



Policy Amendment Proposal EN-12 Permanent Impairment

This policy amendment proposal relating to permanent impairments will reflect the issues consulted on during the engagement for the *Workers' Safety and Compensation Act* (the 'Act') and will align the amendments made in the new legislation.

The new Act comes into force July 1, 2022. The intended effective date of the proposed policy amendments will be July 1, 2022.

The proposed new Permanent Impairment policy will ensure consistency with the provisions of the Act and will provide clarification with respect to board practices and processes relating to the determination and assessment of permanent impairment benefits.

The purpose of the policy is to provide guidance on the determination and assessment of permanent impairment benefits.

Relevant sections of the Act

The following sections of the Act are relevant:

- 97 compensation for permanent impairment

Proposed changes to this policy

- minor changes to section references language and definitions
- amendments to refer to the benefit as a permanent impairment benefit rather than as an "award"
- amendments to reflect the following changes from the Act:
 - the definition of permanent impairment; and
 - a worker can no longer elect to have a permanent impairment benefit paid out as an annuity (currently in Board Order 2008/21 Compensation for Permanent Impairment).
- workers injured prior to the new legislation who are eligible for a benefit after the effective date of the Act will also have the benefit paid out as a lump sum



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Board Orders/Regulations

The following board order/regulation will be revoked as content has been incorporated into the policy amendment proposal.

- [Board Order 2008/21](#) Compensation for Permanent Impairment

Current policy

[EN-12 Permanent Impairment](#)

The Board of Directors is providing this policy amendment proposal to stakeholders seeking their input, comments, questions and suggestions.

Some questions for consideration:

1. Are there any general comments about this policy proposal?
2. Are there any gaps in this policy proposal?
3. Additional comments?

The views of our stakeholders are important to us. All feedback will be considered prior to the Board of Directors approving any amendments.

Engagement on this policy proposal is **extended to February 28, 2022**. Please provide your feedback by:

1. Downloading a [fillable form](#) on our website and sending it as an attachment to Policy.Feedback@wcb.yk.ca
2. Emailing comments directly to Policy.Feedback@wcb.yk.ca
3. Receipt in our building **extended to February 28, 2022**, by mail or drop off at
*Yukon Workers' Compensation Health and Safety Board
401 Strickland Street
Whitehorse, Yukon Y1A 5N8*

A summary of all feedback on this policy amendment proposal will be published on our website at www.wcb.yk.ca (**extended to March 2022**).



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Preventing work-related injuries is the most important job in any workplace. The *Workers' Safety and Compensation Act* establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

Purpose

This policy provides guidance on the determination and assessment of permanent impairment benefits.

Definitions

board means the Workers' Safety and Compensation Board

employer means every association, corporation, individual, partnership, person, society or unincorporated organization or other body having in their service one or more workers in an industry and as further defined in section 77 of the Act

maximum annual earnings means the amount that is determined annually under section 77 of the Act

permanent impairment means a permanent physical or functional abnormality or loss, including disfigurement, that results from a work-related injury

worker means a person who performs work or services for an employer under a contract of service or apprenticeship, written or oral, express or implied and as further defined in section 77 of the Act

Policy statement

1. General

In some cases work-related injuries cause conditions that diminish or disturb the function of a worker's body that could last for the rest of a worker's life. A worker may be permanently disfigured, lose parts of the body or permanently lose function of parts or systems of the body. These workers are entitled to permanent impairment benefits.



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Examples of permanent impairments may include, but are not limited to, loss of limbs; permanent and measurable loss of movement in joints; loss of hearing; loss of sight paralysis; or post-traumatic stress disorder.

A permanent impairment benefit is not related to a worker's ability or inability to do activities such as sports or hobbies, or to do work. For this reason, a permanent impairment benefit is separate from compensation for loss of earnings.

For example, if a web designer and a construction labourer both become paraplegic due to work-related injuries, they will both be assessed with the same level of permanent impairment. The jobs they did before they became paraplegic, and their ability to do those jobs after, do not affect the permanent impairment assessment or benefit. They may have different entitlement to loss of earnings benefits, though, depending on their ability to work and earn as a result of their injuries.

2. Timing of the assessment

A permanent impairment assessment will be done when the worker has reached maximum medical improvement and evidence of a permanent impairment exists. This means the worker has recovered to the best possible condition, has stabilized at that condition and is unlikely to significantly improve.

However, the board may do an interim assessment before the point of maximum medical improvement, if a work-related injury is irreversible. These types of injuries include, but are not limited to, loss of limbs or digits, paraplegia and quadriplegia.

3. Determining and assessing a permanent impairment

The board determines entitlement for permanent impairment benefits on accepted claims for compensation. The board's medical consultant will assess and determine if a permanent impairment exists and percentage or rating of the impairment. The rating will be based on the most current edition of the American Medical Association's Guide to Evaluation of Permanent Impairment (AMA Guides).

In cases where a worker has a permanent impairment, no rating will be less than 1%. If a worker has multiple permanent impairments, the rating will be based on the effect on the whole person, using the combined values charts in the AMA Guides. No rating will be more than 100%.



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4. Death of an injured worker

A worker who dies as a result of a work-related injury before the board has made a determination of their permanent impairment, is not entitled to a permanent impairment benefit.

5. Pre-existing conditions

In some cases, the worker's pre-existing condition will never return to its pre-injury state. In the case of a permanent partial impairment, the board will determine what proportion of the permanent impairment can be attributed to the work-related injury and what portion can be attributed to the pre-existing condition or other cause. Permanent partial impairment benefits will be paid only for the proportion of the permanent impairment that can be attributed to the work-related injury.

A proportioned permanent impairment benefit will be assessed according to this policy, and by determining:

- a. The value of the total clinical impairment of the worker following the work-related injury,

Less
- b. The value of the total clinical impairment of the worker prior to the work-related injury (i.e. the clinical impairment value of the pre-existing condition). Permanent impairment will be assessed according to the AMA Guides. If the worker's pre-existing condition is not measurable, the board's medical consultant will estimate the degree of the pre-existing condition based on the evidence available.

The board will not proportion the permanent impairment benefit when the work-related injury and its immediate consequences are so severe that the permanent impairment would have resulted regardless of the pre-existing condition.

6. Calculations of the benefit

The board will calculate the permanent impairment benefit by multiplying the percentage of permanent impairment by 125% of the maximum annual earnings that was in effect for the year the work-related injury occurred.



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Examples:

1. *Anne severely injures her knee during a fall at work in 2023. Following all therapy and surgery, the medical consultant concludes Anne's injury has resulted in a 5% permanent impairment. The calculation is as follows:*

*125% X \$94,320 (2022 maximum annual earnings) = \$117,900
5% (percentage of permanent impairment) X \$117,900 = \$5,895
The permanent impairment benefit is **\$5,895***

2. *Susan falls from a ladder and breaks both elbows and both wrists in 2022. After multiple surgeries, the board's medical consultant determines the worker has limited function and permanent impairments in all four joints. To determine the percentage of permanent impairment, the medical consultant considers the overall impact on the whole person, based on the AMA Guides, rather than adding up the individual value of each impairment. In this case, the permanent impairment percentage is 25%. The calculation is as follows:*

*125% X \$94,320(2022 maximum annual earnings) = \$117,900
25% (percentage of permanent impairment) X \$117,900 = \$29,475
The permanent impairment benefit is **\$29,475***

7. Review of permanent impairment benefits

The board may review a permanent impairment benefit no earlier than five years after the initial assessment. Subsequent reviews of the same permanent impairment may occur no earlier than five years after the most recent review.

However, if new medical evidence supports the conclusion that the permanent impairment has deteriorated substantially, the board may conduct a review of a permanent impairment benefit before the five-year period has elapsed.

For example, Stan has a knee injury and eventually receives a permanent impairment benefit based on an impairment rating of 4%. Three years later, he needs to have joint replacement surgery on the knee. As this indicates a substantial deterioration of the worker's knee impairment and constitutes new evidence, the board may conduct a review of the permanent impairment benefit before the five year minimum review period has elapsed.

If a review shows that the rating or percentage of impairment has increased, the board will calculate the additional benefit. This review and calculation procedure will apply to reviews of permanent impairment benefits made after January 1, 1993. The calculation procedure is



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as follows:

- a. The board determines the difference in the percentage or rating of the permanent impairment between the initial assessment and the review.
- b. The board will multiply that difference in percentage by 125% of the maximum annual earnings of the year in which the injury occurred.

For example, Peter, a 45 year old worker, injures his back in 1993. He receives a permanent impairment benefit of \$4,000, based on a permanent impairment of 5%. His condition worsens. In 2023 the board reviews his case and determines his impairment is now at 8%. His additional permanent impairment benefit is calculated as follows:

25% X \$50,000 (maximum wage rate in 1993) = \$62,500

8% (new impairment rating) - 5% (1993 impairment rating) = 3%

3% (difference in impairment ratings) X \$62,500 = \$1875.00

*The worker receives an additional permanent impairment benefit of **\$1875.00***

8. Lump sum payment

A worker will receive their permanent impairment benefit as a single lump sum payment. This section applies to all workers eligible for a permanent impairment benefit regardless of date of injury.