



Policy Amendment Proposal

RE-13 Determining Suitable Employment and Loss of Earning Capacity

This policy amendment proposal relating to determining suitable employment and loss of earning capacity 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 amended Determining Suitable Employment and Loss of Earning Capacity policy will reflect minor changes to ensure consistency with the provisions of the Act.

A five-year policy review plan will be developed later in 2022. After July 1, 2022, all amended policies to align with the new Act will be prioritized for a more detailed review.

The purpose of this policy is to provide information on the estimation of a worker's loss of earning capacity.

Relevant sections of the Act

The following sections of the Act are relevant:

- 99 compensation for loss of earning capacity

Proposed minor changes to this policy are highlighted in yellow

- changes to section references, language and definitions
- removal of CPP offset as part of estimation of earnings loss capacity
- new title to reflect Act language

Board Orders/Regulations

N/A

Current policy

[RE-13 Determining Suitable Employment and Earnings Capacity Loss](#)



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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 closes on **May 31, 2022**. Please provide your feedback by:

1. Downloading a [fillable form](#) 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 by May 31, 2022, by mail or drop off at
Yukon Workers' Compensation Health and Safety Board
401 Strickland Street
Whitehorse, Yukon Y1A 5N8

By the end of June a summary of all feedback on this policy amendment proposal will be published on our website at www.wcb.yk.ca



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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 information on the estimation of a worker's loss of earning capacity.

Definitions

board means the Workers' Safety and Compensation Board

functional abilities means the worker's limitations and abilities (what the worker can and cannot do) with respect to a work-related injury

labour market review means the process in which the board gathers information on the current job duties, required skills and levels of earnings of occupations

suitable employment means work that meets the following criteria:

- a. the work is within the worker's functional abilities;
- b. the worker has, or is reasonably able to acquire, the necessary skills to perform the work;
- c. the work does not pose a health or safety risk to the worker or co-workers; and
- d. the work restores the worker's earnings, if possible

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

The worker's loss of earning capacity is the difference, if any, between:

- a. the worker's average earnings before the work-related injury as determined under the Act and policies; and



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- b. the average earnings that the board determines the worker is capable of earning after the work-related injury

2. Estimating loss of earning capacity

Estimating a worker's loss of earning capacity due to a work-related injury requires:

- a. determination of the worker's average earnings before the work-related injury, in accordance with policy [EL-01 Loss of Earnings Benefits](#);
- b. identification of suitable employment for the worker, based on their functional abilities and usually a vocational assessment;
- c. estimation of the earnings that the worker could earn in suitable employment; and
- d. calculation of the difference between (a) and (c).

3. Identification of suitable employment

Suitable employment for the worker is generally identified through the vocational assessment process, as per policy [RE-10 Vocational Rehabilitation](#). This is in cases where the worker is unable to fully recover from a work-related injury and also unable to return to their job at the time of the work-related injury.

In all cases, except where the worker is considered capable of earning minimum wage, the occupation that the worker has chosen (or a default option, if applicable) must meet the definition of "suitable employment" set out in policy [RE-02-1 Duty to Co-operate Part 1 of 4: Early and Safe Return to Work Plans](#).

The worker's ability to remain employed in Yukon, as well as the worker's employment pattern (full-time, part-time, seasonal), are factors considered in the identification of suitable employment.

4. Earnings for suitable employment

The board will rely on current (i.e. not more than three years old) published labour market information or, in the absence of published labour market information, on a labour market survey of at least three suitable employers when determining estimated earnings for suitable employment.

Wage scales applied to suitable employment will be based on the greater of Yukon wage scales for the occupation or the wage scale in the jurisdiction where the worker resides. Where a Yukon wage scale is unavailable, Canadian wage scales will be used.



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Once **the board** has identified an appropriate wage scale, an appropriate earnings level on the scale must be determined.

Where a worker has the physical functional ability to work at least three hours a day, that worker will be considered capable of earning at least the Yukon minimum wage (in effect at the time the policy is applied and updated as the Yukon minimum wage changes, under regulations of the *Employment Standards Act*).

a. Acquiring a new skill – estimating earnings

The estimated earnings level on the wage scale for workers whose suitable **employment** involves acquiring a completely new skill set (not involving transferable skills) or entering new **employment** in which they have no previous experience will be based on the average of the base entry wage.

b. Transferable skills development – estimating earnings

For workers whose return to work plan is designed to improve or augment existing or transferable skills for the suitable **employment**, estimated earnings will be the mid-point on the scale.

c. Actual earnings in suitable **employment**

If the worker has actual earnings in the suitable **employment**, **the board** will use those earnings in estimating the worker's loss of earning capacity if:

- i. the actual wages are higher than the average entry wage or average wages as appropriate under (a) or (b) above; or
- ii. the actual wages are within 90 per cent (90%) of the average entry wages or average wages, as appropriate under (a) or (b) above.

5. Application of policy RE-12 Employment Readiness

If, as part of the worker's return to work plan, **the board** is providing the worker with an employment readiness program it will be administered under policy [RE-12 Employment Readiness](#).

6. Annual review

In partnership with the workers, **the board** annually reviews claims involving compensation to determine loss of earning capacity.



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The review considers:

- a. any change in the worker's functional abilities;
- b. any change in the worker's earnings from employment; and
- c. whether the worker has tried to reduce the financial and physical impacts of the work-related injury, according to requirements of [section 91](#) of the Act and policy [RE-03 Mitigation of Loss](#).

This includes, but is not limited to, the worker:

- d. performing or searching for work that fits with [their](#) functional abilities;
- e. getting appropriate health care treatment and following instructions of health care providers;
- f. trying to maintain functional abilities for as long as possible; and
- g. keeping the board informed of changes in functional abilities or employment earnings.

Indexing of benefits

The review includes the annual indexing of both the [average earnings at the time of the work-related injury](#) and the earnings [the board](#) considers the worker capable of earning in suitable [employment](#). The indexing factor is determined under section [126](#) of the Act.

Labour market review

From time to time, [the board](#) will conduct a labour market review to determine current levels of earnings for suitable [employment](#) for the worker. [The board](#) will give notice to the worker in the year preceding the labour market review year if it decides to conduct such a review. In no case does [the board](#) conduct a labour market review two years in a row.

In a year when there is a labour market review, [the board](#) may adjust or remove the indexing of the suitable [employment](#) applied that same year.

Changes made to the worker's estimated loss of earning capacity will be communicated to the worker verbally, where possible, and in writing. These changes will also be documented on the claim file.

Applying for a review

Workers under this policy who do not incur a loss of earnings capacity as a result of their work-related injury can apply for a review should their functional abilities change due to the work-related injury.



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Related Policies

[EL-01 Loss of Earnings Benefits](#)

[RE-02-1 Duty to Co-operate Part 1 of 4: Early and Safe Return to Work Plans](#)

[RE- 03 Mitigation of Loss](#)

[RE-10 Vocational Rehabilitation](#)

[RE-12 Employment Readiness](#)
