

Loss of Earnings Benefits

Policy No. CL-35

Effective: February 27, 2002

Section Reference: **1(1), 3, 4, 22, 23, 24, 26, 34, 62(6), 89, 90, 96, 101(1)** - *1992 Workers' Compensation Act, SY 1992 as amended*

CL-35: Loss of Earnings Benefits

Introduction

Loss of earnings benefits shall be determined based on the average weekly earnings of an injured worker. The *Workers' Compensation Act* states the average weekly earnings shall be calculated based upon such sources of earnings over such period of time as the board considers fair and just. This policy shall provide the methodology to be used in the calculation of loss of earnings benefits.

Policy

1. General Application

This policy comes into effect on its date of approval by the Board.

2. Roles and Responsibilities

Adjudicators are responsible for calculating average weekly earnings and the resulting loss of earnings benefit.

The board shall document the calculations of loss of earnings benefits on the claim file.

Employers and workers participate in the calculation process by providing information and documentation to the board respecting employment and earnings, and such other information as the board may require, in a timely manner.

3. Calculations

- a. The board shall calculate the Short-Term Benefit on the basis of Regular Earnings for all workers at the outset of a claim for lost earnings.
- b. The board shall calculate the Long-Term Benefit based on the worker's Average Yearly Earnings.
- c. If the calculation for the Short-Term or Long-Term Benefit does not provide a reasonable representation of a worker's loss of earnings, the board shall use the average of earnings of other workers:
 - i. in a similar Yukon occupation; or
 - ii. if a Yukon comparison cannot be made, then in a similar occupation within Canada.

4. Duration

- a. Where a worker remains eligible for loss of earnings benefits, a worker shall receive the Short-Term Benefit for 180 days (the "short-term period").
- b. Where the employment profile of the worker is more than 180 days but less than 365 days, the Short-Term Benefit will continue (the "short-term extension"). This determination shall occur within 12 weeks after the date the claim was accepted.
- c. Where the employment profile of the worker is more than 180 days but less than 365 days, the Short-Term Benefit will continue until the employment profile determination has been met, not exceeding 365 days.
- d. Where the loss of earnings benefits continue past the "short-term period" or the "short-term extension", the Long-Term Benefit shall apply. The Long-Term Benefit shall be based on the worker's Average Yearly Earnings.

5. Employment Profile for Duration of Short-Term Benefits and Short-Term Extension

Employment profile means the length of service from all sources of employment that reflect the worker's historical employment patterns for a length of time before the accident, that fairly and consistently represents the worker's pattern of employment.

This employment profile shall be used to determine any short-term extension to the Short-Term Benefit calculation as determined under section 4. The involuntary interruptions of earnings provision will be applied in calculating the employment profile.

6. Difference between Short-Term Benefit and Long-Term Benefit

When there is a difference between the Short-Term Benefit and the Long-Term Benefit, the difference is not considered to be an overpayment or an underpayment. This does not apply when either benefit was calculated incorrectly because of an error or omission.

7. Related Service

Where a worker remains entitled to compensation benefits, the rehabilitation counsellor will consult with the worker about the scope of a rehabilitation plan. This consultation shall occur within 12 weeks after the date the loss of earnings began.

8. Transition Provision

- a. On the date that this policy is enacted, it shall apply to all workers who are in receipt of earnings loss benefits paid to them pursuant to Interim Policy CL-35.
- b. Workers receiving a Short-Term Benefit Rate under Interim Policy CL-35 for more than 180 days prior to the enactment of this policy will receive the Long-Term Benefit under this policy at 60 days, unless they have an employment profile of

more than 180 days, but less than 365 days.

Workers with this employment profile of more than 180 days but less than 365 days will continue to receive the Short-Term Benefit until the employment profile determination has been met, not exceeding 365 days.

- c. Workers receiving a Short-Term Benefit Rate under Interim Policy CL-35 for 180 days or less prior to the enactment of this policy are eligible for benefits under the criteria established in section 4 of this policy.

9. Definitions

- a. Average Yearly Earnings

Average Yearly Earnings means the documented amount of earnings that a worker received in their occupation(s) over 12 consecutive months, selected in the worker's favour from the 24-month period immediately preceding the disability. Any Involuntary Interruption of Earnings during that time is excluded, and the calculation period is extended backward as appropriate.

- b. Documentation

Documentation means confirmation of earnings that may include pay slips, T4 slips or employer's proof of worker's employment earnings.

- c. Earnings

Earnings (from all sources) includes 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. It does

not include any amount received for expenses incurred by the worker by reason of the worker's employment.

d. Regular Earnings

Regular Earnings means the documented amount of earnings received by a worker in their occupation(s) during the period of time immediately before the disability arose.

The period of time shall be determined based on the hourly, daily, weekly, or other interval, not exceeding a month, that is most beneficial to the worker.

e. Involuntary Interruption of Earnings

Involuntary Interruption of Earnings means a period of time where a worker's earnings were interrupted in the previous 12 months for reasons beyond her or his control. Examples include but are not limited to the following:

- i. documented illness
- ii. disability
- iii. strikes/lockout
- iv. maternity/paternity leave.

f. Short-Term Benefit

Short-Term Benefit means Regular Earnings established and applied by the board in accordance with section 4.

g. Long-Term Benefit

Long-Term Benefit means Average Yearly Earnings established and applied by the board in accordance with section 4.

History

1. Policy Statement CL-35, Average Weekly Earnings, effective January 2, 1993; rescinded December 31, 1999
2. Policy Statement CL-35, Average Weekly Earnings, amended December 17, 1999, effective December 31, 1999.
3. Policy Statement CL-35, Average Weekly Earnings, amended February 8, 2000, section G (b), effective August 8, 2000.
4. Policy Statement CL-35, Earnings Loss Benefits, effective February 27, 2002.