*

To determine a worker's loss earnings, the YWCHSB must first determine the worker's average weekly earnings at the time of the injury. Subsection 3(1) of the *Act* requires the YWCHSB to calculate those "based on any sources of earnings over any period of time that the board of directors considers fair and just, as established by policy."

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The YWCHSB calculates average weekly earnings over periods that are considered to provide the most accurate picture of the worker's earnings and earning pattern at the time of the injury.

1. Short-term benefits

Initially, workers eligible for loss of earnings benefits receive short-term benefits. To determine a worker's average weekly earnings for the calculation of these benefits, the YWCHSB considers the worker's documented earnings that fairly and justly represent the worker's loss of earnings at the time of the injury.

If the worker has little or no documented earnings at the time of the injury upon which to base the calculation of the short-term benefit rate, the worker's short-term benefit rate may be calculated based on the worker's terms and conditions of employment.

2. Duration of short-term benefits

A worker eligible for loss of earnings benefits may receive short-term benefits for up to 90 days from the day of injury.

The duration of a worker's entitlement to short-term benefits may be extended up to 180 days from the day of injury for a seasonal worker. Any proposed extension of a seasonal worker's short-term benefit rate will only apply if the worker is cooperating in his/her recovery and return to work in accordance with the requirements of the *Act* and the policies of the board.

The extension of a seasonal worker's short-term benefit rate shall not continue beyond the normal end date of the worker's seasonal employment (or 180 days from the date of injury, whichever is earlier), at which point the worker will become entitled to the long-term benefit rate, provided he or she continues to suffer from the work-related injury.

3. Provisional benefits

When it is difficult to obtain documentation immediately to confirm a worker's earnings, the YWCHSB may determine a provisional rate of benefits for the worker based on the worker's terms and conditions of employment.

Depending on how the worker is paid, his/her provisional benefit rate could be based on the daily, weekly, bi-weekly, semi-monthly, monthly or other relevant rate of pay that reflects what the worker would normally have earned at the time of injury.

The YWCHSB shall confirm the terms and conditions of the worker's employment with the worker and the worker's employer. For the purposes of a provisional benefit rate, this confirmation may be obtained verbally.

4. Duration and review of provisional benefits

If the YWCHSB pays an injured worker provisional benefits, it may pay these benefits up to a maximum of four weeks from the date of injury. Within those four weeks, the worker and the worker's employer shall provide the YWCHSB with documentation confirming the worker's earnings for a period of up to a month immediately prior to the injury. The YWCHSB shall review the provisional benefit rate based on that documentation. If the documentation indicates the rate should be adjusted up or down, the YWCHSB shall adjust the rate.

5. Long-term benefits

A worker who remains eligible for loss of earnings benefits after receiving the short-term benefit for 90 days (or up to 180 days, if the short-term benefit has been extended in accordance with this policy) shall then receive long-term benefits.

To determine the worker's earnings for the calculation of the long-term benefit rate, the YWCHSB considers the worker's earnings from all employment over the two complete calendar years immediately prior to the date the injury occurred, and selects earnings over the calendar year that is in the worker's favour.

The amount used to calculate the worker's long-term benefit rate should fairly represent the worker's long term annual loss of earnings.

If the worker has involuntary interruptions of earnings during either of these years, the YWCHSB shall exclude the time of the interruption and extend the calculation backward for a period equivalent to the interruption.

In some exceptional circumstances, the calculation of a worker's long-term benefit rate will not provide a reasonable representation of a worker's loss of earnings. In exceptional circumstances such as this, the YWCHSB may base its benefit calculation on the average earnings of other workers in the same or a similar occupation in Yukon (or a similar occupation in Canada if a Yukon comparison cannot be made).

6. Differences between provisional, short-term and long-term benefits

If the provisional benefits have been higher than the short-term benefits, the YWCSHB shall not consider the differences to have been overpayments, unless

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there were errors or omissions in the calculations. See YWCHSB policy, “Recovery of Overpaid Compensation”.

If the provisional payments have been lower than the short-term benefits, the YWCHSB shall pay to the worker the difference owed between the short-term and provisional benefit rate, retroactive to the date of injury.

Any differences between the short-term and long-term benefits shall not be considered overpayments or underpayments, unless there were errors or omissions in the calculations. See YWCHSB policy “Recovery of Overpaid Compensation”.

7. Recurrence of Injury

Section 26 of the *Act* provides that the average weekly earnings of a worker who was previously entitled to compensation and suffers a recurrence of his/her work-related injury after returning to employment shall be equal to the worker’s average weekly earnings before the work-related injury first arose or the worker’s average weekly earnings before the recurrence of the injury, whichever is greater. In these circumstances the worker is entitled to the full period of the short-term benefit rate (90 days) as provided by this policy for the recurrence of the work-related injury.

The average weekly earnings of a worker who was previously entitled to compensation and suffers a recurrence of his/her work-related injury without having returned to employment shall be equal to the worker’s average weekly earnings before the work related injury first arose. In these circumstances the worker’s benefit shall be a continuation of the benefit the worker was receiving when he/she was previously entitled to compensation, dealt with in accordance with the provisions of this policy.

8. Concurrent Employment

When a worker is employed by more than one employer at the time of injury, the YWCHSB will calculate the worker’s loss of earnings benefit rate based on the earnings from all employment in which the worker is unable to work because of the work-related injury, up to the maximum wage rate.

In determining the worker’s loss of earnings benefit, the YWCHSB must also consider any increase in the worker’s earnings from employment that the worker is able to continue performing (if any).

9. Benefits Paid For Lost Time Days Only

The YWCHSB shall pay injured workers loss of earnings benefits only for days on which the worker has experienced loss of earnings. As a result, the worker’s initial

short-term benefit payment does not commence until the first day on which the worker has an actual loss of earnings because of the work-related injury.

10. Retirement

Workers who are retired as defined by YWCHSB policy, “End of Loss of Earnings Benefits” shall not receive loss of earnings benefits.

11. Off-setting CPP/QPP disability benefits

If a worker is eligible for earnings loss benefits, and the worker is also receiving or eligible to receive CPP/QPP disability benefits, the YWCHSB shall subtract 50 per cent (50%) of the gross disability CPP/QPP benefits from the worker’s average weekly earnings, as required by section 24 of the *Act.*

The subtraction, or off-setting, shall:

a) be ‘gross to gross’ – 50 per cent (50%) of gross CPP/QPP benefits subtracted from a worker's gross average weekly earnings (before the maximum wage rate is applied);

b) apply to retroactive CPP/QPP disability benefits if the worker receives notification on or after the effective date of this policy that he or she is receiving or is eligible to receive such benefits;

c) not reduce a worker's loss of earnings benefits below the level of minimum compensation set out by Order of the Board of Directors in accordance with section 30 of the *Act*; and

d) not apply to CPP/QPP disability benefits for the worker’s dependents.

12. Worker’s responsibility to notify YWCHSB about CPP/QPP disability benefits

A worker shall notify the YWCHSB within 10 days of being notified that he or she is entitled to receive CPP/QPP disability benefits.

13. Timing of CPP/QPP Off-set

The YWCHSB shall start subtracting CPP/QPP disability benefits from the date the worker is notified by the federal or Quebec governments that the worker is entitled to monthly CPP/QPP disability benefits.

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ROLES AND RESPONSIBILITIES

Workers are responsible for providing the YWCHSB with complete and accurate earnings information as soon as possible once the claim for compensation has been filed, as well as any change in circumstances that affects the worker's claim for compensation, in accordance with subsections 14(1)(d) and 14(1)(e) of the *Act*. This includes notifying the YWCHSB that he or she has been notified by the federal or Quebec governments of eligibility to receive CPP/QPP disability benefits.

Employers are responsible for providing the YWCHSB with complete and accurate earnings information as soon as possible once the claim for compensation has been filed, as well as any change in circumstances that affects the worker's claim, in accordance with sections 10 and 83 of the *Act.*

YWCHSB decision-makers are responsible for calculating loss of earnings benefits based on the best information available, including CPP/QPP disability benefit off-sets if applicable, and documenting the calculations on the worker's claim file. Decision-makers are also responsible for notifying a worker, the dependents of a deceased worker, or the worker's employer of any decision affecting the claim for compensation as soon as is practicable, in accordance with section 16 of the *Act.*

APPLICATION

This policy applies to the Board of Directors, President/CEO and staff of the YWCHSB; to the Workers' Compensation Appeal Tribunal; and to employers and workers covered by the *Act.*

EXCEPTIONAL CIRCUMSTANCES

In situations where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or an unintended result, the YWCHSB will decide the case based on YWCHSB policy, "Merits and Justice of the Case". Such a decision will be considered for that specific case only and will not be precedent setting.

APPEALS

Decisions made by the YWCHSB under this policy can be appealed directly in writing either to the hearing officer of the YWCHSB in accordance with subsection 53(1) of the *Act* or to the Appeal Tribunal of the YWCHSB in accordance with subsection 54(1) of the *Act*. Notice of the appeal must be filed within 24 months of the date of the decision by the YWCHSB, in accordance with section 52 of the *Act*.

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ACT REFERENCES

Sections 3,10,14,16, 22, 24, 26, 30, 52, 53, 54 and 83

POLICY REFERENCES

EL-04, “Recovery of Overpaid Compensation”
EL-06, “End of Loss of Earnings Benefits”
EN-02, “Merits and Justice of the Case”

HISTORY

CL-35, “Loss of Earnings Benefits”, effective February 27, 2002, revoked July 1, 2008
CL-35, “Average Weekly Earnings”, amended February 8, 2000; section G (b) effective August 8, 2000
CL-35, “Average Weekly Earnings”, amended December 17, 1999, effective December 31, 1999
CL-35, “Average Weekly Earnings”, effective January 2, 1993, revoked December 31, 1999

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